NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 6
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(Includes adopted rules filed through February 28, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 18, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 22, 1994

RULEMAKING IN THIS ISSUE

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **April 20, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

RULE ADOPTIONS

EMERGENCY ADOPTION

PUBLIC NOTICES

(Continued on page 1415)

NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 8(1994)
New Jersey Economic Master Plan Commission Expansion of Membership

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

WHEREAS, Executive Order No. 1(1994) established the New Jersey Economic Master Plan Commission ("Commission") consisting of a Chairperson and twelve (12) members appointed by the Governor, including the Secretary of State and the Commissioners of Commerce and Labor; and

WHEREAS, reaction to the Commission has been extremely positive and many people have expressed an interest in serving as public members of the Commission; and

WHEREAS, the call for broad public participation on the Commission should be accommodated;

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

1. The Commission's membership shall be expanded and shall consist of a Chairperson and eighteen (18) members appointed by the Governor, including the Secretary of State, the Commissioner of the Departments of Commerce and Labor and the Chief of Policy and Planning.
2. Except as herein modified all of the provisions of Executive Order No. 1(1994) shall remain in full force and effect.
3. This Order shall take effect immediately.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Subpoenas

Proposed Amendment: N.J.A.C. 1:1-11.1

Proposed Repeal: N.J.A.C. 1:13A-11.1

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1994-174.

Submit comments by April 20, 1994 to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Blg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Office of Administrative Law (OAL) rules currently provide for issuance of a subpoena by the Clerk or by a judge. N.J.A.C. 1:1-11.1. OAL deemed it inappropriate to permit attorneys and parties to issue subpoenas since the OAL was not granted express subpoena authority under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to 15 and 52:14F-1 to 13. Thus, the extent of OAL's subpoena authority was unclear, for example, whether such authority could be implied from OAL's general authority to conduct contested case hearings or whether it only existed derivatively when the agency for which OAL was hearing a case had such authority. See *Hayes v. Gulli*, 175 *N.J. Super.* 294 (Ch. Div. 1980).

N.J.S.A. 52:14F-5 has been amended to provide the OAL Director express authority to issue subpoenas for the attendance of witnesses and the production of documents in contested case hearings. OAL is proposing to amend its rules to permit issuance of subpoenas by attorneys, *pro se* parties and non-lawyer representatives. There are two limitations on issuance of subpoenas by an attorney, *pro se* party or non-lawyer representative. First, subpoenas can be issued by a party or representative only for attendance at hearings. Subpoenas for depositions can be issued only by an administrative law judge since depositions are generally available only upon order for good cause shown. See N.J.A.C. 1:1-10.2.

Secondly, subpoenas for high level government officials may be issued only by a judge. The high level government officials covered by this provision include the Governor, agency heads, Assistant Commissioners, Deputy Commissioners and Division Directors. Under the definitions of "agency" and "agency head," N.J.A.C. 1:1-2.1, the heads of independent authorities such as New Jersey Transit and the Housing and Mortgage Finance Agency are also included as high level officials. The OAL docket differs from the courts' in that OAL cases primarily involve government agencies. OAL believes that due to the significant numbers of cases involving governmental entities, a potential for abuse exists. In order to ensure against undue burden being placed on high level government officials who may not be necessary witnesses in our proceedings, such subpoenas may be issued only by a judge after a party shows that the subpoena is appropriate.

The proposed amendment incorporates the standards for subpoenaing a high level government official which have been set forth in the case law. *See, Hyland v. Smollok*, 137 *N.J. Super.* 456, 460 (App. Div. 1975); *N.J. Turnpike Authority v. Sisselman*, 106 *N.J. Super.* 358, 367 (App. Div. 1969). Such an individual can be subpoenaed only if he or she has firsthand knowledge of the events involved in the contested case, was directly involved in those events, or his or her testimony is essential to prevent injustice. It has been the policy of the OAL to grant subpoenas, unless obviously improper, subject to a motion to quash. Under the proposed process for subpoenaing a high level government official, this process would be modified. The party requesting such a subpoena would be required to make a showing that it was appropriate, for example, to demonstrate that the subpoenaed individual had firsthand knowledge of or direct involvement in the case, or that the testimony was essential to prevent injustice.

Subpoenas remain subject to motions to quash.

OAL is proposing the repeal of N.J.A.C. 1:13A-11.1 which provided for the issuance of subpoenas by *pro se* parties, attorneys-at-law and non-lawyer representatives in lemon law cases because the lemon law statute, N.J.S.A. 56:12-29 to 49, provided express subpoena authority in those matters. Since OAL now has explicit subpoena authority in all cases, and since the proposed amendment would permit *pro se* parties, attorneys-at-law and non-lawyer representatives to issue subpoenas in any case, this rule is no longer necessary.

Social Impact

In most cases, these procedures should simplify the process of issuing a subpoena. Currently, a requesting party must obtain a blank subpoena form from the OAL, complete the subpoena, return it to the OAL for judge's signature, and then serve the subpoena either in person or by certified mail. The entire process had to be completed by a reasonable time before the hearing. The proposed amendment permits representatives and *pro se* parties to issue the subpoenas, thus elminating one step of the subpoena process. The process should therefore become simpler and less burdensome for parties to contested cases.

Economic Impact

The proposed amendment eliminates the time and expense needed to submit a completed subpoena form to the OAL for signature. This should result in a minimal cost savings for the parties. OAL anticipates that parties will issue subpoenas appropriately. Misuse of the subpoena process would lead to an increased number of motions to quash which would increase the costs for both the parties and an increased use of judge's time for the OAL.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment permits the issuance of subpoenas by *pro se* parties, attorneys-at-law and non-lawyer representatives, and provides the circumstances under which a judge shall issue a subpoena for a high level government official.

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

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk [or], any judge**, or by *pro se* parties, attorneys-at-law or non-lawyer representatives, in the name of the Clerk,** to compel the attendance of a person to testify **or to produce books, papers, documents or other objects** at a hearing [or a deposition.]**, provided however, that a subpoena to compel the attendance of the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director may be issued only by a judge. A subpoena for the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director shall be issued only if the requesting party makes a showing that the subpoenaed individual has firsthand knowledge of, or direct involvement in, the events giving rise to the contested case, or that the testimony is essential to prevent injustice.**

(b) The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, documents or other designated objects at the time and place specified therein and on any continued dates.

(c) Subpoenas to compel the attendance of a person to testify at a deposition may be issued by a judge pursuant to N.J.A.C. 1:1-10.2(c).

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

SUBCHAPTER 11. [SUBPOENAS] **(RESERVED)**

[1:13A-11.1 Subpoenas

(a) Subpoenas may be issued by the Clerk of the OAL or a judge or *pro se* parties, attorneys-at-law or non-lawyer representatives, if any, in the name of the Clerk to compel the attendance of a person to testify or to produce books, papers, documents or other objects at a hearing.

(b) In all other respects, the procedures for issuance, service, challenge and enforcement of subpoenas set forth in N.J.A.C. 1:1-11.1 through 11.5 shall apply.]

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Management and Governing Body Standards

Proposed New Rules: N.J.A.C. 10:37D

Proposed Repeals: N.J.A.C. 10:37-6.1 through 6.4, 6.8, 6.9, 6.25, 6.26, 6.30 through 6.33, 6.37, 6.38, 6.58 and 7.1 through 7.9

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

Authority: N.J.S.A. 30:9A-10.

Proposal Number: PRN 1994-183.

Submit comments by April 20, 1994 to:
Raymond M. Deeney, Esq.
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727
Trenton, NJ 08625-0727

The agency proposal follows:

Summary

These proposed new rules provide the Management and Governing Body requirements for agencies funded by the Division of Mental Health and Hospitals to provide services pursuant to N.J.S.A. 30-9A-1 et seq. ("The Community Mental Health Services Act"). There are approximately 150 such agencies funded by and under contract with the Division at present and they serve approximately 210,000 clients. Currently, management rules for these agencies exist at N.J.A.C. 10:37-6.1 through 6.4, 6.8, 6.9, 6.25, 6.26, 6.37, 6.38, 6.58 and 7.1 through 7.9, which are hereby proposed for repeal and proposed to be replaced by these new rules. Currently, governing body rules for these agencies exist at N.J.A.C. 10:37-6.30, 6.31 and 6.32, which are also hereby proposed for repeal and proposed to be replaced by these new rules.

The rules proposed for repeal have been in effect since 1981 without amendment and aspects of the rules have become outdated. Consequently, the Division elicited extensive input from provider agencies, advocates, consumers, family representatives and other interested parties to develop these proposed rules.

The purpose of these proposed rules is to assist in ensuring the delivery of high quality services by requiring contracted agencies to establish their own internal structures and policies which will promote effective management and governing body practices.

Subchapter 1 contains provisions outlining the general scope and purpose of the chapter. Subchapter 2 defines some words and terms used throughout the chapter. Subchapter 3 provides management standards, including provisions regarding a table of organization, the development of policies and procedures, accessibility of services to clients, information communication, environmental maintenance, quality assurance participation and support, a management information system, service coordination, financial internal controls, a personnel policies and procedures manual, maintenance of personnel files, policies and procedures regarding staff credentials and employment references, employee orientation, training, supervision and evaluation, clinical staff qualifications, conflict of interest policy, discrimination policy, affirmative action and equal employment policies and procedures and client confidentiality, rights and grievance policies. Subchapter 4 provides governing body standards, including provisions regarding the establishment of advisory boards or committees, fiduciary responsibility, by-laws, a conflict of interest and disclosure policy, frequency and documentation of governing board meetings, executive and management functions of the governing board and reports by the provider agency to the governing board.

Social Impact

The Department believes that these proposed new rules positively impact on the consumers of Division-funded services, the providers of those services, the Division and the taxpayers by promoting more effective and efficient service delivery. More specifically, the Department believes that the various aspects of overall management contained in these proposed new rules must be adequately addressed to ensure high quality service delivery. Provider agencies will receive the benefit of the use of standards recently developed with broad input, including significant input from staff of several agencies currently funded by the Division. The Division, and its clients, will benefit from the ability to apply standards which incorporate the developments and experiences garnered during the last twelve years since these standards were initially adopted.

Economic Impact

The proposed new rules will have a positive economic impact upon the indigent and limited income consumers of State funded mental health services by promoting the highest quality services for them at little or no personal expense. Overall, the Department believes the proposed new rules will not have any economic impact on funded agencies, since the agencies are fully funded to provide the services as required.

Regulatory Flexibility Analysis

Some providers of Division-funded mental health services may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq. The proposed new rules set forth a number of reporting, recordkeeping and compliance requirements on such agencies, deemed necessary to ensure the efficient delivery of services, which are completely supported by State funds. The requirements involve management activities, such as developing a table of organization, developing policies and procedures, screening staff, communicating with staff, maintaining records, and coordinating services. Additional requirements involve service delivery, and include the assurance of accessibility to the clients and the maintenance of a clean and safe environment.

There is no need for such agencies to employ outside professional services to comply with the provisions, nor is there any requirement for them to expend capital costs to comply with the rules. Any costs of compliance incurred by the agencies are covered in the contracts between the agencies and the Division. The reporting, recordkeeping and other compliance requirements imposed upon such agencies must be uniformly applied, regardless of the size of the agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality and effectiveness. These standards are important because the individuals with mental illness receiving these services have typically been psychiatrically hospitalized and would be at risk of additional costly and personally disruptive hospitalizations in the absence of quality community services delivered in accordance with these standards.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10:37-6.1 through 6.4, 6.8, 6.9, 6.25, 6.26, 6.30 through 6.33, 6.37, 6.38, 6.58 and 7.1 through 7.9.

Full text of the proposed new rules follows:

CHAPTER 37D
MANAGEMENT AND GOVERNING BODY STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

10:37D-1.1 Scope and purpose

(a) These rules shall apply to all provider agencies (PA) funded by the Division of Mental Health and Hospitals (Division).

(b) These rules are designed to promote client centered services which provide high quality, accessible and innovative treatment. These rules are also designed to promote creativity and responsiveness to client and staff needs, and goal directed services.

10:37D-1.2 Definitions

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

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals.

"Provider agency (PA)" means an agency contracted with, or funded by, the Division to provide specific direct mental health services to clients.

SUBCHAPTER 2. MANAGEMENT STANDARDS

10:37D-2.1 Table of organization

(a) Each PA shall have a written table of organization.

1. The table of organization shall clearly delineate staff accountability and the chain of command of the PA.

2. The table of organization shall be revised within 90 days of any major change in the agency organizational structure.

3. The table of organization shall be approved by the governing board.

10:37D-2.2 Policies and procedures

(a) Each PA shall develop policies and procedures to adequately guide PA operations to meet organizational, fiscal, programmatic and management objectives.

1. Each PA shall ensure that agency policies and procedures are written, distributed to staff and clients, when relevant, and consistently enforced and monitored.

2. Clients shall be provided the opportunity to recommend and evaluate PA policies and procedures that impact the services they receive.

3. Each PA shall review all policies and procedures annually, and revise as necessary. The annual reviews shall be documented.

10:37D-2.3 Service accessibility

(a) Each PA shall make services accessible to clients.

1. Mental health services shall be available at times and locations which provide all clients access to the services.

2. All services shall be accessible to physically handicapped individuals.

3. Through careful attention to ethnic, racial, primary language, and other characteristics, the PA shall assure that services provided to clients are culturally sensitive, culturally competent and in a language sufficiently well understood by the client to assure comprehension.

4. Financial or economic barriers to the receipt of services shall be minimized.

5. Each PA shall provide a written sliding fee schedule for clients based on their ability to pay.

10:37D-2.4 Staff communications

(a) There shall be documentation that managers provide staff with the information they need to effectively perform the functions of their assigned tasks.

1. Methods for communicating information may include staff meetings, written memoranda and supervisory meetings. Documentation that such communication exists may include evidence of staff and supervisory meetings and informational memoranda.

10:37D-2.5 Environment

(a) Each PA shall maintain a clean and safe environment which promote dignity and self respect for staff and clients.

1. The physical plant shall be regularly cleaned and inspected for possible life safety deficiencies.

2. There shall be sufficient space allocated for the programs and activities provided.

3. There shall be sufficient space to allow for privacy for individual, group or family sessions.

10:37D-2.6 Quality assurance

(a) Managers in each PA shall participate in and support their quality assurance program.

1. There shall be documented evidence that information resulting from the quality assurance process is reviewed and used by management to promote and enhance the mission, goals and objectives of the organization.

2. There shall be evidence that management provides input into the agency's quality assurance process as required at N.J.A.C. 10:37-9.

10:37D-2.7 Management information system

(a) Each PA shall develop a computerized or manual management information system which provides information to support the goals and objectives of the organization and the provision of high quality client-centered services.

1. The management information system may include, but need not be limited to, data on admissions, diagnoses, wait for service, referral sources, discharges, dropouts, readmissions, incidents, direct service staff activities, staff caseloads, frequency of services, and types of service modalities.

2. The information collected shall be used by management to assess accessibility of services and appropriateness of staffing, and to assist in management decision-making.

3. The PA's management information system shall be able to generate all routine system-wide contract and client registry data required by the Division.

4. Client information that is contained in the management information system shall be safeguarded to protect confidentiality.

10:37D-2.8 Coordination of services

(a) Each PA shall develop methods to coordinate services between providers who serve mutual clients to ensure continuity of care.

1. Procedures to coordinate services shall ensure that clients' treatment goals and objectives are consistently reinforced and that the services provided are complementary.

10:37D-2.9 Financial procedures

(a) Each PA shall have a system of financial internal controls to protect organizational assets and promote the goals and objectives of the organization.

(b) The system of financial internal controls shall provide reasonable assurance that:

1. Obligations and costs are in compliance with applicable laws;

2. Funds, property and other assets are safeguarded against waste, loss, unauthorized use and misappropriation;

3. All financial transactions applicable to agency operations are properly recorded and accounted for so that financial and statistical reports and accountability over the assets can be maintained and can be prepared; and

4. There is a system of checks and balances related to specific financial routine procedures and a careful separation of functions and responsibilities in authorizing, processing, recording and reviewing transactions.

(c) Each PA's financial procedures shall include, but need not be limited to, the following:

1. Well-maintained accounting records in accordance with generally accepted accounting principles; such records shall include, but not necessarily be limited to, general ledger, cash receipts and cash disbursement journals, accounts receivable and accounts payable journals, payroll register, and inventory records;

2. Up-to-date records related to client attendance and determination of client fees;

3. A methodology for monitoring the accuracy of budget projections compared to actual costs, at least on a quarterly basis; and

4. The reports to the governing board of current financial status information, at least on a quarterly basis.

(d) Each PA's written policies and procedures shall adhere to the contract accounting and reporting requirements contained in N.J.A.C. 10:3.

10:37D-2.10 Personnel manual

(a) Each PA shall have a personnel policies and procedures manual which is approved by the governing board and describes the practices of the PA.

(b) There shall be documentation that the governing board has approved the personnel manual and all subsequent revisions.

(c) The personnel manual shall include, but need not be limited to, the following policies: staff benefits, work hours, sick leaves, leave of absence, on the job injuries, grievances, employee discipline, code of ethics, outside employment, reporting losses, thefts or vandalisms, retirement assistance, employee evaluations, and conflict of interest.

(d) There shall be written job descriptions for every employee position which includes staff responsibilities, minimum qualifications and reporting relationships.

10:37D-2.11 Personnel files

(a) Each PA shall maintain personnel files for all staff and volunteers.

1. Personnel files shall include applications and resumes with pertinent identifying data; a copy of employee contracts when applicable; copies and verifications of professional credentials as appropriate; performance evaluations; and current job descriptions.

10:37D-2.12 Verification of staff credentials

(a) Each PA shall have written policies and procedures to ensure the verification of staff credentials and employment references.

1. Credentials shall be verified either: by viewing the original licenses or degrees of professional staff; a sign-off sheet by the personnel officer or appropriate staff; or documentation of written or telephone contact with the organization that granted the degree; or license.

2. Previous employment shall be verified by documentation of written or telephone contact with an employee's previous employers.

3. There shall be documentation that licenses are verified each year to ensure that they are valid.

10:37D-2.13 Qualification of clinical staff

(a) Each PA shall hire clinical staff who are appropriately licensed, certified or trianed in order to be able to assume responsibility for the clinical services provided by the PA.

1. The PA governing board shall formally adopt policies and procedures to ensure that psychiatrists are Board certified or Board eligible by the American Board of Psychiatry.

2. The PA shall ensure that only appropriately licensed personnel shall provide services for which a license is required.

10:37D-2.14 Training

(a) Each PA shall orient, train, supervise and evaluate employees.

1. There shall be an orientation to assist staff to adequately perform their job responsibilities at the onset of their employment.

2. There shall be documented ongoing training provided to staff on pertinent topics.

3. Cultural sensitivity shall be included in staff orientation and training programs.

4. There shall be regularly scheduled staff meetings or supervisory conferences.

5. There shall be at least an annual performance evaluation of all staff.

6. There shall be procedures to supervise the work of student interns and volunteers.

10:37D-2.15 Conflict of interest

(a) Each PA shall have a policy addressing conflict of interest issues.

1. The policy shall prohibit PA staff from personal, financial, professional or political gain at the expense of the PA's or clients' interest.

2. The policy shall comply with any current Department conflict of interest rules contained in N.J.A.C. 10:3-1.14.

10:37D-2.16 Non-discrimination

(a) Each PA shall have a policy that prohibits discrimination against applicants for employment or services and against any employee or recipient of service, because of race, color, creed, religion, ethnic background, national origin, marital status, handicap, age or gender. The policy shall comply with all Federal and State statutes as well as any current Department non-discrimination policy.

10:37D-2.17 Affirmative action and equal employment opportunity

Each PA shall have policies and procedures that address Affirmative Action pursuant to the Civil Rights Act of 1964, Executive Order No. 61, N.J.A.C. 17:27, N.J.S.A. 10:5-31 et seq. and P.L. 1975, c.127, and Equal Employment Opportunity pursuant to N.J.S.A. 11A:7-1 et seq. The policies shall adhere to all Federal and State statutes and any current Department policies.

10:37D-2.18 Client confidentiality, rights and grievances

(a) Each PA shall have policies and procedures to address client confidentiality, rights and grievances.

1. The policy to safeguard clients' confidentiality shall comply with N.J.S.A. 30:4-24.3 on confidentiality, any current Department policies on access to records and N.J.A.C. 10:37-6.79, Confidentiality of records.

2. The policy to address clients' rights shall comply with N.J.A.C. 10:37-4.5, Clients rights.

3. The clients' grievance procedure shall comply with N.J.A.C. 10:37-4.6, Client complaint agency ombuds procedure.

4. Policies on client confidentiality, rights and grievances shall comply with all related Federal and State statutes, and any current Department rules.

SUBCHAPTER 3. GOVERNING BODY STANDARDS

10:37D-3.1 Governing board; general duties and composition

(a) Each PA shall have a governing board which may establish advisory boards or committees to ensure that the PA's programs are responsive to the consumers in the communities served by the PA.

1. Priority for membership shall be given to individuals who reside, work, and/or receive services in the service area, or are former recipients of services, or have family member(s) who receive services from the PA.

2. Each PA shall document "good faith" efforts to recruit current or former recipients of services from a mental health program, or family members or guardians of such recipients for board membership.

3. Governing boards and advisory boards shall generally reflect the age, race and gender demographics of the service area.

4. To promote diversity, advisory boards shall be composed of individuals with varied expertise.

5. The majority of the governing and advisory board members shall not be providers of health care.

6. There shall be documentation that all advisory boards offer recommendations to the governing board for their consideration.

10:37D-3.2 Governing board; financial responsibility

(a) Each PA's governing board shall assume fiduciary responsibility for the financial management of the PA.

1. The governing board shall authorize, approve and adopt the PA's annual budget.

2. The governing board shall approve all capital projects.

3. The governing board shall review and approve the PA's annual audits performed by an independent public accountant.

4. Each governing board shall formally designate a member to certify financial statements by signature.

5. The governing board shall monitor expenditure reports on at least a quarterly basis to ensure the PA's financial solvency.

10:37D-3.3 By-laws

(a) Each governing board shall establish by-laws that define its roles and functions.

1. The by-laws shall describe the powers and duties of the governing board, its officers and committees.

2. The by-laws shall state the criteria and method of selecting members.

3. The by-laws shall state the number of members necessary for a quorum and the rules for meetings, including frequency of meetings.

4. The by-laws shall describe the authority and responsibilities of the Chief Executive Officer including his or her reporting responsibilities to the board.

5. The by-laws shall be reviewed at least every two years and revised as necessary. The board president or chair shall sign and date the by-laws to indicate the time of review or revision.

6. The by-laws shall conform to the requirements of N.J.S.A. 15A:2-10.

10:37D-3.4 Conflict of interest

Each governing board shall develop a conflict of interest and disclosure policy which conforms with Department rules at N.J.A.C. 10:3-1.14.

10:37D-3.5 Meetings; schedule and minutes

(a) Each governing board and its advisory boards shall meet on a regular basis as described in its by-laws.

1. The governing board and its advisory boards shall meet with sufficient frequency to carry out the functions described in this document but in no case less frequently than quarterly.

2. Minutes of meetings shall be maintained, including resolutions and motions pertaining to the fiscal and legal responsibilities of the board.

10:37D-3.6 Functions of the board

(a) The executive and management functions of the governing board shall include, at a minimum, establishing and approving general policies for the fiscal and programmatic operation of the agency, to ensure consistency with the agency's mission and goals.

(b) The governing board shall appoint the Chief Executive Officer and evaluate his or her performance periodically.

(c) The governing board shall review and approve plans to establish new programs or to substantially alter or discontinue existing programs, substantial changes in levels of service, and changes in populations served.

10:37D-3.7 Reports to the board

(a) Each PA shall submit written reports summarizing the PA's activities and status to the governing board.

1. The governing board shall determine the nature and frequency of these reports, with input from the Chief Executive Officer.

2. The frequency and content of these reports shall provide the governing board sufficient information to meet its legal and fiscal responsibilities.

3. The PA shall provide summaries of Quality Assurance findings to the governing board.

10:37D-3.8 Department access to records

Each governing board shall conform to any current Department rules regarding access to PA records.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration

Appeal Procedure

Proposed Amendments: N.J.A.C. 10:48-1

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

Authority: N.J.S.A. 30:4-6 et seq., 30:1-12 et seq., and 30:6D-5(b).

Proposal Number: PRN 1994-169.

Submit comments by April 20, 1994 to:
James M. Evanochko
Administrative Practice Officer
CN 726
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Developmental Disabilities provides services to approximately 18,000 persons in New Jersey. Services are provided in a variety of settings, such as group homes, supervised apartments, community care homes, and public and private institutions. Services are also provided to persons living in their own home, including, but not limited to, supported or sheltered employment, personal care attendants and respite care.

Persons who apply for services must go through an eligibility determination by the Division. The requirements for eligibility are found at N.J.A.C. 10:46.

In addition, the Division licenses community residences for the developmentally disabled which consist of group homes, supervised apartments and community care homes. The requirements for licensure are found at N.J.A.C. 10:44A and 10:44B.

Some persons applying for services are found to be ineligible. From time to time, there is a disagreement between the individual or his or her legal guardian and the Division staff as to what services should be provided. Occasionally, the Division takes action against the license of an individual. In such instances, the rules provide a means to address those differences.

On April 7, 1993, the Division received the decision of the New Jersey Supreme Court in the matter of *Mr. and Mrs. J.E., on Behalf of G.E. v. DDD,* 131 *N.J.* 552 (1993). That decision, in part, was critical of the Division's appeal procedure and suggested a number of changes. The revised rule reflects the Division's effort to comply with the Supreme Court decision.

A summary of the proposed amendments follows:

Under the "General Provisions" section, it is required that all appeals be sent to the appropriate Assistant Director. The exception to this requirement is that licensure appeals are made to the Division Director.

In the "Definitions" section, new definitions of the terms "placement" and "settlement conference" are provided.

There is a new section on contested cases. Contested cases are specifically identified as licensure actions, ineligibility for services and specific offers of settlement. A settlement conference is required in contested cases. No transcript is made. If settlement is not possible, the matter is transmitted to the Office of Administrative Law.

For non-contested cases, the first step is an informal conference with the component making the decision under dispute. The informal conference was a requirement in the former rule for both contested and non-contested matters. The informal conference is retained in non-contested matters as a means to gather pertinent facts and to clarify the matter under appeal. The appellant is permitted to be represented by legal counsel at an informal conference.

Following an informal conference, the Division will offer an Administrative Review Conference. The person who chairs the informal conference is not permitted to represent the Division's position at the next level of appeal. There are no subpoena powers associated with an Administrative Review Conference. If, however, the appellant requests that a Division employee testify at the conference, the Division will arrange for that employee to be present if the appellant requests in writing that the employee be present at least five working days prior to the conference.

A section has been added to address requests for emergency relief.

Social Impact

The proposed amendments provide that appeals of specific offers of placement will be heard by the Office of Administrative Law. This requirement will provide due process for disputes of decisions as to where a person receiving services will live. The amendments also permit the appellant to be represented by legal counsel in all phases of the appeal procedure. The appellant can be sure that a Division staff member will testify in a non-contested matter if the appellant requests the person to be present.

The amendments affect the person receiving services, the families and/or the legal guardian. The amendments also provide a means to address appeals of licensure actions by the Division. There are approximately 14,000 licensed Community Residences for the Developmentally Disabled.

Prior to the Supreme Court Decision, the Division had fewer than 50 appeals a year that went beyond an informal conference. It is not anticipated that the number of appeals will significantly increase.

Economic Impact

The proposed amendments will have some economic impact. Appeals of specific offers of placement will now be heard in the Office of Administrative Law, and appellants may wish to be represented by legal counsel, which would be at their own expense. There is no economic effect imposed by these amendments on provider agencies or licensees.

Regulatory Flexibility Analysis

In addition to the impact on individuals who appeal decisions of the Division regarding services or placement, the proposed amendments impact on approximately 14,000 licensees. It is estimated that approximately 800 of the service providers in New Jersey qualify as small businesses pursuant to N.J.S.A. 52:14B-16, the Regulatory Flexibility Act. There are no reporting, recordkeeping or other compliance requirements associated with these amendments. There may be costs associated with appealing a decision of the Division in the form of attorney fees, but the rules do not require representation by an attorney.

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

SUBCHAPTER 1. APPEAL PROCEDURE

10:48-1.1 General provisions

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

(c) It is expected that, in most disputes between appellants and service components, the [applicant] **appellant** will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the Administrative Practice Office of DDD (609) 633-2209.

(d) [Disputes relating to decisions on educational program issues involving persons of legal school age shall be discussed at a conference with the appellant and the educational service provider, and/or a conference with the appellant and the Office of Education, Department of Human Services. If agreement is not possible, further resolution of the dispute shall be made by written request to the Department of Education pursuant to N.J.A.C. 6:28-2.7.] **For persons of legal school age, when disputes arise relating to educational program issues, mediation pursuant to N.J.A.C. 6:28-2.6 shall be available through the Office of Education, Department of Human Services. If either party is unwilling to participate in mediation, a written request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education. A request for mediation is not prerequisite to a hearing.**

(e) (No change.)

(f) An appeal may be settled at any time by **a written** agreement of both parties[, if the agreement is accepted by the chairperson, hearing officer or review officer. A settlement agreement shall be included in the decision of the chairperson, hearing officer or review officer]. The settlement **agreement** shall be considered the final decision. The terms of the settlement **agreement** shall be binding upon the appellant and the Division. **The terms of the settlement agreement shall be applicable only to the specific matter under appeal and shall not be released to anyone who is not a party to the settlement.**

(g) (No change.)

(h) [After an attempt at informal resolution, the Division Director shall determine a matter to be contested or non-contested.] Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Non-contested matter shall be referred to administrative review.

(i) Appeals of eligibility, [or] licensure action **or specific offers of services** shall be initiated within 30 calendar days from the date on the written notification of ineligibility or licensure action.

(j) (No change.)

(k) Except in emergencies, a [transfer] **placement** may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing 30 calendar days [of] **before** the proposed [transfer] **placement** and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the [transfer] **placement**. The Division Director shall decide whether or not to defer the [transfer] **placement**. **If the Division Director agrees to defer the placement, the Division shall not be responsible to fund the placement except where the Division was funding the placement prior to the request to defer.**

(l) If a [transfer] **placement** is made on an emergency basis, the appeal may be filed within 30 calendar days following the [transfer] **placement**. The individual shall be maintained in the placement to which he or she was [transferred] **placed** during the pending of the appeal.

(m)-(n) (No change.)

(o) An initial appeal shall be made in writing to the [administrative head of the service component] **Assistant Director of the region in** which the dispute exists **except for licensure actions. Appeals of licensure actions shall be made to the Division Director.**

(p) The [administrative head of the component] **Assistant Director** shall review the appeal to ensure that it conforms with the definition herein. If the [administrative head] **Assistant Director** determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the [administrative head] **Assistant Director** shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.

(q) (No change.)

[(r) The informal conference may be waived if, prior to the informal conference, the appellant contends that the appeal is a contested matter. The request for waiver shall be forwarded by the administrative head to the Division Director. The Division Director shall review the waiver request and if he or she concurs that the matter is contested, the informal conference shall be waived. If the matter is determined to be non-contested, the informal conference shall be held.]

[(s)]**(r)** Evidence **as defined in N.J.A.C. 1:1-2** may be submitted in informal conference or administrative reviews. An allegation or conjecture does not constitute evidence.

10:48-1.2 Definitions

The following words and terms, when used in this chapter, shall have the [following] meanings **as defined in N.J.A.C. 1:1-2 or this section** unless the context clearly indicates otherwise.

...

"Appeal" means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division which involves eligibility, **placement,** provision of service or licensure. The decision shall be a specific action or proposed action which is identifiable in terms of date, "and person(s) making the decision." General complaints or employee grievances shall not be considered appeals.

"Appellant" means the authorized person who may file an appeal with a service component. The authorized person is one of the following:

1.-2. (No change.)

3. The proposed guardian of an individual receiving services where **the Division has assessed** that **the** individual [has been assessed] **is** in need of a guardian but a guardian has not yet been appointed;

4.-5. (No change.)

"Chairperson" means the individual appointed by the [administrative head of the component] **Assistant Director** to hold an informal conference.

...

"Informal conference" means a meeting **prior to an administrative review** in which the respective parties may informally attempt to resolve the issue which is the subject to appeal.

...

"Placement" means the out of home living arrangement, other than for respite, provided by the Division or the day program exclusive of independent employment arranged by the Division.

...

"Settlement conference" means an initial step toward resolving a contested matter prior to transmitting the appeal to the OAL as a contested case.

["Transfer" means a proposed move from one institution to another, from a community based program to an institution, from an institution to a community based program. (Moves between living units within an institution shall not be considered to be a transfer. Such moves shall be subject to appeal after the move is made).]

"[Uncontested] **Non-contested** case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. The Director, Division of Developmental Disabilities, may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(a); N.J.A.C. 1:1-2.1).

[10:48-1.3 Initial step; Informal Conference

(a) Within 10 working days of receipt of the request, an informal conference shall be scheduled by the head of the service component. The informal conference shall be held no more than 20 working days from the receipt of the request. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.

(b) The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.

(c) If resolution cannot be reached at the informal conference, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for further appeal within 15 working days of the written summary.

1. The request shall include the following:

i. The name, address and telephone number of the appellant:

ii. The name and address of the person with developmental disabilities (if different from appellant);

iii. The appellant's relationship to the person with developmental disabilities; and;

iv. A brief statement of the issue under appeal witnesses, if any to be called; and reference to the law, rule, regulation, policy or procedure alleged to be violated, if applicable.

(d) Representation and procedure requirements are as follows:

1. Neither the appellant nor the service component designee shall have legal representation at the Informal Conference.

2. Only those persons who have direct knowledge of the issues involved shall be admitted.

3. The Rules of Evidence shall not be strictly enforced.

4. No transcripts of the proceedings shall be made.

(e) Failure to file an appeal within the prescribed time limits shall render the agency action final.]

10:48-3.1 Contested cases

(a) Appeals of licensure actions, determination of ineligibility for services and appeals of specific offers of placement shall be considered to be contested.

1. The request shall be in writing and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. An appeal shall be denied if the required information is not provided. The request shall include:

i. Name and address of appellant;

ii. Name and address of person with developmental disabilities, if the appeal is made by the person's legal guardian;

iii. A brief statement of the matter under appeal;

iv. A list of potential witnesses; and

v. Reference to the law, rule, regulation or policy alleged to be violated.

(b) Appeals of licensure actions shall be forwarded to the Division Director for actions in accordance with N.J.A.C. 10:48-1.4.

(c) If the matter does not meet the conditions of (a) above, and the appellant believes that the matter is contested as defined herein, the appellant shall set forth his or her reasons supporting that the matter should be considered contested in writing.

(d) The appeal shall be made to the Assistant Director, who shall review the appeal and decide if it is a contested or non-contested matter.

1. If the matter is determined to be contested, prior to transmittal to the OAL, a settlement conference shall be scheduled by the Assistant Director.

2. If the matter is determined to be non-contested, the requirements of N.J.A.C. 10:48-1.5 shall apply.

i. The appellant shall be notified in writing that the matter is non-contested.

ii. If the appellant disagrees, he or she may request a review of that decision by the Division Director.

(e) The appellant shall be notified in writing of a time and date of a settlement conference.

(f) The settlement conference shall require a meeting of the parties, unless both parties agree to a conference by telephone.

1. The settlement conference shall be chaired by a designee of the Assistant Director.

2. The purpose of the conference is to negotiate a settlement and all matters discussed shall remain confidential and inadmissible as evidence.

3. Evidence or testimony shall not be presented.

4. No tape recording of the matter shall be made.

5. The appellant may elect to be represented by legal counsel.

6. In addition to the Assistant Director's designee, a representative of the service component initiating the action under appeal shall be present. The Division may elect to have representation by the Office of the Attorney General.

(g) If agreement is reached, a settlement agreement shall be negotiated and the terms of the agreement shall be made in writing. The settlement shall be time limited or otherwise note when the terms of the agreement shall have been satisfied.

(h) All parties shall sign the agreement. Any settlement is contingent upon the signature of the Assistant Director.

(i) The settlement agreement shall conclude the matter.

(j) If no settlement is possible, the Assistant Director shall notify the Division Director in writing that no settlement was made. A copy of that notice shall be sent to the appellant.

[10:48-1.4 Final step: Administrative Review or Administrative Hearing

(a) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for administrative appeal.

1. Written request for administrative appeal shall be made within 15 working days from the date on the written summary.

2. If the issue being appealed is thought to be a "contested" matter by the appellant and the appellant elects to waive the informal conference, the written request for an appeal shall be made within 15 calendar days of the date of the informal conference.

3. The request for an administrative appeal shall contain the name, address and telephone number of the appellant, name and address of the client (if different from appellant); the appellant's relationship to client; the date of the complaint; a brief statement of the complaint; witnesses, if any to be called and reference to the law, rule regulation, policy or procedure alleged to be violated, if applicable.

(b) The Director, Division of Developmental Disabilities or his or her designee shall review the complaint and determine if it is a contested or non-contested matter.]

10:48-[1.5]**1.4** [Contested cases] **Office of Administrative Law**

(a) Those matters determined to be contested shall be referred to the Office of Administrative Law (OAL) for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) If the contested matter is not settled or involves a licensure action, the Division Director shall transmit the matter to the Office of Administrative Law.

1. In the instance of licensure appeals, the matter shall be transmitted within 10 working days of the receipt of the appeal.

2. In the instance of all other contested matters, the matter shall be transmitted within 10 working days of the notice of the Assistant Director that the settlement conference did not resolve the matter.

Recodify existing 1 and 2 as **3** and **4**. (No change in text.)

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

10:48-[1.6]**1.5** Non-contested cases

(a) [If the matter is determined to be uncontested, the Director shall offer an Administrative Review Conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an Administrative Review Officer.] **Informal conference requirements are as follows:**

1. An informal conference shall be scheduled by the Assistant Director in response to a non-contested matter. The informal conference shall be scheduled no more than 20 working days from the date that a matter is determined to be non-contested. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.

2. The Assistant Director shall appoint a chairperson to convene the Informal Conference.

3. The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to the appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.

4. The appellant may be represented by legal counsel at the informal conference.

5. No transcript shall be made of the informal conference.

6. The Rules of Evidence shall not be strictly enforced.

(b) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for an administrative appeal.

1. Written request for an administrative appeal shall be made within 15 working days from the date on the written summary.

2. The Director shall offer an Administrative Review Conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an Administrative Review Officer.

[(b)](**c**) Administrative paper review requirements are as follows:

1.-2. (No change.)

3. Discovery shall be [limited to the client record as defined in] **provided in accordance with the requirements of** N.J.A.C. 10:41-2.

4.-7. (No change.)

[(c)](**d**) Administrative review conference requirements are as follows:

1.-2. (No change.)

3. The service component shall be represented by a person designated by the [administrative head of the component] **Assistant Director** and may produce documentation and such witnesses as have direct knowledge of the issues involved. **The person representing the component may not be the same person who chaired the informal conference.**

4.-5. (No change.)

6. Discovery shall be [limited to the client record as defined in] **provided in accordance with the requirements of** N.J.A.C. 10:41-2.

7. The appellant may request that an employee of the Division testify at the conference. The appellant shall make such a request in writing to the Review Officer at least five working days prior to the conference. The request shall include the name, work location, title (if known) and a summary of the information to be provided by the employee.

Recodify existing 7.-11. as **8.-12.** (No change in text.)

10:48-1.6 Emergency relief

Emergency relief shall be available as provided in N.J.A.C. 1:1-2.6.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospice Services Manual

Determination of Medical Requirements for Medicaid Hospice Recipients and Personal Care Assistant Services

Proposed Amendments: N.J.A.C. 10:53A-3.2 and 3.4; Appendix, Form #4 (FD-381)

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

Authority: N.J.S.A. 30:4D-3i(1) through (7); N.J.S.A. 30:4D-6b(20); N.J.S.A. 30:4D-7, 7a, b and c; Section 1905(o) of the Social Security Act, 42 U.S.C. 1396d.

Agency Control Number: 93-P-21.

Proposal Number: PRN 1994-162.

Submit comments by April 20, 1994 to:

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

The agency proposal follows:

Summary

The Division is proposing to amend the Hospice Services Manual (N.J.A.C. 10:53A) to establish a process to simplify and accelerate the determination of Medicaid eligibility for hospice services, for persons for whom the Division of Medical Assistance and Health Services assumes the responsibility for disability determination.

Individuals who have not already been determined eligible for Medicaid under another program, or who do not meet the categorical requirements for Medicaid eligibility by virtue of being 65 years of age or older, or receiving disability-related Social Security benefits, are required to have disability determined by the Division's Disability Review Section. The determination is a Medicaid eligibility requirement and is normally processed independent of the hospice medical certification.

In order to simplify the process for those individuals who meet the hospice medical requirement, that is, that such individuals are terminally ill, the disability determination process for Medicaid eligibility has been modified. For cases under the jurisdiction of the Disability Review Section, disability during the first six months of hospice services will be based solely on the physician's certification of terminal illness, in lieu of a full disability determination.

If it appears that such a recipient will require, and elects to continue to receive, hospice services after the initial six-month period, medical documentation to validate the disability status based on terminal illness will be required as a part of the medical certification. During the fourth month of hospice services, the Disability Review Section will verify the status (active or terminated) of the cases determined Medicaid eligible and contact the hospice agency to identify those individuals who will require additional medical documentation as part of the disability review that is required for continued Medicaid eligibility. Documentation must include the following:

1. A statement from the attending physician of the diagnosis(es), prognosis, and the stage of illness; and

2. Copies of laboratory test results, biopsy and/or pathology reports, Magnetic Resonance Imaging (MRI), and Computerized Axial Tomography (CAT) results, and any other objective medical documentation which supports the diagnosis(es).

The medical data and a copy of the Physician Certification/Recertification for Hospice Benefits Form (FD-385) should be submitted to the address listed below. To ensure continuity of eligibility and the payment of services, this should be done as soon as possible, but no later than the last month of certification. Completed documentation should be sent to:

Division of Medical Assistance and Health Services
Office of Eligibility Policy and Operations
Disability Review Section
Mail Code #32
CN-712
Trenton, New Jersey 08625-0712

The proposed amendments also clarify the provision of personal care assistant services provided in conjunction with hospice services under Medicaid. Personal care assistant services shall only be provided as a supplement to hospice if they are provided to replace the caregiver, do not duplicate the hospice services, and are incorporated into the hospice's plan of care for that recipient.

There is a minor change to the Revocation of Hospice Benefits Form (FD-381) (6/92) to correct the omission of the listing of one of the benefit periods in which the hospice recipient can revoke his or her hospice benefits. In accordance with N.J.A.C. 10:53A-3.3, when a recipient revokes his or her hospice benefits, the recipient forfeits hospice services for any remaining days in the benefit period. When the fourth unlimited benefit period was established in N.J.A.C. 10:53A-3.3(a), the hospice recipient was allowed to revoke not only in the initial two 90-day periods but also in the subsequent 30-day period. The Revocation of Hospice Benefits Form (FD-381) is now being revised to reflect the addition of the subsequent 30 day period.

Social Impact

There is some social impact related to these proposed amendments concerning disability determination for persons who elect hospice benefits. The initial determination process will be simplified and accelerated. The physician is required to supply additional medical documentation as part of the continuing disability review to validate the disability status based on terminal illness as part of the medical recertification process. There are 111 Medicaid recipients receiving hospice services, and 25 hospices currently enrolled as Medicaid providers. From September 1992 to January 1994, 369 Medicaid recipients have been served in hospices in New Jersey.

There may be some social impact regarding the personal care assistant rules in that the provision of personal care assistant services may be restricted in a few cases. Both of these rules, however, enforce the intent of Medicaid hospice regulations that services be offered to eligible disabled individuals and that the services offered by the hospice do not duplicate other Medicaid services. Hospice services have enabled patients to remain at home and to receive care that is appropriate for the terminally ill in this setting. Hospice services also enable patients to select a course of care that is appropriate for their condition.

Economic Impact

There is no change in the reimbursement to the provider as the result of these proposed amendments, and no change in the requirements regarding the Medicaid recipients being required to pay for hospice services (see N.J.A.C. 10:53A-4.1). The Division does not believe that this change will have any impact on Medicaid expenses for hospice services. These rules insure appropriate utilization of hospice services and are intended to preclude over-utilization of personal care assistant services by stating that PCA services are to be used to replace the services of a live-in caregiver.

Regulatory Flexibility Analysis

An undeterminable number of hospice agencies who are affected by these proposed amendments are small businesses who provide personal care assistant services as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose some minor reporting, recordkeeping or other compliance requirements on these small businesses for the submission of additional medical documentation to the Disability Review Section of the Division of Medical Assistance and Health Services. These requirements are similar to those already required for disability determinations for other Medicaid recipients.

The proposed amendments impose requirements, as detailed in the Summary above, upon hospices who provide themselves or contract for the provision of personal care assistant services. The data related to live-in caregiver and needs for personal care assistant services should be readily documented and available from the patient's medical record and plan of care.

There is no differentiation in the proposed amendments based on the size of the hospice or home care agencies which provide hospice or personal care assistant (PCA) services. Hospice agencies are required to have or obtain sufficient professional personnel to provide for patient care. Hospice agencies will have to be aware of the restrictions on PCA services when ordering this type of service for hospice recipients.

There should be no capital costs associated with these amendments.

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

10:53A-3.2 Application policy for medical and financial eligibility for hospice services

(a) The application policy for **completion of the** medical [eligibility] **criteria** for **receiving** hospice services is as follows:

1.-2. (No change.)

3. For those cases in which the disability determination for Medicaid eligibility is within the jurisdiction of the Disability Review Section, Division of Medical Assistance and Health Services, the determination of disability for the first six months of hospice services will be based solely on a physician's certification of terminal illness. (See also N.J.A.C. 10:71-3.11 through 3.13).

i. To ensure the continuity of hospice services after six months, the agency responsible for the eligibility determination (that is, the county welfare agencies (CWA's)), shall inform the Disability Review Section of the recipient's eligibility for hospice services based upon the physician's certification of terminal illness and the determination of financial eligibility.

ii. After the initial six-month period, if it appears that such a recipient will require and elects to continue to receive hospice services, the Disability Review Section of the Division shall require medical documentation to validate the disability status based on terminal illness as part of the medical recertification. This documentation is in addition to the Physician's Certification/Recertification for Hospice Benefits Form (FD-385) required under N.J.A.C. 10:53A-2.3.

(1) The required additional documentation consists of the following:

(A) A statement from the attending physician of the diagnosis(es), prognosis and the stage of illness;

(B) Copies of laboratory test results, biopsy and/or pathology reports, Magnetic Resonance Imaging (MRI) and Computerized Axial Tomography (CAT) results; and

(C) Copies of any other objective medical documentation which supports the diagnosis(es).

(2) Individuals who are over 65 years of age, or receiving Medicare, or receiving Social Security Disability Insurance Benefits under Title II or Supplemental Security Income (SSI) under Title XVI, or who are on Aid to Families with Dependent Children (AFDC) are not required to be evaluated by the Medicaid Disability Review Section.

(3) The Disability Review Section will identify and track individuals who are required to be evaluated for continuing disability and will contact the provider to initiate the enhanced recertification process.

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

10:53A-3.4 Covered hospice services

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

(g) Regarding other covered services, some Medicaid services which are not duplicative of hospice services may be covered by Medicaid for the hospice recipient. These services include optometric and optical services, prosthetic and orthotic services, medical day care services, and personal care **assistant** services. These services must be approved by the interdisciplinary team, be consistent with the plan of care and be determined to be medically necessary.

1. The personal care assistant (PCA) services shall be provided to hospice recipients by Medicaid approved PCA providers. (See Home Care Services chapter, N.J.A.C. 10:60-1.7, 1.8 and 1.9.) Personal care assistant services shall be included in the plan of care, and must not be duplicate services covered and reimbursed under the hospice per diem.

2. Personal care assistant services for hospice recipients shall be used only to replace the live-in primary adult caregiver as defined in N.J.A.C. 10:60-1.2, and provided under the limitations of N.J.A.C. 10:60-1.9.

APPENDIX
FORM #4

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

REVOCATION OF HOSPICE BENEFITS

I, ______________________________ revoke the
(Recipient's Name and HSP (Medicaid) Case Number)

hospice benefits allowed to me by Medicaid and rendered ________

by ______________________________ effective this
(Hospice Agency and Medicaid Provider Billing Number)

__________ day of ______________ , 19____.

I understand that any remaining days of this election period will not be available to me.

I understand that I may elect hospice services at a later time if this revocation has occurred during [either] **one** of the two initial 90-day benefit periods **or the third 30-day benefit period.**

I understand that as of the date of this revocation, if I am still eligible, my regular Medicaid benefits will be restored.

Hospice Recipient's Signature or Mark Date

FD-381 (6/92)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Initial Response and Service Delivery; General Provisions

Definitions

Proposed Amendment: N.J.A.C. 10:133-1.3

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

Authority: N.J.S.A. 30:4C-44 and 9:6-8.15.

Proposal Number: PRN 1994-185.

Submit comments by April 20, 1994 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10:133-1.3, Definitions, give the definitions to terms used in recently promulgated Division rules: N.J.A.C. 10:133C-4, Case Goals, and N.J.A.C. 10:133D-2, Case Plan. In addition, definitions are listed for N.J.A.C. 10:133C-2, Eligibility for Services, which has been proposed recently at 26 N.J.R. 897(a).

The Division of Youth and Family Services is in the process of reviewing, revising and incorporating existing Division policy into rules. The Division Director has appointed an advisory body of approximately 90 members to advise the Division on the development of rules which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public. This is known as the Operations Policy to Rules (OPTR) Group. These definitions, as well as the related rules, are products of the OPTR Group's review.

The Division has organized all definitions for the subsequent chapters on initial response and service delivery into N.J.A.C. 10:133-1.3, rather than having definitions in every chapter and subchapter. (See 23 N.J.R. 3715 for the explanation of this organization.)

The purpose of proposing these definitions is to clarify the meaning of terms used in the Division's rules. Definitions are proposed for the following terms: adoption, case plan, custody, delinquency, dependency, independent living, long-term foster care custody, maintenance, maintenance in own house, "other long-term," specialized care, " 'out-of-home placement' or 'placement' or 'substitute care,' " permanency with a relative or family friend and return home. The definition of parent is amended to add "guardian" and delete "foster parent."

Social Impact

The social impact of the proposed definitions is to clarify for clients, family members, out-of-home placement providers and Division representatives, the precise meaning of certain terms used by the Division in the New Jersey Administrative Code. In addition, this information is available to anyone who may become a Division client or out-of-home placement provider in the future, or an advisor to a Division client or out-of-home placement provider.

The Division expects that these definitions will receive a favorable reaction, as they were developed with family and child advocates and have been reviewed thoroughly by the OPTR Group participants, many with an interest in the topics of Case Goals, Case Plan and Eligibility for Services and Support.

Economic Impact

These definitions will have no direct economic impact. Any economic impact results from the adoption of the three sets of rules to which these definitions pertain.

Regulatory Flexibility Statement

Neither the Division nor the public requesting Division services is considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed amendments do not impose reporting, recordkeeping or compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not necessary. These proposed amendments define terms used in other Division chapters and subchapters.

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

10:133-1.3 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

...

"Adoption" means the legal transfer of all parental rights and responsibilities from the parent to a person willing to assume those rights and responsibilities.

...

"Case plan" means a written statement of the Division's intervention on behalf of a child, which includes identification of the problems which necessitate Division involvement with the family, the services or actions needed, who will accomplish or provide them, and the planned time frame for providing each service.

...

"Custody" means continuing responsibility for the person of a child, as established by a surrender and release of custody or consent to adoption, for the purpose of providing necessary welfare services, or maintenance, or both. (N.J.S.A. 30:4C-2(d))

...

"Delinquency" means the definition given in N.J.S.A. 2A:4A-23.

"Dependency" means the state of being a child under the age of 18 who has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent.

...

"Independent living" means the maintenance of a child in a living arrangement that allows that child to function eventually on his or her own when circumstances preclude the child from returning to the person or persons with whom he or she resided at the time of referral or application for services, no appropriate relative or family friend is able or willing to assume care of the child, no family is able or willing to provide long-term foster care custody or to legally adopt the child, or the child rejects each of these living arrangements.

...

"Long-term foster care custody" means the establishment of a Division-initiated, court-ordered, legal relationship between a foster parent and a foster child when neither return home, permanency with a relative or family friend, nor adoption is an appropriate permanent plan, although one or more of these case goals have been diligently but unsuccessfully pursued, pursuant to P.L. 1992, c.139.

"Maintenance" means monies expended by the Division to procure board, lodging, clothing, medical, dental, psychological and hospital care, or any other similar or specialized commodity or service furnished to or on behalf of, or for a child.

"Maintenance in own home" means keeping a child in the home of the person or persons with whom he or she is residing at the time of referral or application for services or keeping the child in the home where the child has been returned or placed following out-of-home placement, regardless of the child's biological or legal ties to the person or persons, and when the circumstances do not necessitate removal from the home.

"Other long-term, specialized care" means the out-of-home placement or maintenance of the out-of-home placement of a child in a long-term, specialized care living arrangement when no appropriate family is able or willing to care for and meet the needs of a child with a serious medical, physical, emotional or mental disability.

"Out-of-home placement" or "placement" or "substitute care" means physically locating a child by the Division, or with the Division's approval, in any out-of-home setting, including foster

care, group home, shelter care, or a residential facility for temporary treatment or long-term care.

"Parent" means any natural parent, adoptive parent, [foster parent,] stepparent, **guardian** or any person[,] who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care.

...

"Permanency with a relative or family friend" means the placement of a child with a biological relative, a relative by marriage or a family friend when circumstances preclude the child from living with or returning to the person or persons with whom he or she resided at the time of referral or application for services, or the person or persons whom the child previously related to as a "parent."

...

"Return home" means putting a child with a parent when the circumstances necessitating placement out of the home have been resolved.

...

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline

Inmate Prohibited Act; Misuse of Electronic Equipment and/or Computer(s) and/or Related Device(s) and Peripheral(s)

Schedule of Sanctions for Prohibited Acts

Proposed Amendments: N.J.A.C. 10A:4-4.1, 5.1, 5.2 and 5.3

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1994-172.

Submit comments by April 20, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:4-4.1(a) to add misuse of electronic equipment and/or computer(s) and/or related device(s) and peripheral(s) to the list of prohibited acts as *.009. Presently, the existing list of prohibited acts does not include the misuse of electronic equipment and/or computer(s), or related device(s) and peripheral(s); thus, this prohibited act cannot be charged as a prohibited act. Less severe prohibited acts are charged such as .452 using any equipment or machinery which is not specifically authorized or .453 using any equipment or machinery contrary to instructions or posted safety standards. As more inmates acquire personal computers and sophisticated word processors, the potential for misuse increases. The addition of misuse of electronic equipment and/or computer(s) and/or related device(s) and peripheral(s) to the list of prohibited acts will provide correctional facility administration with the ability to apply the appropriate prohibited act when an inmate is charged with this misuse. As an asterisk(*) offense, this prohibited act shall be considered a major violation and, upon a finding of guilt, render the offender subject to more severe sanctions with the possibilities of transfer and/or prosecution. In the instance where confiscation is necessary, the proper handling of the confiscated item(s) is essential to minimize loss, damage or destruction. Therefore, the Department of Corrections is also proposing amendments at N.J.A.C. 10A:4-5.1(c), 5.2(c) and 5.3(c) which will establish the disposal of a confiscated item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(b) as an administrative action that may be taken by the Institutional Classification Committee upon recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent.

Social Impact

In the day-to-day management of correctional facilities, the disciplinary procedures and sanctions imposed for violations of rules are among the most important tools by which the correctional facility administration is able to maintain correctional facility stability, safety, and order. The proposed amendments of adding misuse of electronic equipment and/or computer(s) and/or related device(s) and peripheral(s) to the list of prohibited acts and the additional administrative action to dispose of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(b) will minimize loss, destruction and/or damage to the confiscated item(s). These amendments may cause a negative reaction from inmates who have an item(s) confiscated and can no longer maintain that item(s) within the correctional facility. These amendments will add further flexibility to the disciplinary program in the types of sanctions and administrative actions which may be imposed on inmates for violations of prohibited acts and contribute to the safe and orderly operation of the correctional facility.

Economic Impact

The proposed amendments that delineate which specific prohibited act to use when charging an inmate with the misuse of electronic equipment, computer(s) and/or related device(s) or peripheral(s) will have no new or additional economic impact on the public or correctional facilities since various disciplinary charges are currently being imposed on inmates who commit these infractions. However, the addition of the disciplinary sanction to dispose of an item(s) that may be administratively imposed on inmates will help ensure the proper handling of confiscated items. Control of these confiscated items should minimize inmate personal property claims for lost, damaged or destroyed items which should in turn, reduce the financial liability of the Department of Corrections. Additional State financial resources are not necessary to implement or maintain these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule Of Sanctions For Prohibited Acts).

*.001-.008 (No change.)

***.009 Misuse of electronic equipment and/or computer(s) and/or related device(s) and peripheral(s)**

.050-.803 (No change.)

(b) (No change.)

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex, Adult Diagnostic and Treatment Center (ADTC) and Edna Mahan Correctional Facility for Women (EMCF)

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

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1.-5. (No change.)

6. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions; [and/or]

7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(b)2, 3 and 4; and/or

[7.]**8.** (No change in text.)

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

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

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative actions shall include, but not be limited to, the following:

1.-4. (No change.)

5. Increasing custody status; [and/or]

6. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions[.]; **and/or**

7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(b)2, 3 and 4.

10A:4-5.3 Schedule of sanctions for prohibited acts committed at the New Jersey Training School for Boys, the Juvenile Medium Security Unit and the Lloyd McCorkle Training School for Boys and Girls

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

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1.-4. (No change.)

5. Increasing custody status; [and/or,]

6. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Classification Committee or the Juvenile Reception Classification Committee)[.]; **and/or**

7. Disposal of an item(s) in accordance with the options set forth in N.J.A.C. 10A:3-6.4(b)2, 3 and 4.

(a)

THE COMMISSIONER

Inmate Discipline

Inmate Prohibited Act; Failure to Keep a Scheduled Appointment

Proposed Amendment: N.J.A.C. 10A:4-4.1

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1994-163.

Submit comments by April 20, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Current language at Inmate Prohibited Act .707 which states, "refusal to cooperate in following a prescribed course of treatment (that is, refusal to appear for or go to a scheduled exam—medical, dental, etc.)" will be deleted and replaced with, "failure to keep a scheduled appointment with medical, dental or other professional staff." Clarification of the existing language is necessary because as written, Prohibited Act .707 incorrectly implies that a charge can be given to an inmate who refuses a prescribed course of treatment. The purpose of this prohibited act is to enable correctional facility staff to charge an inmate who missed an appointment the inmate had scheduled with a medical, dental, or other professional staff member.

Social Impact

This amendment will clarify the prohibited act that will enable correctional facility staff to charge an inmate who missed an appointment the inmate had scheduled with a professional staff member. Scheduled appointments that are missed adversely affect the orderly running of the correctional facility departments such as the Medical and Social Services Departments. The time wasted due to missed and rescheduled appointments may result in delays in the treatment and care that is provided to all inmates and may increase the work load of the correctional facility staff. Enforcement of this prohibited act should encourage an inmate(s) to become more responsible in his or her behavior regarding professional staff appointments.

Economic Impact

The proposed amendment will have no additional costs to the public or correctional facilities since this same disciplinary charge is already being imposed on inmates who do not attend their scheduled appointments with professional staff. With the clarification of the language of this prohibited act, the actual intent of the Department of Corrections will be met. The consistent use of this charge should encourage inmates to comply with attending scheduled obligations and this, in turn, should reduce the time and associated costs of providing professional staff care and treatment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

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

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions For Prohibited Acts).

*.001-.706 (No change.)

.707 [refusal to cooperate in following a prescribed course of treatment (that is, refusal to appear for or go to a scheduled exam—medical, dental, etc.)] **failure to keep a scheduled appointment with medical, dental or other professional staff.**

.708-.803. (No change.)

(b) (No change.)

(b)

THE COMMISSIONER

Public Information

Proposed Readoption with Amendments: N.J.A.C. 10A:19

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1994-173.

Submit comments by April 20, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:19, Public Information, expires on August 21, 1994. The Department of Corrections has reviewed these rules and, with the exceptions of the proposed amendments in subchapters 1, 2 and 3, has determined these rules to be necessary, reasonable, and proper for the purpose for which the rules were originally promulgated and is, therefore, proposing them for readoption at this time.

Subchapter 1 provides the purpose and scope of the chapter and lists the forms that are utilized in the public information area. A new section N.J.A.C. 10A:19-1.3, Definitions, has been added which defines the terms "free-lancer" and "news media representative." Reference to free-lancer presently exists at N.J.A.C. 10A:19-3.3(c). N.J.A.C. 10A:19-1.3, Forms, has been recodified as N.J.A.C. 10A:19-1.4.

Subchapter 2 provides the rules for public information dissemination. The title of Public Information Officer has been changed to Director of Communications. For the sake of clarity, the words "representative and/or free-lancer" have been added after each reference to news media, and N.J.A.C. 10A:22, Records, has been cross referenced at N.J.A.C. 10A:19-2.3(b).

Subchapter 3 provides the rules for news media representatives or free-lancers contact with correctional facilities and/or inmates. For the purpose of clarification, the proposed amendments add minor changes in language and the words "representative or free-lancer" have been added after each reference to news media. A new subsection (c) has been added at N.J.A.C. 10A:19-3.4 which specifies that contact visits with news media representatives or free-lancers may be restricted or prohibited for security reasons, but that every effort will be made to provide a non-contact visit.

Social Impact

The proposed readoption with amendments of N.J.A.C. 10A:19 will continue to provide the procedure necessary to expedite the continuous gathering and dissemination of information related to the programs, services, activities, achievements and emergencies within the Department of Corrections to the news media and the public at large. This readoption will also continue to provide the public information and guidelines whereby news media representatives and free-lancers may photograph, interview, record or videotape inmates.

With the addition of the definition section, interested individuals can readily find and understand what the qualifications are for news media representatives and free-lancers.

Economic Impact

The proposed readoption of N.J.A.C. 10A:19 provides an efficient process for information gathering and dissemination which should reduce time, effort and expenditure that is necessary for providing information to the public. This readoption with amendments should not result in any new economic impact because the procedure is already in place and additional funding is not required for implementation or maintenance.

Regulatory Flexibility Analysis

The proposed readoption with amendments does not impose reporting or recordkeeping on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements placed upon the news media and free-lancers, some of whom may be small businesses, are contained in N.J.A.C. 10A:19-1.3 and 10A:19-3, and relate to procedural requirements for correctional facility and inmate contact. No business-size related differential in the requirement is provided, since the Department considers these the minimum requirements necessary to maintain the security and orderly administration of correctional facilities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:19.

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

10A:19-1.3 Definitions

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

"Free-lancer" means an individual who is not under contract with a news service or publication and whose writings and/or services regarding the Department of Corrections are scheduled to be published or broadcast by a news service or publication as verified by the Office of Public Information.

"News media representative" means an individual with valid press credentials who provides any means of communication to the public.

Recodify existing N.J.A.C. 10A:19-1.3 as **10A:19-1.4** (No change in text.)

10A:19-2.2 Responsibilities of the [Public Information Officer] **Director of Communications**

(a) The Office of Public Information, New Jersey Department of Corrections, is managed by the [Public Information Officer] **Director of Communications** who shall be responsible for:

1.-5. (No change.)

6. Arranging for news media **representative(s) and/or free-lancer(s)** interviews with personnel and inmates within the Department of Corrections.

10A:19-2.3 Release of information

(a) (No change.)

(b) To ensure compliance with (a) above, employees of the Department of Corrections shall not impart information to news media representatives, **free-lancers** or other persons not officially connected with a correctional facility or the Department of Corrections without prior authorization from the Office of Public Information **except as provided in N.J.A.C. 10A:22.** This section shall not restrict the right of employees to comment on public policy or other issues of public concern in a manner which will not interfere with the security or orderly operation of a correctional facility, or result in a breach of necessary confidentiality.

(c) (No change.)

10A:19-2.6 News media **representative and/or free-lancer** contacts

All news media **representatives and/or free-lancers** inquiries shall be processed in the Office of Public Information, New Jersey Department of Corrections, in accordance with N.J.A.C. 10A:19-3, News Media **Representative and/or Free-Lancer** Contacts With [Institutions] **Correctional Facilities** and Inmates.

SUBCHAPTER 3. NEWS MEDIA **REPRESENTATIVE AND/OR FREE-LANCER** CONTACTS WITH [INSTITUTIONS] **CORRECTIONAL FACILITIES** AND INMATES

10A:19-3.1 Interviewing and photographing adult inmates by [the] news media **representatives and/or free-lancers**

(a) An inmate age 18 or over with the New Jersey Department of Corrections may be photographed, interviewed, recorded, filmed and/or videotaped by [the] news media **representatives and/or free-lancers**:

1.-3. (No change.)

(b) In the event an inmate does not have sufficient mental capacity to understand the nature and implication of being photographed, interviewed, recorded, filmed and/or videotaped by [the] news media **representatives and/or free-lancers**, the written consent of the inmate's guardian shall be required.

10A:19-3.2 Interviewing and photographing juvenile inmates by [the] news media **representatives and/or free-lancers**

An inmate under the age of 18 within the New Jersey Department of Corrections may be photographed, interviewed, recorded, filmed and/or videotaped by [the] news media **representatives and/or free-lancers** only when a parent or guardian indicates his or her approval by signing Form 283-III JUVENILE CONSENT.

10A:19-3.3 Requests by news media representatives and free-lancers

(a) All requests by news media representatives and free-lancers to photograph, interview, record, film and/or videotape an inmate(s) shall be submitted in writing, in person, or by telephone to the Office of Public Information, New Jersey Department of Corrections for review.

(b) The office of Public Information shall verify the affiliation of each news media representative or free-lancer.

(c) [An electronic or print free lancer] **A free-lancer** must have his or her publisher or company submit a statement to the Office of Public Information which indicates that the product of the free-lancer will be published or [broadcast] **broadcasted.**

10A:19-3.4 Decision on news media **representative and/or free-lancer** requests

(a) The Office of Public Information, New Jersey Department of Corrections, shall approve or disapprove all requests by [the] news media **representatives and/or free-lancers** to photograph, interview, record, film and/or videotape an inmate(s) and shall notify the Superintendent of the correctional facility of the decision by telephone.

(b) The Superintendent of the correctional facility may override the Office of Public Information's approval to [the] news media **representatives and/or free-lancers** when the Superintendent determines that the interests of security and/or the orderly operations of the correctional facility would be disrupted by **the** news media **representatives' and/or free-lancers'** activity.

(c) Inmate contact visits with news media representatives and/or free-lancers may be restricted or prohibited when, in the judgement of the correctional facility Superintendent or his or her designee, the inmate's actions may interfere with security concerns or the orderly running of the correctional facility. In those cases in which contact visits have been denied, every effort will be made to provide a non-contact visit consistent with the orderly operation of the correctional facility.

10A:19-3.5 Inmate consent

(a) When a request by the news media **representative and/or free-lancer** to photograph, interview, record, film and/or videotape an inmate(s) has been approved by the Office of Public Information and the Superintendent of the correctional facility, a staff member designated by the Superintendent shall provide the inmate with Form 283-I INMATE CONSENT for [his or her] **the inmate's** review.

(b) The inmate shall indicate his or her approval of the news media **representative and/or free-lancer** request by signing Form 283-I INMATE CONSENT in the presence of the staff member.

(c) (No change.)

10A:19-3.6 Notification of news media **representative and/or free-lancer**

The office of Public Information, New Jersey Department of Corrections, shall notify the news media representative **and/or free-lancer,** by telephone, of the final decision to approve or disapprove the request to photograph, interview, record, film and/or videotape an inmate(s).

10A:19-3.7 News media **and/or free-lancer** agreement

(a) Upon arrival at the correctional facility, the news media representative **and/or free-lancer** shall present valid press credentials or other identification approved by the Office of Public Information, New Jersey Department of Corrections, and complete and sign Form 283-II NEWS MEDIA AGREEMENT.

(b) Photographing, interviewing, recording, filming or videotaping of an inmate by any news media representative **and/or free-lancer** shall not be permitted to take place prior to the signing of Form 283-II NEWS MEDIA AGREEMENT and the completion of Form 283-I INMATE CONSENT.

(c) The original of Forms 283-I and 283-II shall be retained by the correctional facility. A copy of these forms shall be given to the news media representative **and/or free-lancer**, and a copy shall be forwarded to the Office of Public Information, Department of Corrections.

INSURANCE

(a)

DIVISION OF LICENSING AND ENFORCEMENT

Insurance Producer Licensing Professional Qualifications

Proposed Amendments: N.J.A.C. 11:17-3 and 5.7
Proposed Repeals: N.J.A.C. 11:17-5.1 through 5.4 and 5.6

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22A-1 et seq., 17:22A-4(c) and 24, and 17:33-2.

Proposal Number: PRN 1994-102.

Submit comments by April 20, 1994 to:

Donald Bryan
Acting Assistant Commissioner
Division of Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposal consists of a revision and updating of rules relating to the professional qualifications of insurance producers that were adopted effective April 3, 1989 at 21 N.J.R. 899(b) to implement the New Jersey Insurance Producers Licensing Act (N.J.S.A. 17:22A-1 et seq.).

These rules provide for the professional qualifications of insurance producers with specific reference to professional education and examination provisions. Since inception in 1989, no amendments to these rules have been made. The Department's experience in administering these rules over the last four years has demonstrated the need for revision. Proposed changes to the rules are summarized as follows.

Regarding approval of insurance education programs, N.J.A.C. 11:17-3.1(a) is amended to clarify the need for such programs to obtain approval prior to conducting courses.

N.J.A.C. 11:17-3.1(b) requires each program director to produce a signed statement that he or she has read these rules and understands his or her responsibilities as a director and further understands that he or she is fully responsible for the activity of the program. Subsection (b) is also amended to add a requirement that an application for approval of an insurance education program include a statement outlining the manner in which the program provides accessibility to the disabled or handicapped pursuant to "The Americans with Disabilities Act." Reference to this Act and its provisions are also made at proposed N.J.A.C. 11:17-3.3(b)3 and 14, and 3.4(g).

N.J.A.C. 11:17-3.1(c) is amended by deleting the requirement that insurance education programs seeking approval shall provide "the amount of tuition, fees and other charges to be paid by students." This information is not considered by the Department to be part of the approval process. The Department has no authority to regulate such costs and wants to remove any impression that it does.

N.J.A.C. 11:17-3.1(d) is amended to increase the application fee for program approval from $100.00 to $300.00 and to require that payment be made at least 90 days prior to the anticipated opening of the program. The revised fee more accurately reflects the administrative costs relating to program approval and maintenance.

N.J.A.C. 11:17-3.1(e) is amended to extend the effective term of program approval from three to four years.

N.J.A.C. 11:17-3.1(f)2 is amended by adding new language at paragraph (f)2i which underscores the importance of the licensed program director's supervisory role over insurance education programs by stating that failure to appropriately supervise "may result in action being taken against the director's producer license and/or the program."

N.J.A.C. 11:17-3.1(f)3 is amended by requiring that an instructor be of "good character and reputation" and that his or her five years' experience in insurance practice, insurance education or the equivalent "must be derived from the same line or lines of insurance for which he or she is employed to teach courses." In addition to having passed the New Jersey instructor examination, the instructor must be a faculty member of an accredited college or university "and currently teaching insurance courses for college credits in the same subject matter, line or lines of insurance for which the instructor is employed to teach courses." (subparagraph (f)3iii.)

N.J.A.C. 11:17-3.1(f)4 is amended to provide that the use of substitute teachers, special lecturers or guest speakers for prelicensing education courses shall not collectively exceed 25 percent of the total course hours.

N.J.A.C. 11:17-3.1(f)8 is amended to require programs to maintain copies of education certificates issued and final examinations for each student for five years. New language also requires voluntarily terminating programs to "turn over education certificates to the Department within 14 days of ceasing operation."

N.J.A.C. 11:17-3.1(m)5 is amended to state that the 70 percent passing rate necessary to maintain insurance education program approval "shall be determined on the basis of first time test takers."

N.J.A.C. 11:17-3.1(n) contains new language requiring any school whose approval has been suspended or revoked to turn over to the Department within 14 days its student school certificate records.

N.J.A.C. 11:17-3.1(o) permits the Commissioner to impose monetary penalties as an alternative to suspension or revocation of program approval. Such penalties are not to exceed $1,000 for the first violation and $2,000 for each succeeding violation.

New langauge is added at N.J.A.C. 11:17-3.1(p) stating that "no insurance education program or director whose approval has been revoked may reapply for approval for a period of five years."

Regarding prelicensing education, language relating to course waivers at N.J.A.C. 11:17-3.2(j) is amended to provide that waivers shall expire in 30 days from the date of issuance and shall thereafter be reissued or renewed "for good cause only, upon presentation of evidence satisfactory to the Commissioner. Any such extension shall not exceed one additional period of 30 days."

At N.J.A.C. 11:17-3.3(b)13, the Department has deleted the requirement that minimum qualifications and passing requirements of candidates taking the licensing examination be on file at the offices of the Department and be made available for public inspection. The minimum qualifications and passing requirements are set forth at N.J.S.A. 17:22A-4 and N.J.A.C. 11:17-2.3.

A new provision has been added at N.J.A.C. 11:17-3.3(d) requiring applicants previously licensed as non-residents to "apply for a waiver of prelicensing education and pass the state examination within 90 days of meeting the definition of resident licensee; otherwise the license will no longer be valid for failure to qualify as a resident."

A number of minor amendments relating to continuing education have been proposed at N.J.A.C. 11:17-3.4. These include a new 30-day course submission requirement and new language which would allow variance in the computation of continuing education credits depending upon the evaluation of the course content and whether the courses are offered independently or clustered with other courses. A provision is added that no approval will be granted for home study or correspondence courses except to the extent that handicapped or disabled persons are involved.

The transition rules at N.J.A.C. 11:17-5.1, 5.2, 5.3, 5.4, 5.6 and 5.7(a) through (e) are obsolete and are therefore proposed for deletion. The Department proposes that N.J.A.C. 11:17-5.5 be recodified at N.J.A.C. 11:17-5.1 and N.J.A.C. 11:17-5.7(f) be updated and recodified as N.J.A.C. 11:17-5.2(a). May 1, 1991 is the earliest date from which credits for continuing education courses will be given.

Social Impact

These proposed amendments are necessary to maintain at a high level professional qualification standards for licensed insurance producers in the areas of prelicensing education, examination and continuing education.

All current and future licensed insurance producers are affected by these rules thus assuring that at least one by-product of the proposed amendments will be to encourage the continuation of quality insurance services for New Jersey residents.

Also affected by these rules and the proposed amendments are schools, insurers, contract vendors and others who establish and maintain insurance education programs, teach courses and provide examinations.

Many of the proposed amendments are self-explanatory and are intended to clarify existing rules and address areas where procedures relating to such programs are, in the Department's opinion, in need of greater definition or expression.

Economic Impact

The fee for insurance education program approval, set forth at N.J.A.C. 11:17-3.1(d), has been increased from $100.00 to $300.00. This increase will have a significant economic impact on professional schools, insurers and others who establish and maintain such programs even though the effective term of program approval has now been extended from three to four years at which time reapplication is required. See proposed N.J.A.C. 11:17-3.1(e)3. The Department's position is that such an increase is unavoidable due to administrative costs directly relating to program approval and maintenance that have far outstripped remuneration from application fees in recent years.

The various entities involved in establishing and maintaining insurance education programs are already subject to the requirements of "The Americans with Disabilities Act," so adding specific reference to that act at N.J.A.C. 11:17-3.1(a), 3.3(b)3 and 14, and 3.4(g), is not expected to produce an economic impact that does not already exist.

The Department believes that the remaining amendments proposed herein will not have a discernible economic impact on affected parties.

Regulatory Flexibility Analysis

These proposed amendments apply to "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. Included among these small businesses are over 3,700 insurance producer businesses and 92 proprietary professional schools located in New Jersey.

To provide for uniform and consistent applicability of these rules and to avoid the granting of a prescribed advantage to those entities that qualify as "small businesses," no differential treatment has been accorded small businesses by these rules and no such treatment will be accorded pursuant to these proposed amendments.

The proposed new language at N.J.A.C. 11:17-3.1(b)3 calling for a signed statement from each director as part of the application for approval of insurance education programs codifies already existing requirements.

Proposed new language at N.J.A.C. 11:17-3.1(b)7, 3.3(b)3ii and 3.3(b)14 referring to "The Americans with Disabilities Act" reflects already existing requirements of Federal law.

A proposed amendment to N.J.A.C. 11:17-3.1(d) requires that applications for program approval be submitted "at least 90 days prior to the anticipated opening of the program." This will actually assist applicants since involvement of the Department early on in the process will enable the Department to provide appropriate advice before applicants incur significant expenses in establishing such programs.

A new compliance requirement proposed at N.J.A.C. 11:17-3.1(f)4 is intended to maintain prelicensing education courses at a high quality level by limiting the use of substitute teachers, special lecturers or guest speakers to 25 percent of the total course hours. This requirement is not expected to adversely affect any existing program since the Department is not aware of any program that has actually exceeded the 25 percent level.

Most professional schools already comply with the proposed amendments at N.J.A.C. 11:17-3.1(f)8 by keeping on file for each student copies of examinations and education certificates issued. The requirement that such records be maintained for five years is not new. The proposed new language requiring programs voluntarily terminating operations to turn over education certificates to the Department within 14 days of ceasing to do business is intended to accommodate the schools by specifying where these records are to be deposited if and when they cease business operations.

Proposed amendments to N.J.A.C. 11:17-3.1(n), 3.4(b) and 3.4(b)3 impose reasonable compliance deadlines with which approved education programs, whether "small businesses" or not, are expected to comply and should be able to comply without difficulty.

Changes in reporting, recordkeeping and compliance requirements resulting from these proposed amendments and imposed on professional schools as noted above, are minor. These tasks may continue to be accomplished by existing staff; no professional services are required.

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

11:17-3.1 Approval of insurance education programs

(a) Professional schools, insurance companies and others who establish programs which include teaching of insurance courses to satisfy professional qualification requirements for prelicensing or continuing education shall, **prior to conducting such courses,** obtain approval in accordance with this section.

(b) An application for approval of an insurance education program shall be made on a form prescribed by the Commissioner and shall provide the following information:

1.-2.-(No change.)

3. The name of the program director or directors, [and] New Jersey producer license reference number(s), if any, and **a signed statement from each director that he or she has read this subchapter, understands his or her responsibilities as a director, and that he or she is fully responsible for the activity of the program;**

4. (No change.)

5. The address of any permanent classroom or classrooms to be used by the program; [and]

6. A statement outlining the manner in which the program provides accessibility to the disabled or handicapped pursuant to "The Americans with Disabilities Act"; and

[6.]7. (No change in text.)

(c) Programs seeking approval to teach courses of prelicensing education shall also provide:

1. (No change.)

2. The names of the courses, by license authority, which will be taught by the program, if approved; **and**

[3. The amount of tuition, fees and other charges to be paid by students; and]

[4.]**3.** (No change in text.)

(d) Each application for program approval shall be certified as correct by the program director or directors named in the application, and shall be accompanied by a fee of [$100.00] **$300.00**. The application for approval shall be submitted to the Supervisor of Insurance Education **at least 90 days prior to the anticipated opening of the program**.

(e) Applications for program approval shall be reviewed to determine compliance with the requirements prescribed in this subchapter. An applicant shall supply such additional information or documentation as may be required by the Department to determine whether such requirements are met.

1.-2. (No change.)

3. A program approval shall expire in the [third] **fourth** year on the last day of the licensing quarter in which it was effective.

4. (No change.)

(f) Each approved insurance education program (except as modified hereafter) shall:

1. (No change.)

2. Retain a director in charge of the program, who shall be accessible to the Department and the public at [or through] the program's **permanent** office **as required in (f)1 above** during normal business hours. The program director shall:

i. Oversee the program and activities of all instructors;

ii. Be responsible to carry out the program's administrative duties imposed by this subchapter; and

iii. Receive and distribute to all instructors and students communications from the Department and others. The director shall not have had his or her insurance license revoked.

iv. Failure by a licensed director to supervise the program for records compliance and attendance requirements for the issuance of school certificates and continuing education verificaton forms to students may result in action being taken against the director's producer license and/or the program.

3. Use knowledgeable and competent instructors to teach all courses. An instructor shall not have had his or her New Jersey insurance **producer** license revoked **and shall in the opinion of the Commissioner, be otherwise of good character and reputation**. Instructors employed to teach courses of prelicensing education shall [have] **possess** at least five years' experience in insurance practice, insurance education or the equivalent **which must be derived from the same line or lines of insurance for which the instructor is employed to teach courses**, and shall, in addition:

i.-ii. (No change.)

iii. Be a faculty member of an accredited college or university **and currently teaching insurance courses for college credits in the same subject matter, line or lines of insurance for which the instructor is employed to teach courses**[; or].

4. Be permitted to use special lecturers or guest speakers to instruct on particular topics, so long as the program carries out the recordkeeping and reporting requirements imposed by this subchapter. **For prelicensing education courses, the use of substitute teachers, special lecturers or guest speakers shall not collectively exceed 25 percent of the total course hours.**

5. Use classroom facilities with sufficient lighting, desks or tables and which are otherwise conducive to learning. Classroom facilities shall be open to the [Department] **Commissioner or his or her designee** for class monitoring at any time.

6.-7. (No change.)

8. Maintain for five years the records of each student including[, at a minimum,] the name(s) of the course or courses taken [and whether the]**; proof that the** course **final examination** was passed [or failed], if applicable; **and copies of the final examinations and education certificates issued. Programs voluntarily terminating operations shall turn over education certificates to the Department within 14 days of ceasing operation.**

9.-10. (No change.)

(g)-(i) (No change.)

(j) An approved insurance education program shall issue to each student who has successfully completed a prelicensing education course a certificate which shall contain the following:

1.-5. (No change.)

6. A statement **signed by an instructor** that the student was instructed for the number of hours indicated on the certificate, that the instructor is satisfied that the student knows the material, and that the student has received at least a 70 percent minimum passing course grade [in the program] **on a final examination.**

(k)-(l) (No change.)

(m) The Commissioner may suspend or revoke the approval of an insurance education program for any of the following reasons:

1. (No change.)

2. The failure to advise the Department promptly of any change in information initially submitted in the application during the period of approval **including, but not limited to, change of director, school address, place or time of scheduled classes and instructors;**

3.-4. (No change.)

5. For prelicensing education programs only, the failure to maintain an overall passing rate on the State insurance licensing examination of 70 percent or more for any period of 12 consecutive months. [For the purpose of calculating the passing rate, each examination taken by each program graduate will be counted] **The 70 percent passing rate shall be determined on the basis of first time test takers;**

6. For continuing education programs only, the failure to report to the Department **or contract vendor the** students' continuing education credits.

(n) Any school whose approval has been suspended or revoked shall turn over its education certificates to the Department within 14 days.

[(n)]**(o)** As an alternative to suspension or revocation of approval, the Commissioner may place any program on probation with appropriate conditions **or impose monetary penalties not to exceed $1,000 for the first violation and $2,000 for each succeeding violation.**

(p) No insurance education program or director whose approval has been revoked may reapply for approval for a period of five years.

11:17-3.2 Prelicensing education

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

(j) Waivers shall expire in [60] **30** days from the date of issuance and shall [not] **thereafter** be reissued or renewed **for good cause only, upon presentation of evidence satisfactory to the Commissioner. Any such extension shall not exceed one additional period of 30 days.**

11:17-3.3 State licensing examination; use of independent examination vendor; exemptions; retaking of examination

(a) (No change.)

(b) Any contract for development and administration of the New Jersey State insurance producer licensing examination shall include, without limitation, the following terms and conditions:

1.-2. (No change.)

3. The contract vendor shall:

i. (No change.)

ii. Provide all physical facilities **which shall be in compliance with "The Americans with Disabilities Act"**; and

iii. (No change.)

4.-5. (No change.)

6. The contract vendor shall administer the examination in accordance with the contract, which shall contain adequate provisions for preregistration of test candidates, [walk-in testing,] score reporting, security measures and such other provisions that, in the opinion of the Department, assure fair and consistent administration of the examination.

7. (No change.)

8. The contract vendor shall score examinations promptly, and shall [mail] **provide** score reports to all passing and failing candidates within 15 calendar days after each test date.

9.-12. (No change.)

13. The Department shall have the sole responsibility for establishing minimum qualifications and passing requirements of candidates taking the licensing examination. [These qualifications and passing requirements shall be on file at the offices of the Department and shall be made available for public inspection.]

14. The contract vendor shall defend and indemnify the Department of Insurance, the State of New Jersey and its agents, officers and employees from all claims, actions, damages, liability and expenses in connection with loss of life, personal injury, [and/or] damage to property **and/or failure to comply with the requirements of "The Americans with Disabilities Act"** arising out of the ownership, occupancy or use by the contract vendor of any facilities used as test administration centers, occasioned wholly or in part by any act or omission of the contract vendor, its agents, contractors or employees.

15. The contract vendor shall provide technical and legal assistance to the Department in the event of any legal challenge to the validity of any examination administered, prepared and/or [copywrited] **copyrighted** by the contract vendor or the Department in which the State of New Jersey or any of its agencies, officers or employees is named as a party.

16. (No change.)

17. The contract vendor shall transmit to the Department, in a form satisfactory to the Department, information collected during the test registration process to aid in prompt licensing of passing candidates, and may issue to passing candidates, on a form prescribed by the Department, a temporary work authority. The contract vendor shall deliver the test registration [form] **data** of passing candidates to whom a temporary work authority has been issued within 30 days of the date of the test.

(c) (No change.)

(d) Applicants previously licensed as non-residents shall apply for a waiver of prelicensing education and pass the State examination within 90 days of meeting the definition of resident licensee; otherwise the license will no longer be valid for failure to qualify as a resident.

[(d)]**(e)** (No change in text.)

[(e)]**(f)** For good cause shown, the Commissioner may, by order, require an applicant for licensure or a licensee to retake the State licensing examination within a specified period of time. The order shall clearly and fully state the alleged factual circumstances upon which it is based. In the case of a licensee, a license shall remain effective pending the results of the new examination unless otherwise subject to revocation or suspension.

1. (No change.)

2. After review of the record, the Commissioner shall either rescind the order or require the licensee or applicant for licensure to retake the examination within a prescribed period of time.

i. If a licensee fails to retake the examination within the prescribed period of time, the Commissioner shall issue an Order to Show Cause why the license should not be revoked and shall advise the licensee of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform **Administrative Procedure** Rules [of Administrative Procedure], N.J.A.C. 1:1[-1].

ii. If an applicant for licensure fails to retake the examination within the prescribed period of time, the Commissioner may refuse to issue the license for which application is made and shall advise the applicant for licensure of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1[-1].

[f](**g**) Resident individuals registered by any insurance company to do business as a limited insurance representative dealing with bail bonds or mortgage guarantee insurance shall have taken and passed **an** [special] examination **given by the company thereby demonstrating an appropriate level of competency as a limited insurance representative with respect to these lines of insurance.** The insurance company registering such persons shall confirm that this requirement has been met, and the limited insurance representative shall maintain evidence of meeting this requirement at his or her place of business.

11:17-3.4 Continuing education

(a) No resident individual insurance producer license shall be renewed **with an effective date on or** after May 1, [1994] **1995** unless the renewal applicant demonstrates that he or she has completed 48 continuing education credits during the previous four years. [This requirement shall not apply to attorneys-at-law admitted to practice in New Jersey with authority for title insurance only.] **Resident insurance producers may earn no more than 24 credits in any one calendar year. Insurance related computer courses must be limited to one such course per four-year licensing period. Producers taking prelicensing insurance courses for the purpose of adding an authority shall not be granted continuing education credits for completing such courses.**

(b) Approved insurance education programs [may] **shall** submit to the Department for certification of continuing education credits, **at least 30 days prior to the date the course is to begin,** such courses as they may develop.

1. A request for continuing education credit certification shall be made on a form prescribed by the Department which shall request the following information.

i.-ii. (No change.)

[iii. Copies of any and all materials to be used;]

[iv.]**iii.** The number of actual classroom hours required to complete the course; [and]

[v.]**iv.** Such other information as may, in the opinion of the Department, be necessary to evaluate the course for certification of continuing education credits[.]**; and**

v. Whether the course will be offered independent of other approved courses or as part of a cluster of courses given within a single day or on succeeding days.

2. (No change.)

3. Courses which have been submitted and evaluated independently may be offered as a cluster of courses only if the subject matter of the courses is distinct and not overlapping. When such courses are being offered consecutively, notice of such offering shall be made to the Supervisor of Insurance Education for reevaluation at least 30 days prior to its anticipated administration.

[3.]**4.** The Supervisor of Insurance Education shall certify courses submitted for continuing education credits as provided above, or disapprove the course for continuing education credits, and notify the program director of the decision. In the event of disagreement with the decision, the program director may, within 30 days of receipt of notice from the Department, supply the Supervisor of Insurance Education with a written request for reevaluation supported by reasons for disagreement with the decision and such additional information as may be appropriate. The Supervisor of Insurance Education shall promptly reevaluate the course and advise the program director [of the Department's final decision on the continuing education credits allowed] **of the result of the Supervisor's reevaluation.**

[4.]**5.** (No change in text.)

(c) Continuing education credits shall be certified in accordance with the following:

1. Each completed part of the Chartered Life Underwriter (CLU), **Chartered Financial Counselor (ChFC)** and Chartered Property/Casualty Underwriter (CPCU) designations shall be worth 12 continuing education credits.

2. Each college level insurance course completed and passed at an accredited college, [or] university **or entity other than a college which has been evaluated and approved for college credit by the American Council on Education** shall be worth four continuing education credits for each semester hour of college credit.

3. The number of continuing education credits certified shall be based upon the length of the course, **course content** and the level of difficulty. Each continuing education course submitted by an approved insurance education program [shall] **may, depending upon the evaluation of the course content and whether the courses are**

offered independently or clustered with other courses, be worth the total number of credits computed in accordance with the following schedule.

i. One credit for a half day **three-hour** course;

ii. Two credits for a full day **six-hour** course;

iii. Three credits for a two day **12-hour** course;

iv. Four credits for a course more than two days **comprising 13 hours or more;**

v. Two **additional** credits for a basic level or introductory course; and

vi. Four **additional** credits for an advanced course.

4. (No change.)

5. Courses offered to attain a professional designation or license will be worth no more than eight credits.

6. No approval will be granted for home study or correspondence courses except as provided in (g) below.

(d) (No change.)

(e) Producers who request continuing education credit [for one or more parts of the CLU or CPCU designations, or insurance courses completed at an accredited college or university,] **pursuant to (c)1 or 2 above,** shall submit to the Department, on a form prescribed by the Department, the request together with a transcript or other documentation [to demonstrate] **certifying** completion of the course **and college credits awarded.**

(f) Attorneys who are licensed for title insurance only shall submit to the Department, at least six months but not more than one year prior to renewal, a certificate of good standing issued by the clerk of the Supreme Court of New Jersey accompanied by a completed form prescribed by the Department, which provides the attorney's name, producer reference number, date of birth, social security number and license expiration date.

(g) The Commissioner may grant credit for alternative courses, such as home study for handicapped or disabled persons, as defined by "The Americans with Disabilities Act," when classroom attendance is an impediment due to the person's disability. Evidence of such hardship in the form of a certification by a physician shall be submitted with any such request. The request shall describe how the person's disability is an impediment to classroom attendance. Individuals with disabilities shall contact the Supervisor of Insurance Education prior to alternative course enrollment at the Department of Insurance, CN 329, Trenton, New Jersey 08625.

[(f)]**(h)** (No change in text.)

[(g)]**(i)** If the accounting required by [(f)]**(h)** above is considered by the resident producer to be inaccurate, he or she shall promptly request the director of the approved education program to file with the Department, or its designee, an appropriate supplemental report.

[(h)]**(j)** At least [five] **four** months prior to the renewal of license, the Department, or its designee, shall issue to individual resident producers a statement indicating, based on current records, whether the continuing education requirement for renewal has been met. In the event the producer asserts that credit has not been recorded for a certified continuing education course, it shall be the sole responsibility of the producer to request the director of the approved program where the course was taken to file with the Department, or its designee, a supplemental report of continuing education credits.

[11:17-5.1 Effective dates

(a) The standards of conduct, penalties and other related provisions described in the Act shall take effect as provided by statute. All pleadings in any pending disciplinary action filed on or before the effective date of the Act shall be deemed amended to charge violation of a comparable section.

(b) Beginning May 1, 1988, the Department shall cease issuing agent, broker and solicitor licenses under prior law. Beginning July 1, 1988, all licenses shall be issued in accordance with the provisions of the New Jersey Insurance Producer Licensing Act and this chapter. New license applicants between May 1, 1988 and July 1, 1988 shall, if qualified, be issued a temporary certificate authorizing them to work pending licensure as a producer.

(c) All those holding licenses as life agents, life brokers, life solicitors, property/casualty agents, property/casualty brokers, property/casualty solicitors, surplus lines agents and title agents may continue to transact business authorized by those licenses after the effective date of the Act, and until relicensed as insurance producers in accordance with N.J.A.C. 11:17-5.2.

(d) All those licensed as property/casualty agents, whose licenses expire April 30, 1988, may continue to transact any business authorized by those licenses until relicensed as insurance producers in accordance with N.J.A.C. 11:17-5.2.

11:17-5.2 Relicensing current licensees as producers

(a) On or before July 1, 1988, the Department shall mail an initial producer license renewal application to each currently licensed agent, broker and solicitor with general authorities described in N.J.A.C. 11:17-2.5. These applications shall be directed to the business address then on file with the Department.

(b) Initial producer license renewal applications shall set forth the date of expiration of the initial producer license, which shall be by licensing quarter so as to spread future renewals over four years.

(c) License fees charged for the initial producer license renewal application shall be proportionate to the number of licensing quarters until expiration, and shall provide credit for fees paid for any license issued under prior law for a license year that has not begun by August 1, 1988.

(d) On or before July 31, 1988, all currently licensed agents, brokers and solicitors with general authorities described in N.J.A.C. 11:17-2.2 shall apply for relicensing as a producer by completing the application and returning it with a valid check or money order for the fee charged.

(e) Any person licensed under prior law who does not desire to relicense as a producer may return the initial producer license renewal application marked "Do Not Renew" and request a refund of any fees paid for a license issued under prior law for a license year that has not begun by August 1, 1988.

(f) Unless relicensed as a producer in accordance with this chapter, any license issued under prior law as an agent, broker or solicitor with authorities described in N.J.A.C. 11:17-2.2 shall be cancelled effective August 1, 1988.

(g) All licensed producers currently appointed as agents by any company under prior law shall be deemed to continue as a producer with a valid agency contract with that company unless and until a notice of termination of agent has been filed in accordance with N.J.A.C. 11:17-2.9. Any resolutions filed by affiliated companies for the joint appointment of agents under prior law will continue in effect until the Department receives notice to the contrary.

(h) After August 1, 1988 but before November 1, 1988, all organizations licensed as producers shall file a statement with the Department naming those producers who serve as the licensed officers or partners of the licensed organization. Such a statement shall be dated, signed and certified by at least one licensed officer or partner.

(i) On or after August 1, 1988 but before November 1, 1988, all producers who employ other producers as provided by N.J.A.C. 11:17-2.9(b) shall file statements conforming to the requirements of that section. Such statements shall be dated, signed and certified to be correct by the employing producer.

(j) Temporary certificates issued prior to November 1, 1988 in accordance with N.J.A.C. 11:17-2.4 may be issued with an expiration date no more than 180 days after the date of issuance.

11:17-5.3 Limited insurance representatives

(a) On or after May 1, 1988, any company writing insurance that may be marketed through limited insurance representatives shall register, in accordance with N.J.A.C. 11:17-2.10, any new representatives not licensed under prior law.

(b) All those licensed as bail bond agents, credit life agents, credit health agents, credit property/casualty agents, ticket life agents, ticket accident agents, ticket property/casualty agents, group mortgage cancellation agents, mortgage guarantee agents and auto physical damage and liability only agents may continue to transact any business authorized by existing licenses until such licenses expire.

(c) On or after November 1, 1988, but before existing licenses expire, all companies writing insurance business that may be marketed through limited insurance representatives shall file a statement registering those licensed under prior law and pay the registration fee provided in N.J.A.C. 11:17-2.12.

11:17-5.4 Insurance consultants

Insurance consultants who do not hold a license issued under prior law must either obtain a producer license or stop doing business by August 1, 1988.]

11:17[5.5]**5.1** (No change in text.)

[11:17-5.6 Effect of license revocation or suspension

Nothing in these rules shall authorize any person whose license has been revoked or suspended to continue to transact insurance business after the date of revocation or suspension.]

11:17-[5.7]**5.2** Professional qualifications

[(a) Insurance education programs approved in accordance with the prior rule, N.J.A.C. 11:2-19, are deemed to continue as approved until their current or extended approval expires, unless approval is revoked.

(b) Subject to the time limitations of the New Jersey Insurance Producers Licensing Act, P.L. 1987, c.293, and N.J.A.C. 11:17-5.4, individuals applying for producer licenses are deemed to satisfy the education and examination requirements of N.J.A.C. 11:17-3.2 and 3.3 by completing courses of prelicensing education at an approved program and passing the State licensing examination in accordance with prior law.

(c) The provisions of N.J.A.C. 11:17-3.2(b) and (c) shall take effect on April 1, 1990. No approved education program shall issue after that date a certificate confirming that a person has satisfied the requirements of prelicensing education unless the individual has completed the course or courses described in N.J.A.C. 11:17-3.3.

(d) Subject to the provisions of any current vendor contract, the State licensing examination administered on or after April 1, 1990 shall be in accordance with examination specifications designed to test the curricula as provided in N.J.A.C. 11:17-3.3.

(e) Until March 31, 1990, approved education programs may teach courses and issue certificates of completion of prelicensing education that include the minimum course hours specified in prior rules N.J.A.C. 11:2-1.1, 1.2, 1.3 and 1.5.]

[(f)] No continuing education credits shall be accepted for courses completed prior to [August 1, 1988] **May 1, 1991.**

(a)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Certification and Audit Requirements for Carrier Reports of Reimbursable Losses and Covered Non-group Persons

Certification of Non-member Status

Proposed Amendments: N.J.A.C. 11:20-8 and 9

Proposed New Rules: N.J.A.C. 11:20-8.8 and 8.9 and 11:20-13

Authorized By: New Jersey Individual Health Coverage Program Board of Directors, Charles Wowkanech, Chair.

Authority: N.J.S.A. 17B:27A-2 et seq.

Proposal Number: PRN 1994-171.

Submit written comments by March 7, 1994 to:

Interim Administrator
New Jersey Individual Health Coverage Program
Comments to Rules
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, New Jersey 08830

The agency proposal follows:

Summary

The New Jersey Individual Health Coverage ("IHC") Program was established pursuant to N.J.S.A. 17B:27A-2 et seq. ("the Act") in order to make health benefits plans available to individuals. The IHC Program Board of Directors ("the Board") proposes an amendment to the reporting requirements contained in N.J.A.C. 11:20-8 to change the filing deadline for the Market Share and Net Paid Loss Report, known as Exhibit K, from March 1, 1994 to April 1, 1994 and to require that the member's Chief Financial Officer certify that a member's losses reported in the Market Share and Net Paid Loss Report are accurate, complete and consistent with annual statements and other corporate reports filed with the Commissioner of Insurance. Proposed new rule N.J.A.C. 11:20-8.8 permits the IHC Program Board to request additional information to verify the certification and to order an audit, performed by an independent auditor, the cost of which would be shared equally by the member and the IHC Program Board. The new rule permits the IHC Program Board to adjust a member's net paid losses, for the purpose of determining reimbursement for losses, for the member's failure to meet the certification requirements or as a result of the findings of an independent audit. Proposed new rule N.J.A.C. 11:20-8.9 provides for a hearing in the event a member is denied reimbursement for losses, in whole or in part. Finally, the proposed amendments to subchapter 8 would permit a carrier whose administrative systems cannot provide exact figures for covered lives under health benefits plans isused prior to August 1, 1993 to use estimation factors to calculate the number of covered non-group persons reported in the Market Share and Net Paid Loss Report.

The proposed amendments to N.J.A.C. 11:20-9 would require that a member seeking a final or prorata exemption from assessments for reimbursable losses report to the IHC Program Board, on or before April 1, 1994, and annually thereafter on or before March 1, the number of non-group persons covered by the carrier as of December 31 of the preceding calendar year. The proposed amendments require that the member's Chief Financial Officer certify that the number of covered non-group persons reported reflects actual covered lives counted in accordance with the IHC Program regulations. The amendments permit the IHC Program Board to request additional information to verify the certification and to order an audit, performed by an independent auditor, the cost of which would be shared equally by the member and the IHC Program Board. The amendments permit the IHC Program Board to adjust a member's reported covered non-group persons, for the purpose of determining whether the member should receive an exemption from assessment for reimbursable losses, for the member's failure to meet the certification requirements or as a result of the findings of an independent audit. The amendments provide for a hearing in the event a member is denied an exemption, in whole or in part. Finally, the proposed amendments change the deadline for a carrier to submit a request for an exemption from May 1, 1994 to June 1, 1994, and change the deadline for the IHC Program Board to assign to a carrier a minimum enrollment share from April 1, 1994 to May 1, 1994.

The Board proposes new rules at N.J.A.C. 11:20-13 to provide a means for carriers and other entities to obtain certification of their status as non-members of the IHC Program. The purpose of these rules is to create certainty on the part of a carrier and the IHC Program as to a carrier's liability for assessments for losses. The proposed rules allow carriers and other entities that wish to be considered non-members of the IHC Program to file a request with the IHC Program Board by April 1, 1994, and March 1 thereafter and send a copy of the request to the Commissioner of Insurance. The proposed rules enumerate criteria for determining that a carrier or other entity is not a member of the IHC Program, and require that a duly authorized officer of the carrier or other entity certify a statement of the reasons for which non-member status is requested.

N.J.A.C. 11:20-13.1 sets forth the purposes and scope of this subchapter.

N.J.A.C. 11:20-13.2 sets forth criteria for asserting non-member status.

N.J.A.C. 11:20-13.3 sets forth the procedure for requesting a determination of non-member status from the IHC Program Board.

N.J.A.C. 11:20-13.4 imposes a deadline on the IHC Program Board for review and approval or disapproval of requests for non-member status determinations.

N.J.A.C. 11:20-13.5 allows a carrier that has been denied non-member status to request a hearing.

P.L. 1993, c.164, section 8 provides a special procedure by which the Board may take actions, such as promulgation of these rules. Prior to the adoption of an action, the Board shall provide notice and a detailed description of its intended action to three newspapers of general circulation. The Board is further required to forward the notice of the intended action and detailed description to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board is also required to provide all interested persons an opportunity to comment in writing on the intended action of at least 20 days. The Board may adopt an action immediately following the close of the public comment period, and the action shall be effective on the date the regulations are submitted to the OAL for publication in the New Jersey Register, or such later date as the Board may establish. Within a reasonable time after submission of the comments, the Board is also required to prepare a report for distribution listing all parties who provide comments, summarizing the content of the comments, and providing the Board's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

Social Impact

The proposed amendments, including the new rules in subchapter 8, affect the members of the IHC Program that seek reimbursement of losses and the members that seek exemptions from assessments for reimbursable losses. The proposed amendments do not impose new substantive requirements; rather, they set forth a means for verifying that a carrier has made a good faith effort to comply with the IHC Program rules and that a senior officer of the member has reviewed reports to the IHC Program Board.

The proposed amendments create more flexible deadlines for filing reports and certifications so that members have sufficient time to obtain the necessary review and certifications. The proposed amendments also set forth a process for the IHC Program Board to audit and verify the calculations that are essential to the function of the assessment and reimbursement mechanism of the IHC Program.

While members are not likely to welcome any additional paperwork, it is in the interests of all IHC Program members that reported reimbursable losses are accurate and reviewable by the IHC Program Board. Members that are liable for assessments for reimbursable losses should welcome certification and audit procedures which may result in lower reported losses and, consequently, lower assessments. Members that are liable for assessments should also welcome certification and audit procedures which result in the most accurate reporting of the number of non-group persons enrolled by members that have applied for exemptions from assessments for reimbursable losses. These procedures will help ensure that carriers that have not satisfied their minimum enrollment share are not exempted from bearing a share of the assessment for reimbursable losses. Members seeking reimbursement for losses and members seeking exemptions from assessments for reimbursable losses will not be overburdened by the proposed amendments, particularly in view of the benefits they receive in terms of reimbursement for losses and exemption from assessments.

The proposed new rules at N.J.A.C. 11:20-13 affect carriers and other entities that seek to demonstrate that they are not members of the IHC Program and, as such, are not liable for assessments and other requirements of the IHC Program. No carrier is required to file a non-member status request, so no burden is imposed on any carrier. Carriers or other entities may find it beneficial to eliminate any doubt as to their status in advance and avoid disputes with the IHC Program Board over their liability for assessments and responsibility to meet filing deadlines.

Economic Impact

The proposed amendments, including the new rules in subchapter 8, are likely to have a minimal economic impact on members required to file statements certifying the accuracy of their reported reimbursable losses or the accuracy of their reported enrollment of non-group persons. The proposed amendments will have no immediate economic effect on members seeking neither reimbursement for losses nor exemptions from assessment, but may benefit such carriers in the long term by ensuring the accuracy of reported losses and non-group person enrollment and potentially reducing their share of assessments for reimbursable losses.

The proposed new rules at N.J.A.C. 11:20-13 create a voluntary filing for non-member status and thus imposes no economic burden on any entity. However, carriers and other entities may find it economically beneficial to clear up in advance any doubts they or the IHC Board may have about their liability for assessments and other requirements of the IHC Program.

Regulatory Flexibility Analysis

Since none of the members of the IHC Program issuing health benefits plans in New Jersey is a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required for the requirements imposed under the proposed amendments and new rules at N.J.A.C. 11:20-8 and 9.

Proposed new rules N.J.A.C. 11:20-13 provide a voluntary procedure by which carriers and other entities, some of which may be small businesses, may be certified as non-members of the IHC Program. The rules provide for the filing of a request for non-member certification with the Board by a specific deadline, with a copy to the Commissioner and provides for a hearing opportunity should non-member status be denied. The only cost that will be incurred by carriers or other entities is the minor administrative cost of preparing and filing the request; no professional services are required. As this procedure is voluntary and the minimum necessary to ensure proper certification as to non-member status, no lesser requirements or exemptions are provided based upon business size.

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

SUBCHAPTER 8. THE IHC PROGRAM MARKET SHARE AND NET PAID LOSS REPORT

11:20-8.1 Scope and applicability

(a) This subchapter sets forth annual reporting, **certification and audit** requirements of market share data and losses to determine the total amount of losses which are reimbursable, and the allocation of assessments for reimbursement of those losses, as well as a basis for determining criteria to be met by carriers requesting exemption from such assessments.

(b) (No change.)

11:20-8.2 Filing of the market share and net paid loss report form

(a) Every member of the IHC Program shall file the report form set forth as Exhibit K in the Appendix to this chapter, on or before June 28, 1993, **April 1, 1994,** and annually thereafter no later than March 1. Every member shall complete Parts A, B, C and D of the report form, whether or not the member is seeking reimbursements for losses, or exemptions from assessments for losses.

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

11:20-8.4 Calculation of covered non-group persons

Members shall report in Part C2 of the report form the total number of persons covered under individual community rated health benefits plans, individual modified community rated health benefits plans, conversion health benefits plans, the number of Medicaid recipients covered by the member under a contract with the State of New Jersey, and Medicare lives covered by the member under Medicare cost and risk contracts with the Federal government, and contracts covering actual HealthStart Plus recipients, as of December 31 of the preceding calendar year. **For contracts issued prior to August 1, 1993, where a member's administrative systems cannot provide the number of actual covered persons, the following factors shall be used to convert contracts or subscribers to the total number of covered persons: single = 1; husband and wife = 2; parent and child(ren) = 2.8; family = 3.9.**

11:20-8.6 Certifications

(a) [All reports shall be certified as] **The Chief Financial Officer, or other duly authorized officer of the member, shall certify that all market share and net paid loss reports filed with the IHC Board are** accurate, complete and conform[ing] with the requirements of this subchapter[by the Chief Financial Officer of the member or other duly authorized officer of the member]. The person certifying the combined **market share and net paid loss** report of an affiliated carrier shall be the same person certifying the separate **market share and net paid loss** report of the member submitting the combined **market share and net paid loss** report for the affiliated carrier. **Every duly authorized officer who certifies a separate or combined market share and net paid loss report shall be responsible for errors contained therein.**

(b) [Notwithstanding certification of the combined report, the persons certifying the separate reports of the members of the affiliated carriers shall be responsible for any errors contained in the separate member's report.] **The Chief Financial Officer, or other duly authorized officer, of a member which has filed for reimburse-**

ment of losses shall certify, on or before April 1, 1994 and annually thereafter on or before March 1, that:

1. The administrative expenses reported therein are allocated on a basis consistent with previous market share and net paid loss reports and annual statements or other corporate reports of the member required to be filed with the Commissioner pursuant to law or regulations or, if changed, the changes have been outlined in detail including the impact and reason for the change; and

2. The net investment income reported therein has been allocated on a basis consistent with previous market share and net paid loss reports and annual statements or other corporate reports of the member required to be filed with the Commissioner pursuant to law or regulations or, if changed, the changes have been outlined in detail including the impact and reason for the change.

11:20-8.7 [Failure] **Penalties for failure** to [comply] **file market share and net paid loss report**

(a) Failure to [comply with the reporting provisions of] **file in a timely manner market share and net paid loss reports and certifications required by** this subchapter [as required by June 28, 1993] shall result in:

1. The denial of a member's application for exemption from assessments for reimbursable losses [under the IHC Program for the remainder of calendar year 1993]; and

2. The Board's [determining that] **using** the premium set forth in the member's most recent Annual Statement filed with the Department [is] **as** the premium base [upon which] **to calculate** that member's market share allocation of assessments for reimbursement of losses [will be calculated by the Board].

11:20-8.8 Audits

(a) A member shall, upon written request of the IHC Program Board, provide additional information that the IHC Program Board may require to substantiate that the member has met the requirements in N.J.A.C. 11:20-8.6(b).

(b) The IHC Program Board shall review, and may audit, a member's reimbursable losses reported in the member's market share and net paid loss report. The IHC Program Board shall choose and direct the independent auditor. The IHC Program Board and the member being audited shall share equally the cost of an independent audit.

(c) The IHC Program Board shall adjust a member's reported net paid losses, for purposes of determining reimbursement for losses for the preceding calendar year, for the member's failure to meet the certification requirements of this subchapter or as a result of the findings of an independent audit conducted pursuant to (b) above.

11:20-8.9 Hearings

Any member that is denied reimbursement of losses, in whole or in part, on the grounds that the member has failed to meet the certification and reporting requirements of this subchapter, or as a result of the IHC Program Board's review of an independent audit of the member's reported net paid losses, may request a hearing within 20 days of the date that the IHC Program Board notifies the member of its final determination, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A request for a hearing shall include a detailed explanation of the reasons that the Board's action should be reconsidered.

SUBCHAPTER 9. EXEMPTIONS

11:20-9.1 Purpose

The purpose of this subchapter is to set forth the procedures for obtaining **conditional exemptions, reporting and certifying the number of non-group persons,** and the standards for granting **final or prorata** exemptions from assessments for reimbursement of losses in accordance with N.J.S.A. 17B:27A-12.

11:20-9.2 Filing for an exemption from assessments for reimbursements

(a) A member seeking to be exempted from the obligation to pay assessments for reimbursement of losses shall submit a written request for such exemption to the Board. A written request for an exemption shall be submitted annually [no later than] **on or before** May 1, except that in 1993, written request for exemptions shall be submitted to the Board on or before August 1, 1993 **and in 1994, written request for exemptions shall be submitted to the Board on or before June 1, 1994.** No exemptions from assessments for 1992 losses will be granted. Written requests shall be submitted to:

Interim Administrator
New Jersey Individual Health Coverage Program
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, New Jersey 08830

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

11:20-9.3 Minimum enrollment share

(a) On or about July 8, 1993, **on or about May 1, 1994,** and annually thereafter on or before April 1, the IHC Program Board shall issue to each member its minimum enrollment share of non-group persons for that calendar year which the member must agree to cover in that calendar year for purposes of obtaining an exemption from assessments for reimbursements for losses incurred in that calendar year.

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

11:20-9.5 Procedures for granting or denying exemptions

(a) A member granted a conditional exemption shall be granted a final exemption from assessments for reimbursements for losses accruing for the calendar year in which the conditional exemption was granted if the Board determines that the information filed by the member pursuant to [N.J.A.C. 11:20-8 and this subchapter] **(b) below** evidences the following:

1.-3. (No change.)

(b) Members seeking final or pro rata exemptions shall report to the Board, on or before April 1, 1994, and annually thereafter on or before March 1, the number of non-group persons covered by that member as of December 31 of the preceding calendar year, so that the Board can determine whether the member has satisfied its minimum enrollment share. The member shall report separately the number of non-group persons in each category of non-group person enumerated in N.J.A.C. 11:20-9.4. The Chief Financial Officer, or other duly authorized officer of the member, shall certify that the covered non-group persons reported therein:

1. Were counted in accordance with N.J.A.C. 11:20-9.4;

2. If covered by standard health benefits plans and conversion health benefits plans, were enrolled on an open enrolled and community rated basis;

3. Were actual covered lives and not estimations of covered lives based on conversion factors applied to contracts or other approximation methods;

4. Were enrolled as of December 31 of the preceding calendar year; and

5. Do not include persons whose premium due is more than 30 days overdue.

(c) A member shall, upon written request of the IHC Program Board, provide additional information that the IHC Program Board may require to substantiate that the member has met the requirements in (b) above.

(d) The IHC Program Board shall review, and may audit, a member's non-group persons reported pursuant to (b) above. The IHC Program Board shall choose and direct the independent auditor. The IHC Program Board and the member being audited shall share equally the cost of an independent audit.

(e) The IHC Program Board shall adjust a member's reported non-group persons, for purposes of determining whether the member should receive an exemption or pro rata exemption from assessment for reimbursable losses, for the member's failure to meet the certification requirements of (b) above or as a result of the findings of an independent audit conducted pursuant to (d) above.

[(b)]**(f)** (No change in text.)

[(c)]**(g)** Members denied a pro rata exemption from assessments for reimbursements for losses may, within 20 days of the date of the Board's ruling, request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform

Administrative Procedure Rules, N.J.A.C. 1:1. A request for a hearing shall include a detailed explanation of the reasons [why] **that** the Board's action should be reconsidered.

Recodify existing (d) and (e) as **(h)** and **(i)** (No change in text.)

SUBCHAPTER 13. CERTIFICATION OF NON-MEMBER STATUS

11:20-13.1 Purpose and scope

The purpose of this subchapter is to provide a means by which carriers and other entities may be certified as non-members of the IHC Program.

11:20-13.2 Non-member status

(a) An entity is a non-member of the IHC Program if:

1. It is not a carrier as that term is defined in N.J.A.C. 11:20-1.2;

2. It is a carrier that neither has issued nor has inforce health benefits plans during the calendar year of certification; or

3. It is a carrier that is permitted by law to be certified as a non-member.

11:20-13.3 Filing of non-member certification requests

(a) A carrier or other entity that desires to be considered a non-member of the IHC Program for a given calendar year shall file with the Board a request for non-member certification by April 1, 1994, for calendar year 1993, and thereafter by March 1 following the end of the calendar year for which non-member status is sought. Such request shall be sent to:

Non-Member Status Certification
IHC Program Administrator
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, New Jersey 08830

(b) A carrier or other entity that submits a request for non-member certification shall include an affirmative statement, certified by a duly authorized officer, of the reasons for which non-member status is requested.

(c) A carrier or other entity that submits a request for non-member certification shall file a copy of the request with the Commissioner.

11:20-13.4 Decisions on filings by the Board

Within 30 days of receipt of a written request for non-member status, the Board shall grant or deny the request for non-member status in writing, specifying the reasons for the decision. If the Board does not grant or deny the written request for non-member status within 30 days of its receipt by the Board, the written request shall be deemed to be approved, except that the Board may extend the decision period for an additional 30 days by notifying a carrier or other entity, in writing, of the Board's need for additional information in order to make a determination.

11:20-13.5 Review and hearing by the Board

(a) A carrier that has been denied non-member status may request a hearing within 20 days of the date of the Board's ruling. A request for a hearing shall include a detailed written explanation of the reasons that the Board's action should be reconsidered. Hearings under this section will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A carrier that requests a hearing shall be considered a member of the IHC Program until and unless the Board determines that the carrier is not a member.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Maximum Fee for Participation in Game
Proposed Amendment: N.J.A.C. 13:3-3.4

Authorized By: Legalized Games of Chance Control Commission, Robert J. Whelan, Chairman.

Authority: N.J.S.A. 5:8-79 (see Reorganization Plan No. 004-1992).

Proposal Number: PRN 1994-186.

The Commission will conduct a **public hearing** on Wednesday, April 13, 1994 between the hours of 10:00 A.M. and 2:00 P.M. at 185 Washington Street, Newark, New Jersey. Persons wishing to speak at the hearing should submit a brief synopsis of the proposed statement or identify the topic about which they will speak so that the Commission may determine the sequence and identity of speakers who will provide it with relevant non-cumulative comments and data.

Submit written comments by April 20, 1994 to:

Robert J. Whelan, Chairman
Legalized Games of Chance Control Commission
Post Office Box 46000
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Amusement Games Licensing Law authorizes the playing of games of chance, skill or a combination of both for amusement or entertainment, at seashore and other resorts, amusement parks, and agricultural fairs provided the prizes awarded consist only of merchandise. This proposed amendment responds to a request from the New Jersey Amusement Association for an increase in the maximum allowable charge for participation in an amusement game. The association requested an increase in the maximum fee that a licensed amusement game operator may charge a player for a single opportunity to play an amusement game and also the maximum fee that a licensed amusement game operator may charge a player for the opportunity to play an amusement game several times. In considering the request, the Commission finds that the provisions of N.J.A.C. 13:3-3.4, which allow licensees to charge as much as $5.00 for multiple opportunities to play subsequent amusement games, are in conflict with the Amusement Games Licensing Law, specifically N.J.S.A. 5:8-107, which states in pertinent part "... all winners shall be determined and all prizes shall be awarded in any game forthwith upon the completion of the game and before making or accepting any charge for participation in any subsequent game." The proposed amendments to N.J.A.C. 13:3-3.4 will raise the maximum fee for player participation in an amusement game, but will eliminate the provisions which appear to authorize the making or accepting of a charge for entry into a subsequent game prior to the completion of an initial game.

The Commission, while clarifying the inability of a licensee to charge for or collect a fee for participation in subsequent games, has authorized its licensees to discount the fee for entry into a single game if they so desire. For example, if the fee to enter a single amusement game is $1.00, the operator may permit three opportunities to play in that single game for $2.00. The operator may not charge or accept $2.00 and permit the player to participate in a second or subsequent game. The game must be completed prior to the operator making or accepting a charge to participate in a subsequent game. A game is completed when a wager is placed, the occurrence that determines the winner transpires, and the prize is awarded.

N.J.S.A. 5:8-107 provides that the Commission shall, after public hearing, and in accordance with the provisions of the law, determine the amount a licensee may charge or accept from any person for participation in an amusement game. The maximum fee a licensee may charge or accept from a player has not increased since 1983, except for the fee to play arcade games which was raised from $0.50 to $1.25 provided the game afforded the player an enhanced form of play. Licensees report that since the last increases, costs such as the lease or maintenance of amusement game sites, purchase of merchandise awarded as prizes to players, labor and other business related expenses have contributed to a significant decrease in profit derived from the operation of an amusement game business. It is necessary to establish a charge to play amusement games that is economically attractive to the player and satisfying to the licensed operator. Licensees should be allowed sufficient flexibility in the fee structure to enable them to charge entry fees appropriate to the type of game operated and economic conditions. Licensees contend that limits on allowable entry fees presently in place do not afford that opportunity nor are they indicative of the current market.

This amendment will impose a reasonable limitation on fees charged to players, ensure that charges are made in a manner consistent with the law, and allow operators flexibility to react to market trends and economic conditions.

Social Impact

The Amusement Games Licensing Law authorizes the operation and regulation of amusement games which provide amusement and entertainment and award merchandise prizes to players visiting seashore and other resorts, amusement parks and agricultural exhibitions. This proposed amendment gives licensees needed flexibility to adjust the price to play amusement games consistent with market conditions, while at the same time placing a reasonable limit on the maximum fee to be charged. It is expected that the amendment will have a positive social impact.

Economic Impact

In 1993, 1,009 licenses to operate amusement games were issued. The amusement games operated pursuant to those licenses are one of the many attractions of the New Jersey shore resorts and a traditional activity at the amusement parks and agricultural exhibitions (county fairs) located throughout the State. Amusement games are operated for the most part for commercial purposes offering summer employment to students and others available during the traditional season of operation. Licensees are required to make significant investment in both property and equipment. Allowing an increase in the maximum price for participation in a game is expected to afford the licensee the opportunity to introduce a greater variety of prizes and new and exciting games. Persons visiting the locations where amusement games are played are free to choose to play or not to play the games. Those who do play will weigh the price to play against the prize offered. In most cases, this interaction in the marketplace will prevent licensees from charging prices for entry into a particular game which are disproportionate to the value of the amusement, entertainment or the prize offered. The Commission is statutorily mandated to set the maximum charge to be made or accepted by any licensee. These controls are in the best interest of the public and the industry. The maximum charge set by this amendment will provide licensees with an opportunity to earn a reasonable profit and at the same time protect the public from excessive charges thus providing a positive economic impact.

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 13:3-3.4 focuses on raising the maximum fees that amusement games licensees may charge players. The amendment does not impose any additional administrative burden on the amusement games industry in terms of reporting and recordkeeping requirements, initial capital costs, costs for employing professional services, or other costs of compliance.

The increased fees to participate in amusement games will be imposed only on those members of the public who choose to play the games. The increase in fees will not necessarily result in greater cost to the public. The amendment will adjust the price to play amusement games to reflect current market conditions. The proposed fees will offer licensees an opportunity to adjust their prices within limits, in response to economic conditions and market trends.

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

13:3-3.4 Maximum fee for participation in game

(a) [Except as set forth in this section, no] **No** licensee shall charge or accept, or allow[,] **or permit** [or suffer], directly or indirectly, the charging or accepting of more than [$1.00] **$3.00** from any one player [or participant] **for an opportunity to participate** in any one amusement game [for each single or multiple entry fee or payment for the privilege of participating in the game].

(b) All prizes or tickets or tokens redeemable for a prize awarded in a game shall be awarded immediately upon completion of the game and before making or accepting a charge for participation in any subsequent game.

(c) No charge shall be made or accepted for participation in a game in excess of the posted charge for the opportunity to participate in the game. Nothing in this section shall be construed to prohibit a licensee from offering a discounted entry fee for multiple opportunities to participate in a single game. [The maximum charge for participation in any skill game certified in N.J.A.C. 13:3-7.9(a)1 under Certification No. 1 shall not exceed $1.00 for any one game or play, except that a charge not to exceed $2.00 may be made for multiple plays, the aggregate number of which must be greater than the sum of the plays available at the single play price.

(c) The maximum charge for participation in any game of chance certified in N.J.A.C. 13:3-7.9(a) or (a)9 under certifications No. 5 or No. 9 shall not exceed $1.00 for any one game or play, except that a charge not to exceed $2.00 may be made for multiple chances, the aggregate number of which must be greater than the sum of the chances available at the single play price.

(d) The maximum charge for participation in any arcade game certified in N.J.A.C. 13:3-7.9(a)2 under Certification No. 2 shall not exceed the maximum charge specified in the original or amended certification, but in no event shall the amount exceed $1.00, except that where a machine or device permits an enhanced mode of play the total shall not exceed $1.25. Dollar bill acceptors may be used only where the certification allows a charge of $1.00 for a single play. Dollar bill acceptors, if used, shall not accept more than one bill for a single play and in no event shall the machine accept multiple bills for credit or multiple play build up. Bill acceptors shall not accept bills larger than a $1.00 denomination. The maximum denomination currency for games permitting an enhanced mode of play shall not exceed $0.25, with a cumulative total of $1.25, when the maximum number of coins are inserted. The number of tickets or tokens awarded shall be at least proportionately increased when additional coins are inserted. In establishing the maximum charge for an arcade machine or device, the Commissioner shall consider, but is not limited to, the following:

1. The type and nature of the machine or device;
2. The type of prize it is designed to award;
3. The number and denomination of currency required or permitted for play; and
4. The time required to complete a game or play.

(e) The maximum charge for participation in any group game certified in N.J.A.C. 13:3-7.9(a)4 under certification No. 4 shall not exceed $1.00 for any one game or play, except that an increased charge not to exceed $5.00 may be made to allow play for a set period of time, provided that the number of games to be played within that period of time shall exceed the number of games or plays that would be played at the single game or play price.]

[(f)]**(d)** Upon receipt of currency greater than the charge [for the game or play] **to play a game**, the licensee must immediately remit the appropriate change to the player.

(a)

DIVISION OF MOTOR VEHICLES

Driving Schools

Proposed Readoption with Amendments: N.J.A.C. 13:23

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:12-4.

Proposal Number: PRN 1994-187.

Submit written comments by April 20, 1994 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt with amendments the provisions of N.J.A.C. 13:23, Driving Schools, in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on May 26, 1994. The Division of Motor Vehicles has reviewed these rules pursuant to the Executive Order and has found them to be necessary and required for the purpose for which they were promulgated.

The rules implement the provisions of N.J.S.A. 39:12-1 et seq., which provide for the licensing of businesses engaged in driving instruction and the licensing of instructors employed by such businesses. The rules implement the public policy of this State as set forth in N.J.S.A. 39:12-1 et seq. by establishing licensing standards for driving schools and driving school instructors and setting forth guidelines for transactions between a driving school and persons seeking driving instruction.

The substantive change to N.J.A.C. 13:23 which is part of this proposal is the proposed amendment of N.J.A.C. 13:23-2.34. The rule as amended specifies that driver license applicants appearing for the Division's driving test in a vehicle used for instruction by a driving school must be accompanied by a licensed driver who has in his or her possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration and a valid insurance identification card. The amendment clarifies that the rule's applicability extends only to those instances in which a driver license applicant appears for his or her driving test at one of the Division's driver testing centers in a vehicle used for instruction by a driving school.

N.J.A.C. 13:23 contains four subchapters, the provisions of which are briefly summarized below:

N.J.A.C. 13:23-1.1 sets forth definitions of words and phrases used in the chapter.

N.J.A.C. 13:23-2.1 sets forth the general requirement that every person proposing to engage in the business of conducting a driving school must be licensed by the Director prior to engaging in such business.

N.J.A.C. 13:23-2.2 specifies the application procedure for licensure as a driving school. Applicants for an initial license are required to submit the license fee with the application and must also submit to fingerprinting. In addition to other documents, an applicant must submit samples of each form which he proposes to use in the business.

N.J.A.C. 13:23-2.3 pertains to driving school license fees. The fee for an initial license is $250.00; an annual renewal license fee of $100.00 is collected by the Division thereafter.

N.J.A.C. 13:23-2.4 pertains to the display of a driving school license by a licensee.

N.J.A.C. 13:23-2.5 pertains to a change of driving school business ownership or interest.

N.J.A.C. 13:23-2.6 pertains to lost, mutilated or destroyed driving school licenses.

N.J.A.C. 13:23-2.7 pertains to the surrender of a driving school license.

N.J.A.C. 13:23-2.8 provides that a driving school business may not be conducted at a location or in a manner which gives the appearance to the public that the business has some official connection with the Division of Motor Vehicles.

N.J.A.C. 13:23-2.9 provides that changes of driving school business location or name may not be made without the prior approval of the Director.

N.J.A.C. 13:23-2.10 sets forth prohibited business locations for driving schools.

N.J.A.C. 13:23-2.12 sets forth specific standards for the denial, suspension or revocation of a driving school license by the Director.

N.J.A.C. 13:23-2.13 provides that a driving school must be accessible to the public during normal business hours of each regular working day. This requirement may be satisfied by having office personnel available or having a telephone answering service or telephone answering machine.

N.J.A.C. 13:23-2.15 provides that a driving school branch office must meet all of the requirements for a licensed principal place of business.

N.J.A.C. 13:23-2.16 provides that in the event the use of a driving school branch office is discontinued, the branch office license must be surrendered within seven days to the Division of Motor Vehicles.

N.J.A.C. 13:23-2.18 provides that the Director must be notified within seven days, in writing, if a change occurs in the residence address of any proprietor, partner, officer, director, authorized agent or instructor of any driving school.

N.J.A.C. 13:23-2.19 specifies that a file shall be maintained by a driving school containing the service record and the service agreement, if used, between the driving school and every person receiving lesssons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement in the operation of motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 also specifies that the service record shall include the student's name, driver license number, instructor's name, the date, type and duration of all lessons, lectures, tutoring, instruction or other services relating to the acquisition of a license or endorsement to operate motor vehicles or motorcycles.

N.J.A.C. 13:23-2.20 pertains to the loss, mutilation or destruction of records required to be kept by a driving school.

N.J.A.C. 13:23-2.21 pertains to the retention of records by a driving school. The records required to be maintained must be kept for a period of three years.

N.J.A.C. 13:23-2.22 pertains to driving school service agreements and the conditions to be set forth therein. All driving school service agreements must contain at a minimum all information contained in the sample service agreement set forth in the rule. A student may rescind an agreement with a driving school within 72 hours of the first lesson and is entitled to a refund for any lesson or service not provided. N.J.A.C. 13:23-2.22 also requires driving schools to provide to all students a statement of services to be rendered and fees to be charged, and requires driving schools to provide to all students a receipt for payments made to the driving school.

N.J.A.C. 13:23-2.23 pertains to agreements between driving schools and secondary schools.

N.J.A.C. 13:23-2.24 pertains to driving school student requirements.

N.J.A.C. 13:23-2.28 pertains to motor vehicles used in a driving school business. Any vehicle, except buses, motorcycles and articulated vehicles, used for instruction by a driving school must be equipped with dual controls on foot brake and, if any, on clutch. Any vehicle, except a motorcycle, used for instruction by a driving school must also be equipped with seat belts for both the student and instructor and with inside and outside rear view mirrors for both student and instructor. Vehicles must be covered by liability insurance in the amounts of at least $250,000/$500,000/$50,000. The liability insurance policy must provide that such liability coverage cannot be cancelled or terminated unless the Division has been given at least 30 days prior written notice.

N.J.A.C. 13:23-2.29 provides that vehicles must display a "Student Driver" sign when being used for driving instructions.

N.J.A.C. 13:23-2.30 regulates the advertising that can be used by a driving school. School advertisements may not guarantee licensure upon completion of instruction. A driving school may not advertise in such a manner so as to give the impression that it has some official connection with the Division or an authorized motor vehicle agent. Advertisements must be based on fact and may not be false, deceptive or misleading. Advertisements which cannot be changed, deleted or withdrawn within a period of seven days or less, including classified telephone directory advertisements, must be approved by the Director or his designee prior to printing.

N.J.A.C. 13:23-2.32 prohibits practice driving on State grounds used for State driving tests.

N.J.A.C. 13:23-2.33 requires a driving school licensee or employee to confirm that a prospective student has a valid driver's license or validated examination permit prior to conducting behind-the-wheel instructions or presenting the student for a driving test.

As noted above, the Division has proposed to amend N.J.A.C. 13:23-2.34 as part of this proposal to specify that driver license applicants appearing for the Division's driving test in a vehicle used for instruction by a driving school must be accompanied by a licensed driver who has in his possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration and a valid insurance identification card.

N.J.A.C. 13:23-2.35 prohibits a driving school from employing any person as an instructor or agent who has been convicted of any of the offenses set forth in N.J.A.C. 13:23-2.12(a)3 unless the Director has determined that such person may serve in such capacity.

N.J.A.C. 13:23-2.36 establishes the requirements for the issuance of authorized agent identification certificates. An applicant for an authorized agent certificate must be at least 18 years of age, must be of good moral character, must hold a valid driver's license and must have a driving record devoid of the offenses set forth in N.J.A.C. 13:23-2.36(d). Such an applicant must also submit to fingerprinting and, if licensed by another state or states during the past three years, must submit a certified abstract of his driving record from the state(s) in which he is or was licensed to drive. N.J.A.C. 13:23-2.36 establishes an annual fee of $5.00 for an authorized agent certificate. The rule also sets forth standards for the denial, suspension or revocation of an authorized agent certificate by the Director.

Driving school licensees and their employees are subject to the requirements set forth in N.J.A.C. 13:23-2.37 and may not act in such a way as to attempt to influence Division employees in their official determinations relative to the licensing of the driving school's students.

N.J.A.C. 13:23-3.1 requires the licensing of a person as a driving school instructor as a condition to that person providing driving instructions on behalf of a driving school.

N.J.A.C. 13:23-3.2 provides that instructor's licenses are valid for use only in connection with the business of the driving school(s) listed thereon and only for lessons authorized by those schools.

N.J.A.C. 13:23-3.3 provides that instructor's licenses shall not be issued to any person unless that person possesses a valid driver's license and has held a license permitting him to drive for at least the last three consecutive years, and has complied with the other requirements set forth in the subchapter.

N.J.A.C. 13:23-3.4 provides that an applicant for an initial instructor's license must be at least 21 years of age and must submit to fingerprinting. The rule also provides that an applicant licensed to drive by another state or states during the past three years must submit a certified abstract of his driving record from the state(s) in which he is or was licensed to drive.

N.J.A.C. 13:23-3.5 pertains to driving school instructor's license fees. The fee for an initial license is $75.00; an annual renewal licensee fee of $30.00 is collected by the Division thereafter.

N.J.A.C. 13:23-3.6 provides that the instructor's license must be in the possession of the instructor at all times while giving driving instructions or when accompanying a student.

N.J.A.C. 13:23-3.7 pertains to lost, mutilated or destroyed driving school instructor's licenses.

N.J.A.C. 13:23-3.8 pertains to the surrender of a driving school instructor's license or endorsement.

N.J.A.C. 13:23-3.9 provides that applicants for instructor's licenses are subject to specialized testing as part of the licensing procedure and must submit proof of having completed either the six hour or eight hour National Safety Council Defensive Driving Program.

Driving school instructors are subject to the requirements set forth in N.J.A.C. 13:23-3.11 and may not act in such a way as to attempt to influence Division employees in their official determinations relative to the licensing of the instructor's students.

N.J.A.C. 13:23-3.12 provides specific standards for the denial, suspension and revocation of a driving school instructor's license by the Director.

N.J.A.C. 13:23-4.1 pertains to driving school classroom facilities.

N.J.A.C. 13:23-4.2 pertains to driving school classroom requirements.

Social Impact

The rules proposed for readoption have a positive social impact. The rules benefit the public by promoting fairness in dealings between a driving school and its prospective students. A prospective student may rescind a contract within 72 hours of the first lesson with a full refund for intructions or other services that have not been provided by the school. The licensing standards imposed by N.J.A.C. 13:23 on applicants for and holders of driving school licenses, driving school instructor's licenses and authorized agent identification certificates also protect the public by providing specific standards for the denial, suspension or revocation of a driving school license, driving school instructor's license, and an authorized agent identification certificate.

The rules proposed for readoption also safeguard the public by prohibiting false or deceptive advertising and requiring prior approval by the Director or his designee of proposed advertising which, because of its nature and form of publication, cannot be corrected for a substantial period of time. The proposed amendment of N.J.A.C. 13:23-2.34 has a beneficial social impact since it clarifies the rule's applicability, thus promoting better public understanding of the rule. The rules proposed for readoption have no social impact upon the Division of Motor Vehicles.

Economic Impact

The rules proposed for readoption have an economic impact on the Division of Motor Vehicles in that its Business License Compliance Unit is responsible for the processing of applications for the various types of licenses and certificates provided for in N.J.A.C. 13:23. The Unit is also responsible for monitoring driving school, driving school instructor and driving school authorized agent compliance with the provisions of N.J.S.A. 39:12-1 et seq. and N.J.A.C. 13:23 and for initiating administrative suspension proceedings against violators.

An initial license fee of $250.00 and an annual renewal license fee of $100.00 must be paid to the Division by driving schools pursuant to N.J.S.A. 39:12-2. An initial license fee of $75.00 and annual renewal license fee of $30.00 must be paid to the Division by driving school instructors pursuant to N.J.S.A. 39:12-5. An annual certificate fee of $5.00 must be paid to the Division by driving school authorized agents pursuant to N.J.A.C. 13:23-2.36. The aforementioned fees partially offset the administrative expenses incurred by the Division.

N.J.A.C. 13:23-2.30, which prohibits false or deceptive advertising by driving schools, is expected to protect the economic interest of the general public.

The proposed amendment of N.J.A.C. 13:23-2.34 has no economic impact upon the State, driving schools or the public. The amendment imposes no additional fees upon driving schools or the public; rather, it merely clarifies the applicability of the existing rule.

Regulatory Flexibility Analysis

The proposed readoption continues to impose upon driving schools the reporting and recordkeeping requirements currently required by N.J.A.C. 13:23.

Approximately 157 entities are currently licensed by the Division to engage in the business of a driving school. Most, if not all, of these schools qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Driving schools are subject to various recordkeeping provisions primarily contained in N.J.A.C. 13:23-2.19 thru 13:23-2.22. N.J.A.C. 13:23-2.19 specifies that a file shall be maintained by a driving school containing the service record and the service agreement, if used, between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement in the operation of motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 also specifies that the service record shall include the student's name, driver license number, instructor's name, the date, type and duration of all lessons, lectures, tutoring, instruction or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 also permits business records to be electronically stored. N.J.A.C. 13:23-2.20 pertains to the loss, mutilation or destruction of records required to be kept by a driving school. N.J.A.C. 13:23-2.21 pertains to the retention of records by a driving school. The records required to be maintained must be kept for a period of three years as specified in said rule. N.J.A.C. 13:23-2.22 pertains to driving school service agreements and the conditions to be set forth therein. All driving school service agreements must contain at a minimum all information contained in the sample service agreement set forth in the rule. N.J.A.C. 13:23-2.22 also requires driving schools to provide to all students a statement of services to be rendered and fees to be charged, and requires driving schools to provide to all students a receipt for payments to the driving school.

The rules proposed for readoption will not require small businesses to engage additional professional services for compliance therewith. The records are of a kind that would be maintained in the ordinary course of business. Therefore, the rules do not impose additional reporting or recordkeeping burdens on small businesses nor do they necessitate initial capital and annual expenditures for reporting or recordkeeping compliance by small businesses.

The general licensing provisions contained in the rules have uniform application to all entities which engage in the business of driving instruction. It is not feasible to exempt small businesses from these requirements in light of the statutory licensing requirement.

The proposed amendment of N.J.A.C. 13:23-2.34 does not impose new requirements upon small businesses licensed as driving schools, but instead clarifies the applicability of the existing requirements imposed by the rule. The amendment clarifies that the rule applies only to those instances in which a driver license applicant appears for his driving test at one of the Division's driver testing centers in a vehicle used for instruction by a driving school; in such instances, the applicant must be accompanied by a licensed driver who has in his possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration and valid insurance identification card. The proposed amendment does not impose additional fees upon driving schools, nor does it impose additional recordkeeping requirements upon such schools.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:23.

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

13:23-2.34 Requirements at driving test

[(a)] Applicants appearing for the driving test **in a vehicle used for instruction by a driving school** shall be accompanied by a licensed driver who has in his or her possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration and a valid insurance identification card.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MARRIAGE COUNSELOR EXAMINERS

Examination Fee

Proposed Amendment: N.J.A.C. 13:34-1.1

Authorized By: Board of Marriage Counselor Examiners, Leslie Aronson, Executive Director.
Authority: N.J.S.A. 45:8B-13.
Proposal Number: PRN 1994-177.

Submit written comments by April 20, 1994 to:
Leslie Aronson, Executive Director
State Board of Marriage Counselor Examiners
Post Office Box 45007
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Marriage Counselor Examiners has been advised by Professional Examination Service (PES) of an increase in its cost per candidate fee from $160.00 to $195.00. The $225.00 now charged by the Board includes $65.00 to cover the Board's administrative expenses in handling the examination application.

The proposed amendment to N.J.A.C. 13:34-1.1 revises the fee schedule to include only the Board's $65.00 administrative cost, which will remain unchanged. This will avoid the necessity of amending the regulation each time PES increases its cost per candidate fee. Candidates for the May examination accordingly will pay $260.00 ($65.00 plus PES' increased fee of $195.00).

Social Impact

The proposed amendment has no impact upon the general public as it merely advises applicants of the Board's administrative fee for handling examination applications. Although PES has increased its cost per candidate fee from $160.00 to $195.00, the $65.00 administrative fee remains unchanged.

Economic Impact

Applicants for licensure will be required to pay the fee established by PES plus the Board's $65.00 administrative fee. There will be no economic impact upon the general public.

Regulatory Flexibility Statement

The proposed amendment to the Board of Marriage Counselor Examiners fee schedule will affect only individual applicants for licensure, rather than small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No regulatory flexibility analysis is, therefore, necessary.

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

13:34-1.1 Annual license fees and charges

(a) There shall be paid to the State Board of Marriage Counselor Examiners the following fees:

1.-2. (No change.)

3. Examination fee [$225.00] **$65.00 plus the fee charged by Professional Examination Service**

4.-11. (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Fitting and Dispensing of Deep Ear Canal Hearing Aid Devices

Proposed Amendment: N.J.A.C. 13:35-8.7
Proposed New Rule: N.J.A.C. 13:35-8.8

Authorized By: Board of Medical Examiners, Charles A. Janousek, Executive Director.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1994-190.

Submit written comments by April 20, 1994 to:
Charles A. Janousek
Executive Director
New Jersey State Board of Medical Examiners
140 E. Front St., 2nd Floor
Trenton, NJ 08608

The agency proposal follows:

Summary

The New Jersey State Board of Medical Examiners is proposing both an amendment to N.J.A.C. 13:35-8.7, Scope of practice, and new rule N.J.A.C. 13:35-8.8, Fitting and dispensing of deep ear canal hearing aid devices.

The proposed amendment consists of an addition to the scope of practice section so as to include the fitting and dispensing of deep ear canal hearing aid devices as within the scope of practice of licensees. The proposed new rule requires specific safeguards that licensees must comply with in order to fit or dispense these devices. The proposed new rule has been promulgated because the Hearing Aid Dispensers Examining Committee has advised the Medical Board of the advisability of establishing safeguards in response to the new technology involving canal devices. These devices require an impression taking and fitting process that contacts the tympanic membrane and thereby increases the risk of complications and undesirable side-effects.

The amendment to N.J.A.C. 13:35-8.7(a)3 includes as within the scope of practice of hearing aid dispensers the fitting and dispensing of deep ear canal hearing aid devices that require an impression taking technique involving instruments applied to the tympanic membrane.

New rule N.J.A.C. 13:35-8.8 provides comprehensive safeguards for this new technology in order to guard against complications that might arise as a result of medical instruments making contact with the tympanic membrane. Subsection (a) requires that licensees who dispense these deep ear canal devices submit to the Committee, on a form provided by the Committee, the name and address of a Board certified ENT physician licensed in New Jersey who has agreed to be constantly accessible through electronic communications during the impression taking

process and who is available to render immediate in-person assistance if needed. Subsection (b) requires that a licensee refrain from initiating the impression taking process unless the licensee has ensured that the physician on record with the Board is available and that the consumer has had a pre-impression medical examination. Subsection (c) requires that the licensee shall immediately refer any consumer who develops complications to a physician. Subsection (d) requires that the licensee refer the consumer to an ENT physician for a post-impression medical evaluation. Subsection (e) requires that the licensee shall maintain documentation of any examinations pertinent to the impression taking and fitting process.

Social Impact

The proposed amendment and new rule should be beneficial to hard-of-hearing consumers, for they will stand to gain access to new technology with protective safeguards to guard against and treat complications. By including this new technology within the scope of practice of hearing aid dispensers, this amendment makes deep ear canal hearing aid devices more readily available to consumers without being unduly restrictive. The proposed new rule is intended to provide safeguards, including both pre- and post-impression taking medical evaluations by an ENT physician who shall be telephonically available during the impression taking process and available to render immediate in-person assistance if needed.

For licensees, the proposed amendment and new rule are beneficial in that they provide them with the opportunity to make this new technology available to their patients in a responsible manner that calls on licensees to ensure that evaluations are conducted, that a physician is available during the impression taking procedure, and that the necessary records are maintained.

Economic Impact

The proposed new rule and amendment will have an economic impact on the select number of hard-of-hearing consumers who purchase these devices because they will be required to incur the additional costs of a pre- and post-impression taking medical evaluation by an ENT physician. These costs are, however, considered to be the minimum necessary in order to safeguard the public's health and welfare.

The proposed new rule and amendment should be economically beneficial to licensees of the Hearing Aid Dispensers Examining Committee because the new rule and amendment marginally increase their market by permitting licensees to dispense this new technology at no additional costs to themselves. The economic impact of the amendment and new rule on Board of Medical Examiners licensees and, in particular, ENT physicians is that they will benefit from increased revenue generated because of the additional medical evaluations, though they will benefit no more so than is required to enact good public health policy since pre- and post-evaluations are advisable in order to be adequately protective of the public.

Regulatory Flexibility Analysis

If for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., hearing aid dispensers are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendments and new rule, which govern deep ear canal hearing aid devices, will apply to all of the approximately 500 hearing aid dispensers. Additional reporting and recordkeeping are required. The licensee is required to report to the Committee, on a form provided by the Committee, the name and address of a Board certified ENT physican who has agreed to be constantly accessible through electronic communications during the impression taking process and who is available to render immediate in-person assistance as required. The recordkeeping requirement is that the licensee must maintain on file the records of the consumer's pre- and post-evaluations with an ENT physician. The proposed amendments and new rule do not require any initial capital costs or the retention of professional services or any other costs of compliance.

The Board considers these amendments to be reasonable and to be the minimum necessary for the protection of the public health, safety and welfare. Thus the proposed amendments and new rule must be uniformly applied to all licensees without differentiation as to size of practice.

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

13:35-8.7 Scope of practice

(a) The practice of fitting a hearing aid as defined by N.J.S.A. 45:9A-2(d) shall include:

1.-2. (No change.)

3. Pursuant to N.J.A.C. 13:35-8.8, the fitting and dispensing of a deep ear canal hearing aid device that requires an impression taking technique involving instruments applied to the tympanic membrane;

Recodify existing 3 to 6 as **4 to 7** (No change in text.)

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

13:35-8.8 Fitting and dispensing of deep ear canal hearing aid devices

(a) A licensee may fit and dispense a deep ear canal hearing aid device that requires an impression taking technique involving instruments applied to the tympanic membrane, provided that the licensee advises the Committee, on a form provided by the Committee, of the name and address of a Board-certified ENT physician licensed in this State who has agreed to be constantly accessible through electronic communications during the impression taking process and who is available to render immediate in-person assistance when required.

(b) The licensee shall not initiate the impression taking process unless the licensee has ensured that a physician is available as required by (a) above and that the consumer has, within seven days prior to the impression taking process, received a medical evaluation from an ENT physician licensed in the State. The physician's evaluation shall determine whether a deep ear canal hearing aid device may be safely and effectively worn by the consumer and shall be documented by written medical clearance, which the licensee shall place in the consumer's patient records.

(c) The licensee shall immediately refer any consumer who develops any complications during the impression taking or fitting process to the physician identified in (a) above or to a physician selected by the consumer.

(d) The licensee shall refer the consumer, following the impression taking process, to the physician who performed the pre-impression taking evaluation or to another plenary physician licensed in the State and shall secure a written evaluation regarding the placement of the deep ear canal hearing aid device and the consumer's continuing ability to safely and effectively wear the device.

(e) The licensee shall maintain documentation of the evaluations required pursuant to subsection (b) and (d) above consistent with the provisions of N.J.A.C. 13:35-6.5(b).

Recodify existing N.J.A.C. 13:35-8.8 to 8.18 as **13:35-8.9 to 8.19** (No change in text.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MORTUARY SCIENCE
Handling and Embalming Bodies Dead of an Infectious or Contagious Disease
Proposed New Rule: N.J.A.C. 13:36-7.1

Authorized By: Board of Mortuary Science, Paul C. Brush, Executive Director.

Authority: N.J.S.A. 45:7-38.

Proposal Number: PRN 1994-164.

Submit written comments by April 20, 1994 to:
Paul C. Brush, Executive Director
State Board of Mortuary Science
Post Office Box 45009
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Mortuary Science is reproposing a new rule, N.J.A.C. 13:36-7.1, which would give the Board enforcement authority to act in cases of discrimination based on the presence of a contagious, infectious or communicable disease. The rule was originally proposed on May 20, 1991 as PRN 1991-281 (at 23 N.J.R. 1517(a)). Based not only on public comment received during the 30-day comment period but also on regulations that have now been promulgated by various Federal and State agencies, the Board has decided to replace the previously detailed standards for handling infectious or contagious disease cases with a generalized incorporation by reference of pertinent Federal, State and local laws on the subject.

The proposed new rule is intended to assist the Board in carrying out its statutory responsibility to protect the public health and welfare and to provide the Board with a strong legal basis for enforcement of these policies. The Board maintains its belief that the proposed rule is of considerable importance in assuring that no person is denied funeral services based upon the cause of death and in reducing the risk that funeral service personnel will contract an infectious or contagious disease.

Subsection (a) of the proposed rule affirms the right to unconditional funeral services except as provided by law or regulation. Subsection (b) addresses the specifics of the preparation for burial or transportation of a body dead from an infectious or contagious disease by making reference to the existence of recommendations from the Centers for Disease Control in Atlanta, Georgia, and by making further general reference to all applicable Federal, State, and local laws governing medical and infectious waste.

Social Impact

The proposed new rule will have a beneficial social impact on the public by affirming the right to funeral services and by reducing the possibility that funeral service providers or personnel will contract or transmit an infectious or contagious disease through improper handling of embalming procedures or through improperly disposing of medical waste. The reference in subsection (b) to recommendations from the Centers for Disease Control will benefit licensees of the Board of Mortuary Science by alerting them to available published material on the proper precautions to be taken by licensees. For its part, the Board of Mortuary Science will benefit in that it will be better able to fulfill its statutory duty to protect the public health and welfare by further directing licensees' attention to the need for compliance with all Federal, State and local laws governing the handling and embalming of bodies dead of an infectious or contagious disease.

Economic Impact

The proposed new rule will have a beneficial economic impact on the survivors of individuals dead from an infectious or contagious disease because subsection (a) mandates that no conditions will be placed upon the provisions of a funeral service except as provided by law or regulation. Survivors of the deceased who are making funeral arrangements will therefore be aided in avoiding unnecessary provisions that would tend to escalate funeral costs.

Licensees of the Board will not be significantly affected by this rule in an economic sense because they must, after all, already be in compliance with existing Federal, State and local laws that govern the handling and embalming of bodies dead of an infectious or contagious disease. (Those laws include the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.) Compliance with the universal precautions established by the Centers for Disease Control may impose some slight additional economic burden on licensees, but any possible burden is more than offset by the benefit for licensees of knowing that minimium standards have been mandated in order to safeguard their own health and welfare.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., funeral establishments are deemed "small businesses," then within the meaning of the statute, the following statements are applicable:

The proposed new rule requires no reporting or recordkeeping. The proposed rule also does not require the retention of professional services. The question of whether or not the proposed rule will require initial capital costs or other costs of compliance will depend on the procedures already in place at a given funeral establishment regarding the handling and embalming of bodies dead of an infectious or contagious disease. Any initial or additional costs are expected to be minimal in order to bring the funeral establishment into compliance with the recommendations of the Centers for Disease Control and the existing Federal, State and local laws that govern these matters.

Since the proposed rule seeks to promote and protect the public health and welfare, no differentiation in compliance can be made relating to business size.

Full text of the proposed new rule follows:

SUBCHAPTER 7. SPECIAL RULES OF PRACTICE

13:36-7.1 Handling and embalming bodies dead of an infectious or contagious disease.

(a) Except as otherwise provided by law, including, but not limited to, regulation, no person in the conduct of the practice of mortuary science shall:

1. Deny funeral services for any deceased person based upon the cause of death;
2. Place any condition upon the provision of funeral services for any deceased person based upon the cause of death; or
3. Represent that state or local law requires that any condition be placed upon the provision of funeral services for any deceased person based upon the cause of death.

(b) In the preparation for burial or transportation of a dead body, the funeral director, the embalmer and assistants shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference, which shall include taking due care to prevent any spread of infection in the handling of such body during transportation, in preparation and during embalming, and after contact with such body, and shall disinfect their hands and remove any soiled clothing. All instruments, gloves, coverings and utensils used in embalming or in handling the body shall be disinfected immediately after being used. All fluids or other matters removed from such body in the process of embalming shall be disposed of in accordance with all applicable State, Federal and local laws and regulations governing medical and infectious waste.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

Sterile Admixture Services in Retail Pharmacies

Proposed New Rules: N.J.A.C. 13:39-11
Proposed Amendment: N.J.A.C. 13:39-10.2

Authorized By: Board of Pharmacy, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 45:14-26.2.

Proposal Number: PRN 1994-178.

Submit written comments by April 20, 1994 to:
H. Lee Gladstein, Executive Director
State Board of Pharmacy
Post Office Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

New technology that is greatly expanding the list of conditions amenable to home intravenous treatment and recent efforts to reduce health care costs in the State of New Jersey by substituting home care for hospital treatment have combined to spur a rapid growth in home intravenous therapy ("home IV"). The Board has consequently witnessed a steady increase in the number of commercial enterprises seeking pharmacy permits to operate solely as sterile admixture services so as to meet the growing needs of other retail and hospital pharmacies for these services.

Based upon documented complaints implicating some IV suppliers in negative outcomes with regard to the provision of sterile products, and due to increasing use of these products, the Board recently undertook a thorough review of its existing rules concerning sterile admixture services. Because the Board wishes, for consumer protection purposes, to update its rule in this area as quickly as possible, the rule will be proposed in two parts: one relating to sterile admixture services in retail settings (the within proposal) and one relating to services in institutional settings (to be proposed in the near future). Hospital pharmacies remain subject to existing State and Federal requirements.

Several consultants assisted the Board in developing this proposal, including consultants from four of the leading companies in the home IV industry. The proposal represents a compilation of the best known and most current guidelines for sterile admixture services as provided by the American Society of Hospital Pharmacists, the Food and Drug Administration, the National Association of Boards of Pharmacy, and the Joint Commission on Accreditation of Health Care Organizations.

Although the basic format of the subchapter and some sections remain unchanged, significant new requirements are proposed as outlined below. Given the substantial changes that are being proposed, current permit holders will be allowed one year from the effective date of the new rules to come into compliance with the new rules.

The new requirements concern primarily minimum space requirements, process redesign, and training and supervision of supportive personnel. Specifically, each pharmacy must have a designated clean room and an anteroom, collectively to be known as the controlled environment, and minimum requirements for room size and equipment are prescribed. Both the pharmacist in charge and the dispensing pharmacist will need academic or practical training in sterile compounding procedures, and supportive personnel are to be tested every six months to ensure competency and appropriate aseptic technique. A "tracking document" is required to document completion of all necessary steps in the compounding process, and standards for prescription labeling and recordkeeping will be upgraded. Because the Board has experienced a lack of consistency in the substance of policy and procedure manuals it has recently reviewed, the new rules also detail the basic information to be included in both the manual and the written quality assurance program.

Social Impact

Achieving and maintaining sterility and overall freedom from contamination of a pharmaceutical product, together with proper labeling, storage, dispensing, recordkeeping and counseling, are essential in order to protect the health and safety of users of sterile IV products.

The proposed new rules for retail pharmacies will have a beneficial impact on consumers in that they reflect the Board's efforts to bring its existing rules up to date and to ensure that both commercial companies as well as full-service pharmacies are being held to the same high standards. The rule revisions are especially relevant at this time given the expanding use of home IV therapy and the concomitant growth in commerical compounding services.

Economic Impact

Approximately 80 permits to provide sterile admixture services have been issued to date. It is likely that all permit holders will incur some expense in bringing their pharmacy services into line with these new rules. Costs will vary among permit holders depending upon the extent to which they presently meet minimum space and equipment requirements.

The services of 90 percent of current permit holders are limited to the provision of sterile admixture products, and it is likely that these permit holders will experience a less serious economic impact than the approximately eight full-service retail pharmacies that do not derive a significant portion of their income from providing sterile IV services. The board believes that most, if not all, of these eight full-service retail pharmacies do not have the space or equipment to meet the proposed minimum requirements, and it is possible that some of these pharmacies may be unable to continue to provide sterile IV services. However, in the Board's opinion the monetary losses to this small number of retail pharmacies must be weighed against the benefit to the user of sterile IV products in being reasonably assured of a consistent product quality. The Board believes that the proposed upgraded standards are essential and will far outweigh anticipated monetary losses, especially in light of recent complaints and the expected continuing growth in home IV therapy and in the commercial provision of compounding services.

Regulatory Flexibility Statement

The majority of the 80 current permit holders would be considered "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Both the pharmacist in charge and the dispensing pharmacist must assure that product sterility is maintained by permitting compounding to be performed only by licensees and other properly trained and supervised individuals in an appropriately equipped controlled environment and by providing regular analytical testing and special packing and delivery procedures, all as outlined in a policy and procedure manual. Both the pharmacist in charge and the dispensing pharmacist must have practical or academic training in sterile product compounding.

Recordkeeping requirements include maintaining, in a separate prescription file, a tracking document which assures compliance with all necessary steps in the compounding process; documenting that supportive personnel are tested biannually for proper asceptic technique; and recording in the patient profile record system vital information relative to the administration of IV therapy, including any patient use of over-the-counter and home remedies.

Initial compliance costs cannot be estimated with any certainty at this time, as stated in the Economic Impact statement. Costs will vary, depending upon the extent of current compliance and business size, but are expected to be greatest for the small number of full-service retail pharmacies currently providing compounding services or for those wishing to provide such services. It is likely that these full-service pharmacies will be unable to meet the special and/or equipment requirements for a controlled environment and thus will incur substantial construction costs if they wish to continue or begin offering compounding services.

The intent of the proposed new rules is to ensure that IV drug products maintain their sterility in the compounding process, for the protection of the health, safety and welfare of individuals receiving home IV therapy. Accordingly, the Board cannot provide exemptions from these requirements based upon business size, because to do so would destroy the value of the rules.

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

13:39-10.2 Compliance

(a) An institutional pharmacy which holds a permit to compound and dispense sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements of this subchapter.

(b) A **retail** pharmacy which [intends to]**, on or prior to (insert effective date of new N.J.A.C. 13:39-11), held a permit to** compound and dispense sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements of this subchapter.

(c) A retail pharmacy which, on or after (insert effective date of new N.J.A.C. 13:39-11) holds a permit to compound and dispense sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements of N.J.A.C. 13:39-11.

SUBCHAPTER 11. STERILE ADMIXTURE SERVICES IN RETAIL PHARMACIES

13:39-11.1 Purpose and scope

This subchapter shall apply to all retail pharmacies which obtain a permit, on or after (insert effective date of subchapter), to compound and dispense sterile admixture products, parenteral nutrition and/or parenteral drug therapy.

13:39-11.2 Training requirements

(a) The pharmacist in charge and the dispensing pharamcist shall have practical or academic training in sterile product compounding, clean room technology, laminar flow technology, and quality assurance techniques and shall be required to document such training if required by the Board.

(b) The pharmacist in charge shall be responsible for ensuring that, prior to performing delegated sterile admixture services, all supportive personnel are trained and can successfully demonstrate:

1. Comprehensive knowledge of the pharmacy's standard operating procedures with regard to sterile admixture services as set forth in the policy and procedure manual required to be maintained pursuant to N.J.A.C. 13:39-11.8;

2. Familiarity with the necessary compounding techniques; and

3. Appropriate aseptic technique, which shall be proven by means of a test batch of growth-media.

(c) At least every six months, the pharamacist-in-charge shall test the aseptic technique of supportive personnel by means of a test batch of growth-media. Test results shall be recorded in a log which shall be available for the Board's inspection.

13:39-11.3 Supportive personnel; required supervision

(a) The dispensing pharamcist shall provide direct supervision to supportive personnel who are working within the controlled environment, as defined in N.J.A.C. 13:39-11.11. The dispensing pharmacist shall supervise, at any given time, no more than two supportive personnel performing delegated sterile admixture tasks.

1. For purposes of this subchapter, "direct supervision" means that the dispensing pharmacist shall be present in the dispensing area whenever supportive personnel are compounding sterile admixture products, and shall conduct in-process and final checks of all steps in preparation, compounding and dispensing of sterile admixture products.

2. Supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

(b) The dispensing pharmacist may delegate to supportive personnel only the tasks set forth below in (c)2 (recording of the prescription), (c)3 (selection of the drugs, container and diluent), and (c)4 (compounding of sterile admixture) below. The dispensing pharmacist shall check that each task has been performed correctly prior to any further task being performed in the dispensing process.

13:39-11.4 Tracking document

(a) The pharmacist-in-charge and the dispensing pharmacist shall ensure that the sterile admixture product has been properly prepared, labeled, controlled, stored, dispensed and distributed in accordance with the provisions of this subchapter.

(b) The dispensing pharmacist shall prepare a document to track completion of the following steps of the compounding process. The tracking document(s) shall be initialed by the individual(s) who completed each step:

1. Receipt of prescription;
2. Recording of prescription in the patient record profile system, pursuant to N.J.A.C. 13:39-11.10;
3. Correct selection of the drugs, container, and diluent prior to their being compounded in the clean room;
4. Verification that all sterile admixture compounding is performed within the clean room and that proper aseptic procedures are being used at all times to prevent bacterial contamination of the product;
5. Verification that residual components comply with the order;
6. Verification that the prescription label complies with the requirements of N.J.A.C. 13:39-11.5; and
7. Verification that the prescription order is complete and ready to be dispensed, including any necessary ancillary supplies.

(c) The completed tracking document(s) shall be kept in a separate prescription file pursuant to the provisions of N.J.A.C. 13:39-5.6.

13:39-11.5 Information required to appear on prescription label

(a) The dispensed container for any sterile admixture product shall bear a permanently affixed label with at least the following information:

1. The date prepared;
2. The name of the physician;
3. The name of the patient;
4. Directions for use;
5. The name of the basic solution;
6. The name and amount of drug(s) added;
7. The name or identifying code of the pharmacist who checked or prepared the sterile admixture product;
8. The name, address, and telephone number of the pharmacy;
9. The pharmacy's Drug Enforcement Administration (DEA) number, should the sterile admixture product contain any controlled dangerous substances;
10. The expiration date of the sterile admixture product;
11. Any ancillary and cautionary instructions as needed;
12. As pertinent, a warning that cytotoxic products are biohazardous; and
13. As pertinent, the requirements for proper storage.

13:39-11.6 Expiration date of sterile preparation

(a) The expiration date of a sterile admixture product shall be 24 hours or as otherwise stated by the manufacturer.

(b) Any expiration date that extends beyond 24 hours or the manufacturer's expiration date shall be substantiated by documentation satisfactory to the Board.

13:39-11.7 Handling, packing and delivery

(a) To ensure the integrity and efficacy of compounded sterile admixture products, the pharmacist in charge shall ensure that:

1. A reasonable effort is made to provide tamper-evident packing;
2. Delivery is made from the pharmacy to the patient within a reasonable time; and
3. Proper in-transit storage is provided consistent with product labeling.

13:39-11.8 Policy and procedure manual

(a) The pharmacist in charge shall maintain a policy and procedure manual which shall set forth in detail the licensee's standard operating procedures with regard to sterile admixture services.

(b) The policy and procedure manual shall include at least the following:

1. A risk-management program (including, but not limited to, incident reports, adverse drug reactions, and product contamination);
2. Security measures (ensuring that the premises where sterile admixture drugs are present are secured, so as to prevent access by unauthorized personnel);
3. Equipment;
4. Sanitation;
5. Reference materials;
6. Drug storage;
7. Drug dispensing;
8. Drug labeling;
9. Drug destruction and returns;
10. Delivery of drugs;
11. Patient recordkeeping;
12. Investigational new drugs; and
13. A quality assurance program.

(c) The pharmacist in charge shall review and, if necessary, amend the policy and procedure manual on at least an annual basis. Documentation of the annual review shall be made available to the Board upon request.

13:39-11.9 Quality assurance program

(a) This section shall apply both to commercially available injectable drug products that are dispensed to patients without compounding or other manipulation, and to sterile admixture products that prior to dispensing have been in any way repackaged, reconstituted, diluted, admixed, blended, or otherwise manipulated (collectively referred to as "compounded").

(b) The dispensing pharmacist shall ensure that the sterile admixture product retains its quality attributes within acceptable limits through a written quality assurance program. The quality assurance program shall require at least that:

1. The sterile admixture product is kept under appropriate controlled conditions at the location of use, and is administered through adequate labeling and verbal or written instructions;
2. The potency, pH, sterility, freedom from pyrogen, particulate limits, container integrity, appearance, and other qualities or characteristics that the sterile admixture product is expected to have do exist for the entire labeled life of the sterile admixture product, or until the sterile admixture product is manipulated by the patient or caregiver;
3. The quality assurance program encompasses every sterile admixture product under the pharmacy's control and includes all phases of its preparation, distribution, storage, administration, and directions for use;
4. The proper analytical testing is performed at regular intervals of time in order to verify the microbiological, chemical, and physical quality of all sterile admixture products;

5. Air and surface sampling takes place monthly;
6. Laminar air flow hoods are certified semi-annually;
7. The Class 100 Clean Room is certified semi-annually; and
8. All unused drugs and materials used in the preparation of sterile admixture products, including antineoplastic agents, are disposed of properly in accordance with accepted professional standards and applicable laws, including the Medical Waste Act (N.J.S.A. 13:1E-48.1 et seq., P.L. 1989, c.34).

13:39-11.10 Patient profile records

(a) The pharmacist in charge shall ensure that a patient profile record is maintained and monitored for each patient. The patient profile record shall include, but is not limited to, the following:
1. Available medical information consistent with N.J.A.C. 13:39-7.14;
2. A complete record of the formulations of the sterile admixture products dispensed; and
3. Initial and ongoing clinical pharmacy monitoring plans.

(b) A reasonable, documented attempt shall be made to ensure that a patient profile record includes over-the-counter and home remedies.

13:39-11.11 Controlled environment: entry

(a) The pharmacy shall have designated areas, namely a clean room and an anteroom, which shall collectively be known as the controlled environment.

(b) The controlled environment shall be:
1. Accessible only to designated personnel;
2. Used only for the preparation of parenteral products, or such other tasks that require a controlled environment; and
3. Structurally isolated from other areas within the pharmacy by means of restricted entry or access.

13:39-11.12 Controlled environment: construction

(a) The surfaces of ceilings, walls, floors, fixtures, shelving, counters, and cabinets in the controlled environment shall be smooth, impervious, free from cracks and crevices, and nonshedding, thereby minimizing spaces in which microorganisms and other contaminants may accumulate.

(b) All surfaces shall be resistant to sanitizing agents.

(c) Junctures of ceilings to walls shall be covered or caulked to avoid cracks and crevices where dirt can accumulate.

(d) Ceilings that consist of inlaid panels shall be impregnated with a polymer to render them impervious and hydrophobic, and shall also be caulked around each perimeter to seal them to the support frame.

(e) Walls shall consist either of panels locked together and sealed, or of epoxy-coated gypsum board.

(f) Floors shall have vinyl floor covering and shall be seamless or have heat-welded seams and coving to the sidewall.

(g) Dust-collection overhangs (such as ceiling utility pipes) or ledges (such as window sills) shall be either avoided or sealed.

(h) Ceiling lighting fixtures shall have exterior lens surfaces that are smooth, mounted flush, and sealed.

(i) Ceilings and walls shall have every penetration sealed.

13:39-11.13 Controlled environment: stocking

(a) The controlled environment shall contain only the following:
1. Items such as furniture, equipment, supplies, and other goods that are required for the tasks to be performed there;
2. Items that are nonpermeable, nonshedding, and resistant to disinfectants; and
3. Items that have been cleaned and sanitized just prior to their being enclosed.

(b) Whenever possible, equipment and other items used in the controlled environment should not be taken from these rooms except for calibration, servicing, or other activity associated with the proper maintenance of the item.

13:39-11.14 Controlled environment: maintenance and supplies

(a) The controlled environment shall be kept clean and arranged in an orderly fashion. All required equipment shall be maintained in good operating condition.

(b) The controlled environment shall not be used for bulk storage, warehousing, or clerical and secretarial functions.

(c) The controlled environment area shall contain the following supplies:
1. Gloves, masks, gowns, and other personal protective equipment;
2. Needles and syringes of various sizes;
3. Disinfectant cleaning agents;
4. Clean towels;
5. Hand-washing materials, including antimicrobial skin cleaner; and
6. Any and all supplies necessary for the aseptic preparation of sterile admixture products.

13:39-11.15 Clean room

(a) The clean room shall contain no sinks or floor drains.

(b) Work surfaces shall be constructed of smooth, impervious materials, such as stainless steel or molded plastic, so that the work surfaces may be readily cleaned and sanitized.

(c) The clean room shall be a minimum of 150 square feet in size and shall be compatible with the volume of compounding being conducted.

(d) Appropriate environmental control devices shall be in place, such as laminar airflow hoods and the zonal laminar flow of high efficiency particulate air (HEPA) filtered air, which shall be capable of maintaining Class 100 conditions during normal activity.

(e) The clean room shall contain the following equipment:
1. A laminar airflow hood or suitable HEPA filter system;
2. For the compounding and dispensing of antineoplastic agents, sufficient additional space to accommodate a vertical air laminar flow hood;
3. Waste containers in compliance with Occupational Safety and Health Administration (OSHA) standards for used needles and syringes, and for chemotherapy waste; and
4. Ancillary supplies required for proper compounding.

13:39-11.16 Anteroom

(a) The environmental quality within the anteroom shall be better in terms of demonstrated particle count or positive room pressurization than that of adjacent areas, such as the main pharmacy, so as to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the clean room.

(b) The anteroom shall contain the following equipment:
1. A sink with hot and cold running water;
2. Label and packaging equipment and supplies;
3. Waste containers for all personal protective equipment;
4. An eyewash station; and
5. A hazardous waste spill kit.

(c) A refrigerator, as required by USP Standards, shall be reasonably accessible to the anteroom to ensure the integrity of the sterile admixture product, but shall not be located within the controlled environment.

(d) In addition to the minimum reference library mandated in N.J.A.C. 13:39-7.7, each sterile admixture service shall also contain the most current edition of the American Hospital Formulary Service and other reference materials pertinent to this specialized service.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION

Unit Price Labeling

Proposed Amendment: N.J.A.C. 13:45A-14.7

Authorized By: Emma N. Byrne, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-24.

Proposal Number: PRN 1994-166.

A **public hearing** on this proposal will be held on:
Tuesday, April 5, 1994 at 10:00 A.M.
Room N-8
6th Floor
124 Halsey Street
Newark, New Jersey

Submit written comments by April 20, 1994 to:
Emma N. Byrne
Director
Division of Consumer Affairs
Post Office Box 45027
Newark, New Jersey 07101

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:45A-14.7, Unit price labels approved for display, is in response to requests from senior citizens that such labels should become more easily readable by consumers attempting to distinguish the retail price of a product from its unit price. The amendment provides that the size and conspicuousness of the numerals used to disclose the retail price shall be equal to or greater than that for the unit price, and that where the retail price exceeds the unit price, the type face for the unit price shall not be less than 50 percent than that of the retail price.

Social Impact

This proposed amendment will have a beneficial impact on consumers seeking to distinguish the retail price of a product, and will have negligible impact on grocers and all other retail vendors.

Economic Impact

This proposed amendment will have an economic impact on those retail vendors who choose to change their labels to provide for the bigger type for selling price. However, it must be pointed out that the regulation is discretionary. Only those retail vendors who opt to take on the added expense of reprogramming their computers to generate the new labels will incur this additional expense. Those vendors who do not opt to generate new labels will incur no additional economic burden.

Regulatory Flexibility Analysis

The proposed amendment will create an additional burden on those small businesses (as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) that choose to take on the new expense. The new expense would be for the cost of reprogramming labeling equipment to provide for a larger selling price. No additional reporting, recordkeeping, costs for professional services, or other costs of compliance other than those cited above are necessitated by this proposal. Those businesses that choose not to change their labels will incur no additional expense. Currently, the "Unit Price Disclosure Act," (N.J.S.A. 56:8-21 et seq.) requires that the price per measure and retail portions of a unit price label be equal. A frequent complaint from seniors and other consumers is that the retail price is too difficult to read. The purpose of the proposed amendment is to provide all retail vendors subject to unit pricing with the option to increase the size of the retail price on unit price labels, providing that the price per measure portion is no less than half the size of the retail price portion. This optional enlargement of the retail price portion will make it easier for consumers to read the price on the labels. This amendment is a result of discussions between senior citizens and the New Jersey Food Council. All businesses with annual gross receipts from consumer commodities of less than $2,000,000 from all retail establishments with a total floor area of less than 4,000 square feet are exempt from this rule.

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

13:45A-14.7 Unit price labels approved for display

(a) (No change.)

(b) In determining whether to approve the label, the [director] **Director** shall be guided by the following standards:

1. The shelf label shall be divided so as to create a left and right side; individual item labels may be divided vertically or horizontally into two portions. The amount of space devoted to the unit price and the retail price[, as well as the size and conspicuousness of the numerals used to disclose such amounts, shall be equal.] **portion shall be equal. The size and conspicuousness of the numerals used to disclose the retail price shall be equal to or greater than that for the unit price. Where the retail price exceeds the unit price, the type face for the unit price shall not be less than 50 percent than that of the retail price.**

2.-7. (No change.)

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Proposed Amendments: N.J.A.C. 13:60

Authorized By: Lt. Colonel D.C. Trocchia, Acting Superintendent, Division of State Police.

Authority: N.J.S.A. 39:5B-32.

Proposal Number: PRN 1994-188.

Submit written comments no later than 5:00 P.M., Wednesday, April 20, 1994 to:
Lt. Col. D.C. Trocchia, Acting Superintendent
Division of State Police
Division Headquarters
Office of Hazardous Materials Transportation, Compliance and Enforcement
P.O. Box 7068
West Trenton, NJ 08628-0068

The agency proposal follows:

Summary

This notice proposes amendments to the Motor Carrier Safety Regulations and Appendix at N.J.A.C. 13:60. The amendments change the manner and method by which the Federal Motor Carrier Safety Regulations (FMCSR) and Appendices to the Federal Motor Carrier Safety Regulations (hereafter FMCSR shall mean both the FMCSR and Appendices thereto) are adopted and incorporated, by reference, in the State regulations.

Currently, the FMCSR are adopted and incorporated, by reference, when they appear in the published editions of the Code of Federal Regulations (C.F.R.), Title 49, revised as of October 1st of each year. The October 1st revised edition of the C.F.R. generally becomes available from the Superintendent of Documents of the United States Government Printing Office the following February.

Pursuant to N.J.A.C. 13:60-2.1, as recently readopted and amended, as R.1993 d.472 (25 N.J.R. 3091(a), July 19, 1993; 25 N.J.R. 4501(a), September 20, 1993), the Superintendent currently adopts and incorporates, by reference,

"... the Code of Federal Regulations: Parts 390 through 397, Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation, inclusive, ... revised as of October 1, 1992, ... and ... Appendices D, E, F, and G to Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation, revised as of October 1, 1992, ..."

This policy of adopting and incorporating, by reference, the FMCSR only as published in the latest revised edition of the Code of Federal Regulations, Title 49, is identical to a policy initiated and employed by the New Jersey Department of Transportation (NJDOT) Commissioner (Commissioner) in regulations adopted at N.J.A.C. 16:49 and Appendix, Transportation of Hazardous Materials, pursuant to N.J.S.A. 39:5B-26 and 31.

Under the present regulatory system, changes to the FMCSR, adopted as a final rule action by the Federal Highway Administration (FHWA) and published in the Federal Register, can be delayed in their implementation and enforcement by a year or more. Delays of this type create a bifurcated regulatory system, which can promote confusion on the part of the regulated industry (operators of commercial motor vehicles and motor carriers) as well as on the part of the law enforcement agencies responsible for enforcement of the FMCSR.

In addition, recent actions by the FHWA, amending and supplementing the FMCSR, have necessitated a reevaluation of the policy of only adopting and incorporating, by reference, the FMCSR as of the most recent revised date of the Code of Federal Regulations, Title 49.

Accordingly, the Superintendent, with the adoption of the amendments proposed herein, will hereafter adopt and incorporate, by reference, the

FMCSR as, and when, they are adopted, amended, or supplemented by the FHWA. When the FHWA publishes a final rule action in the Federal Register, the State will contemporaneously adopt and incorporate, by reference, the same rule. By adopting and incorporating, by reference, FHWA final rule actions adopting, amending, or supplementing the FMCSR, there will be only one set of motor carrier safety rules and regulations to be followed by the regulated industry, and enforced by law enforcement agencies authorized to enforce these federal regulations.

In those limited instances where the Superintendent has determined that enforcement of the FMCSR might adversely impact upon commercial motor vehicle operators and motor carriers who transport non-hazardous material(s) cargo, exclusively in intrastate commerce, the practice of amending, modifying, revising, intentionally omitting, and/or delaying implementation of any such FMCSR will be continued. Such actions will be accomplished by a separate rulemaking proposal by the Superintendent outlining any variations from the FMCSR which would apply to this specific class of operators or motor carriers.

The amendments proposed herein do not deviate from the legislative mandate set forth in P.L. 1991, c.491, amending N.J.S.A. 39:5B-32. That amendment required the Superintendent to adopt regulations substantially conforming to the requirements concerning qualifications of interstate motor carrier operators and vehicles established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," Pub.L. 97-424 (49 U.S.C. App. §§2301-2304) and the Federal "Motor Carrier Safety Act of 1984," Pub.L. 98-554 (49 U.S.C. App. §2501 et seq.) and to include provisions with regard to motor carrier operators and vehicles engaged in intrastate commerce or used wholly within a municipality or municipality's commercial zone that are compatible with the FMCSR. Under this proposed amendment these regulations will, in fact, more closely reflect the Federal adoptions for all classes of operators and vehicles.

The proposed amendment will also continue the practice of identifying, in the "Appendix to the Regulations Regarding the Motor Carrier Safety Regulations" (Appendix), the Parts, Subparts, and Sections of the FMCSR which have been adopted and incorporated, by reference, and those which the Superintendent has amended, modified, revised, intentionally omitted, and/or delayed in their implementation.

However, since the FHWA is continuously proposing and adopting new rules, amendments and supplements to the FMCSR, the Appendix will only be capable of reflecting those FMCSR which had been adopted and incorporated, by reference, as of a specific date which will be set forth at N.J.A.C. 13:60-2.1(c). Final rule actions by the FHWA after the date set in the State regulations will be available to any interested persons or entities by examining the Federal Register, or by subscribing to a service which provides continuous updates on actions by the FHWA as reflected in the Federal Register.

The Superintendent, by amendment at N.J.A.C. 13:60-1.3(f), anticipates that periodic updates of the Appendix will be published in the New Jersey Register and Administrative Code to assist the regulated industry and those affected by the rules, by identifying those Parts, Subparts, and/or Sections which have been adopted and incorporated, by reference, without change, as well as those which have been amended, modified, revised, intentionally omitted and/or delayed in their implementation.

Reliance on publication of final rule actions in the Federal Register is considered to be appropriate and adequate notice of actions proposed and taken by the FHWA on FMCSR. The Federal Register is published daily, and all proposals are open to public comment under the Federal Administrative Procedure Act, 5 U.S.C. §554 et seq.

Pursuant to Federal law, the FMCSR directly apply to, effect, and impact: any operator of a commercial motor vehicle or any motor carrier operating in interstate commerce; and any operator of a commercial motor vehicle or motor carrier engaging in the transportation of hazardous materials, whether in interstate or intrastate commerce. Pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60, operators of commercial motor vehicles and motor carriers that engage in the transportation of non-hazardous material(s) cargoes exclusively in intrastate commerce, since September 20, 1993, are required to adhere to the FMCSR. It is, therefore, entirely reasonable to conclude that this regulated industry is, as a matter of law, presently making itself aware of, and commenting upon, proposed changes to the FMCSR, when they are published in the Federal Register as a Notice of Proposed Rulemaking or Advanced Notice of Proposed Rulemaking. When a final rule action is published by the FHWA, the regulated industry has been given adequate and appropriate notice and an opportunity to comment.

The Superintendent intends to track and monitor future FHWA rule proposals pertaining to the FMCSR in order to make an early determination concerning any Federal proposal which, because of its impact on operators and motor carriers exclusively engaged in non-hazardous materials intrastate commerce, may require amendment, revision, modification, intentional omission, and/or delay in implementation. Through that process, the Superintendent will be prepared to promptly submit timely and appropriate notices of proposed amendment to N.J.A.C. 13:60, under the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to minimize any adverse impact a new FMCSR may have on the regulated industry.

A synopsis of the amendments to N.J.A.C. 13:60 Motor Carrier Safety Regulations and its Appendix follows.

Throughout the rules, amendments to the text have been added to reflect that the FMCSR, and all supplements and amendments thereto, as, and when, adopted by the FHWA in a final rule action published in the Federal Register will hereafter be adopted and incorporated, by reference, by the Superintendent in the Motor Carrier Safety Regulations. N.J.A.C. 13:60-1.1, 1.3, 1.5, 1.6, 2.1 and Appendix.

At N.J.A.C. 13:60-1.3(a), definitions have been added for the terms: Code of Federal Regulations, or C.F.R.; Commissioner of NJDOT; Federal Register, or FR; Secretary of the U.S. Department of Transportation; and Superintendent of the Division of State Police.

At N.J.A.C. 13:60-1.3(f), the existing subsection has been deleted and new text inserted to reflect that the FHWA is continuously amending and supplementing the FMCSR. This new subsection explains that future supplements and amendments to the FMCSR, as, and when, adopted by the FHWA in a final rule action published in the Federal Register will hereafter be considered as adopted and incorporated, by reference, in the New Jersey Motor Carrier Safety Regulations, N.J.A.C. 13:60 and Appendix. This new subsection also explains that some Part(s), Subpart(s), or Section(s) of the FMCSR may be modified, revised, amended, delayed in their implementation and/or intentionally omitted. In those instances the Superintendent will, pursuant to the Administrative Procedure Act, propose amendments to N.J.A.C. 13:60 and Appendix.

N.J.A.C. 13:60-1.5 addresses "document availability." This section has been amended to reflect that the FMCSR can be obtained, not only from U.S. Governmental sources, but also from non-governmental commercial vendors. The list of U.S. Government and non-governmental sources, is not considered to be all encompassing. Should other sources, not listed in this amendment, become known to the Superintendent, upon verification of the service provided, they will be added with the next revision or supplementation of this regulation.

Subchapter 2 and N.J.A.C. 13:60-2.1 have also been amended to reflect the new method of adoption and incorporation, by reference, as discussed above. Subsection (b) has been amended and a new subsection (c) has been added.

The amendment at N.J.A.C. 13:60-2.1(b) reflects: the new method of adoption and incorporation, by reference; that some sections, subparts, or parts may have been amended, revised, modified, intentionally omitted, and/or made subject to a different effective date; and it describes the adopted and incorporated, by reference, Parts and Appendices only by their titles. N.J.A.C. 13:60-2.1(c) deals with supplements and amendments to the FMCSR which will be adopted by a final rule action by the FHWA and will become effective after February 11, 1994. This subsection reiterates that all supplements and amendments adopted by a final rule action of the FHWA and published in the Federal Register are to be considered as adopted and incorporated, by reference, by the Superintendent in the Motor Carrier Safety Regulations, N.J.A.C. 13:60 and Appendix. FMCSR adopted after February 11, 1994, although not appearing in the Appendix to the Motor Carrier Safety Regulations, can be found by consulting the Federal Registers issued after that date. As the Superintendent revises and amends these regulations, in the future, the date contained in N.J.A.C. 13:60-2.1(c), currently referenced as February 11, 1994, will be changed to reflect a date contemporaneous with the published notices.

A brief synopsis of the FMCSR which are adopted and incorporated, by reference, in this proposal is set forth below. Not all final rule actions are discussed in detail, some are simply referenced by the FHWA final rule action.

The FHWA, by a final rule action (58 FR 67370-67375, December 21, 1993), adopted amendments to 49 C.F.R. Parts 390 and 392 prohibiting the use or possession of radar detectors in all commercial motor vehicles. These amendments became effective on January 20, 1994 (58 FR at 67371). The amendments were initially proposed, by the FHWA, on January 24, 1992 (57 FR 2885). The FHWA received a considerable number of public comments on the rule (58 FR at 67371-67373). After an exhaustive analysis, the FHWA promulgated the final rule action amending 49 C.F.R. §390.5 and establishing a new rule at 49 C.F.R. §392.71 (58 FR at 67375).

49 C.F.R. §390.5 was amended to include a definition of radar detector. The new rule at 49 C.F.R. §392.71 prohibits the use or possession of a radar detector in a commercial motor vehicle, operation of a commercial motor vehicle equipped with a radar detector and prohibits a motor carrier from allowing a driver to violate the foregoing provisions. It is the view of the Superintendent that enforcement of these provisions of the FMCSR will enhance the general safety of the motoring public, and contribute to a reduction in the number of commercial motor vehicles exceeding the 55 mile per hour maximum speed limit.

The U.S. Department of Transportation adopted final rules implementing a "Management Information System (MIS) For Workplace Drug Testing Programs," under the Omnibus Transportation Employee Testing Act of 1991 (58 FR 68194-68196, December 23, 1993—Common Preamble) and amending the FMCSR, Controlled Substances Testing; Recordkeeping and Reporting Requirements (58 FR 68220-68230, December 23, 1993). The final rule, as adopted, became effective January 1, 1994 and amended 49 C.F.R. §391.87(h), Notification of test results and recordkeeping. An appendix to the amended rule, entitled "Information Systems Data Collection Forms," also appeared in the Federal Register, but will not be reproduced in the Code of Federal Regulations. 58 FR at 68222, Note.

The FHWA removed an entire Part from the FMCSR, Part 394 "Notification and Reporting of Accidents" (58 FR 6726-6729, February 2, 1993). That Part is now listed as "Removed & Reserved." In lieu of the accident reporting requirements under this, now deleted, Part, commercial motor vehicle operators and motor carriers will be required to comply with the provisions of N.J.S.A. 39:4-129.

Other changes to the FMCSR included amendments to Sections: 390.3(f)(2) (General applicability); 390.5 (Definitions); 390.27 (Locations of regional motor carrier safety offices); 391.1(i) (Scope of the rules in this part; additional qualifications; duties of carrier-drivers); 391.43 (Medical examination; certificate of physical examinations); 391.85 (Controlled Substances Testing—Definitions); 391.89 (Access to individual test results of test findings); 391.113(a) (Post-accident testing requirements); and 395.8(f) (Driver's record of duty status). Changes also included a new rule at Section 390.15 (Assistance in investigations and special studies).

None of the FMCSR referenced above and adopted and incorporated, by reference, herein, adversely impact upon operators or motor carriers engaged exclusively in non-hazardous materials intrastate transporation and, therefore, do not require any further action on the part of the Superintendent.

Social Impact

The proposed amendments impact upon motor carriers, motor carrier operators, and persons operating commercial motor vehicles in interstate and intrastate commerce in this State. Previously, the impacted groups were required under the State regulations to comply with, and be knowledgeable of the FMCSR, Parts 390 through 397, inclusive, and the Appendices to the FMCSR, in the C.F.R., Title 49, revised as of October 1, 1992. Adoption of these amendments does not impose any new burden on those operating in interstate commerce or those transporting hazardous material(s) in interstate or intrastate commerce in quantities requiring hazardous material(s) placarding or displaying hazardous material(s) placarding. Those groups are already subject to the FMCSR as, and when, adopted by the FHWA. Motor carriers, motor carrier operators, and operators of commercial motor vehicles transporting non-hazardous material(s) cargoes exclusively in intrastate commerce are, except as otherwise indicated in the Appendix to the Regulations Regarding Motor Carrier Safety, subject to the FMCSR. The only new factor is that all motor carriers, motor carrier operators and persons operating commercial motor vehicles in this State will now be required to adhere to the FMCSR as, and when, they are adopted by the FHWA as a final rule action and published in the Federal Register.

This new policy of concurrent adoption and incorporation, by reference, of final rule actions of the FHWA concerning the FMCSR will eliminate any potential for confusion on the part of the regulated industry. The former practice of only adopting and incorporating, by reference, the FMCSR as published in the Code of Federal Regulations, Title 49, revised as of October 1st of each year created a dual and delayed regulatory system.

Compliance with the most current FMCSR will benefit both the motor carrier industry and the general public. All commercial motor vehicles will be subject to the same uniform rules and regulations concerning safety of equipment, operator requirements, traffic rules and regulations.

Economic Impact

The amendments proposed herein will have no significant economic impact on motor carriers, motor carrier operators, or persons operating commercial motor vehicles in interstate or intrastate commerce. These amendments simply change the adoption and incorporation, by reference, of the FMCSR from the annual revisions of the FMCSR as published in the Code of Federal Regulations, Title 49, to the adoption and effective dates of the FMCSR as supplemented and amended by the FHWA through a final rule action published in the Federal Register under the federal Administrative Procedure Act (5 U.S.C. §554 et seq.) and the authority of the Secretary of Transportation to adopt rules and regulations governing motor carrier safety (49 U.S.C. App. §2505).

Motor carriers, motor carrier operators, and persons operating commercial motor vehicles in interstate commerce are already required, as a matter of law, to comply with the FMCSR as, and when, adopted by the FHWA. Motor carriers, motor carrier operators, and persons operating commercial motor vehicles transporting hazardous material(s) in interstate or intrastate commerce in quantities requiring hazardous material(s) placarding or displaying hazardous material(s) placarding, are required, as a matter of law, to comply with the FMCSR under 49 C.F.R. §177.804 of the Federal Hazardous Materials Regulations. Therefore, there is no foreseeable economic impact on either of these groups.

There will be some modest impact on motor carriers, motor carrier operators, and operators of commercial motor vehicles transporting non-hazardous material(s) exclusively in intrastate commerce. Pursuant to P.L. 1991, c.491, amending N.J.S.A. 39:5B-32, this group was required to substantially comply with the FMCSR. Under this proposed amendment, this group will now be required to monitor the Federal Register for rule proposals and final rule actions by the FHWA supplementing or amending the FMCSR. This can be accomplished through subscription to the Federal Register or a service which monitors the Federal Register for specific topics. The nominal out of pocket expenses for these services can be shared through industry associations or similar groups.

Whatever additional expenses might be incurred are viewed as minimal and entirely appropriate when weighed against the greater safety to the motoring public which should result from adoption and incorporation, by reference, of the FMCSR as, and when, adopted by a final rule action by the FHWA and published in the Federal Register.

The Division of State Police anticipates incurring some additional costs to assure that it will be able to maintain the most current status of proposed rule actions by the FHWA concerning the FMCSR. As the FMCSR is supplemented and amended, those changes can be promptly communicated to the State Police personnel responsible for its enforcement. These additional costs are viewed as nominal.

Regulatory Flexibility Analysis

The amendments proposed herein will continue the imposition of reporting, recordkeeping and compliance requirements on motor carriers and their personnel if they are involved in interstate or intrastate commerce and are operating a vehicle or commercial motor vehicle within the applicable definitions. Motor carriers, motor carrier operators, and their personnel and operators of vehicles which transport, in interstate or intrastate commerce, hazardous material(s) in quantities requiring hazardous material(s) placarding or displaying hazardous material(s) placarding will also continue to be subject to reporting, recordkeeping and compliance requirements. An undetermined number of the entities affected by these amendments may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No differentiation in requirements or exemptions can be afforded such businesses due to the Federally mandated nature of the FMCSR and their legislative objective to protect the health and safety of the public.

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

13:60-1.1 Purpose

This chapter and appendix [establishes] **establish** rules and regulations concerning the qualifications of motor carrier operators and vehicles engaged in interstate or intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone, which substantially conform to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation

Assistance Act of 1982," Pub. L. 97-424 (49 U.S.C. App. §§2301-2304) and the Federal "Motor Carrier Safety Act," Pub. L. 98-554 (49 U.S.C. App. §2501 et seq.), by adopting **and incorporating by reference:** the "Federal Motor Carrier Safety Regulations," [as adopted at Title 49, Code of Federal Regulations, Parts 390 through 397 (49 C.F.R. Parts 390 through 397)] **and all supplements and amendments thereto;** and Appendices [D, E, F, and G to Subchapter B—] **to the** "Federal Motor Carrier Safety Regulations," [at Title 49, Code of Federal Regulations, Chapter III (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G)] **and all supplements and amendments thereto.**

13:60-1.2 Application

(a) The provisions of this chapter and appendix are applicable to every motor carrier and every person, including drivers, agents, employees and representatives, involved or in any manner related to:

1.-2. (No change.)

3. The transportation in any motor vehicle in intrastate commerce of materials determined by the Secretary of the United States Department of Transportation to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.) and which materials are transported in a quantity requiring hazardous material(s) placarding under federal Hazardous Materials Regulations (49 C.F.R. Parts 171, 172, 173, 174, 177, 178, 179, and 180) **and all supplements and amendments thereto;**

4. (No change.)

5. The transportation in a commercial motor vehicle, as defined at N.J.S.A. 39:3-10.11, [subsections a, b, c, and d,] in intrastate commerce of any non-hazardous material(s) cargo;

6. [Subject to any prevailing requirements of paragraph 3. of this subsection, the] **The** operation of a commercial motor vehicle, as defined at N.J.S.A. 39:3-10.11, [subsections a, b, c, and d,] **and subject to any prevailing requirements of (a)3 above,** in intrastate commerce or wholly within a municipality or a municipality's commercial zone.

(b) (No change.)

(c) The provisions of this chapter and appendix shall not apply to a farm vehicle registered in this State, pursuant to the provisions of N.J.S.A. 39:3-24 and 39:3-25, provided the farm vehicle is operating:

1.-4. (No change.)

13:60-1.3 Definitions and general requirements

(a) For the purposes of this chapter and appendix, and unless another definition is specified, the terms set forth below are defined as follows:

"Code of Federal Regulations" or "C.F.R." shall mean the Code of Federal Regulations, authorized pursuant to 44 U.S.C. §1510 and published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended, 44 U.S.C. §1501 et seq. and 1 C.F.R. Part 8).

"Commissioner" shall mean the Commissioner of the New Jersey Department of Transportation.

"Federal Register" or "FR" shall mean the Federal Register, authorized pursuant to 44 U.S.C. §1501 et seq. and published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended, 44 U.S.C. §1501 et seq. and 1 C.F.R. Part 5).

"Hazardous material(s)" shall mean [materials] **a substance or material** determined by the Secretary of the United States Department of Transportation, **pursuant to the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq., and as defined at 49 C.F.R. §171.8,** to be [hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.) and are] **capable of posing an unreasonable risk to health, safety, and property when** transported in [a quantity requiring hazardous material(s) placarding under federal Hazardous Materials Regulations as adopted by the Commissioner of Transportation at N.J.A.C. 16:49] **commerce, and which has been so designated.**

...

"Secretary" shall mean the Secretary of the Department of Transportation of the United States of America.

"Superintendent" shall mean the Superintendent of the Division of State Police.

(b) Throughout this chapter and appendix there are references to **Federal** rules and regulations **pertaining to motor carrier safety,** adopted by, **or on behalf of,** the Secretary [of Transportation of the United States of America] or **adopted or incorporated, by reference, herein by the Superintendent, pursuant to this chapter and appendix, or** the Commissioner [of Transportation of the State of New Jersey], **at N.J.A.C. 16:49.** For convenience, those **Federal** rules and regulations **and any supplements and amendments thereto** may be cited in this chapter and appendix in one or all of the following forms:

1. "Federal Motor Carrier Safety Regulations" **as:**

i.-iv. (No change.)

2. "Appendix or Appendices to Federal Motor Carrier Safety Regulations" **as:**

i. Code of Federal Regulations, Appendix or Appendices to Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49[, or];

ii. 49 C.F.R. Ch. III, Subch. B, App.;

iii. Appendix to Subchapter B;

iv. Appendix or Appendices to Federal Motor Carrier Safety Regulations; **or**

v. Appendix or Appendices to the Federal Motor Carrier Safety Regulations;

3. "Hazardous Materials Regulations" **as:**

i. Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, 179, 180, Subchapter C—Hazardous Materials Regulations, Chapter I—Research and Special Programs Administration, U.S. Department of Transportation, Title 49;

ii. 49 C.F.R. Parts 171, 172, 173, 174, 177, 178, 179, 180; **or**

iii. Hazardous Materials Regulations.

(c) (No change.)

(d) Whenever the term "interstate" is used in the Federal [regulations] **Motor Carrier Safety Regulations,** adopted **and incorporated, by reference,** herein, **and all supplements and amendments thereto,** it shall, for the purpose of [these regulations] **this chapter and appendix,** mean or include both "interstate" and "intrastate" transportation in commerce and those vehicles used or operated wholly within a municipality or a municipality's commercial zone except where stated otherwise.

(e) (No change.)

(f) [As new Federal publications reflecting amendments to 49 C.F.R. Parts 390-397 or 49 C.F.R. Ch. III, Subch. B, App. D, E, F, or G become available, this chapter and appendix may be amended by the Superintendent of State Police, in consultation with the Division of Motor Vehicles and the Department of Transportation pursuant to the provisions of N.J.S.A. 39:5B-32b.] **The Federal Highway Administration, United States Department of Transportation, supplements and amends the Federal Motor Carrier Safety Regulations and the Appendices to the Federal Motor Carrier Safety Regulations on a continuing basis pursuant to the Federal Administrative Procedure Act (5 U.S.C. §554 et seq.) and authority granted to the Secretary, pursuant to 49 U.S.C. App. §2505. Supplements and amendments are published as a notice of proposed rulemaking in the Federal Register and are subject to a period of public comment prior to their adoption. Adoption of supplements and amendments, by a final rule action, appear in the Federal Register and indicate an effective date for their implementation and enforcement. The Superintendent will hereafter rely upon the notices of proposed rulemaking and final rule actions published in the Federal Register supplementing and amending the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations as notice to all interested parties and all persons or entities affected by these regulations. Final rule actions supplementing and amending the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations will hereafter be considered as adopted and incorporated, by**

reference, herein, upon their publication in the Federal Register, and will become effective on the effective date as published in the Federal Register. Any modification, revision, amendment, delay in implementation, or omission by the Superintendent of any Section(s), Subpart(s), or Part(s) of the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations, and all supplements and amendments thereto will be the subject to a separate notice of proposed rulemaking, pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(g) The provisions and requirements of these regulations as well as the Federal [regulations] **Motor Carrier Safety Regulations** adopted **and incorporated** [herein], by reference, **herein, and all supplements and amendments thereto,** and made a part hereof as if set forth in full, are applicable to all motor vehicles, as defined in this chapter and appendix, engaged in transportation in interstate and intrastate commerce or operating in interstate and intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone, as well as all motor vehicles engaged in transportation of hazardous material(s) in a quantity requiring hazardous material(s) placarding **or displaying hazardous material(s) placarding** unless specifically stated otherwise.

13:60-1.4 Penalty for violation

(a) The penalties for violation of these regulations, including the Federal [regulations] **Motor Carrier Safety Regulations, adopted and** incorporated, by reference, [in] **at** N.J.A.C. 13:60-2 and herein, shall be enforced under the provisions of N.J.S.A. 39:5B-29.

(b) (No change.)

13:60-1.5 Document availability

(a) Copies of the "Federal Motor Carrier Safety Regulations" [(49 C.F.R. Parts 390-397)] and "Appendices to **the** Federal Motor Carrier Safety Regulations," [(49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G), revised as of October 1, 1992] **as found in the Code of Federal Regulations (49 C.F.R. Parts 390-397 and 49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G) and the Federal Register and all supplements and amendments thereto, as** [and referenced and] adopted **and incorporated, by reference,** herein, may be purchased from the **following** sources [listed below].

1. United States Government:

Superintendent of Documents
U.S. Government Printing Office
Washington, [D.C.] **DC** 20402
(202) 783-3238

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, [N.Y.] **NY** 10278-0081
(212) 264-3825

U.S. Government Printing Office Bookstore
[Room 1214, Federal Building
600 Arch Street]
Robert Morris Building
100 North 17th St.
Philadelphia, [Pa. 19106] **PA 19103**
(215) [597-0677] **636-1900**

Federal Highway Administration
Research & Special Programs Administration
Hazardous Materials Information Exchange
Electronic Bulletin Board
Toll Free: 1-800-752-6367
Dataline: (708) 972-3275

2. Non-governmental sources:

(Note: the inclusion of a non-governmental source, herein, does not constitute an endorsement or recommendation of the product or service offered, sold, or provided by that source or the accuracy of the information said to be contained therein. Non-governmental sources are listed solely as a convenience to interested parties.)

American Trucking Associations
2200 Mill Road
Alexandria, VA 22314-4677
Toll Free: 1-800-ATA-LINE (282-5463)

J.J. Keller & Associates
3003 West Breezewood Lane
P.O. Box 368
Neenah, Wisconsin 54957-0368
Toll Free: 1-800-558-5011
(414) 722-2848

Regulations Management Corporation
1505 Arlington Road
Bloomington, Indiana 47404-0809
(812) 333-7347

Regulation Scanning
30 West Third St.
Williamsport, PA 17701
Toll Free: 1-800-326-9303

(b) Copies of **the** "Federal Motor Carrier Safety Regulations" [(49 C.F.R. Parts 390-397)] and "Appendices to **the** Federal Motor Carrier Safety Regulations," [(49 C.F.R. Ch. III. Subch. B, App. D, E, F, and G), revised as of October 1, 1992] **as found in the Code of Federal Regulations (49 C.F.R. Parts 390-397 and 49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G) and the Federal Register and all supplements and amendments thereto, as** [and referenced and] adopted **and incorporated, by reference,** herein, are available for review at the following public libraries:

New Jersey State Library
185 West State Street
Trenton, [N.J.] **NJ** 08625
(609) 292-6220

Newark Public Library
5 Washington Street
Newark, [N.J.] **NJ** 07101
(201) [733-7882] **733-7782**

Jersey City Public Library
U.S. Government Documents Section
472 Jersey Avenue
Jersey City, [N.J.] **NJ** 07304
(201) 547-4517

New Brunswick Public Library
60 Livingston Avenue
New Brunswick, [N.J.] **NJ** 08901
(908) 745-5108

Trenton Public Library
120 Academy Street
Trenton, [N.J.] **NJ** 08608
(609) 392-7188

Camden County Public Library
Laurel Road
Voorhees, [N.J.] **NJ** 08043
(609) 772-1636

Cherry Hill Public Library
1100 Kings Highway, North
Cherry Hill, [N.J.] **NJ** 08034
(609) 667-0300

(c) Copies of **the** "Federal Motor Carrier Safety Regulations" [(49 C.F.R. Parts 390-397)] and "Appendices to **the** Federal Motor Carrier Safety Regulations," [(49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G), revised as of October 1, 1992] **as found in the Code of Federal Regulations (49 C.F.R. Parts 390-397 and 49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G) and the Federal Register and all supplements and amendments thereto, as** [and referenced and] adopted **and incorporated, by reference,** herein, are available for review, during regular business hours, at:

[Division of State Police
Division Headquarters]
Office of Hazardous Materials Transportation,
Compliance and Enforcement
New Jersey Division of State Police
Division Headquarters
River Road, P.O. Box 7068
West Trenton, [New Jersey] **NJ** 08628-0068

Regular business hours at this office are 8:30 [a.m.] **A.M.** to 5:00 [p.m.] **P.M., Eastern Time,** Monday through Friday. The telephone number is (609) 882-2000, extension 2582 or 2586.

13:60-1.6 Assistance

(a) For general assistance and procedural questions in matters related to the "Federal Motor Carrier Safety Regulations" and "Appendices to Federal Motor Carrier Safety Regulations", **and all supplements and amendments thereto,** as adopted **and incorporated, by reference,** herein, contact:

Bureau of Motor Carrier Safety
Federal Highway Administration
U.S. Department of Transportation
25 Scotch Road, Second Floor
Trenton, [N.J.] **NJ** 08625
(609) 989-2276

(b) For assistance in matters related to enforcement of the regulations adopted **and incorporated, by reference,** herein, contact:

Office of Hazardous Materials Transportation,
Compliance and Enforcement
New Jersey Division of State Police
Division Headquarters
River Road, P.O. Box 7068
West Trenton, [N.J.] **NJ** 08628-0068
(609) 882-2000, extension 2582 or 2586

Note, however, statements or opinions provided by the Division of State Police do not constitute legal advice.

SUBCHAPTER 2. ADOPTION **AND INCORPORATION, BY REFERENCE,** OF [PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATIONS, BY REFERENCE] **FEDERAL MOTOR CARRIER SAFETY REGULATIONS AND APPENDICES TO FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

13:60-2.1 [Code of Federal Regulations, Parts and Appendices adopted by reference] **Adoption and incorporation, by reference, Federal Motor Carrier Safety Regulations and Appendices to Federal Motor Carrier Safety Regulations**

(a) [The] **Except as may be otherwise indicated in this chapter and appendix, the** Superintendent [of the Division of State Police], pursuant to N.J.S.A. 39:5B-32, hereby **adopts and** incorporates, by reference[,]**:**

1. [the following portions of the Code of Federal Regulations: Parts 390 through 397, Subchapter B—] **The** Federal Motor Carrier Safety Regulations, [Chapter III—] **and all supplements and amendments thereto, adopted as a final rule action by the** Federal Highway Administration, **U.S.** Department of Transportation[, Title 49—Transportation, inclusive, (excluding Sections 391.69, 393.81 and 397.3) revised as of October 1, 1992,] (49 C.F.R., Parts 390 through 397, inclusive); and

2. Appendices D, E, F, and G to [Subchapter B—] **the** Federal Motor Carrier Safety Regulations, [Chapter III—] **and all supplements and amendments thereto, adopted as a final rule action by the** Federal Highway Administration, **U.S.** Department of Transportation[, Title 49—Transportation, revised as of October 1, 1992,] (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G). [These Parts and Appendices are detailed in the Appendix to the within Regulations regarding Motor Carrier Safety Regulations.]

(b) The Parts and Appendices **of the Federal Motor Carrier Safety Regulations and all supplements and amendments thereto, adopted as a final rule action by the Federal Highway Administration, United States Department of Transportation, and** adopted **and incorporated, by reference, herein, by the Superintendent,** are summarized below. **A more detailed list of the sections in the Parts and Appendices is found in the appendix to this chapter ("Appendix to the Regulations Regarding Motor Carrier Safety Regulations"). Within that list some sections, subparts, or parts may have been modified, revised, amended, made subject to a different effective date, and/or intentionally omitted by the Superintendent. Those sections, subparts, or parts are clearly identified in the text of the appendix to this chapter.**

1. Part 390, Federal Motor Carrier Safety Regulations: General. [(A revision is made to Section 390.5; and modifications are made to Sections 390.21 and 390.23.)]
2. Part 391, Qualifications of Drivers. [(Section 391.69 is omitted; revisions are made to Sections 391.49(a), 391.71(a) and (b), and 391.85; and modifications are made to Sections 391.11, 391.21, 391.23, 391.31, 391.35, 391.41, 391.61 and 391.93.)]
3. Part 392, Driving of Motor Vehicles.
4. Part 393, Parts and Accessories Necessary for Safe Operation. [(Section 393.81 is omitted.)]
5. Part 394[, Notification and Reporting of Accidents. (A modification is made to this Part.)] **(Removed and Reserved)**
6. Part 395, Hours of Service of Drivers.
7. Part 396, Inspection, Repair, and Maintenance.
8. Part 397, Transportation of Hazardous Materials: Driving and Parking Rules. [(Section 397.3 is omitted; and new Subparts are included.)]
9. Appendix D to Subchapter B—Table of Disqualifying Drugs and Other Substances, Schedule I.
10. Appendix E to Subchapter B—Tables of Disqualifying Drugs and Other Substances, Schedules II through V.
11. Appendix F to Subchapter B—Commercial Zones, Sections 1, 6, 11, 12, 43, and 44.
12. Appendix G to Subchapter B—Minimum Periodic Inspection Standards.

(c) Supplements and amendments to the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations which have been adopted as a final rule action by the Federal Highway Administration and become effective after February 11, 1994, are not listed in the appendix to this chapter. Those supplements and amendments are, pursuant to (a) above, adopted and incorporated, by reference, herein, as if set forth in full. The full text of such supplements and amendments can be found by examining the Federal Register published after the above noted date. See also, N.J.A.C. 13:60-1.5, Document availability, and N.J.A.C. 13:60-1.6, Assistance.

APPENDIX TO THE REGULATIONS REGARDING MOTOR CARRIER SAFETY REGULATIONS

[This] **Subject to the provisions of N.J.A.C. 13:60-2.1(c), this** Appendix to the [regulations regarding] **Regulations Regarding** Motor Carrier Safety Regulations [details] **lists** the adopted **and incorporated, by reference,** portions of [Title 49, Code of] **the** Federal **Motor Carrier Safety** Regulations, by Part, Subpart, Section, or Appendix. [All] Parts, Subparts, Sections, or Appendices are listed by letter or number and by title to identify content for the reader. [Exceptions, revisions, or modifications] **Modifications, revisions, amendments, and/or delays in implementation** are stated within the appropriate [Parts, Sections, or Appendices] **Part(s), Subpart(s), Section(s), or Appendices.** Omitted sections are identified with the notation "(This Section intentionally omitted.)".

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B FEDERAL MOTOR CARRIER SAFETY REGULATIONS

PART 390 FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A (No change.)

Subpart B—General Requirements and Information
Section 390.9 State and local laws, effect on.

Section 390.11 Motor carrier to require observance of driver regulations.
Section 390.13 Aiding or abetting violations.
Section 390.15 [(Reserved)] **Assistance in investigations and special studies.**
Section 390.16 (Reserved)
Section 390.17 (Reserved)
Section 390.19 Additional equipment and accessories.
Section 390.21 Marking of commercial motor vehicles.
(Section 390.21 is modified to state the following:)
A commercial motor vehicle operated in intrastate commerce shall be subject to the provisions of N.J.S.A. 39:4-46.
Section 390.23 Relief from regulations.
(Section 390.23 is modified to state the following:)
The following commercial motor vehicles, operating in intrastate commerce, are exempt from this section when any emergency occurs that affects the citizens of New Jersey[.]**:**
(a) Commercial motor vehicles which are owned, operated, or leased by a public or quasi-public or private entity in this State, said entity being subject to the jurisdiction of the Board of Regulatory Commissioners; or
(b) Commercial motor vehicles which are owned, operated or leased by a public, quasi-public or private entity in this State and which is or will be operated under a contract to the State of New Jersey or a governmental or quasi-governmental entity thereof.
Such emergencies include, but are not limited to, weather and other acts of nature (e.g., snow, flooding, earthquake, power/telephone outages, disruptions to power or telephone transmission lines or facilities, supply lines or facilities for steam, water, or gas) and other emergencies (e.g., motor vehicle accidents, industrial accidents, fires, etc.)
Section 390.25 Extension of relief from regulations—emergencies.
Section 390.27 Locations of regional motor carrier safety offices.
Section 390.29 (Reserved)
Section 390.31 Copies of records or documents.
Section 390.33 Vehicles used for purposes other than defined.
Section 390.35 Certificates, reports, and records: falsification, reproduction, or alteration.
Section 390.37 Violation and penalty.

PART 391 QUALIFICATIONS OF DRIVERS

Subpart A. (No change.)

Subpart B—Qualifications and Disqualifications of Drivers
Section 391.11 Qualifications of drivers.
(Section 391.11 is modified to state the following:)
The provisions of Section 391.11(b)(1) do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or [the] **operate a** vehicle [displays] **displaying** a hazardous material(s) placard.
Section 391.15 Disqualification of drivers.

Subpart C—Background and Character
Section 391.21 Application for employment
(Section 391.21 is modified to state the following:)
The provisions of Section 391.21 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or [the] **operate a** vehicle [displays] **displaying** a hazardous material (s) placard.
Section 391.23 Investigation and inquiries.
(Section 391.23 is modified to state the following:)
The provisions of Section 391.23 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or [the] **operate a** vehicle [displays] **displaying** a hazardous material(s) placard.
Section 391.25 Annual review of driving record.
Section 391.27 Record of violations.

Subpart D—Examinations and Tests
Section 391.31 Road test.
(Section 391.31 is modified to state the following:)
The provisions of Section 391.31 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or [the] **operate a** vehicle [displays] **displaying** a hazardous material(s) placard.
Section 391.33 Equivalent of road test.
Section 391.35 Written examination.
(Section 391.35 is modified to state the following:)
The provisions of Section 391.35 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or [the] **operate a** vehicle [displays] **displaying** a hazardous material(s) placard.
Section 391.37 Equivalent of written examinations.

Subpart E—Physical Qualifications and Examinations
Section 391.41 Physical qualifications for drivers.
(Section 391.41 is modified to state the following:)
A driver engaged in intrastate commerce, [excluding the transportation of hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard,] who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, but who is not physically qualified to drive under Section 391.41(b) of this Subchapter may continue to drive a motor vehicle**, unless the driver is transporting hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or is operating a vehicle displaying a hazardous material(s) placard**.
Section 391.43 Medical examination; certificate of physical examination[s].
Section 391.45 Persons who must be medically examined and certified.
Section 391.47 Resolution of conflicts of medical evaluation.
Section 391.49 Waiver of certain physical defects.
(Section 391.49 is revised to state the following:)
(a) A person who is not physically qualified to drive under Section 391.41(b)(1) or (2), and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if that person has been granted a waiver pursuant to this section, (49 C.F.R. §391.49).

Subpart F—Files and Records
Section 391.51 Driver qualification files.

Subpart G—Limited Exemptions
Section 391.61 Drivers who were regularly employed before January 1, 1971.
(Section 391.61 is modified to state the following:)
The provisions of Section 391.61 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or

[the] **operate a** vehicle [displays] **displaying** a hazardous material(s) placard.

Section 391.62 (Reserved)
Section 391.63 Intermittent, casual, or occasional drivers.
Section 391.65 Drivers furnished by other motor carriers.
Section 391.67 Drivers of articulated (combination) farm vehicles.
Section 391.69 Drivers operating in Hawaii. (This Section intentionally omitted.)
Section 391.71 Intrastate drivers of vehicles transporting combustible liquids.

(Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of these regulations as of January 1, 1991, who possesses a valid New Jersey [commercial driver's license] **Commercial Driver License** (CDL), and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

(1) Is transporting combustible liquids as defined in the Hazardous Materials Regulations (49 C.F.R. §173.120(b)), and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, a person who has been a regularly employed driver (as defined in Section 390.5 of these regulations as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) of these regulations and who is otherwise qualified under N.J.S.A. 39:3-10.9 et seq. to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey driver's license issued prior to January 1, 1991, and continues to be a regularly employed driver of that motor carrier and drives a vehicle that:

(1) Is a truck (as defined in Section 390.5 of these regulations), and

(2) Is operated in detail delivery service, and

(3) Is transporting combustible liquids as defined in the Hazardous Materials Regulations (49 C.F.R. §173.120(b)), and

(4) Is operated in intrastate commerce.

Subpart H—Controlled Substances Testing

Section 391.81 Purpose and scope.
Section 391.83 Applicability.
Section 391.85 Definitions.

(Section 391.85 is revised to state the following:)

[Intrastate Commerce—"Commercial Motor Vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property:]

"Commercial Motor Vehicle—Intrastate Commerce" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property in intrastate commerce:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(c) If the vehicle is designed to transport 16 or more passengers including the driver;

(d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or

(e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.87 Notification of test results and recordkeeping.
Section 391.89 Access to individual test results of test findings.
Section 391.93 Implementation schedule.

(Section 391.93 is modified to state the following:)

Motor carriers engaged in intrastate commerce, excluding motor carriers transporting hazardous material(s) requiring hazardous material(s) placarding **or vehicles displaying hazardous material(s) placarding**, are required: (1) to implement a controlled substance testing program for "drivers subject to testing" which meets the requirements of this Subpart no later than July 1, 1994; (2) A random and "non-suspicious based post-accident testing" pursuant to subsection d. of this subsection no later than December 31, 1994.

Section 391.95 Drug use prohibitions.
Section 391.97 Prescribed drugs.
Section 391.99 Reasonable cause testing requirements.
Section 391.101 Reasonable cause testing procedures.
Section 391.103 Pre-employment testing requirements.
Section 391.105 Biennial **(periodic)** testing requirements.
Section 391.107 Pre-employment and [Biennial] **biennial** testing procedures.
Section 391.109 Random testing requirements.
Section 391.111 Random testing procedures.
Section 391.113 Post-accident testing requirements.
Section 391.115 Post-accident testing procedures.
Section 391.117 Disqualification.
Section 391.119 Employee Assistance Program (EAP).
Section 391.121 EAP training program.
Section 391.123 After-care monitoring.

PART 392 DRIVING OF MOTOR VEHICLES

Subparts A-F (No change.)

Subpart G—Prohibited Practices

Section 392.60 Unauthorized persons not to be transported.
Section 392.61 Driving by unauthorized person.
Section 392.62 Bus driver; distraction.
Section 392.63 Towing or pushing loaded buses.
Section 392.64 Riding within closed vehicles without proper exits.
Section 392.65 Sleeper berth; transfer to or from.
Section 392.66 Carbon monoxide; use of vehicle when detected.
Section 392.67 Heater, flame-producing; on vehicle in motion.
Section 392.68 Motive power not to be disengaged.
Section 392.69 Sleeper berth, occupation.
Section 392.71 Radar detectors; use and/or possession.

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A (No change.)

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

Section 393.9 Lamps operable.
Section 393.11 Lighting devices and reflectors.
Section 393.17 Lamps and reflectors[—], combinations in drive[-]away-towaway operation.
Section 393.19 Requirements for turn signaling systems.
Section 393.20 Clearance lamps to indicate extreme width and height.
Section 393.22 Combination of lighting devices and reflectors.
Section 393.23 Lighting devices to be electric.
Section 393.24 Requirements for headlamps and auxiliary road lighting lamps.
Section 393.25 Requirements for lamps other than headlamps.
Section 393.26 Requirements for reflectors.
Section 393.27 Wiring specifications.
Section 393.28 Wiring to be protected.
Section 393.29 Grounds.
Section 393.30 Battery installation.
Section 393.31 Overload protective devices.
Section 393.32 Detachable electrical connections.
Section 393.33 Wiring, installation.

Subpart C—Brakes

Section 393.40 Required brake systems.
Section 393.41 Parking brake system.
Section 393.42 Brakes required on all wheels.

Section 393.43	Breakaway and emergency braking.
Section 393.44	Front brake lines, protection.
Section 393.45	Brake tubing and hose, adequacy.
Section 393.46	Brake tubing and hose connections.
Section 393.47	Brake lining.
Section 393.48	Brakes to be operative.
Section 393.49	Single valve to operate all brakes.
Section 393.50	Reservoirs required.
Section 393.51	Warning devices and gauges.
Section 393.52	Brake performance.

Subpart D—Glazing and Window Construction

Section 393.60	Glazing in specified openings.
Section 393.61	Window construction.
Section 393.62	Window obstructions.
Section 393.63	Windows, markings.

Subpart E-F (No change.)

Subpart G—Miscellaneous Parts and Accessories

Section 393.75	Tires.
Section 393.76	Sleeper berths.
Section 393.77	Heaters.
Section 393.78	Windshield wipers.
Section 393.79	Defrosting device[s].
Section 393.80	Rear-vision mirrors.
Section 393.81	Horn. (This Section intentionally omitted.)
Section 393.82	Speedometer.
Section 393.83	Exhaust[s] system **location**.
Section 393.84	Floors.
Section 393.85	(Reserved)
Section 393.86	Rear end protection.
Section 393.87	Flags on projecting loads.
Section 393.88	Television receivers.
Section 393.89	Buses, driveshaft protection.
Section 393.90	Buses, standee line or bar.
Section 393.91	Buses, aisle seats prohibited.
Section 393.92	Buses, marking emergency doors.
Section 393.93	Seats, seat belt assemblies, and seat beat assembly anchorages.
Section 393.94	Vehicle interior noise levels.

Subpart H-J (No change.)

PART 394 [NOTIFICATION AND REPORTING OF ACCIDENTS] **(REMOVED AND RESERVED)**

[(The Sections in this Part are modified by the following):

The provisions of Part 394 do not apply to motor carrier(s) engaged in intrastate commerce, except as otherwise provided herein. Motor carrier(s) engaged in the transportation of hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.) are subject to, and required to comply with, the provisions of Part 394.

Section 394.1	Scope of the rules in this part.
Section 394.3	Definition of "reportable accident".
Section 394.5	(Reserved).
Section 394.7	Immediate notification of fatal accidents.
Section 394.9	Reporting of accidents.
Section 394.11	Notice of death after filing report.
Section 394.15	Assistance in investigations and special studies.
Section 394.20	Instructions for preparing accident reports.]

PART 395 HOURS OF SERVICE OF DRIVERS

Section 395.1	Scope of rules in this part.
Section 395.2	Definitions.
Section 395.3	Maximum driving and on-duty time.
Section 395.7	**(Removed and** Reserved)
Section 395.8	Driver's record of duty status.
Section 395.10	**(Removed and** Reserved)
Section 395.11	**(Removed and** Reserved)
Section 395.12	**(Removed and** Reserved)
Section 395.13	Drivers declared [out-of-service] **out of service.**
Section 395.15	Automatic on-board recording devices.

PARTS 396-397 (No change.)

APPENDIX D TO SUBCHAPTER B—TABLE OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULE I.

APPENDIX E TO SUBCHAPTER B—TABLES OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULES II THROUGH V.

APPENDIX F TO SUBCHAPTER B—COMMERCIAL ZONES

Section 1	New York, N.Y.
Section 6	Philadelphia, Pa.
Section 11	Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.
Section 12	Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.
Section 43	Definitions.
Section 44	Commercial zones determined generally, with exceptions.
Section 45	**Controlling distances and population data.**

APPENDIX G TO SUBCHAPTER B—MINIMUM PERIODIC INSPECTION STANDARDS.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Possession of Drugs or Drug Instruments

Proposed Amendment: N.J.A.C. 13:70-14A.8

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

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

Proposal Number: PRN 1994-168.

Submit written comments by April 20, 1994 to:
Mike Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08626

The agency proposal follows:

Summary

The proposed amendments will strengthen the existing rule by adding Federal guidelines and prohibiting the possession of any drugs not approved by the Food and Drug Administration on all grounds under the jurisdiction of the New Jersey Racing Commission. It also specifies that a licensed veterinarian cannot have, in his or her possession, any non-F.D.A. approved drugs.

Social Impact

The proposed amendment will have a positive influence on the integrity of racing. It will address the concerns the public may have that a horse may have been given an illegal substance designed to enhance performance and which could affect the outcome of a race. It will help to restore public confidence in the sport by prohibiting the possession of those drugs not approved by the F.D.A. on all grounds under the jurisdiction of the Racing Commission.

Economic Impact

It is not anticipated that the proposed amendment will result in any increase or decrease in cost to the horsemen. However, it may increase public confidence in the integrity of the sport and, therefore, have a positive effect on wagering, which would benefit both the industry and the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because 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. The amendment's prohibitions are imposed on individuals.

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

13:70-14A.8 Possession of drugs or drug instruments

(a) No person [aside from licensed veterinarians] shall have in his **or her** possession, anywhere within the grounds of any association conducting a race meeting, or anywhere within the confines of a race track enclosure, or anywhere within the grounds of any licensed off-track stabling facility, **or any grounds under the jurisdiction of the Racing Commission,** any drugs not possessed in accordance with the laws of the State of New Jersey **and of the United States, nor any drug not on the Federal Food and Drug Administration's approved list**, nor any contraband drugs or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for **prescribed** self-administration, **or by a licensed veterinarian for treatment of horses with a drug or drugs legally possessed by said veterinarian** and further provided that the individual, **with the exception of a licensed veterinarian,** possessing such device promptly notify the State Steward:

1. That he **or she** is in possession of such device; and
2. Of the chemical substance to be administered.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Possession of Drugs or Drug Instruments
Proposed Amendment: N.J.A.C. 13:71-23.9

Authorized By: New Jersey Racing Commission, Frank Zanzucchi, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1994-167.

Submit written comments by April 20, 1994 to:
Mike Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08626

The agency proposal follows:

Summary

The proposed amendments will strengthen the existing rule by adding Federal guidelines and prohibiting the possession of any drugs not approved by the Food and Drug Administration on all grounds under the jurisdiction of the New Jersey Racing Commission. It also specifies that a licensed veterinarian cannot have, in his or her possession, any non-F.D.A. approved drugs.

Social Impact

The proposed amendment will have a positive influence on the integrity of racing. It will address the concerns the public may have that a horse may have been given an illegal substance designed to enhance performance and which could affect the outcome of a race. It will help to restore public confidence in the sport by prohibiting the possession of those drugs not approved by the F.D.A. on all grounds under the jurisdiction of the Racing Commission.

Economic Impact

It is not anticipated that the proposed amendment will result in any increase or decrease in cost to the horsemen. However, it may increase public confidence in the integrity of the sport and, therefore, have a positive effect on wagering, which would benefit both the industry and the state.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rule 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. The amendment's prohibitions are imposed on individuals.

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

13:71-23.9 Possession of drugs or drug instruments

(a) No person [aside from licensed veterinarians] shall have in his **or her** possession, anywhere within the grounds of any association conducting a race meeting, or anywhere within the confines of a race track enclosure, or anywhere within the grounds of any licensed off-track stabling facility, **or any grounds under the jurisdiction of the Racing Commission,** any drugs not possessed in accordance with the laws of the State of New Jersey **and of the United States, nor any drug not on the Federal Food and Drug Administration's approved list**, nor any contraband drugs or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for **prescribed** self-administration, **or by a licensed veterinarian for treatment of horses with a drug or drugs legally possessed by said veterinarian** and further provided that the individual, **with the exception of a licensed veterinarian,** possessing such device promptly notify the State Steward:

1. That he **or she** is in possession of such device; and
2. Of the chemical substance to be administered.

TRANSPORTATION

(b)

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

Speed Limits
Route U.S. 202 in Somerset County
Proposed Amendment: N.J.A.C. 16:28-1.67

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 1994-170.

Submit comments by April 20, 1994 to:
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.67 to establish revised "speed limit" zones along Routes U.S. 202 in the Borough of Bernardsville and the Township of Bernards, Somerset County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a local government request, 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 U.S. 202 in the Borough of Bernardsville and the Township of Bernards, Somerset County, were warranted.

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

Social Impact

The proposed amendment will establish revised "speed limit" zones along Route U.S. 202 in the Borough of Bernardsville and the Township of Bernards, Somerset 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 the "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]):

16:28-1.67 Route U.S. 202[1]

(a) The rate of speed designated for the certain parts of State highway Route U.S. 202 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-x. (No change.)

xi. 50 miles per hour to a point 1,000 feet north of the intersection of Crestview Drive (Bernardsville) (milepost [37.3]**36.15**); thence

xii. 40 miles per hour [to the center of Woodland Road (milepost 37.8)] **between 1,000 feet north of Crestview Drive and Woodland Road (mileposts 36.15 to 36.83)**; thence

xiii. 30 miles per hour [to a point 275 feet north of the intersection of Church Street] **between Woodland Road and Finley Avenue (mileposts 36.83 to 37.70)**; thence

xiv. 35 miles per hour [to the intersection of Finley Avenue (milepost 38.7)] **between Finley Avenue and Madisonville Road (mileposts 37.70 to 37.92)**; thence

xv.-xxi. (No change.)

[1](No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Notice of Administrative Correction and Extension of Comment Period
Lane Usage
Route N.J. 38 in Burlington County
Proposed New Rule: N.J.A.C. 16:30-3.11

Take notice that the Department of Transportation has discovered an error in the notice of a proposed new rule at N.J.A.C. 16:30-3.11, published in the February 22, 1994 New Jersey Register at 26 N.J.R. 908(a).

The milepost for eastbound Route N.J. 38 traffic at N.J.A.C. 16:30-3.11(a)1i(1)(C) was incorrectly submitted to the Office of Administrative Law as milepost 18.2. The correct milepost for eastbound Route N.J. 38 traffic should read milepost 18.5. In view of this error, the Department of Transportation is providing a new 30 day comment period.

The notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Submit written comments by April 20, 1994 to:
George A. Strathern
Supervising Engineer II, Traffic
Department of Transportation
Bureau of Traffic Engineering
1035 Parkway Avenue
CN 613
Trenton, NJ 08625

Full text of the proposal is found at N.J.A.C. 16:30-3.11, published in the February 22, 1994 New Jersey Register at 26 N.J.R. 908(a). The corrected text at N.J.A.C. 16:30-3.11(a)1i(1)(C) as it should have appeared in the notice of proposal is as follows (proposed additions indicated in boldface **thus**; proposed deletions indicated in brackets [thus]):

16:30-3.11 Route 38

(a) Turning movements of traffic on certain parts of State highway Route 38 described in this subsection are regulated as follows:

1. In Burlington County:

i. Lumberton and Southampton Townships;

(1) Center lane for left turn only:

(A) Both directions of Route 38 (milepost 18.3) at Smithville Road—Smithville-Jacksonville Road, Lumberton and Southampton Townships.

(B) For westbound Route N.J. 38 (milepost 18.2) traffic at the driveway along the south side of Route N.J. 38 approximately 370 feet west of the Smithville-Jacksonville Road westerly curb line in the Township of Lumberton.

(C) For eastbound Route N.J. 38 [(milepost 18.2)] **(milepost 18.5)** traffic at the driveway (to the Division of Motor Vehicles Inspection Station) located along the north side of Route N.J. 38 approximately 1,000 feet east of the Smithville Road easterly curb line in the Township of Southampton.

(b)

TRANSPORTATION ASSISTANCE
Notice of Pre-Proposal
Regulation of Autobuses and Transportation Public Utilities
Pre-Proposed Amendments: N.J.A.C. 16:51, 16:53 and 16:53D

Authorized By: W. Dennis Keck, Acting Assistant Commissioner, Policy and Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-1, et seq., 52:14B-3 and 52:14D-1 et seq.

Pre-Proposal Number: PPR 1994-1.

A **public hearing** concerning this pre-proposal will be held on Thursday, May 12, 1994 at 1:00 P.M. to 4:00 P.M. at the following address:
New Jersey Department of Transportation
Engineering and Operations Building
Multi-purpose Room, 1st Floor
1035 Parkway Avenue
Trenton, New Jersey 08625-600

Submit comments in writing by June 4, 1994 to:
Thomas P. Thatcher
Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
Trenton, New Jersey 08625-600

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.S.A. 1:30.

The agency pre-proposal follows:

Summary

Buses, bus operations, and for hire passenger transportation within the State of New Jersey are subject to various forms of State oversight and regulation. Since 1979, the Department of Transportation has had a major role in the oversight and regulation of buses and certain other transportation public utilities. Buses are generally referred to in the statutes and regulations as "autobuses."

The Department believes that reassessment of its autobus regulations could identify areas where the regulations could be made less burdensome and more effective and better serve the needs of the public and regulated industry. The Department's regulations regarding autobus public utilities are, N.J.A.C. 16:51, Practice and Procedures Before the Office of Regulatory Affairs; N.J.A.C. 16:53, Autobuses, and N.J.A.C. 16:53D, Zone of Rate Freedom.

The purpose of this Notice of Pre-proposal for rulemaking is to provide a forum under which the public and regulated industry can provide comments and suggestions to the Department regarding State regulation of autobuses. In addition to the identification of specific regulatory issues or problems, the Department is also interested in receiving suggested solutions to these problems. The Department will closely review and consider all comments and suggestions.

The public comment period for this pre-proposal is 75 days and shall close on June 4, 1994. Persons must provide their comments and suggestions to the Department by this date. Persons should address their correspondence to the Department's Administrative Practice Officer whose full address is shown in the beginning of this pre-proposal.

A **public hearing** to receive oral and written testimony and presentations shall be held on Thursday, May 12, 1994 in the Multi-purpose room of the Department of Transportation from 1:00 P.M. to 4:00 P.M. Persons may submit written comments to the Department either by mail to the Administrative Practice Officer or in person at the public hearing. Comments in the form of oral testimony or presentations can only be submitted at the public hearing. All comments, suggestions and testimony submitted in resposne to this pre-proposal shall be considered open public records and available for review at the Department, by appointment, during regular business hours.

Although the Department welcomes comments on any issue pertaining to autobus oversight, the Department wishes to especially invite comments on the following topics:

1. INSURANCE

Autobus operators are required to carry liability insurance. Insurance costs can be very high and are said to be driving some companies out of New Jersey.

a. What could be done to help control insurance costs, while at the same time assuring that autobus operators have sufficient insurance coverage to protect the public?

b. What more could be done to ensure that all companies carry adequate insurance?

2. INSPECTIONS

Most autobuses receive two inspections a year. Currently, these inspections are typically an NJDOT performed inspection followed by an operator self inspection six months later. In the future, New Jersey operators may be required to submit to additional Federally mandated vehicle emissions inspections.

a. Is the current system of autobus safety inspection satisfactory? How could it be improved or made more efficient?

b. Is self inspection of autobuses working? If it is, should there be more reliance on self inspection? If it is not, what needs to be done to ensure that self inspected buses maintain a high level of safety?

3. SERVICE IMPROVEMENT

The NJDOT regulates autobuses with the goal of ensuring that the needs of the public are served and protected. The NJDOT desires that the regulated industry provide the public with the best possible public transportation service and at reasonable fares.

a. What could the Department of Transportation do to improve bus services and public transportation? How could the Department better facilitate the introduction of new transportation services and routes?

b. What service criteria should be introduced to improve bus service for the public?

4. REGULATORY STANDARDS AND PROCEDURES

Numerous NJDOT regulatory standards and procedures are leftover from former Board of Public Utilities (BPU) practices and are in need of updating. Some BPU procedures were highly structured, formal, and often time consuming or costly for interested parties. The NJDOT wants to improve upon its procedures to facilitate processing and approvals.

a. Most autobus operators file an annual report with the New Jersey Department of Transportation. Are portions of the annual report burdensome to prepare? The current report form has recently been modified. Could the report be further improved or simplified?

b. How might petition requirements be simplified?

c. N.J.A.C. 16:53 sets forth autobus specifications. Are these specifications reasonable and technically correct with current technology and equipment?

d. Are current "zone of rate freedom" (ZORF) procedures timely and efficient? Are the rates which result from the ZORF procedures reasonable? Could ZORF procedures be improved?

e. Is route service overregulated? How might more operational flexibility be provided regarding regular routes and casino routes in ways advantageous to the public interest?

5. INTERVENTIONS

Existing intrastate regular route operators are protected by the NJDOT from certain destructively competing autobus service that would undermine the profitability of existing autobus operators. An existing autobus operator can move to block the entry of a new competing service by filing an intervention with NJDOT.

a. Are too many frivolous interventions being filed against bus companies by other bus companies? If so, what should be done to discourage the filing of frivolous interventions?

b. Should a person or company who files an intervention be required to pay a major portion of the administrative cost incurred by the Department of Transportation in processing that intervention?

6. TITLE 27 AND TITLE 48 ROUTE AUTHORITY COORDINATION

Issues have arisen regarding regular routes authorized by NJDOT under Title 48 and regular routes operated by New Jersey Transit or contracted out by New Jersey Transit under Title 27. In some cases, competition can be destructive.

a. What can be done to improve coordination between Title 27 and Title 48 routes?

b. How can issues of destructive competition between Title 27 and Title 48 routes be better handled?

7. OPERATING AUTHORITY CONTINUATION

The operating authority to provide an autobus service can be granted to a company via a Certificate of Public Convenience and Necessity from the NJDOT. Prior to discontinuing autobus service, an operator is also required to formally petition the NJDOT for authority to stop service. Operators are required to file various reports with the NJDOT.

a. Some bus companies have not operated a bus or charter service for years. Should their operating authority or Certificates of Public Convenience and Necessity be invalidated or withdrawn by the Department?

8. ENFORCEMENT

In addition to regulating autobus operations and performing vehicle inspections, the NJDOT investigates and takes actions to curtail illegal operations.

a. How are illegal autobus operations affecting the overall autobus industry?

b. Are current enforcement actions against illegal autobus operations effective? If not, what more could NJDOT do to control or abate illegal autobus operations?

c. What could the autobus industry do to assist NJDOT to control or abate illegal operators?

9. VANS AND LIMOUSINES

A new generation of transportation services by smaller vehicles is developing.

a. What are the current impacts of newly evolving van oriented services upon traditional autobus services? What are the potential future impacts, both positive and negative?

b. Should the NJDOT regulate limousines or limousine services? If so, what aspects of the limousine business should be regulated?

c. Does the existing autobus industry anticipate utilizing smaller vehicles for suburban services?

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Garden State Arts Center
Unauthorized Selling of Merchandise; Confiscation
Proposed Amendment: N.J.A.C. 19:8-2.11

Authorized By: New Jersey Highway Authority, David W. Davis, Executive Director (with approval of the Board of Commissioners).

Authority: N.J.S.A. 27:12B-5(j) and 27:12B-24(a).

Proposal Number: PRN 1994-176.

Submit written comments by April 20, 1994 to:
David W. Davis, Executive Director
New Jersey Highway Authority
P.O. Box 5050
Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

The proposed amendment permits the confiscation of merchandise which is being sold without authorization on Garden State Arts Center property. The amendment makes it clear that any merchandise sold without the express permission of the Garden State Arts Center will be subject to confiscation and further indicates that a person who has in his or her possession or under his or her control four or more like items is presumed to have violated the rule.

Social Impact

This amendment will enhance restrictions regarding security for the Garden State Arts Center. It should contribute to patron enjoyment by the elimination of unauthorized sales of merchandise in the areas surrounding the Amphitheater.

Economic Impact

This amendment will not result in increased costs for the patron of the Garden State Arts Center; however, this amendment should have a positive impact on revenues accruing to the Arts Center. At present, the Arts Center receives a percentage of the monies generated by the sale of official items. If there is stricter enforcement against "bootleg" items being sold, there is a substantial likelihood that there will be an increase in the sale of legitimate merchandise, thereby increasing Arts Center revenues.

The individuals whose goods are confiscated will incur a negative economic impact as a result of the confiscation.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The sole effect of the amendment is to regulate the unauthorized sale of merchandise at the Garden State Arts Center, by providing for confiscation of such merchandise and setting forth the circumstances under which a presumption of violation will exist.

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

19:8-2.11 Garden State Arts Center

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

(h) No person shall sell any merchandise of any description or kind [within the] **on** Arts Center **property** without express permission of the Authority. **Any unauthorized sale of said merchandise shall subject same to confiscation. A person who has in his or her possession or under his or her control four or more like items is presumed to have violated this subsection.**

(a)

CASINO CONTROL COMMISSION

Applications

Statements of Compliance

Proposed Amendments N.J.A.C. 19:41-6.1 through 6.5

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

Authority: N.J.S.A. 5:12-63, 69a, 70a, 80h and 81.

Proposal Number: PRN 1994-179.

Submit written comments by April 20, 1994 to:

David C. Missimer
Assistant General Counsel
Casino Control Commission
Tennessee Avenue at the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:41-6 are intended to conform this subchapter of rules to various changes which have been made to the Casino Control Act since the rules were first adopted. For example, the amendments to N.J.A.C. 19:41-6.1(a) and (b) are being proposed in order to differentiate between the two types of statements of compliance which may now be issued in the discretion of the Commission.

The existing rules only addressed a request by an applicant for licensure or qualification for a statement of compliance by the Commission with regard to the satisfaction of one or more eligibility criteria applicable to its pending application. This type of application for a statement of compliance is governed by N.J.S.A. 5:12-81 and would be codified by the proposed amendments at N.J.A.C. 19:41-6.1(a). The proposed amendments to N.J.A.C. 19:41-6.1(a) would also require that a request for a statement of compliance be initiated by the filing of a petition and would require the applicant to demonstrate to the satisfaction of the Commission that the applicant intends, if found qualified, to actually engage in the business or activity which required the license or qualification to be obtained. The amendment would also clarify that, notwithstanding the showing of intent noted above, the Commission would retain its current discretion to refuse to issue a statement of compliance to any applicant.

Since the existing rules were adopted, the Casino Control Act was amended, see N.J.S.A. 5:12-80h, to add a second type of statement of compliance which the Commission may, in its discretion, issue. Under the provisions of N.J.S.A. 5:12-80h and N.J.A.C. 19:41-6.1(b), the Commission may issue a statement of compliance to any person who can establish that there is a reasonable likelihood that such person, if found qualified by the Commission, would purchase the securities of a casino licensee or a holding or intermediary company thereof in such quantity so as to require the person to apply for licensure or qualification in accordance with the Act and rules of the Commission. The proposed amendments would require that a request for this type of statement of compliance also be initiated by the filing of a petition with the Commission.

Proposed new subsection N.J.A.C. 19:41-6.1(c) would clarify that a statement of compliance issued by the Commission under either N.J.A.C. 19:41-6.1(a) or (b) would only establish the qualification of the applicant for the statement as of the date of issuance of the statement; a change in any material fact relevant to the eligibility criterion for which the statement had been issued which occurred after the issuance of the statement would require the applicant to re-establish its qualification in accordance with the Act and the rules of the Commission. Moreover, the applicant would be required to supply additional information concerning any events which transpired from the date of issuance of the statement to the date of consideration of the application for licensure or qualification.

The proposed amendments codified at N.J.A.C. 19:41-6.1(d) would establish presumptive expiration dates of 12 months for statements issued pursuant to N.J.S.A. 5:12-81 and N.J.A.C. 19:41-6.1(a) and six months for statements issued pursuant to N.J.S.A. 5:12-80(h) and N.J.A.C. 19:41-6.1(b). Notwithstanding the foregoing, a statement of compliance issued pursuant to N.J.S.A. 5:12-81 and N.J.A.C. 19:41-6.1(a) to an applicant which also received a commitment for the reservation of a casino license would expire on the same date as the commitment. Any statement of compliance which was issued prior to the effective date of the proposed amendments would, pursuant to N.J.A.C. 19:41-6.1(e), expire in accordance with the provisions of N.J.A.C. 19:41-6.1(d) as if the statement had been issued on the effective date of the amendment unless otherwise extended, withdrawn or revoked prior to that date.

The proposed amendments to N.J.A.C. 19:41-6.2 are also intended to clarify that a statement of compliance is only valid as to the facts and circumstances which were known on the date of its issuance. Accordingly,the proposed amendments provide that a statement of compliance shall be withdrawn should there be a change in the facts or circumstances which were known at the time it was issued.

The remaining amendments to N.J.A.C. 19:41-6.3, 6.4 and 6.5 are either technical in nature or simply insert revised statutory provisions into the existing rules. See, for example, N.J.A.C. 19:41-6.4 where the statutory limit for casino license reservations has been increased from 18 months to 30 months with the possibility of good cause extensions.

Social Impact

The proposed amendments do not reflect any independent social judgments made by the Commission but rather implement statutory changes enacted by the Legislature. The ability of persons who are contemplating the purchase of an interest in a casino licensee or holding company to determine in advance whether they would be found qualified for licensure or qualification should enhance the marketability of casino securities and thus contribute to the economic well-being of the Atlantic City casino industry. To the extent that the casino industry prospers, the social programs supported by tax revenues derived from casino gaming should prosper as well.

The threshold determinations required by N.J.A.C. 19:41-6.1(a) and (b) should help assure that persons requesting statements of compliance from the Commission actually intend to pursue involvement in the casino industry in New Jersey. Those provisions of the Act which authorize the issuance of statements of compliance by the Commission are not designed to make the Commission an independent licensing authority for any person or entity which is interested in establishing its reputation for good character and integrity. Unless a petitioner for a statement of compliance can demonstrate a legitimate interest in obtaining a statement in furtherance of its participation in gaming in New Jersey, the resources of the Division and the Commission should not be expended in investigating and considering the application.

The proposed amendments should also help to clarify that any gaming regulator which looks to the decisions of the New Jersey Casino Control Commission to help determine the qualification of entities which apply for licensure in its own jurisdiction should not rely on a statement of compliance issued by the Commission unless such regulators have examined the record of the applicant since the date that the statement of compliance was issued.

Economic Impact

The proposed amendments simply implement various provisions of the Casino Control Act which authorize the filing of applications for statements of compliance and the rules themselves should not have any significant economic impact. The ability to request statements of compliance from the Commission, as noted above, may have a favorable economic impact on the casino industry in New Jersey but any such impact would be extremely difficult to measure and is due to the enabling legislation as opposed to the rules being proposed.

Regulatory Flexibility Anslysis

The proposed new rules address statements of compliance, which may be requested by any applicant for a license or determination of qualification required by the Act. Some of the entities applying for licensure or qualification may qualify as a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. If such an applicant chooses to seek a statement of compliance, there will be some time and expense involved in filing a petition, in accordance with the new rules. However, it would not be feasible to exempt small businesses from these requirements or to differentiate between applicants. The standards set forth in the proposed rules must apply uniformly to ensure that all applicants for licensure or qualification are qualified under the standards set forth in the Act.

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

19:41-6.1 General provisions

(a) Any applicant for a license or determination of qualification required by the Act may, pursuant to N.J.S.A. 5:12-81, file a petition requesting the issuance of a statement of compliance by the Commission that the applicant has established compliance with one or more of the eligibility criteria required by the Act or the rules of the Commission for that license or qualification approval. Before the Commission will refer any such petition to the Division for investigation, the applicant shall be required to establish to the satisfaction of the Commission that the applicant actually intends, if found qualified, to engage in the business or activity which requires the license or determination of qualification to be obtained. Notwithstanding the foregoing, the [The] Commission may, in its discretion, **refuse to** issue a [revocable] statement of compliance to [an] **any** applicant [for any license certifying that all requirements relating to a particular specified eligibility criterion or stage in the license consideration process have been complied with at any time the Commission is satisfied that any such requirements have been established by the applicant in accordance with the Act and regulations of the Commission].

(b) Any person who, upon the filing of a petition with the Commission, can establish to the satisfaction of the Commission that there is a reasonable likelihood that such person, if found qualified, will obtain and hold the securities of a casino licensee, or any holding or intermediary company thereof, in such quantity so as to require the qualification of the person in accordance with the Act or the rules of the Commission, may request the issuance of a statement of compliance by the Commission that such person is qualified to hold such securities prior to their actual acquisition. If the Commission, in its discretion, determines to issue a statement of compliance pursuant to N.J.S.A. 5:12-80h and this subsection, such statement shall be issued only if the Commission is satisified, after an investigation by the Division, that the qualification of the person has been established in accordance with the Act or the rules of the Commission.

(c) Any statement of compliance issued by the Commission pursuant to N.J.S.A. 5:12-80(h) or 81 and this subchapter shall establish the qualification of the person or applicant as of the date of issuance of the statement of compliance. The issuance of a statement of compliance by the Commission shall not be deemed in any way to relieve a person or applicant of the obligation to:

1. File any supplemental application information required by the Commission or Division concerning events or activities during the period from the date of issuance of the statement of compliance to the date of consideration of the application for licensure or qualification; or

2. Re-establish its qualification in accordance with the Act and rules of the Commission should there be, after the statement of compliance is issued, a change in any material fact or circumstance relevant to an eligibility criterion which is a subject of the statement of compliance.

(d) Notwithstanding any other provision of this subchapter, unless otherwise extended by the Commission upon application by the recipient and for good cause shown, any statement of compliance issued by the Commission pursuant to N.J.S.A. 5:12-81 and (a) above shall expire 12 months after its date of issuance, unless the recipient has also received a commitment for the reservation of a casino license, in which case the statement of compliance shall expire on the same date as the commitment.

(e) Notwithstanding any other provision of this subchapter, unless otherwise extended by the Commission upon application by the recipient and for good cause shown, any statement of compliance issued by the Commission pursuant to N.J.S.A. 5:12-80(h) and (b) above shall expire six months after its date of issuance.

(f) Any statement of compliance issued by the Commission prior to the effective date of this subsection shall expire in accordance with the provisions of (d) and (e) above as if the statement had been issued on such effective date unless such statement of compliance is otherwise extended, withdrawn or revoked prior to such date in accordance with the provisions of this subchapter.

19:41-6.2 Contents

(a) Every statement of compliance shall:

1. Specify the particular **eligibility** criterion [or stage complied with and indicate that such applicant has qualified for licensure in relation to the criterion or stage specified] **as to which compliance has been established**;

2.-4. (No change.)

5. Indicate that [it may be revoked by the Commission upon a finding that a change of circumstances has affected such compliance, that] the **statement of compliance shall be withdrawn by the Commission if:**

i. There is a change in any material fact or circumstance relevant to the eligibility criterion as to which the statement was issued;

ii. The applicant [has] otherwise [failed] **fails** to [qualify] **satisfy the standards** for licensure **or qualification in accordance with the Act or rules of the Commission;** [that the]

iii. The applicant [has failed] **fails** to comply with any conditions imposed by the Commission; or [that]

iv. The Commission finds cause to revoke the statement of compliance for any other reason [for revocation exists].

19:41-6.3 Issuance of licenses **and approvals**

No license **or qualification approval** shall be issued to any person to whom a statement of compliance has been issued unless every [qualification] **eligibility criterion relevant to the application** of such person as of the time of the issuance of such license **or approval** shall have first been established in accordance with the Act and [regulations] **rules** of the Commission.

19:41-6.4 Commitments that casino licenses shall be reserved

(a) No commitment to reserve a casino license in accordance with [Section 81c of the Act] **N.J.S.A. 5:12—81c** shall accompany a statement of compliance certifying satisfaction of the requirements of [Section 84e of the Act] **N.J.S.A. 5:12—84e** unless:

1. The applicant is eligible in accordance with every provision of the Act, including those of [Section 82b] **N.J.S.A. 5:12-82b** which require that the proposed hotel, in the judgment of the Commission, can become an **approved** hotel **building** within [18] **30** months **of the date of such commitment or within such additional time period as the Commission may, upon a showing of good cause, establish**;

2. The applicant has satisfied all of the requirements of [Section 84e of the Act] **N.J.S.A. 5:12—84e** with respect to [his] **its** specific casino hotel proposal;

3. The commitment to reserve is for a period not to exceed [18] **30** months **from the date of such commitment or within such additional time period as the Commission may, upon a showing of good cause, establish**; and

4. The applicant qualifies for a casino license within a period not to exceed [18] **30** months of the date of such commitment **or within such additional time period as the Commission may, upon a showing of good cause, establish**.

19:41-6.5 Reservations of other licenses

No license shall be reserved by the Commission other than a casino license in accordance with [Section 81c, 82b and 84e of the Act and regulations of the Commission] **N.J.S.A 5:12-81c, 82b, 84e and the provisions of this subchapter**.

(a)

CASINO CONTROL COMMISSION

Applications

Casino Licensees

Applications for Issuance of Employee Licenses or Registration and Natural Person Qualification

Petitions for Casino Employee Registration

Proposed New Rules: N.J.A.C. 19:41-7.1A and 7.1B, and 19:43-9.5

Proposed Amendment: N.J.A.C. 19:41-7.7

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 89b, 90b, 91b, 92 and 102b.

Proposal Number: PRN 1994-180.

Submit written comments by April 20, 1994 to:
Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 19:41-7.1A codifies existing requirements concerning the application forms which must be filed by an individual seeking to obtain an employee license or a registration or who is required to establish his or her qualifications because of his or her position with a casino license or applicant, a junket enterprise, a gaming school, a casino service industry enterprise or with a holding company of any of the aforementioned companies or enterprises. This rule also details all of the application materials which must be included with an application form before the application will be accepted for filing.

Proposed new rule N.J.A.C. 19:41-7.1B codifies the existing procedures which permit applicants for registration to choose either to file their own application forms, in person or by mail, or alternatively to request that a casino licensee or applicant file the application on his or her behalf. The new rule also includes the new requirement that applicants who choose to file their own applications include a written offer of employment with the application.

Proposed new rule N.J.A.C. 19:43-9.5 codifies the requirement in section 91 of the Act that casino hotel employee registration be granted only upon petition by a casino licensee or applicant and specifies what must be in these petitions. For the most part the rule iterates existing requirements. However, the requirement that the petition include a statement that the casino licensee or applicant has verified that the applicant for registration is eligible to work and has completed the federally required Employment Eligibility Verification Form is new. This is consistent with proposed amendments to N.J.A.C. 19:41-1.3 published in the New Jersey Register at 26 N.J.R. 339(a), which provides that no natural person shall be employed in the operation of a licensed casino unless he or she is a citizen of the United States or is authorized pursuant to Federal law to work in the United States.

The proposed amendment to N.J.A.C. 19:41-7.7 modifies the existing fingerprinting provision to conform with current fingerprinting practice. The provisions for fingerprinting in triplicate and distribution of the fingerprint forms are deleted. An alternative to fingerprinting "under the supervision of the Division" is provided by permitting an applicant for individual qualification to submit two sets of classifiable fingerprints on cards provided by the Commission.

Social Impact

The Commission requires applicants for employee licenses, registrations and natural person qualification to file application forms detailing their personal background and criminal history, if any. The information requested from applicants for employee licenses and qualification is also used to determine whether these individuals possess the character, financial and business qualifications required by the Casino Control Act and Commission rules. As such, the application procedures codified herein protect the casino industry and the gaming public and enable the Commission to fulfill its statutory mandate to strictly regulate all persons related to the operations of licensed casino enterprises and all related casino service industries.

Economic Impact

The new rules are not expected to have any significant economic impact. Applicants are presently required to file the application forms detailed in the manner specified in proposed new N.J.A.C. 19:41-7.1A and casino licensees currently file petitions requesting the issuance of Casino Hotel Employee Registration, as provided in the proposed N.J.A.C. 19:43-9.5. The change in the application procedure for applicants for casino hotel employee registration effects less than 10 percent of applicants for registration since 90 percent or more choose to have applications filed on their behalf by casino licensees or applicants. The requirement that these applicants obtain a written offer of employment to file with their application will not entail any additional expense on the applicant for registration's part, although a minimum of additional time and expense will be required by casino licensees and applicants in preparing the required letters. The change in the petition procedures in new rule N.J.A.C. 19:43-9.5 requires casino licensees or applicants simply to add an additional statement to the petition which they are already required to file, concerning procedures they are already required to follow. The amendment to N.J.A.C. 19:41-7.7 merely codifies existing practice, and is therefore not expected to have any significant economic impact.

Regulatory Flexibility Statement

Proposed new rule N.J.A.C. 19:43-9.5 affects casino licensees and applicants. The new rules and amendments also affect individual applicants for employee licenses or registrations and individuals identified in the Act and Rules as natural persons required to establish their qualifications. None of these qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

19:41-7.1A Application for the issuance of employee licenses or registrations and natural person qualification

(a) An application for the initial issuance of an employee license or registration or for individual qualification shall include the following:

1. A completed original and one photocopy of the appropriate Personal History Disclosure (PHD) Form or Qualifier Disclosure Form (QDF), as follows:

i. An applicant for a casino key employee license, junket representative license, resident director license or an applicant required to qualify pursuant to subsection 102c of the Act by virtue of his or her position with a junket enterprise shall file a PHD-1B as set forth in N.J.A.C. 19:41-5.3;

ii. An applicant for a casino employee license or gaming school employee license shall file a PHD-2A as set forth in N.J.A.C. 19:41-5.4;

iii. An applicant for a casino hotel employee registration shall file a PHD-4A as set forth in N.J.A.C. 19:41-5.5;

iv. An applicant required to qualify pursuant to N.J.S.A. 5:12-85c or e by virtue of his or her position with a casino licensee or applicant shall file the PHD Form required by N.J.A.C. 19:43-2.6;

v. An applicant required to qualify pursuant to N.J.S.A. 5:12-85c, d, or e by virtue of his or her position with a holding company or intermediary company of a casino licensee or applicant shall file the PHD Form required by N.J.A.C. 19:43-2.7;

vi. An applicant required to qualify pursuant to subsections 92a and b of the Act by virtue of his or her position with a casino service industry enterprise or gaming school shall file a PHD-1A as set forth in N.J.A.C. 19:41-5.2; and

vii. An applicant required to qualify pursuant to subsections 92c and d of the Act by virtue of his or her position with a casino service industry enterprise shall file a QDF as set forth in N.J.A.C. 19:41-5.9;

2. The documents required for identification by N.J.A.C. 19:41-7.2A;

3. A photograph of the applicant, taken within the preceding 12 months, which shall be attached to the original PHD Form or QDF;

4. Either of the following:

i. A certification by the Division that the applicant has been fingerprinted in accordance with N.J.A.C. 19:41-7.7(a)1; or

ii. In the case of an applicant for individual qualification, either the certification required by (a)4i above or the fingerprint impression cards required by N.J.A.C. 19:41-7.7; and

5. Any applicable fee required by N.J.A.C. 19:41-9.11, 9.11A, 9.12, 9.13, 9.14 or 9.15.

(b) Each applicant shall file a complete application pursuant to (a) above with the Commission by mail or in person at the address specified in N.J.A.C. 19:40-3.5(b) and (c), except as otherwise provided in N.J.A.C. 19:41-7.1B.

(c) Except as provided in (d) below, no application shall be accepted for filing unless it includes all application materials required by (a) above, completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the PHD Form or QDF.

(d) An applicant for individual qualification shall provide the documents required by (a)2 and (a)4ii above upon the request of the Division.

19:41-7.1B Application for casino hotel employee registration; filing requirements

(a) No casino hotel employee registration shall be issued by the Commission unless:

1. The applicant for registration has an offer of employment from a casino licensee or applicant; and

2. A petition requesting that the Commission issue the registration has been filed by the casino licensee or applicant pursuant to N.J.A.C. 19:43-9.5

(b) A completed application for casino hotel employee registration as set forth in N.J.A.C. 19:41-7.1A shall be filed as follows:

1. The applicant for registration may provide the casino licensee or applicant with his or her written authorization to file the application on his or her behalf pursuant to N.J.A.C. 19:43-9.5(a)4; or

2. The applicant for registration may submit the complete application directly to the Commission by mail or in person at the address specified in N.J.A.C. 19:40-3.5(b) and (c), provided that:

i. The application is accompanied by a written offer of employment from a casino licensee or applicant; and

ii. The applicant provides the casino licensee or applicant with a signed and dated certification stating that he or she has filed a completed application with the Commission.

19:41-7.7 Fingerprinting

Each applicant, licensee, registrant and person required to be qualified shall be fingerprinted under the supervision of the Division without charge [and in triplicate on fingerprint impression cards provided by the Commission and marked "noncriminal." One of the said forms shall be provided by the Division to the Commission, one shall be filed with the Division and one shall be filed with the Division of State Police]**, except that an applicant for individual qualification may alternatively submit two sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.**

19:43-9.5 Petitions for casino hotel employee registration

(a) In accordance with N.J.S.A. 5:12-91f, no casino hotel employee registration shall be issued by the Commission except upon the petition of a casino licensee or applicant. Such petition shall be in writing and shall include the following:

1. The name and date of birth of the applicant for registration;

2. The position in which the applicant for registration will be employed;

3. A statement by the casino licensee or applicant that it has verified that the applicant for registration is eligible to work and that it has completed the Employment Eligibility Verification Form (Form I-9) provided by the U.S. Department of Justice, Immigration and Naturalization Service; and

4. Either of the following:

i. A completed application for casino hotel employee registration as set forth in N.J.A.C. 19:41-7.1A, which shall be accompanied by a written statement, signed and dated by the applicant for registration and an authorized representative of the casino licensee or applicant, authorizing the casino licensee or applicant to file the application on behalf of the applicant for registration; or

ii. A certification by the applicant for registration that he or she has filed a completed application with the Commission.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs

Proposed Amendment: N.J.A.C. 19:45-1.46

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

Authority: N.J.S.A. 5:12-63(c) and 5:12-99(1).

Proposal Number: PRN 1994-181.

Submit written comments by April 20, 1994 to:
Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment will permit a casino licensee's hotel accounting department to control and reconcile the inventory of coin coupons as long as the hotel controller reports directly to the casino controller.

The proposed amendment will codify existing practices of certain casino licensees, as well as provide flexibility to other casino licensees.

Social Impact

The proposed amendment is not anticipated to have any social impact since the procedural change will only affect the operations of casino licensees.

Economic Impact

The proposed amendment may provide for a more efficient operation of both the casino and hotel accounting departments thereby reducing the casino licensee's cost of operation.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendment will only affect the operation of New Jersey casino licensees, none of which qualifies as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(e) Coupons received from the manufacturer or distributor, or produced by the licensees' data processing or printing department, shall be opened and examined by at least two individuals, one of whom shall be from the accounting department. Any deviations between the invoice or control listing accompanying the coupons, the purchase or requisition order, and the actual coupons received shall be reported promptly to the Casino Controller or to a higher authority in a direct reporting line and the Internal Audit Department.

1.-3. (No change.)

4. For purposes of this section, "accounting department" shall be deemed to refer to any accounting personnel employed by the casino licensee who report in a direct line to the casino controller and shall include hotel accounting personnel who are not otherwise employed in casino operations.

(f)-(o) (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Game

Double Down Stud

Proposed Amendments: N.J.A.C. 19:46-1.17 and 1.19

Proposed New Rules: N.J.A.C. 19:46-1.13F and 19:47-17.1 through 17.11

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

Authority: N.J.S.A. 5:12-5, 69(e), 70(f), 99(a) and 100.

Proposal Number: PRN 1994-182.

Submit written comments by April 20, 1994, to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments and new rules would permit a variation of the game of poker, known as "double down stud," to be played in Atlantic City casinos.

Double down stud would be played with one 52-card deck, using a layout similar to a blackjack table. It is based upon the card rankings used in five card stud poker, except that players bet against the house instead of each other. To begin the game, the players place their initial wagers in front of their positions, and one card is dealt face up to each player. Three cards are then dealt face up and one card is dealt face down, in front of the dealer. These four cards are used by each of the players, together with their previously dealt card, to create a stud poker hand of five cards.

At this point, players can see four of their five cards and may now place a second bet (a "double down" bet) in an amount equal to the first bet, if they so desire. After all additional bets have been placed, the face down card is turned over, and the players' bets are paid or taken according to a payout schedule ranging from 1-to-1 for a pair of jacks or better, to 10-to-1 for a full house, and 1,000-to-1 for a royal flush. A pair of sixes to a pair of tens is a push (a tie), and a pair of fives or less loses. The deck must be reshuffled after each round of play has been completed, see N.J.A.C. 19:47-17.4(a).

This game would also have a payout limit of $100,000 per hand, see N.J.A.C. 19:47-17.10(c). The limitation would be conspicuously printed on the table layout, and signage approved by the Commission would be required at each table, explaining the payout limit and its ramifications. N.J.A.C. 19:46-1.13F(c).

As noted in N.J.A.C. 19:47-17.7, the number of personnel and the supervision requirements for double down stud would be the same as are now required for blackjack in N.J.A.C. 19:45-1.12 (one dealer per table, four tables per floorperson, and 16 tables per pit boss, unless revised supervision has been approved). Of course, the casino personnel dealing and supervising this game would still need to have such experience and obtain such training as the Commission may require, pursuant to N.J.A.C. 19:44-8.3(b), as well as all necessary license endorsements, pursuant to N.J.A.C. 19:41-9.16.

Proposed new rule N.J.A.C. 19:46-1.13F contains the requirements for the table that would be used in the game; amendments to N.J.A.C. 19:46-1.17 and 1.19 set forth the card requirements and would permit the use of an automated shuffling device in the game, respectively.

The new rules at N.J.A.C. 19:47-17 contain the rules of play for the proposed game, including the payout odds and the aforementioned payout limit.

Social Impact

The proposed amendments and new rules are not expected to have any social impact beyond that created by the authorization of a game which is compatible with the public interest. The amendments and new rules do not reflect any social judgments made by the Commission. The implementation of this game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City casinos as a result of the introduction of double down stud.

Economic Impact

The implementation of any game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs may be offset by increased casino revenues generated by the game. Moreover, to the extent that the game does generate increased casino revenues, senior and disabled citizens of New Jersey would benefit from the additional tax revenues that would be collected. But as noted above, any attempt to quantify the effects of the introduction of double down stud on casino revenue would be highly speculative at this time.

The proposed amendments and new rules may also require the Commission and Division of Gaming Enforcement to incur some costs in testing and preparing to regulate the game. However, these costs are necessary to review, introduce and test the game, and the costs will be borne by the game's sponsors and the casino licensees which have agreed to test the game, as required by N.J.A.C. 19:47-8.4(b).

Regulatory Flexibility Statement

The proposed amendments and new rules would only affect casino licensees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility statement is required.

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

19:46-1.13F Double down stud table; physical characteristics

(a) Double down stud shall be played on a table having seven places on one side for the players, and a place for the dealer on the opposite side.

(b) The cloth covering a double down stud table (the layout) shall have imprinted thereon the name or trade name of the casino licensee and seven separate designated betting areas for the placement of wagers by the players. A separate designated area shall be located below each betting area for the placement of double down wagers. There shall also be a separate designated area located directly in front of the table inventory container for the placement of the dealer's common cards. The Commission shall approve the location and labelling of each of these designated areas on the layout.

(c) The following inscription shall be conspicuously printed on each double down stud layout: "Payout Limit of $100,000 Per Hand." A casino licensee shall post a sign, approved by the Commission, at each double down stud table explaining the details and the ramifications of this payout limit.

(d) Each double down stud table shall have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of the dealer, in locations approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat, pai gow poker, pokette [and], red dog **and double down stud** shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

(b) Each deck shall be composed of four suits [–] : diamonds, spades, clubs and hearts.

(c) Each suit shall be composed of 13 cards [–] : ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, 2. The face of the ace, king, queen, jack and 10 value cards may contain an additional marking, as approved by the Commission, which will permit a dealer, prior to exposing his or her hole card at the game of blackjack, to determine the value of that hole card.

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

19:46-1.19 Dealing shoes; **automated shuffling devices**

(a) (No change.)

(b) Cards used to game at blackjack, pai gow poker, minibaccarat [and], red dog **and double down stud** shall be dealt from a **manual or automated** dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment when the table is not open for gaming activity. Notwithstanding the foregoing, cards used to game at pai gow poker, **and double down stud** may be dealt from the dealer's hand in accordance with N.J.A.C. 19:47-11.8A **and 17.8, respectively.**

(c) A device which automatically shuffles cards may be utilized at the game of blackjack, pai gow poker, minibaccarat [and], red dog **and double down stud** in addition to [or in place of] a **manual or automated** dealing shoe, provided that the **automated card shuffling** device and the procedures for [dealing and] shuffling **and dealing** the cards through the use of the device are submitted to and approved by the Commission.

(d) A **manual or automated** dealing shoe shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and, at a minimum, shall adhere to the following specifications:

1.-3. (No change.)

(e)-(g) (No change.)

SUBCHAPTER 17. DOUBLE DOWN STUD

19:47-17.1 Definitions

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

"Double down wager" means an additional wager made by a player, in an amount equal to the amount of the player's original wager, after all cards for the round of play have been dealt but before the dealer exposes the hole card.

"Hand" means the five card stud hand formed for each player by combining the single card dealt to the player and the four cards dealt in front of the dealer.

"Hole card" means the card which has been dealt face down to the dealer.

"Push" means a tie, as defined in N.J.A.C. 19:47-17.10.

"Rank" or "ranking" means the relative position of a card or group of cards as set forth in N.J.A.C. 19:47-17.5.

"Round of play" or "round" means one complete cycle of play during all players then playing at the table have been dealt a hand, have wagered upon it, and have had their wagers paid off or collected in accordance with the rules of this subchapter.

"Suit" means one of the four categories of cards: diamond, spade, club or heart.

19:47-17.2 Cards; number of decks

(a) Except as provided in (b) below, double down stud shall be played with one deck of cards with backs of the same color and design, one additional solid yellow or green cutting card and one additional solid yellow or green cover card to be used in accordance with the procedures set forth in N.J.A.C. 19:47-17.4. The deck of cards used shall meet the requirements of N.J.A.C. 19:46-1.17.

(b) If an automated card shuffling device is used, a casino licensee shall be permitted to use a second deck of cards to play the game, provided that:

1. Each deck of cards complies with the requirements of (a) above;

2. The backs of the cards in the two decks are of a different color;

3. One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;

4. Both decks are continuously alternated in and out of play, with each deck being used for every other round of play; and

5. The cards from only one deck shall be placed in the discard rack at any given time.

19:47-17.3 Opening of the table for gaming

(a) After receiving a deck of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards, and the floorperson assigned to the table shall verify that inspection.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence.

(c) After the first player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with N.J.A.C. 19:47-17.4.

(d) If a casino licensee uses an automated card shuffling device to play the game and two decks of cards are received at the table pursuant to N.J.A.C. 19:46-1.18 and 19:47-17.2, each deck of cards shall be separately sorted, inspected, verified, spread, inspected, mixed, stacked and shuffled in accordance with the provisions of (a) through (c) above immediately prior to the commencement of play.

(e) All cards opened for use on the table and dealt from a manual dealing shoe shall be changed at least once every 24 hours. All cards opened for use on the table and dealt from the hand shall be changed at least once every eight hours. Procedures for compliance with this section must be submitted to the Commission for approval.

19:47-17.4 Shuffle and cut of the cards

(a) Immediately prior to the commencement of play and after each round of play has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack; provided, however, that nothing herein shall be deemed to prohibit the use of an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a manual dealing shoe.

(b) After the cards have been shuffled and stacked, the dealer shall:

1. If the cards were shuffled using an automated card shuffling device which inserts them directly into a dealing shoe, deal the cards in accordance with the procedures set forth in N.J.A.C. 19:47-17.8; or

2. If the cards were shuffled manually, or were shuffled using an automated card shuffling device which places the deck of cards in a single stack after the shuffle is completed, cut the cards in accordance with the procedures set forth in (c) through (e) below.

(c) If a cut of the cards is required, the dealer shall place the stack of cards on top of the cover card. Thereafter, the dealer shall offer the stack of cards to be cut, with the backs facing up and

the faces facing the layout, to the player determined pursuant to (d) below. If no player accepts the cut, the dealer shall cut the cards.

(d) The cut of the cards shall be offered to players in the following order:

1. The first player to the table, if the game is just beginning; or

2. The player at the farthest position to the right of the dealer; provided, however, that if there are two or more consecutive rounds of play, the offer to cut the cards shall rotate in a counterclockwise manner after the player to the far right of the dealer has been offered the cut.

(e) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take the cutting card and all the cards on top of the cutting card and place them on the bottom of the stack. Thereafter, the dealer shall remove the cover card and place it in the discard rack. The dealer shall then deal the cards in accordance with the procedures set forth in N.J.A.C. 19:47-17.8.

(f) Whenever there is no gaming activity at a double down stud table which is open for gaming, the cards shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-17.3 shall be completed.

19:47-17.5 Double down stud rankings

(a) The rank of the cards used in double down stud, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, 2. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or a "straight" formed with a two, three, four and five.

(b) The permissible poker hands at the game of double down stud, in order of highest to lowest rank, shall be:

1. "Royal flush" is a hand consisting of an ace, king, queen, jack and 10, all of the same suit;

2. "Straight flush" is a hand consisting of five cards of the same suit in consecutive ranking;

3. "Four-of-a-kind" is a hand consisting of four cards of the same rank, regardless of suit;

4. "Full house" is a hand consisting of a "three-of-a-kind" and a "pair";

5. "Flush" is a hand consisting of five cards of the same suit;

6. "Straight" is a hand consisting of five cards of consecutive rank, regardless of suit;

7. "Three-of-a-kind" is a hand containing three cards of the same rank regardless of suit;

8. "Two pairs" is a hand containing two "pairs"; and

9. "Pair" is a hand containing two cards of the same rank, regardless of suit, with two aces being the highest ranking pair and two twos being the lowest ranking pair.

19:47-17.6 Wagers

(a) All wagers at double down stud shall be made by placing gaming chips, plaques or coupons on the appropriate betting areas of the table layout. A verbal wager accompanied by cash shall not be accepted.

(b) All wagers shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedure in N.J.A.C. 19:47-17.8. Except as provided in N.J.A.C. 19:47-17.8(c) and (d) below, no wager shall be made, increased, or withdrawn after the dealer has announced "No more bets."

(c) A casino licensee may, in its discretion, permit a player to wager on no more than two betting areas at a double down stud table during a round of play, which areas must be adjacent to each other.

19:47-17.7 Supervision requirements; required training and license endorsements

(a) For purposes of complying with the organizational and supervision requirements of N.J.A.C. 19:45-1.11 and 1.12, the number of personnel required for each double down stud table shall be the same as that required for a blackjack table.

(b) For purposes of training and license endorsements, all casino personnel dealing and supervising the game of double down stud shall have such experience and obtain such training as the Commission shall require, pursuant to N.J.A.C. 19:44-8.3(b), and shall obtain all necessary license endorsements, pursuant to N.J.A.C. 19:41-9.16.

19:47-17.8 Procedure for dealing the cards

(a) All cards used in double down stud shall be dealt from a dealing shoe or dealt from the dealer's hand, in accordance with the following procedures:

1. If a casino licensee chooses to have the cards dealt from a manual dealing shoe, the dealing shoe shall meet the requirements of N.J.A.C. 19:46-1.19 and shall be located on the table to the left of the dealer. Once the procedures required by N.J.A.C. 19:47-17.4 have been completed, the deck shall be placed in the manual dealing shoe and the dealer shall announce "No more bets." Each card shall be removed from the dealing shoe with the dealer's left hand and placed on the appropriate area of the layout with the dealer's right hand.

2. If the casino licensee chooses to have the cards dealt by hand, the following requirements shall be observed:

i. Once the procedures required by N.J.A.C. 19:47-17.4 have been completed, the dealer shall place the deck of cards in either hand, and once the dealer has chosen the hand in which the cards will be held, the dealer shall use that hand whenever holding the cards during that round of play.

ii. The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.

iii. The dealer shall announce "No more bets" prior to dealing any cards. The dealer shall deal each card by holding the deck of cards in the chosen hand and using the other hand to remove the top card of the deck and place it on the appropriate area of the layout.

(b) The dealer shall deal the first card, face up, to the player farthest to the left of the dealer and then, moving clockwise around the table, deal each remaining player a card, face up. The dealer shall then deal one card face down and three cards face up to the designated area directly in front of the table inventory container. These last four cards, together with the single card previously dealt to each player, shall be used to form the five card stud poker hand of each player for that round of play.

(c) After all cards for the round of play have been dealt but before the dealer exposes the hole card, a player may place a double down wager in the designated betting area.

(d) After all double down wagers have been placed, the dealer shall again announce "No more bets," and shall then turn over and reveal the hole card.

(e) No player shall touch any of the cards during a round of play.

19:47-17.9 Procedure for completion of each round of play; collection and payment of wagers

(a) After the hole card is revealed, all losing wagers shall immediately be collected by the dealer and placed in the table inventory container. All losing hands shall then be immediately collected by the dealer and placed in the discard rack. A wager made by a player shall lose if the hand of the player has a poker hand rank which is lower than or equal to a pair of fives.

(b) If the wager made by a player is a push, the dealer shall not collect or pay the wager, but shall immediately collect the cards of that player after all losing wagers and hands have been collected. A wager made by a player shall be a push if the hand of the player has a poker hand rank equal to or higher than a pair of sixes but lower than a pair of jacks.

(c) After all losing wagers and pushes have been settled, all winning wagers shall be paid. All winning hands shall remain face up on the layout until all winning wagers have been paid by the dealer. Winning wagers shall be paid in accordance with the payout odds listed in N.J.A.C. 19:47-17.10. The dealer shall pay all winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. A wager by a player shall win if the hand of the player has a poker hand rank

equal to or higher than a pair of jacks. After paying all winning wagers, the dealer shall immediately collect the cards of all winning players and place them in the discard rack, together with the remaining cards in the deck used for that round of play.

19:47-17.10 Payout odds; payout limitation

(a) The payout odds for winning wagers at double down stud printed on any layout or in any brochure or other publication distributed by a casino licensee shall be stated through the use of the word "to" or "win," and no odds shall be stated through the use of the word "for."

(b) A casino licensee shall pay off winning wagers at no less than the odds listed below, subject to the payout limitation in (c) below:

Wager	**Payout Odds**
Royal Flush	**1,000 to 1**
Straight Flush	**100 to 1**
Four-of-a-Kind	**25 to 1**
Full House	**10 to 1**
Flush	**8 to 1**
Straight	**5 to 1**
Three-of-a-Kind	**3 to 1**
Two Pair	**2 to 1**
Pair of Jacks, Queens, Kings or Aces	**1 to 1**
Pairs of Sixes, Sevens, Eights, Nines or Tens	**Push**
Pair of Fives or less	**Lose**

(c) Notwithstanding the payout odds in (b) above, the payout limit for any hand shall be $100,000.

19:47-17.11 Irregularities

(a) If a hole card is exposed prior to the dealer announcing "No more bets" pursuant to N.J.A.C. 19:47-17.8(d), all hands shall be void.

(b) A card found face up in the shoe or the deck shall not be used in the game and shall be placed in the discard rack. If more than one card is found face up in the shoe or the deck, all hands shall be void and the cards shall be reshuffled.

(c) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe or the deck.

(d) If any player or the dealer is dealt an incorrect number of cards, all hands shall be void and the cards reshuffled.

(e) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with procedures approved by the Commission.

(f) Any automated card shuffling device shall be removed from a gaming table before any other method of shuffling may be utilized at that table.

LABOR

(a)

UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Temporary Disability Benefits

Reproposed Amendments: N.J.A.C. 12:18

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

Authority: N.J.S.A. 43:21-25 et seq.

Proposal Number: PRN 1994-189.

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

Friday, April 15, 1994
10:00 A.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

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

Submit written comments by April 20, 1994 to:

Linda Flores, Special Assistant
External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at 609-777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

On January 19, 1993, at 25 N.J.R. 262(a), the Department of Labor proposed readoption with amendments of N.J.A.C. 12:18, the rules governing the Temporary Disability Benefits Program; these rules were scheduled to expire on March 7, 1993 pursuant to Executive Order No. 66(1978). Comments received during the comment period which ended February 18, 1993 were submitted by the Department's Private Plan Hearing Officer, the Board of Review, the Office of Employment Security and Job Training and the Office of Unemployment Insurance and Disability Insurance Services and addressed only the proposed amendments to the rules, including a suggestion that the proposed amendments be distributed more broadly. In order to avoid a suspension in the governing rules while additional distribution efforts were made, as well as to provide the opportunity to consider fully comments which might be received, the former Commissioner of Labor, Raymond L. Bramucci, determined to bifurcate the originally proposed readoption from the proposed amendments. The former Commissioner adopted the rules effective March 5, 1993 (see 25 N.J.R. 1515(c)) but did not adopt the proposed amendments at that time. The proposed amendments were distributed more broadly to additional individuals and organizations and the comment period was extended to May 5, 1993 to accommodate the expanded distribution effort. No additional comments were received during the extended comment period.

On January 19, 1994, Acting Commissioner Peter J. Calderone determined, for technical reasons, not to adopt the proposed amendments before the proposal expiration date; however, he also determined to immediately repropose the amendments contained in the original proposal, with the exception of the amendments pertaining to the conduct of hearings at N.J.A.C. 12:18-2.43 (see 25 N.J.R. 262(a)), as well as any further amendments deemed necessary for the effective operation of the program. In addition, proposed amendments incorporating gender-neutral language, typographical and technical corrections, the elimination of verbiage and other technical clarifications have been included. The hearing rules will be reviewed with the Office of Administrative Law and could be the subject of a future proposal.

N.J.A.C. 12:18 sets forth the rules governing the administration of the Temporary Disability Benefits Program, including definitions, the procedure for the application for exemption, the service of papers and the standards governing the reimbursement of funds; the administration of Private Plan Disability Benefits; and the administration of State Plan Disability Benefits. A summary of the proposed amendments follows.

N.J.A.C. 12:18-1.1 sets out the meaning of words and terms used in the chapter. The proposed amendments include a requirement that a "claimant's authorized representative" submit medical documentation supporting the claim of incapacity and clarifies that the term "Commissioner" refers to the Commissioner of Labor.

N.J.A.C. 12:18-2 addresses the administration of Private Plan Disability Benefits. N.J.A.C. 12:18-2.1 through 2.4 describe the extent of coverage, benefits, proof of coverage and choice of doctors. One of the requirements for a person to be eligible for temporary disability benefits under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., is that the person be under the care of a legally licensed healthcare professional who, when requested by the Division, must certify, within the scope of the practitioner's practice, the disability of the claimant. Licensed podiatrists, practicing psychologists and optometrists were added by statute to the list of healthcare professionals who are permitted to certify a disability for purposes of the law, N.J.S.A. 43:21-39. Accordingly, N.J.A.C. 12:18-2.4, Choice of doctor, is being amended to include licensed podiatrists, practicing psychologists and optometrists; the section is also being amended to exclude the term "chiropodist" both because the term was eliminated from the statute and the requisite services are

provided by podiatrists or chiropractors. In addition, the word "licensed" is being added consistent with the statute, N.J.S.A. 43:21-39.

N.J.A.C. 12:18-2.13, which covers the approval by the Division of private plans, is being amended to expand the grounds upon which the Division may certify approval of private plans and to provide greater flexibility to the Division in determining the effective date of an approved plan consistent with the statutory authority found at N.J.S.A. 43:21-32. The current rule at N.J.A.C. 12:18-2.13(b) sets forth three grounds for determining whether the private plan approved by the Division may take effect prior to the next calendar quarter following submission of the plan. Since the grounds are not established pursuant to statutory prescription, the Division proposes a modification to the rule which will make it clear that the grounds set forth in the rule are not all-inclusive. This will allow the Division to set an earlier effective date based upon factors which raise similar concerns and considerations at those contained in the current rules, such as an out-of-State employer whose newly established operation in this State is covered by a private plan approved under the laws of the State where the employer is headquartered. The amendment also clarifies that in general the effective date of private plans that are approved by the Division relates back to the date of submission and not the date of approval.

The statute at N.J.S.A. 43:21-41(d), Requirements for entitlement, was amended to increase the requirements for entitlement to benefits for periods of disability beginning on or after October 1, 1984 to 20 base weeks or 12 times the Statewide average weekly wages. The Temporary Disability Benefits Law was also amended to modify the definition of "base week" with respect to periods of disability beginning on or after October 1, 1985 to mean any calendar week during which an individual earned remuneration equal to not less than 20 percent of the Statewide average weekly remuneration. N.J.A.C. 12:18-2.27(d)3 and 4 and (e)3 and 4 reflects these statutory amendments as they relate to minimum earnings eligibility requirements for Temporary Disability Benefits.

N.J.A.C. 12:18-2.43 through 2.48 provide the rules governing the conduct of hearings, the issuance of decisions and judicial review of same, the inspection of records and the issuance of subpoenas. The proposed amendments at N.J.A.C. 12:18-2.43 provide for non-attorney representation as required by N.J.S.A. 43:21-17 and 50; modifications corresponding to this change are also found at N.J.A.C. 12:18-2.42(b) and 2.45(b). N.J.A.C. 12:18-2.45(c) is further amended in the proposal by deleting reference to judicial review via a proceeding in lieu of prerogative writ. Because this proceeding is archaic, the proposed amendment at N.J.A.C. 12:18-2.45(d) directs that appeals be filed in accordance with the Rules of Court. In addition, N.J.A.C. 12:18-2.48 has been modified to increase the reimbursement rate of mileage from $0.10 to $0.25 per mile which will be paid to witnesses testifying at private plan hearings. This increased rate reflects the present mileage reimbursement rate allowed by the State of New Jersey.

N.J.A.C. 12:18-3 describes the administration of the State Plan Disability Benefits Program, including coverage, notice and proof of disability, claims filing, reduction of benefits, concurrent coverage, notice and appeals. The proposed amendment at N.J.A.C. 12:18-3.1(g), provides for impartial examinations by licensed healthcare professionals, to include licensed podiatrists, practicing psychologists, public health nurses and optometrists consistent with statutory amendments. In addition, the proposed amendment at N.J.A.C. 12:18-3.1(g) reflects the Division's practice over the last few years of paying $75.00 for physical examinations rather than the $25.00 fee which is presently provided for in the rule. The amendment also allows fees to be increased or decreased in the future upon evaluation by the Commissioner based on cost effectiveness and the available pool of examiners.

The proposed amendment at N.J.A.C. 12:18-3.2(b) eliminates reference to numbered forms since these references are no longer used by the Division in its current operations.

Finally, the proposed amendments include gender-neutral language, typographical corrections, technical changes and the elimination of verbiage throughout the rules as appropriate.

Social Impact

N.J.A.C. 12:18 describes the Temporary Disability Benefits Program which provides for financial assistance to individuals who are not working due to illness and/or accidental injuries which are non-work related. This program has a significant and positive social impact as it provides security for individuals who are unemployed during periods of illness.

N.J.A.C. 12:18-1.1 and N.J.A.C. 12:18-2.4 are amended to reflect amendments to the statute. Accordingly, licensed podiatrists, practicing psychologists and optometrists were added to the list of healthcare professionals who are permitted to certify a disability for the purposes of the Temporary Disability Benefit Law. The additions benefit claimants by expanding the pool of healthcare professionals available to them under the statute.

The proposed amendments to N.J.A.C. 12:18-2.13 regarding the effective dates of private plans approved by the Division have a positive social impact because they give the Division more flexibility in granting certificates of approval effective as of the earliest possible date, thereby affording employers a greater opportunity to provide to their employees private plan disability coverage which may be more liberal than that available under the State Plan. Expanding the conditions under which approval of private plans may be certified also mitigates against the administrative delays inherent in the private plan certification process.

N.J.A.C. 12:18-2.27 was changed to reflect a statutory amendment which specifies the earnings requirements for benefit entitlement and indexes the earnings requirements, expressed as a percentage of the Statewide average weekly wage. An alternative earnings test (previously $2,200 in covered wages) is also indexed as 12 times the Statewide average weekly wage. This has a positive effect in that annual amendments are not necessary to reflect increases in the Statewide average weekly wage.

N.J.A.C. 12:18-2.43 reflects an amendment to the statute which broadens the scope of individuals who are permitted to represent parties at hearings before the Division. The amendment now permits non-attorneys to represent claimants and employers at such hearings, thereby providing greater flexibility to the claimants when making the determination to seek representation.

N.J.A.C. 12:18-2.48, which increases the mileage rate for reimbursement of travel expenses incurred by witnesses testifying at private plan hearings, was amended for uniformity and conformity with the rate presently paid by the State for mileage in other programs administered by the Department such as its vocational rehabilitation and social security programs.

N.J.A.C. 12:18-3.2(g) sets forth the fee which the Division has been paying for impartial examinations performed by licensed healthcare professionals. The fee was increased by the Division from $25.00 to $75.00 to provide for a more fair and equitable payment for services rendered by these professionals. The proposed amendment provides that such fees may be increased or decreased in the future on evaluation by the Commissioner. This change will benefit claimants since it will expand the pool of licensed healthcare professionals willing to perform the requisite examination. In addition, the increased fee more closely tracks the fee for examinations allowed in other programs administered by the State, such as vocational rehabilitation, social security, etc., thereby assures uniformity and consistency in Departmental policy.

Economic Impact

The proposed amendments are expected to have a positive effect on employees since they strengthen the program that provides financial assistance during times of economic hardship due to temporary disability. Employers are required to pay temporary disability contributions for their employees to receive these benefits, and to keep employee records and provide certain employee information to the Department and claimants concerning disability benefit claims. Employees are also required to make contributions.

The proposed amendments to N.J.A.C. 12:18-2.13 regarding the approval of private plans and their effective dates are expected to have a positive economic impact on employers in that earlier effective dates would reduce the expense associated with administrative delays inherent in the certification process. The time for the application may be lengthy resulting in the employer's providing for its employees duirng a period when it would also have to remit contributions for temporary disability benefits coverage under the State Plan. The proposed amendment expanding the grounds for granting a retroactive effective date will also have a similar positive economic impact on employers making such applications. The current rule restricts the grounds for such retroactive effective dates for certification to those arising from a labor-management agreement, a newly formed subsidiary of an employer covered by a private plan and an employer's acquisition of a business with an existing private plan. It is expected that by expanding the grounds upon which retroactive approval may be granted, many more employers may benefit economically from retroactive certifications.

The proposed amendment to N.J.A.C. 12:18-2.27 mirrors the statutory amendment which specifies the earnings requirements for benefit entitlement. To be entitled to benefits, a claimant must have 20 base weeks in which he or she earned 20 percent of the Statewide average weekly wage or, in the alternative, must earn 12 times the Statewide average weekly wage. The rule relates to N.J.A.C. 12:15 which is amended annually to set forth changes in the earnings requirements. These proposed amendments benefit the Department's administration of the program because they dispense with the need for annual amendments to the rules. The proposed amendments have no economic impact on claimants or employers.

The amendment to N.J.A.C. 12:18-2.43 permitting non-attorneys to represent parties at hearings will have a positive economic impact on the public since individuals are granted more flexibility in choosing professional services, thereby potentially resulting in economic savings.

The amendment to N.J.A.C. 12:18-2.48 increasing the mileage reimbursement rate for witnesses testifying at private plan hearings will have a *de minimus* economic impact on the trust fund since the number of hearings being conducted is negligible. Accordingly, no increases in the contribution rate are envisioned.

The amendment to N.J.A.C. 12:18-3.2(g) which reflects the increase in the fee for impartial examinations from $25.00 to $75.00 does not have any economic impact on the claimant or employer since this fee is paid out of administrative funds. Moreover, based upon the Division's experience, the number of these examinations has been negligible, therefore, no economic impact to the trust fund has been experienced and none is projected for the future. In addition, the increased fee is expected to result in a reduction in out-of-pocket expenses incurred for impartial medical examinations.

Regulatory Flexibility Analysis

The proposed amendments impose reporting and recordkeeping requirements on licensed podiatrists, psychologists, public health nurses and optometrists, many of whom may be small businesses as that term is defined in the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq. By being added to the list of healthcare professionals who may perform impartial examinations under the Temporary Disability Program, these small businesses will have to comply with the reporting requirements imposed on all healthcare professionals participating in the Temporary Disability Benefits Program. These requirements, which are not burdensome, are necessary for the proper and effective administration of the program. Moreover, no additional costs or professional services will be needed to comply. Because the participation of healthcare professionals is voluntary and is beneficial to the claimants, and due to the minimal nature of the compliance requirement, no differentiation in the compliance requirements based on business size is proposed.

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

12:18-1.1 Definitions

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

...

"Claimant" means an individual who has filed a claim for disability benefits or who has notified the Division or the employer, nominee, designee, trustee, union, association of employees, insurer or organization paying benefits under a private plan that he **or she** expects to file such a claim.

"Claimant's authorized representative" means an individual who represents or acts in behalf of a claimant who is incapable of fulfilling the requirements of filing claims for disability benefits, and who is so authorized by a power of attorney or other authorization satisfactory to the Division. Such authorized representative must file with the Division, on a form prescribed by the Director, a duly sworn affidavit that the claimant[, according to information received from the claimant's physician, dentist, chiropodist or chiropractor,] is incapable of making a claim for disability benefits and that he **or she** assumes the responsibility of acting in behalf of such claimant in accordance with the Act and this Chapter. **Such filing must be supported by medical documentation of incapacity.**

"Commissioner" means the Commissioner of Labor.

"Director" means the Director of the Division of [Employment Security] **Unemployment and Temporary Disability Insurance** in the Department of Labor [and Industry].

...

"Employee" means a covered individual as defined in N.J.S.A. 43:21-27(b). With respect to any one employer the term shall mean such a covered individual who is in employment, as defined by the Unemployment Compensation Law and Regulations promulgated thereunder, for which he **or she** is entitled to remuneration from such employer or who has been out of such employment for less than two weeks and has not become employed by another employer, during such period.

...

12:18-2.2 Benefits

(a) An employee shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he **or she** is covered under a private plan.

(b) An employee shall not be paid any benefits for disability during unemployment (N.J.S.A. 43:21-3, 4) for any period of disability commencing while he **or she** is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

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

(e) If an employee is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he **or she** may be entitled under the State plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant, for a subsequent period of disability. If an employee is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he **or she** may be entitled under a private plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant for a subsequent period of disability.

(f) If the benefits claimed by an employee or his **or her** authorized representative under a private plan are denied, such denial shall be by a written notice to the employee or his **or her** authorized representative, giving the reason therefor and stating the employee's rights to a hearing in accordance with the Act. Upon the issuance of such notice, the Division shall be immediately furnished with a copy of the claim and the notice of denial, or facsimiles thereof.

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

12:18-2.4 Choice of doctor

An employee covered under a private plan shall have the right to choose his **or her** own attending **licensed** physician, dentist, [chiropodist or] chiropractor, **podiatrist, practicing psychologist or optometrist**, but he **or she** may be required to submit, not more often than once a week, to an examination by a **licensed** physician, dentist, [chiropodist or] chiropractor, **podiatrist, practicing psychologist or optometrist** designated by the employer, insurer or organization paying benefits.

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)-(c) (No change.)

12:18-2.8 Application for approval

(a) An employer desiring to establish a private plan for the payment of benefits to employees, shall file an application on a form and in a manner prescribed by the Director. In requesting the form, the employer shall inform the Division whether the benefits will be provided by a contract of insurance, or by an agreement between the employer and a union or association representing [his] **the** employees or by the employer as a self-insurer.

(b) If two or more employers desire to have their private plans insured by a single policy of insurance, either by mutual agreement or by agreement as set forth in subsection (a) of this Section, each shall file an application for approval on a form and in a manner prescribed by the Director, designating a nominee, designee, trustee or one of them as [his] **the** duly authorized agent for the purposes of this Act.

12:18-2.9 Minimum plan requirements

(a) Each private plan, in order to secure Division approval, shall provide to the employees covered thereby rights equal at least to those set forth in N.J.S.A. 43:21-37 to 43:21-42 inclusive, by assuring that:

1. (No change.)

2. The private plan does not impose restrictions on, or provide [exclusive] **exclusion** from eligibility for benefits in respect to any employee covered thereunder, in such manner as to deny benefits which would be payable to the employee under the State plan, but for his **or her** inclusion in the private plan.

3. Except as provided for in N.J.A.C. 12:18-2.10 (Concurrent coverage) of this chapter, the benefits payable to each employee covered thereunder shall be at least equal, in both weekly amount and duration, to [whose] **those** which would be payable to the employee under the State plan, but for his **or her** inclusion in the private plan.

12:18-2.10 Concurrent coverage

(a) (No change.)

(b) For the purposes of this section with respect to periods of disability commencing on or after January 1, 1953, a covered individual is deemed to be in "concurrent employment" if he **or she** is in employment with two or more employers during some part of the last calendar day he **or she** was in employment preceding the commencement of a period of disability. The term "concurrent employers" is deemed to mean the covered employers with whom such individual was in employment on such last day of employment.

(c) If an employee is in concurrent employment with two or more employers of whom only one has a private plan, under which such employee is covered, then the employee shall be eligible to receive, under such private plan, benefits not less than he **or she** would be eligible to receive if covered only under the State plan with respect to all employment, and no benefits shall be payable under the State plan for disability commencing while he **or she** is covered under such private plan.

(d) If an employee is in concurrent employment with two or more employers having private plans, under which such employee is covered, each such private plan shall pay not less than the full amount the employee would be eligible to receive if covered under the State plan, except that any such private plan may take into account coverage under other private plans on the following basis: the benefits payable under such private plans to such employee may be apportioned among the plans in the same proportion that such employee earned wages from such concurrent employers during the eight calendar weeks immediately prior to the commencement of his **or her** disability but in no event shall the employee receive less than the benefits to which he **or she** would be entitled under the most favorable plan, both as to weekly amount and duration.

12:18-2.11 Employee consent

If employees are required to contribute to the cost of a private plan, the employer shall submit, in writing, to [his] **the** employees a brief summary of the provisions of the plan, including the weekly benefit rate, the maximum amount and duration of benefits and the contributions required from the employees with respect to the benefits to be provided thereby. A majority of the employees to be covered must agree by written election (by ballot or otherwise) to the establishment of the plan which shall include the worker's contribution required. Evidence of their consent shall be shown on the application for approval.

12:18-2.13 Certificate of Approval; effective date

(a) (No change.)

(b) [The private plan shall take effect on the first day of the calendar quarter next following approval date. If the employer requests that the plan or transfer be effective prior to that calendar quarter, the Division may grant approval only if it finds that the plan:] **Each such private plan shall be submitted in detail to the Division of Unemployment and Temporary Disability Insurance and shall be approved by the Division to take effect as of the first day of the calendar quarter next following the submission date, or as of an earlier date if requested by the employer and approved by the Division. Grounds for approval of an earlier effective date include, but are not limited to, whether the plan:**

1.-3. (No change.)

12:18-2.14 Withdrawal of certificate of approval

(a) A certificate may be withdrawn or revoked upon notice and opportunity for hearing if the Division finds:

1.-5. (No change.)

6. That the employer, his **or her** duly authorized agent, the union or association representing the employees or any person acting in behalf of any of the foregoing are deriving a profit in instituting or administering the plan; or

7.-8. (No change.)

(b) A certificate of approval may be withdrawn or revoked effective as of the date of the occurrence of the condition, violation, event or omission forming the basis for such withdrawal or revocation, or at any subsequent date which in the judgment of the Director or his **or her** authorized representative, shall be necessary for the protection of the benefit rights of the employees [theretofor] covered by the plan. The Division shall give the employer, the insurer or organization paying benefits, and all interested parties notice of revocation or withdrawal of the certificate of approval and an opportunity for a hearing.

12:18-2.25 Security exemption

(a) Exemption from the requirement of [Section] N.J.A.C. 12:18-2.24 [(], Security required[)], [of this Chapter] shall be granted to any employer who:

1. Is exempt from insuring [his workmen's] **the employer's workers'** compensation liability, as provided by law; or

2. Satisfies the Division as to [his] **the employer's** financial responsibility to pay the benefits provided by [his] **the employer's** plan by furnishing a complete, current financial statement and such other proof as may be acceptable to the Division. An annual review of the financial responsibility will be made.

12:18-2.26 Disposition of security upon termination

(a) The security provided for in this [Subchapter] **subchapter** should be applied by the Division to the payment of any unpaid obligations under the private plan. Upon termination of a private plan, which does not provide for the assumption by an admitted insurer of the liability to pay benefits, or upon withdrawal of approval of such private plan, the Division shall retain the security [theretofor] deposited, for the purpose of securing the payment of the obligations of the private plan. Upon the expiration of all benefit claims outstanding after the lapse of five complete calendar quarters following the effective date of termination or withdrawal of approval, the Division shall make a final assessment of the charges against the employer as provided in the Act and these regulations.

(b) If the amount of such assessment is not paid within 30 days after the date of notice thereof, the Division may collect the amount of the assessment out of the security on deposit [with it], or may call upon the surety insurer for payment. Any security thereafter remaining shall be returned to the employer or [his] **the employer's** legal representative or [his] assignee, or the surety insurer paying the amount of such assessment shall [thereupon] be discharged of its obligation under the bond.

(c) (No change.)

12:18-2.27 Exchange of information

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

(c) When requesting such information, such payer shall furnish the Division with the following information:

1.-2. (No change.)

3. The names and addresses of such other employers, from whom the employee alleges to have earned wages immediately preceding his **or her** disability, as may be necessary to determine all wages earned in the required eight base weeks;

4. (No change.)

(d) If the private plan of an employer provides as a condition of eligibility for benefits with respect to a period of disability commencing on or after January 1, 1953, that an otherwise eligible employee shall have established at least [17] **20** or a lesser number of base weeks within the 52 calendar weeks preceding the week in which his **or her** period of disability commenced and the employee has not established such base weeks from his **or her** employment with the employer, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the number of base weeks in the employee's base year. When requesting such information, such payer shall furnish the Division with the following information:

1.-2. (No change.)

3. The names and addresses of such other employers, from whom the employee alleges to have earned weekly wages of not less than [$15.00] **20 percent of the Statewide average weekly wage** immediately preceding his **or her** disability, as may be necessary to determine the required number of base weeks;

4. The number of calendar weeks in the 52 calendar weeks immediately preceding the calendar week in which the period of disability commenced, during which the employee earned not less than [$15.00] **20 percent of the Statewide average weekly wage** from the employer.

(e) If the private plan of an employer provides, with respect to periods of disability commencing before January 1, 1968, that the maximum total benefits payable to any eligible employee in any 12-month period may be computed as an amount equal to ¾ of the employee's base weeks occurring in the 52 consecutive calendar weeks immediately preceding the calendar week in which the period of disability commenced multiplied by the employee's weekly benefit amount and it appears that such provision will be applicable with respect to any period of disability because the employee has not established a sufficient number of base weeks from his **or her** employment with the employer to provide total benefits at least equal to 26 times his **or her** weekly benefit amount, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the number of base weeks in the employee's base year. When requesting such information, such payer shall furnish the Division with the following information:

1.-2. (No change.)

3. The names and addresses of such other employers, from whom the employee alleges to have earned weekly wages of not less than [$15.00] **20 percent of the Statewide average weekly wage** immediately preceding his **or her** disability, as may be necessary to determine the required number of base weeks;

4. The number of calendar weeks in the 52 consecutive calendar weeks immediately preceding the calendar week in which the period of disability commenced, during which the employee earned not less than [$15.00] **20 percent of the Statewide average weekly wage** from the employer.

(f) If the private plan of an employer provides, with respect to periods of disability commencing on or after January 1, 1968, that the maximum total benefits payable to any eligible employee may be computed as an amount equal to 26 times the weekly benefit rate or ⅓ of his **or her** wages in his **or her** base year whichever is lesser, and it appears that such provision will be applicable with respect to any period of disability because wages earned with prior employers in the base year are lacking, then the insurer shall request the Division to provide a statement of the total wages in the employee's base year. When requesting such information, such insurer shall furnish the Division with the following information:

1.-4. (No change.)

12:18-2.28 Notice from employers

Within seven days after the mailing of a request for information with respect to a period of disability commencing on or after January 1, 1953, each employer having a private plan shall furnish the Division with any information requested or known to [him] **the employer** which may bear upon the eligibility of the claimant.

12:18-2.29 Reports by self-insurers

(a) On or before the 30th day following the close of each calendar quarter during which a self-insured private plan is in effect, each employer shall, on a form prescribed by the Division, file a statement showing:

1.-3. (No change.)

4. Such other information as the Division may require with respect to the financial ability of the self-insurer to meet [his] **the self-insured's** obligations under the plan.

(b) (No change.)

12:18-2.40 Time of filing

Any complaint shall be deemed filed on the day it is delivered to the office of the Disability Insurance Service, Labor [and Industry] Building, **CN 957,** John Fitch Plaza, Trenton, New Jersey 08625-**0957**, or if mailed, the complaint shall be deemed filed on the postmarked date appearing on the envelope in which the complaint is mailed; provided, postage is prepaid and the envelope is properly addressed.

12:18-2.42 Notice of formal hearing

(a) (No change.)

(b) Written notices of the time and place of any hearing shall be given to the claimant[,] **and** employer, **or their authorized representatives,** 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) (No change.)

(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.

12:18-2.43 Conduct of hearings

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

(d) [Any individual may appear for himself or any party may be represented by an attorney at law of the State of New Jersey. Appearances for and on behalf of any party other than the Division at formal hearings on any proceeding subject to judicial review shall be limited to an attorney at law of the State of New Jersey.] **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.**

(e) Any individual who is a party, or any 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.

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

(h) The hearing officer may take additional evidence if he **or she** deems it necessary, provided the parties shall be given proper notice of the time and place of hearing.

(i) (No change.)

12:18-2.45 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and [an order in writing, signed by him,] **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 [order] **decision** shall set forth a statement of the facts involved, the reasons [for the order] 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 [therewith] **with the order** [unless any party feeling aggrieved by the action of the hearing officer applies for judicial review through a proceeding in lieu of prerogative writ].

(d) Any appeal of the order shall be in accordance with the Rules of Court.

12:18-2.46 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 typographical errors.

12:18-2.47 Inspection of records

(a) Orders for the production or inspection of the 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) (No change.)

12:18-2.48 Issuance of subpoenas

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

(c) 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 [$0.10] **$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 the hearing officer before whom the individual appeared as a witness.

(d) 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 [$0.10] **$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 the hearing officer before whom the individual appeared as a witness.

12:18-3.1 Extent of coverage

(a) A claimant shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he **or she** is covered under a private plan.

(b) A claimant shall not be paid any benefits under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 for any period of disability commencing while he **or she** is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) An individual who is covered by a private plan or is separated from his **or her** employment for a period of two weeks or more immediately prior to disability shall not be entitled to any benefits under the State plan.

(d) (No change.)

(e) If a claimant is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he **or she** may be entitled for a subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21-3, 4). If a claimant is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he **or she** may be entitled for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21-3, 4).

(f) If a claimant shall refuse to submit to a physical examination by a **licensed** physician, dentist, podiatrist, [or] chiropractor, **practicing psychologist, public health nurse or optometrist** designated by the Commissioner of Labor [and Industry] or his **or her** designee, the claimant shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid.

(g) If a physical examination of a claimant is required, the Commissioner of Labor [and Industry] or his **or her** designee shall authorize such examination to be made by a [legally-] licensed physician, dentist, podiatrist, [or] chiropractor, **practicing psychologist, public health nurse or optometrist**. Upon submission of a written report of the examination to the Department of Labor [and Industry], a fee not exceeding [$25.00] **$75.00** for each such examination shall be paid to the examining physician, dentist, podiatrist [or], chiropractor, **practicing psychologist, public health nurse or optometrist**, which fee shall be charged to the administration account. **Upon recommendation of the Director and upon a finding that an increase or decrease in this fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the fee on a Statewide or county basis for one or more of these groups of examiners.** In cases requiring the services of a specialist [or a diplomate], or in cases requiring clinical tests supporting a diagnosis, the Commissioner [of Labor and Industry] or his **or her** designee shall, in his **or her** discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

12:18-3.2 Notice and proof of disability

(a) A written notice of disability on which claim for benefits under the State plan is based, shall, within 30 days after the commencement of the period of disability, be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state claimant's full name, address and social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) accompanied by the certification of the attending **licensed** physician, dentist [or chiropodist], **podiatrist, chiropractor, practicing psychologist or optometrist** as required hereinafter, shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the State plan is based shall be furnished by any claimant who expects to be or has been totally unable to perform the duties of his **or her** employment for a period of eight or more consecutive days and is under the care of a [legally] licensed physician, dentist, [or chiropodist] **podiatrist, chiropractor, practicing psychologist or optometrist**. A claimant's authorized representative may furnish the proof of disability and file a claim for benefits on behalf of the claimant. The proof and claim accompanied by a certification of the attending **licensed** physician, dentist, [or chiropodist] **podiatrist, chiropractor, practicing psychologist, or optometrist,** shall be furnished to the Division, on Form DS-1 (Proof and Claim for Disability Benefits) not later than 30 days after the commencement of the period of disability for which benefits are claimed. **A** "Supplemental Proof and Claim for Disability Benefits" [(Form DS-7B)] **form** shall be filed as proof of continued disability, when requested by the Division.

(c) (No change.)

12:18-3.3 Filing of claims for benefits

(a) (No change.)

(b) Disability benefits shall be payable to any claimant while outside of this State, provided he **or she** complies with the Act and this Subchapter. In such case, the attending physician, dentist, [or chiropodist] **chiropractor, podiatrist, practicing psychologist or optometrist** shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

12:18-3.4 Reduction of benefits

(a) The amount of benefits otherwise payable to a claimant under the State plan for any week of disability, or part thereof, shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his **or her** most recent employing unit contributed on his **or her** behalf. If such latter benefits are being paid on a monthly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/30 of such monthly amount, multiplied by seven, and the amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate. If **such** latter benefits are being paid on a weekly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/7 of the weekly amount multiplied by the number of days of disability during that week and that amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate.

(b) (No change.)

12:18-3.5 Concurrent coverage

(a) For the purposes of this [Subchapter] **subchapter** with respect to periods of disability commencing on or after January 1, 1953, a covered individual is deemed to be in "concurrent employment" if he **or she** is in employment with two or more employers during some part of the last calendar day he **or she** was in employment preceding the commencement of a period of disability. The term "concurrent employers" is deemed to mean the covered employers with whom such individual was in employment on such last day of employment.

(b) With respect to a covered individual in concurrent employment, his **or her** concurrent employers contributing to the State Disability Benefits Fund on his **or her** behalf shall be deemed to be his **or her** "most recent covered employer" for the purpose of computing his **or her** average weekly wage as defined in Section 3 of the Temporary Disability Benefits Law (N.J.S.A. 43:21-27). Such employees shall be entitled to receive benefits under the State plan computed on the basis of his **or her** total wages earned from all such employers during the base weeks in the eight calendar weeks immediately preceding the calendar week in which disability commenced.

(c) The benefits paid for any period of disability under the State plan to a covered individual who is in concurrent employment shall be charged to the accounts of such individual's concurrent employers in the same proportion that such individual earned wages from such concurrent employers during the base weeks in the 52 calendar weeks immediately preceding the commencement of his **or her** disability.

12:18-3.6 Notice to claimant and employer

(a) A claimant shall be given written notice of any decision on his **or her** claim and of the reason for any denial of his **or her** claim.

(b) If the "Employer's Statement" on Form DS-1 has not been completed by an employer or his **or her** representative, [Form DS-6 (Notice of Disability Benefit Claim Filed and a Request For Information)] **a request for information** shall be mailed or delivered to the employer or employers by whom the claimant was employed at the commencement of the disability or by whom he **or she** was last employed if out of employment less than two weeks.

(c) A copy of the decision of eligibility of the claimant stating his **or her** weekly benefit rate and the probable duration for which benefits will be paid, shall be mailed or delivered to the employer or employers by whom such claimant was employed at the commencement of the disability or by whom he **or she** was last employed if out of employment less than two weeks. A notice of each payment of benefits shall be given to such employer or employers.

12:18-3.7 Notice required from employers

(a) Within seven days after the mailing of a request for information with respect to a period of disability commencing on or after January 1, 1953, an employer shall furnish the Division with any information requested or known to him **or her** which may bear upon the eligibility of the claimant.

(b) If any employer or employing unit fails to respond to the request for information within seven days after the mailing of such request, the Chief of State Plan Disability Benefits shall rely entirely on information from other sources, including an affidavit to the best of the knowledge and belief of the claimant with respect to his **or her** wages and time worked. Except in the event of fraud, if it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant.

(c) The employer, within two working days after receipt of the decision of eligibility [(Form DS-8)], shall furnish the Division with any information known to him **or her** bearing upon the eligibility of the claimant or duration of payments to be made.

(d) If after receipt of a decision of eligibility [(Form DS-8)] an employer acquires information which may render the claimant ineligible for benefits or reduce the rate or amount of benefits, such employer shall immediately forward the information to the Division.

(e) Whenever a decision of eligibility with respect to a period of disability commencing after December 31, 1952 is based upon information other than that supplied by an employer because such employer failed to respond to a request for information, such decision of eligibility and any subsequent determination thereunder shall be incontestable by the non-complying employer, as to any charges to his **or her** employer's account under N.J.S.A. 43:21-7(e) because of benefits paid prior to the close of the calendar week following the receipt of his **or her** reply. Such decision of eligibility shall be altered if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks or parts thereof occurring subsequent to the close of the calendar week following the receipt of the employer's reply shall be paid in accordance with such altered decision of eligibility.

12:18-3.8 Filing of appeals by claimants or employers

Unless the claimant or the employer, within seven calendar days after the delivery of a decision or notification thereof, or within ten calendar days after such notification was mailed to his **or her** last-known address, files an appeal from such decision, it shall be final and benefits shall be paid or denied in accordance therewith, except for such decisions or determinations as may be altered as provided in Section 3.7 (Notice required from employers) of this Chapter.

12:18-3.9 Rules on appeal

The rules of the Board of Review shall govern appeals in disability benefit cases under the State plan. **See appeal rules at N.J.A.C. 12:20-4.**

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF WATER QUALITY

New Jersey Pollutant Discharge Elimination System

Proposed Readoption: N.J.A.C. 7:14A

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

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 58:4A-4.1 et seq., 58:4A-5 et seq., 58:12A-1 et seq., 4:24-39 et seq., 13:1D-1 et seq. and 13:1E-1 et seq.

DEPE Docket Number: 15-94-02/167.

Proposal Number: PRN 1994-184.

Submit written comments, identified by the Docket Number given above, by April 20, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) administers the New Jersey Pollutant Discharge Elimination System (NJPDES), N.J.A.C. 7:14A, which controls the discharge of pollutants into the surface and ground waters of the State pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. N.J.A.C. 7:14A establishes a permitting program for various types of discharges including surface water discharges, sanitary landfills, indirect discharges to public and private wastewater treatment plants, industrial waste management facilities, land application of residuals, and ground water discharges, including underground injection wells, surface impoundments, infiltration percolation lagoons, land application of effluents by overland flow, and land application of effluents by spray irrigation. This chapter also governs the Department's approval of the construction and operation of domestic and industrial treatment works, including sewage collection systems, and treatment plants.

In accordance with the requirements of Executive Order 66(1978), N.J.A.C. 7:14A expires on June 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 many problems within the existing rules and has determined that substantial amendments to N.J.A.C. 7:14A are necessary. Therefore, the Department has initiated a process of substantially restructuring the NJPDES rules. On February 1, 1993, the Department issued a Notice of Opportunity for Interested Party Review in the New Jersey Register in order to solicit comments on various options to restructure the NJPDES program (see 25 N.J.R. 411(a)). The major component of the proposed restructuring of the NJPDES program is the use of a watershed approach to water resource management, including permitting. The Department held two public Round Tables and received extensive oral and written comments on the Interested Party Review document. Based on this input, the Department is presently writing a proposal which will repeal the existing NJPDES chapter and replace it with an entirely new chapter. The Department anticipates that these changes will be proposed in June 1994.

The Department proposed amendments and new rules governing Treatment Works Approvals, Sewer Bans, and Sewer Ban Exemptions on August 2, 1993 (see 25 N.J.R. 3282(a)). Subchapter 12 in the current NJPDES rule was proposed for repeal, and the new provisions proposed as new rules at N.J.A.C. 7:14A-22 and 23. Formal public hearings on the proposal were held on September 10, 1993, and September 23, 1993. The proposed changes included a reduction in the scope of projects which would require a Treatment Works Approval, elimination of duplicative review of TWA applications, updating the technical design standards to reflect current technology, reduction of the types of violations which could trigger imposition of a sewer ban, and an increase in the scope of projects that could qualify for a sewer ban exemption. These proposed changes will result in greater efficiency in those permit programs where a Treatment Works Approval is a prerequisite for issuance of a NJPDES permit. The comments received on this proposal were generally favorable and the Department expects to adopt most of the proposed changes in April 1994.

Due to the scope of the proposed changes which were released for public comment in the Interested Party Review on February 1, 1993, which are currently being considered by the Department for formal proposal, and the extent of public comments that are anticipated on that proposal, the Department will not be able to revise the chapter before it expires. Therefore, to extend the June 2, 1994 expiration of N.J.A.C. 7:14A 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. 7:14A to the proposal expected to be issued in June 1994, which will propose to repeal the existing rules and repropose the chapter in substantially revised form as new rules. Persons interested in receiving notice of preliminary informal meetings concerning the proposed changes, or who would like to request such meetings, should contact Narinder Ahuja at (609) 292-4543.

The following is a summary of each subchapter in N.J.A.C. 7:14A:

Subchapter 1. General Information: N.J.A.C. 7:14A-1 sets forth the general policy considerations in the NJPDES program, including the purpose and scope of N.J.A.C. 7:14A. This subchapter also includes the fee schedule for applicants and NJPDES permittees and the definitions section.

Subchapter 2. General Requirements for the NJPDES Permit: N.J.A.C. 7:14A-2 sets forth the procedures required to apply for a NJPDES permit, the general conditions and requirements which are applicable to all permits, and the process of modifying, suspending, or revoking permits. The subchapter specifies the limited conditions under which an emergency permit may be issued and the conditions under which a compliance schedule may be specified in the permit.

Subchapter 3. Additional Requirements Applicable to Discharges to Surface Water (DSW): N.J.A.C. 7:14A-3 includes the permitting requirements, conditions, and limitations for discharges to surface water. The subchapter specifies the methodologies to be used for calculating effluent limitations. The subchapter includes specific requirements for particular discharges such as animal feeding operations, aquaculture, silvaculture, and separate storm sewers. Appendices to the subchapter include general permits for the discharge of stormwater related to industrial and construction activities.

Subchapter 4. Additional Requirements for an Industrial Waste Management Facility: N.J.A.C. 7:14A-4 sets forth the specific permitting requirements for industrial waste management facilities (IWMFs) and the issuance of permits-by-rule for these facilities.

Subchapter 5. Additional Requirements for Underground Injection Control Program (UIC): N.J.A.C. 7:14A-5 includes the policy provisions, classification system, application procedures, permit conditions and criteria applicable to underground injection wells.

Subchapter 6. Additional Requirements for Discharges to Ground Water (DGW): N.J.A.C. 7:14A-6 establishes permitting requirements for ground water dischargers. The requirements include monitoring, sampling, criteria, and recordkeeping for ground water discharges. The subchapter includes requirements related to the design and installation of monitoring wells for discharges to ground water.

Subchapter 7. Procedures for Decision-Making: N.J.A.C. 7:14A-7 sets forth the procedures used by the Department to issue, modify, revoke, reissue, or terminate NJPDES permits.

Subchapter 8. Public Comment and Notice Procedures: N.J.A.C. 7:14A-8 includes the procedures to be followed by the Department for public notice, public hearings, and adjudicatory hearings when permits are issued, modified, denied or contested. The subchapter includes the procedures and restrictions on the issuance of stays of permit limitations or conditions when a permit is contested.

Subchapter 9. Specific Procedures Applicable to Discharges to Surfacewater (DSW): N.J.A.C. 7:14A-9 sets forth the procedures used to grant variances, including Section 316(a) thermal variances, for surface water discharges.

Subchapter 10. Filing Requirements for NJPDES Permits: N.J.A.C. 7:14A-10 sets forth specific requirements to submit data and specific plans regarding a discharge to surface water, treatment plants, land application sites or ground water. The subchapter includes the specific requirements for a Discharge Allocation Certificate for a discharge to surface water, including the specific items required for the Environmental Assessment.

Subchapter 11. Public Access to Information and Requirements for Department Determination of Confidentiality: N.J.A.C. 7:14A-11 sets forth the procedures to be followed to assert a claim for confidentiality and the Department's procedure for determining a claim for confidentiality. The procedures include those for safeguarding confidential information and for obtaining access to the information. The limited instances when access to the information is permitted are set forth.

Subchapter 12. Requirements for a Treatment Works Approval: N.J.A.C. 7:14A-12 includes the procedures used to approve the construction or modification of the treatment works used to collect, treat or discharge pollutants. The subchapter also includes the sewer connection ban requirements and provisions for sewer ban exemptions. As explained previously, the Department has proposed to substantially modify the rules regarding treatment works approvals and anticipates adopting most of the proposed changes in April 1994.

Subchapter 13. Additional Requirements for DTWs, Local Agencies, and Their Users: N.J.A.C. 7:14A-13 sets forth the requirements for pretreatment of indirect discharges entering a domestic treatment works. The subchapter includes the procedures and criteria for approval of pretreatment programs for domestic treatment works.

Subchapter 14. Oil and Grease Effluent Limitations: N.J.A.C. 7:14A-14 establishes effluent limitations, sampling protocols, and applicable analytical methods for oil and grease for all discharges to surface water and for indirect discharges to a domestic treatment works.

Social Impact

The readoption of N.J.A.C. 7:14A will cause no changes to the existing regulatory system. N.J.A.C. 7:14A is an essential guide to those dischargers, such as industries, municipalities, and sewer authorities, which are required to obtain a NJPDES permit. The rules set forth the applicable permit conditions, application procedures, and filing requirements for all permittees. The NJPDES rules create a permit program which requires the treatment of domestic, municipal, and industrial wastewater thereby protecting the surface and ground waters of the State. These waters have uses such as domestic, municipal and industrial water supplies, commercial and recreational fishing, clamming, crabbing, swimming, and boating. The readoption of these rules will allow the Department to continue to protect the waters of the State.

Economic Impact

The readoption of these rules will neither increase nor decrease the cost of the NJPDES program. The NJPDES rules establish a self-supported permit system where permit fees support the administration of the NJPDES permit program. This proposed readoption contains no amendments or changes to that process. The NJPDES program has significantly improved the environmental quality of New Jersey's surface and ground waters by abating the negative impact of water pollution. The improvements in environmental quality have had a positive economic impact on property values, business interests, and the tourist industry.

The readoption of these rules is unlikely to result in increased costs to permittees which are currently in compliance with their discharge permit. There will be no increase in costs for sampling, analysis, or reporting because these activities are currently required and the frequency of required sampling and reporting will not change. Additional costs, if any, would be primarily attributable to additional actions required to consistently comply with permit limitations and conditions resulting from current requirements.

Where additional actions will be required to comply with effluent limitations, the costs will vary widely. The magnitude of the economic impacts will be determined, in part, by the severity of the problem and the approach chosen to comply with the effluent limitations. Possible approaches available for meeting effluent limitations include:

- modification of existing treatment;
- construction and operation of additional treatment units;
- pretreatment at the source(s) of the toxic pollutant(s);
- pollution prevention (for example, substitution of less toxic or non-toxic chemicals for the toxic pollutants at the point of generation); and
- source reduction (for example, reclamation or recycling of toxic pollutants).

Actual estimates of costs associated with upgrading treatment systems to meet effluent limitations are dependent on pollutant loadings, technology based requirements, categorical requirements, antidegradation requirements, removal of multiple toxic substances by a single type or combination of treatments, and the fate of the pollutants in a specific waterbody. There are so many uncertainties involved in making assumptions for each variable that any estimate could contain such large errors as to make the estimate highly suspect. Ignoring the fact that N.J.A.C. 7:9B-1.6(c)4iii already requires imposition of the same effluent limitations, the additional costs associated with this readoption would range from zero for some dischargers to millions of dollars for other dischargers.

Environmental Impact

The proposed readoption of N.J.A.C. 7:14A will cause no change in the existing regulatory system. It will continue to assist the Department in effectively administering the NJPDES program. The NJPDES program will continue to provide the Department with the regulatory means to mitigate and prevent adverse impacts from discharges to the waters of the State. A discharge permit includes pollutant limits, monitoring requirements, reporting requirements, and compliance schedules. The NJPDES permit process is an essential device in protecting the water quality of the State.

Regulatory Flexibility Analysis

The readoption of N.J.A.C. 7:14A applies to all businesses which discharge wastewater to surface water, ground water, treatment plants, injection wells, or land application sites. The Department estimates that there are approximately 1,800 permitted individuals or facilities which are considered to be "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these rules, small businesses will continue to be required to obtain permits, submit discharge monitoring reports, keep records of monitoring information, and comply with permit limitations and compliance schedules.

Professional services likely to be utilized to comply with N.J.A.C. 7:14A include, but are not limited to, licensed professional engineers, licensed surveyors, and laboratories certified to perform specific chemical analyses. The initial costs for compliance with these rules may vary from approximately $200.00 to several thousand dollars, depending on the required professional services, permits, and water testing and sampling fees. Annual costs range from a minimal amount to several thousand dollars, depending on the need for the preceding activities.

N.J.A.C. 7:14A is primarily designed to protect and preserve human health and the environment with regard to the volume of wastewater rather than the size of the facility. No new compliance requirements are included in the proposed readoption. The Department balanced the need to protect the environment against the economic impact upon small businesses and provided exemptions for small businesses in the reporting requirements for surface water discharges (N.J.A.C. 7:14A-10.3(a)10) and indirect discharges (N.J.A.C. 7:14A-10.5(c)11) when the existing rules were adopted. As explained in the Summary, while proposing to readopt these rules without change for an interim period, the Department is comprehensively evaluating the NJPDES program and expects to propose significant changes to the rules in June 1994.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14A.

(a)

ENGINEERING AND CONSTRUCTION

Flood Control Bond Grants

Proposed Readoption with Amendments: N.J.A.C. 7:23

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

Authority: Emergency Flood Control Bond Act (P.L. 1978, c.78) and N.J.S.A. 13:1D-1 et seq.

DEPE Docket Number: 13-94-02/306.

Proposal Number: PRN 1994-175.

Submit written comments, identified by the Docket Number given above, by April 20, 1994 to:

Janis Hoagland
Administrative Practice Officer
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules governing the administration of the Flood Control Bond Grants at N.J.A.C. 7:23 are set to expire on June 9, 1994. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated, and should be readopted.

As a result of the loss of life and extensive property damage caused by severe floods in New Jersey, in 1978 the Legislature passed and the Governor signed the Emergency Flood Control Bond Act (Act), P.L. 1978, c. 78. On November 7, 1978, the citizens of New Jersey approved, by referendum, the Act and authorized the issuance of bonds in the amount of $25,000,000. Pursuant to the Act, the bond monies were reserved to the Department for distribution.

The Act authorized $22,000,000 of the proceeds of the bonds to be used for grants to municipalities and counties for acquisition, development, construction and maintenance of flood control facilities. All of the original sum has been committed or expended. From this sum, the Department has granted these monies pursuant to the eligibility requirements of N.J.A.C. 7:23. The Act also authorized, and the Department distributed, $3,000,000 of the proceeds of the bonds for the development of Statewide and regional comprehensive flood control master plans.

Although funds for this Bond Act have been committed or expended, the Bond Act provides for line item appropriations. Since funding may be appropriated each fiscal year, rules should exist that set forth the funding criteria and application and selection process.

N.J.A.C. 7:23 implements the Emergency Flood Control Bond Act and establishes the basic eligibility criteria for a flood control grant, the priority system for ranking eligible applicants, the procedure for awarding a grant, the conditions grantees must satisfy before receiving funds under a grant, and administration and performance requirements under the grant.

The priority system established by N.J.A.C. 7:23 awards eligible applicants points based on the number of people who will be protected and the value of property that will be protected by the flood control project. Those applicants whose projects receive the most points are awarded grants if funds are available and the applicants comply with all other application requirements in a timely manner. The priority point system is weighted to favor those projects that protect the most residents in the identified flood prone area.

A summary of N.J.A.C. 7:23 follows:

Subchapter 1 contains general provisions regarding the grant program, including the scope and purpose of the rules. This subchapter also includes rules regarding the Department's annual budget requests, reports to the Special Joint Legislative Committee and annual requests for legislative appropriations.

Subchapter 2 prescribes grant procedures and requirements.

N.J.A.C. 7:23-2.1 and 2.2 set forth the scope of subchapter 2, and the definitions of terms used therein.

N.J.A.C. 7:23-2.3 sets forth the eligibility criteria an applicant must meet to receive a grant. Generally, the proposed flood control project must not create more flooding problems upstream or downstream; the proposed project must be an economical and environmentally sound solution to the flooding problem; the applicant must irrevocably commit financial resources to complete the project; and because of limited State funds for the program, the applicant cannot request a grant of more than $1,000,000 unless the project will provide 100-year flood control protection to more than one municipality.

N.J.A.C. 7:23-2.4 describes the procedures for an applicant to request a preapplication conference with the Department.

N.J.A.C. 7:23-2.5 sets forth the application procedures and describes the documentation and information that must be submitted to the Department for the specific type of project proposed. The information that must be contained in an Environmental Assessment, if required, is also outlined in this section.

N.J.A.C. 7:23-2.6 to 2.8 provide notice that an application is a public record, set forth the procedure by which each application will be evaluated by the Department, and describe the manner by which an applicant will be notified of the approval or disapproval of its application.

N.J.A.C. 7:23-2.9 to 2.12 describe when the amount and terms of a grant are determined, the manner in which the State's share of a project grant is determined, the preparation and transmission of grant award documents, and the effect of a grant award.

N.J.A.C. 7:23-2.13 sets forth the priority point system by which the Department establishes a ranking of those projects that meet basic eligibility requirements. A project that does not receive a minimum of 10 priority points is ineligible for grant monies.

N.J.A.C. 7:23-2.14 describes allowable project costs, particularly land acquisition costs, and indicates the basis upon which payment of allowable costs will be made.

N.J.A.C. 7:23-2.15 to 2.17 set forth the manner in which awarded grant funds may be allocated by the grantee, how unused grant funds will be managed by the State, and how the grantee shall administer grant funds to ensure against fraud and other unlawful and corrupt practices.

N.J.A.C. 7:23-2.18 sets forth general grant conditions, including project scheduling, required hazard insurance, accounting procedures, affirmative action requirements, performance bonds, and the letting of construction contracts.

N.J.A.C. 7:23-2.19 to 2.35 set forth administration and performance requirements with which a grantee must comply as well as the procedures by which the Department may terminate a grant.

A summary of the proposed amendments follows:

The definition of "Assistant Director" has been deleted from N.J.A.C. 7:23-2.2, a definition of "Administrator" added, and the definition of "Division" modified to reflect organizational changes in the Department, specifically, the transfer of the Flood Plain Management Section from the former Division of Coastal Resources to the Engineering and Construction Division. Since each approved grant project must satisfy applicable environmental rules and regulations in order to obtain all necessary permits from the Department, N.J.A.C. 7:23-2.3(a)4 was altered to eliminate the phrase, "or cause unacceptably high environmental damage," since it gave the impression that an applicant might be able to circumvent Departmental regulations.

Other changes have been made to reflect the previously noted reorganization of the Department and to correct minor errors.

Social Impact

The proposed readoption will have a positive social impact by continuing to provide the means for local governmental agencies to acquire, develop, construct and maintain flood control facilities thereby improving the quality of life and ensuring the safety of its citizens. However, this benefit will only be realized if the legislature continues to appropriate funding for flood control projects.

Economic Impact

The proposed readoption will have a positive economic impact by providing the funds for flood control projects that may have otherwise been unavailable at the local level. Since the enactment of the Emergency Flood Control Bond Act, 36 grants totalling $21.2 million have been issued pursuant to these rules. Grant applicants would incur the administrative costs of application, and those awarded grants the costs of meeting the grant conditions and administrative and performance requirements.

Environmental Impact

While construction of flood control works is potentially disruptive to a riverine environment, grant applicants are required, pursuant to N.J.A.C. 7:23-2.5(c), to prepare an Environmental Assessment identifying potential negative environmental impacts, and mitigation measures to be taken. The Environmental Assessment for each proposed project is carefully reviewed by specialized staff and additional mitigation is recommended where possible. Each approved grant project must also satisfy applicable environmental rules and regulations in order to obtain all necessary permits from the Department. In developing the existing rules, the Department has balanced the need to protect the public from the adverse impacts of flooding while protecting the environment from the negative effects of constructing flood control works.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the rules establish policies and procedures for the distribution of funds to local governmental agencies. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:23.

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

7:23-1.8 Procedure for obtaining a flood control grant

(a) Each potential [patient] **applicant** for a flood control grant shall:

1.-3. (No change.)

7:23-2.2 Definitions

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

...

["Assistant Director" means the Assistant Director of the Engineering and Construction Element, Division of Coastal Resources, New Jersey Department of Environmental Protection.] **"Administrator" means the Administrator of the Engineering and Construction Division, Natural and Historic Resources, New Jersey Department of Environmental Protection and Energy.**

...

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and **Energy** or his **or her** designated representative.

...

"Department" means the New Jersey Department of Environmental Protection **and Energy**.

...

"Division" means the [Division of Coastal Resources] **Engineering and Construction Division of Natural and Historic Resources**.

7:23-2.3 Eligibility [and] Criteria

(a) Any applicant with a flood control program is eligible for a grant in any year where it satisfactorily completes the application process in a timely manner, meets the eligibility criteria set out in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to be funded. To receive a grant the project shall meet the following criteria:

1. The minimum priority score set out in N.J.A.C. 7:23-**2**.13.

2.-3. (No change.)

4. The project shall not be excessively expensive [or cause unacceptably high environmental damage].

5.-12. (No change.)

(b) (No change.)

7:23-2.4 Preapplication procedures

(a) (No change.)

(b) Questions concerning the grant program and requests for a preapplication conference should be directed to:

Chief, [Section] Flood Plain Management **Section**
[Division of Coastal Resources] **Engineering and Construction Division**
CN [401] **419**
Trenton, New Jersey 08625
(609) 292-2296

7:23-2.5 Application procedures

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

(h) Applications shall be sent to:

Chief, Flood Plain Management Section
[Division of Coastal Resources] **Engineering and Construction Division**
CN [401] **419**
Trenton, New Jersey 08625
(609) 292-2296

(i) (No change.)

7:23-2.11 Grant award document

The [Division of Coastal Resources] **Engineering and Construction Division** of the Department shall prepare and transmit four copies of the grant award document to the applicant. The applicant shall execute the grant award document and return it within 30 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The grant award document shall set forth the approved project scope, budget, approved project[s] costs, and the approved commencement and completion dates for the project or major phases thereof. The grant award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process. After the Department has completed its internal processing of the grant award document, it shall transmit a copy of the executed grant award document to the grantee.

7:23-2.13 Priority determination

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

(f) The applicants receiving a Notice of Intent to Award a Grant shall obtain all necessary Federal, State and local permits within one year [of] **after** receipt of the Notice of Intent to Award a Grant. Failure to obtain the required permits within the required time period shall make the project ineligible for a grant for that year.

(g)-(i) (No change.)

7:23-2.14 Allowable project costs

(a) (No change.)

(b) In determining acquisition costs the applicant shall:

1. Contact the Office of Green Acres, [Department of Environmental Protection] **Department of Environmental Protection and Energy**, CN 412, Trenton, New Jersey 08625-0412, (609) 588-3450, concerning the proposed acquisition and select appraisers from a list supplied by the Office of Green Acres in accordance with the following schedule:

i.-ii. (No change.)

2. (No change.)

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

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Notice of Time Change of Public Hearing on CO Nonattainment Areas Redesignation Request and Proposed Amendments to N.J.A.C. 7:27-25 regarding Oxygenated Fuels

Take notice that the above-referenced joint public hearing will take place on Friday, March 25, 1994 as originally published in the New Jersey Register on February 22, 1994, appearing as public notice 26 N.J.R. 1160(c) and notice of proposal 26 N.J.R. 1048(a). However, the DEPE has changed the time. The hearing will now begin at 1:00 P.M. The location remains as follows:

Friday, March 25, 1994 at 1:00 P.M. (time change) at
DEPE Public Hearing Room
401 East State Street
Trenton, New Jersey

RULE ADOPTIONS

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION

Notice of Administrative Correction
Worker and Community Right to Know Regulations
Definition of Community Right to Know Survey

N.J.A.C. 7:1G-1.2

Take notice that the Department of Environmental Protection and Energy has discovered that a comma needs to be included in the definition of "Community Right to Know Survey" at N.J.A.C. 7:1G-1.2 (adopted at 26 N.J.R. 200(a)) in order to properly separate "the Environmental Survey" from the descriptive phrase "formerly Part I." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

7:1G-1.2 Definitions

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

...

"Community Right to Know Survey" means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey, formerly Part I, and the Superfund Amendments and Reauthorization Act, Section 312.

...

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Crab Management

Adopted Repeal: N.J.A.C. 7:25-7.13
Adopted Repeal and New Rule: N.J.A.C. 7:25-14.1
Adopted Amendments: N.J.A.C. 7:25-14.2, 14.4, 14.5, 14.6 and 14.10
Adopted New Rules: N.J.A.C. 7:25-14.7, 14.8 and 14.11
Adopted Recodification and Amendments: N.J.A.C. 7:25-14.7 and 14.8 as 14.12 and 14.13

Proposed: November 1, 1993 at 25 N.J.R. 4831(a).
Adopted: February 25, 1994 by Robert C. Shinn, Commissioner, Department of Environmental Protection and Energy.
Filed: February 28, 1994 as R.1994 d.152, **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. 23:2B-6, 23:2B-14 and 50:3-16.13.
DEPE Docket Number: 54-93-10/301.
Effective Date: March 21, 1994.
Expiration Date: February 15, 1996.

The New Jersey Department of Environmental Protection and Energy (Department) is adopting the repeal of N.J.A.C. 7:25-7.13, repeal and new rule N.J.A.C. 7:25-14.1, amendments of N.J.A.C. 7:25-14.2, 14.4, 14.5, 14.6 and 14.10, new rules N.J.A.C. 7:25-14.7, 14.8 and 14.11 and recodification and amendments of N.J.A.C. 7:25-14.7 and 14.8 as 14.12 and 14.13 proposed on November 1, 1993 at 25 N.J.R. 4831(a). Public hearings were held on November 17, 1993 at Stockton State College in Pomona, New Jersey and on November 24, 1993 at the Ocean County Administration Building in Toms River, New Jersey and the comment period closed on December 1, 1993. Oral comments were presented by 64 individuals at the public hearings. A total of 259 individuals provided written comments, including 15 individuals that also provided oral comments at a public hearing. Commenters consisted of commercial fishermen, commercial clammers, commercial crabbers, boat livery operators, recreational crabbers, recreational fishing clubs, and interested citizens.

The following is a list of those persons and organizations that made either written or oral comments directly related to the proposal.

Individual—Organization

1. George Simmons
2. Fred Green
3. Willard Burnight
4. William Vibbert—Island Beach State Park
5. Paul McLain
6. Kathleen Pietrusgh
7. Jack King
8. James Campbell
9. Steven Muermann
10. Michael Burton
11. Gale Voss—Good Luck Point Marina
12. Gary Dickerson—Manasquan Fishing Club
13. Bill Berry
14. Kenneth Bailey
15. Howard Matthews
16. D. Ernest Hedges
17. Jack Miktus—Jersey Coast Anglers Assn.
18. Richard Baumgardt—Dicks Landing
19. John Smath
20. James V. Wray
21. Joe Rizzo
22. Robert Munson
23. Bill Somers
24. A.T. Ogden—Delaware Bay Waterman's Assn.
25. William Muerman
26. Doreen Muerman
27. Jeremy Muerman
28. Jason Muerman
29. Lance Naylor
30. John Maxwell—NJ Shellfisheries Assn.
31. Joe Tarpine
32. John Bradford
33. Joe Lawson
34. Alex Brosky
35. Ron Bozarth
36. Thomas Fortier
37. Charles Clark
38. Gino Santori
39. Adeo Santori
40. Michael Ahearn
41. Brian Matthews
42. Gary Cottrell
43. Richard Pietrusyka
44. Tom Gormley—Barnegat Bay Decoy and Bayman's Museum
45. Charles Givens
46. Scott Bailey
47. Tim Polijczuk
48. Ted Gorecky
49. Donna Horan
50. Jim Jenks
51. A. Klein
52. Kenneth LeQuier
53. Tom Seibert
54. Ed Tonneson
55. William Richert
56. Pearl Schwartz—Barnegat Bay Watershed Assn.
57. Tom Fote—Jersey Coast Anglers Assn.
58. Earl Gelnaw
59. Frank Richetti—New Jersey Federation of Sportsmen Clubs

60. Jim O'Connor
61. Joe Panek, Sr.
62. Wanda Muermann
63. Steve Frost
64. Ed Gurcane
65. Philip Andersen
66.A Petition Presented by Delaware Bay Commercial Crabbers signed by: Kenneth B. Turner, Sr., James Nash, Larry Schloss, Bob Bateman, Scott Sheppard, Tom Reeves, Todd Reeves, Jack King, Gene Browney, Steve Sheppard, Elmer Widustrus, Lance Naylor, Clint Walker, H. Hall, Walter Charm, George Simmons, Jim Kroper, Ron Walker, Kenneth W. Bailey, Randy T. (last name not legible)
67. A Petition Presented by Delaware Bay Commercial Crabbers signed by: Kenneth B. Turner, Sr., Kenneth W. Bailey, Charles Givens, Randy J. Laudeman, Elmer Widustrus, E. Bry, Jack King, Ken Turner, Greg W. Goff, Greg W. Goff, Jr., Sonny Conover, Tom Pawlik, Jim Krogman, name not legible, H. Hall, Clint Walker, Lance Naylor, Bob Bateman
68. A Petition Presented by Barnegat Bay Blue Crab Conservation Alliance signed by: Elmer S. Gray, Larry Caseli, Maureen Polagonia, Marylyn Sprague, Erma Phillips, Linda Cepner, Arnie Brex, Lydia Russo, G. R. Schwartz, Gertrude Schwartz, Porfina deVilla, Gladys Eayce, Lorraine Miller, Barbara Mayer, Laura Kent, Frank Nicole, name not legible, Geri Levin, name not legible, Pete Egloff, Bruce Laundry, Pat Hall, Germaine Barton, Carol Cortelyn, J. (last name not legible), Mary Argandizza, Edwin F. Dahl, Elizabeth Dahl, Tom Ruggert, Wes Davis, Russell Murphy, Barbara Molkenthirn, name not legible, Corinne Kanaley, Walt Skupski, Doreen Garn, Harold Sauli, name not legible, Emile Dupont, Debra Sanford, Frank Krupa, Vinnie DiFusco, name not legible, Vicki Albert, Matthew C. Bistis, Libby Desend, Karen Warren, Hildegard DuPont, Lauren H. Biersenck, Janet Biersench, Theresa Ahearn, Louise Sanford, Edward Ahearn, Jr., Emily Ahearn, Ester Gautier, June Grande, Wendy Sathmary, Paul D. (last name not legible), Joseph Dipierno, Frank Baumgardt, Victoria C. (last name not legible), Helen C. Shrump, Janet Melantz, Myrtle Blohm, George Blohm, Bill Frost, Fran Frost, G. Blanchard, Eddie Mosler, Charles Frazier, Jacki Hail, Jennifer Sanford, Debra A. Woods, Grace M. Russo, (first name not legible) Russo, James Zaccaro, Charlene Wolcok, Fred Clark, Kenneth J. Gaddy, Nancy Ahearn, Edward R. Ahearn III, Gloria Foster, Jane Fasa, Marie Sneddan, John R. Woods, Mr. and Mrs. Joseph Zipf, Pat Lauer, Marlin Weber, Nancy Davis, Bob Foster, James Eissing, Colleen M. Sheedy, Kenneth P. Smith, C. P. Thompson, name not legible, Frank Yager, Paul Rochelle, Walt Warduk, Genevieve Slivoski, Theodore Pali, Vera Historal, Richard Beechworth, Helen Wismer, Cliff Sapley, Vince Diehle, name not legible, Thomas J. (last name not legible), Bob Kellog, Sal Collora, Gus Johnson, James Garber, Charles W. Schmidt, Dorothy Schmidt, Eugen J. O'Bri, Lori C. Mayo, Alan Leoclke, John J. Smith, Frank Johnson, Robert Mancini, Stanley P. Williams, Gary Cottrell, (first name not legible) Cottrell, Gail Voss, name not legible, George A. Krammer, David Colvin, Gail Coleman, Lori Wehn, Harry Satyger, Marion Satyger, Frank (last name not legible), George Horvath, name not legible, Lawrence Fix, Jessica Miscio, James Millar, Paul Cardeo, name not legible, Milton Schisler, Maureen Krause, William L. Cummings, Frank L. Cummings, Laurelle Cummings, Gus Faella, Sal (last name not legible), Neal Moshen, Terri Howell, Bob Clark, Jack September, Bub Weisel, name not legible, name not legible, George Flemming, Diane C. Adams, Timothy E. Scully, Tom Dalessio, Marie de Samplees, name not legible, name not legible, Candace Cuba, Vincent Malvossi, Dennis Martin Paul Vilanovia, Bridget Malvossi, Eleanor Malvossi, Lloyd (last name not legible), Donna Arthur
69. Harry N. Fromm
70. Donald Launer
71. John Sly
72. Allen English
73. J. Lynn Beardsley
74. Mary and Edward Armutus
75. Frank Decker
76. John J. Maxwell
77. William Mayer
78. Thomas E. McNulty
79. Dominic and Janice Capasso
80. Jeffrey H. Moore
81. Joseph Ecret, Jr.
82. William deCamp, Jr.—Ocean County Izaak Walton League
83. George E. Meirose—Barrier Island Charters, Inc.
84. Stephen G. Crane, Sr.
85. Julie Squire—Gallagher, Evelius and Jones
86. Joseph Ajar
87. David Kaiser
88. G. Elliot Giles
89. Leonard T. Connors, Jr., Jeffrey W. Moran, Christopher J. Connors—Senator and Assemblymen, 9th District
90. Angela Cristini—Ramapo College
91. Glenn A. Westrvelt
92. Norm Andersen
93. Fenton Anderson—Delaware Bay Shellfish Council
94. John Marter
95. Ted Gordon—Natural Areas Council
96. R. W. Todd
97. Carl Ayars
98. Harry Kiefer
99. Gary Caputi
100. Allan Bogdan
101. Ed Harrison—Marine Trades Assn.
102. Louis Turner
103. John Ward, Edmund Jeleniewski
104. Doug Mularz
105. Robert Bailey
106. Beverly Bailey
107. Robert Able
108. John C. Botsolas
109. Gregory Marshal—New Jersey Division of Parks and Forestry
110. John S. Hough
111. Fred Layton

Summary of Public Comments and Agency Responses:

The following is a summary of comments received on the Department's proposal and the Department's responses to the comments. The numbers in parentheses after the comment correspond to the commenter numbers in the list above.

General

1. COMMENT: Limited entry is unfair to commercial fishermen or other New Jersey residents who are not eligible to buy a commercial crab license (3, 10, 13, 21, 26, 27, 28, 35, 37, 41, 44, 72, 29, 33, 89, 88, 25, 83, 63, 62, 60, 50, 51, 80, 33, 107).

RESPONSE: The limited entry system for the blue crab commercial fishery is designed to stabilize participation in the fishery. The Department believes that the limited entry system will have no detrimental effects on crabbers who are eligible to remain in the fishery and have made substantial investments in the fishery. No economic impacts will be incurred by individuals not immediately eligible to participate in the fishery because they have not recently experienced an economic gain from the fishery nor have they any investment in the fishery which would be lost due to the limited entry system. The Department did, however, recognize that some people not eligible to participate in the fishery would like an opportunity to participate; therefore, a lottery system was developed to allow for a small number of additional licenses to be sold in 1994. In addition, licenses again will be available after the number of licenses sold falls below the 1991 level.

2. COMMENT: There should be a waterman's license to allow a commercial fisherman to participate in any legal fishery (3, 21, 25) or allow shellfishermen to participate in crabbing who can provide tax records to prove a substantial income from clamming (89).

RESPONSE: The Department disagrees with the commenters' statements. The current licensing system allows the Department to determine the number of participants in different fisheries (clamming, crab potting, crab dredging, fyke netting, gill netting) simply by determining the number of specific licenses sold. An all encompassing waterman's license would eliminate this ability. In addition, allowing shellfishermen eligibility to participate in the crab fishery would, to be equitable, necessitate allowing other types of commercial fishermen into the crab fishery, defeating the purpose of the limited entry system. A waterman's license would also eliminate the Department's ability to institute fisheries specific limited entry systems based on previous participation in the fishery.

3. COMMENT: Limited entry will limit the harvest of blue crabs; therefore, the price will go up and people will stop buying crabs (2, 45).

RESPONSE: The Department disagrees with the commenters' statements. The Department has repeatedly been advised by commercial crabbers that the amount of harvest of blue crabs from the Chesapeake

Bay controls the price. Therefore, New Jersey's limited entry system should have very little effect on the price of blue crabs.

4. COMMENT: Anyone licensed for crab dredging or crab potting should be eligible to purchase either license (29, 33, 78, 111).

RESPONSE: The Department issues different licenses for crab dredging and crab potting and recognizes them as different fisheries. The limited entry system is based on past participation in the specific fishery, and therefore a fisherman must have participated in the specific fishery to be eligible for a crab pot or crab dredge license. In addition, allowing cross over between fisheries would defeat the limited entry purpose of stabilizing participants in each specific fishery.

5. COMMENT: Limited entry is supported as a way to reduce fishing pressure (82, 91, 5, 38, 39, 65).

RESPONSE: The Department agrees with the commenters' statements that limited entry will help to at least stabilize fishing pressure.

6. COMMENT: A recreational only crabbing zone, no commercial pots, should be established along the entire length of Island Beach State Park 300 feet from the western shore and in the area south of a line drawn from Fishing Creek to the North side of Hennsler Island. These zones will promote better recreational crabbing and protect terrapins (4, 19, 56, 70, 71, 82 95, 109). Recreational crabbing only areas or blue crab refuges should be established (5, 17, 19, 52, 57, 59, 61, 73, 74, 75, 82, 83, 96), especially around boat liveries (42, 25, 68, 11) and small creeks (81).

RESPONSE: The Department recognizes the need to investigate zones to exclude commercial pots, no crabbing zones and terrapin protection areas. Increasing minimum width of creeks allowed to be potted from 25 feet to 50 feet will accomplish some of the commenters' requests for recreational only zones and terrapin protection. Recently, the Department conducted a survey of boat liveries in the state to determine exactly where blue crab boat liveries are located. The results of the survey will be used by the Marine Fisheries Council's Crab Committee, including representatives from the recrational and commercial crab sectors, personnel from Island Beach State Park and other interested parties to determine if additional areas need to be restricted to the use of crab pots.

7. COMMENT: The blue crab resource is being decimated because of overfishing. Regulations are needed so everyone can catch crabs (38, 39, 104).

RESPONSE: Although optimum fishing levels have not been established for the blue crab resource, the Department agrees that the number of fishermen and the amount of fishing gear is increasing. As a result, an increasing portion of the crab stock can be harvested each year and user conflicts increase as the amount of fishing gear increases. The purpose of the limited entry system is to stabilize user conflicts and harvest of crabs with the intent of managing the crab resource for the benefit of all user groups.

8. COMMENT: Turtle excluders should be used on all crab pots to protect turtles (56, 82).

RESPONSE: The Department is fully supportive of any device that will reduce the number of terrapins captured while at the same time not significantly affecting crabbing efficiency of crab pots. In fact, the Department is currently conducting research on turtle excluders, and if they prove to be effective and practical, fully intends to implement a requirement for turtle excluders.

9. COMMENT: Creating environmental zones and recreational crabbing zones may discriminate against some users of the resource (21, 63, 25).

RESPONSE: The Department agrees that restricting some user groups from specific areas is a difficult restriction to implement fairly. The Department does not, within this adoption, create environmental or recreational crabbing zones other than by increasing minimum creek width for potting from 25 feet to 50 feet. In addition, any such action in the future will have significant input from all user groups to help eliminate discrimination against some users of the resource.

10. COMMENT: The cost of a commercial crab license is too low. The license should be $200.00 (25) or at least $300.00 (5) since the resource is owned by all citizens of New Jersey.

RESPONSE: The Department agrees that the blue crab resource is owned by all citizens of New Jersey, and has taken some action in licensing costs. This adoption raises the crab dredge license from a fee of $15.00 to $50.00 to a flat fee of $100.00 to be equivalent with the cost of a crab pot license. At this time, the Department believes these fees are reasonable in comparison to licensing costs in other fisheries.

11. COMMENT: A blue crab management plan should be developed incorporating the wise and equitable use of New Jersey's blue crab resource (5, 25, 19, 56, 86, 87).

RESPONSE: The Department agrees that a blue crab management plan incorporating the wise and equitable use of New Jersey's blue crab resource is needed, and also believes that this adoption package represents a blue crab management plan.

12. COMMENT: Scientific data are not available to support changes in regulations; therefore, no changes should be made (15, 25, 26, 43, 44, 48, 34, 60, 64, 90, 46).

RESPONSE: The Department agrees that much needs to be learned about blue crabs and the blue crab fishery, but also believes that evidence is available to support changes in the regulations. The number of commercial crabbers, the amount of crabbing gear, and the number of crabbing related conflicts and complaints are all steadily increasing. Stabilization of participants and the amount of gear used in the commercial fishery will help to stabilize fishing effort and the harvest of adult spawners, thereby protecting future recruitment.

13. COMMENT: The State did not get enough input from the commercial fishery before changing regulations; therefore, no changes should be made (6, 26, 34, 45, 7, 9, 25, 44, 54, 102, 21).

RESPONSE: The Department disagrees with the commenters' statements. Input from the commercial fishery was not only accepted but actively solicited by the Department. Changes in blue crab regulations were developed by the Marine Fisheries Council's blue crab advisory committee, composed of Council members, representatives from the commercial crab pot and crab dredge fisheries, rental boat liveries and recreational crabbers. Potential changes to the blue crab regulations were fully discussed at Marine Fisheries Council meetings, which are open to the public. Two public hearings were held to solicit comment from all sectors of the public. These public hearings are not required by law, but the Department wanted to receive as much public input as possible.

14. COMMENT: Commercial licenses should be issued to the vessel, not an individual (7, 14, 22, 23, 24, 31, 32, 33, 40, 41 42, 46, 45, 68, 80).

RESPONSE: The Department disagrees with the commenters' statement. Crab pot and crab dredge licenses have always been issued to individuals, as are the majority of other commercial fishing licenses issued by the Department. The Department does not recognize a need to change this licensing procedure. To clarify this aspect of the rule, the term "person" when used with licensing provisions has been replaced by the term "individual".

15. COMMENT: There should be only one licensed individual on a vessel at one time (57, 59, 82).

RESPONSE: The Department believes the intent of this comment is to prevent one vessel from using more than the number of legal pots by having more than one licensed individual on board, thereby decreasing the actual number of pots in use. The Department, however, recognizes the tradition of more than one crabber sharing a vessel, or two or more licensed crabbers having a partnership utilizing the same vessel. Furthermore, the intent of this regulation was to cap the growth of this fishery without creating unnecessary hardships on traditional participants in the fishery, and therefore disagrees with this comment.

16. COMMENT: Opposing comments were received on the issue of cull rings. Some suggested that all commercial crab pots should have cull rings to allow sublegal crabs to escape (5, 17, 21, 25, 57, 59, 61, 82, 90), while one person indicated that cull rings should not be required on crab pots because they would allow the escape of legal size shedder crabs (48).

RESPONSE: The Department has considered the use of cull rings on crab pots several times during the development of this regulation. Although cull rings would allow sub-legal crabs to escape and reduce the efficiency of ghost pots, cull rings would also render standard crab pots useless for harvesting shedder crabs, an important component of the commercial industry. The commercial crab industry has continued to provide conflicting advice regarding this issue; therefore, the Department will not at this time require cull rings.

17. COMMENT: Crab pots should be set no closer than 100 yards apart nor in navigable or popular channels (5), with a setback from all channels where potting would be illegal (20).

RESPONSE: Crab pots cannot now legally be set in navigable channels. Creating a channel setback or requiring crab pots to be set no closer than 100 yards apart would create a substantial economic impact by imposing vast area restrictions not now in place. The Department however, appreciates the intent of the comments as to reduce user conflicts. The Department is addressing this issue by increasing potting creek width from 25 feet to 50 feet. The Department also recognizes the need to investigate recreational crabbing zones, and no crabbing zones as stated in the responses to Comment numbers 6 and 9.

18. COMMENT: The number of pots should be limited in Barnegat Bay. The proposed regulations will not limit pots because crabbers will be able to buy additional licenses or fish up to 400 pots each (11, 57, 59, 79).

RESPONSE: The Department agrees that pot density in some parts of Barnegat Bay may be too high. The Department also believes that these regulations will serve to immediately stabilize the number of crabbers, reduce the number of pots fished by a few large-scale crabbers and eventually reduce fishing pressure by reducing the number of licenses issued to 1991 levels. In addition, commercial crabbers will not be able to buy an unlimited number of licenses due to the limited entry program.

19. COMMENT: There were opposing viewpoints on the issue of different provisions for the Atlantic Coast and Delaware Bay. Some stated that there should be separate crab licenses for Delaware Bay because it is a separate fishery with separate problems from Atlantic coast bays (14, 32, 46, 30, 32, 46, 66, 80, 84, 93, 22, 105, 106). Others felt that Delaware Bay and Atlantic coast bays should have a separate set of regulations (30, 19, 57, 59, 19, 70, 71, 76, 80, 93), while still other commenters suggested that Delaware Bay and Atlantic coast bays should have the same regulations to be fair and equitable to all commercial crabbers (61, 25, 27).

RESPONSE: The Department agrees that Delaware Bay has a separate fishery with separate problems from Atlantic coast bays. The Department can respond to these differences with regulations that recognize these differences, not necessarily with separate licenses. Crab pot/trot line licenses have always been one license for the entire state. Different provisions can now be implemented under the existing regulatory structure. However, crab dredging is a new fishery for Delaware Bay. Because of the large number of comments regarding Delaware Bay dredging, the Department is withdrawing the section of the regulations establishing this fishery and will address the issue under a separate proposal. As a result of withdrawing the section on dredging in Delaware Bay, the Department must also delete two criteria used to qualify for a dredge license, namely an oyster boat license and the Area 2 and 3 license, as these licenses were specific to Delaware Bay.

20. COMMENT: Crab dredging should be eliminated or new dredges designed to eliminate tearing up of crabs (8, 88, 92, 97).

RESPONSE: The Department disagrees that crab dredging should be eliminated, whereas, proper management of the fishery results in economic benefits for the public while protecting the resource. The Department does encourage use of dredges designed to eliminate crab mutilation by requirng different dredge specifications suited to different dredging areas.

21. COMMENT: Rod and reels should not be allowed on a commercial crabber's work boat while crabbing (12, 17).

RESPONSE: The Department appreciates the intent of this comment in that carrying a rod and reel may provide a way to circumvent by-catch regulations. However, the Department believes the adopted regulations in addition to fish pots being illegal in bays are sufficient to control by-catch.

22. COMMENT: No fish should be allowed on a commercial crabber's work boat while crabbing other than bait fish (12, 17, 57, 59).

RESPONSE: Because almost any kind of fish could conceivably be used as bait, the Department believes that this recommendation would add little to support blue crab management and would be over restrictive to commercial crabbers.

23. COMMENT: The amount of fishing effort does not effect the abundance of crabs; therefore, effort should not be restricted (15, 43, 47, 50, 34, 55, 58).

RESPONSE: The Department believes that stabilizing fishing effort and the harvest of adult spawners may help to protect future recruitment. The Department also believes that high fishing effort in a localized area can effect local availability and alter traditional sport/commercial allocation without necessarily effecting overall abundance or future recruitment.

24. COMMENT: Commercial crab potting should be divided into zones with a limited number of pots in each zone (16, 68, 107).

RESPONSE: The Department agrees that limiting the number of pots in pre-established zones would help to reduce user conflicts. Commercial crab potters, however, continually move gear as crabs move. This mobile nature of the fishery make pre-established zones impractical and would severely reduce the efficiency of the commercial potting industry.

25. COMMENT: Boat rental business for crabbing is bad because of a lack of larger crabs. Something needs to be done to help the boat livery industry (18, 11).

RESPONSE: The Department believes that the new regulations will benefit the boat livery industry. Commercial participants in the fishery will be stabilized and reduced in the future due to the limited entry program. Large commercial operations will be required to reduce the number of pots through pot limits. In addition, the Department is now proposing a dual size limit, allowing recreational crabbers to retain smaller crabs than commercial crabbers.

26. COMMENT: All crab pots and associated gear should be removed at the end of the crabbing season to reduce the number of ghost pots (5, 68).

RESPONSE: The Department agrees with the comment and has adopted regulations requiring removal of all gear after the crabbing season is closed.

27. COMMENT: Restricting the number of commercial licenses is not justified because no one knows what the appropriate level of effort should be and there will be no restriction on the number of recreational pot licenses (24).

RESPONSE: The number of commercial crabbing licenses is being restricted to stop the increasing trend of user conflicts and stabilize the harvest of crabs and with the intent of managing the crab resource for the benefit of all user groups. The 1991 level of the number of crab pot license holders was chosen because it represented a time when the number of gear conflicts and resource availability complaints started to increase. Although there will be no restrictions on the number of recreational pot licenses issued, recreational effort via commercial style pots is restricted by the fact that license holders can fish only two pots.

28. COMMENT: Certain proposed regulations, such as pot limits and pot checking requirements, should be instituted only between Memorial Day and Labor Day to take biology of animal into account (26, 27, 25, 90).

RESPONSE: The Department, along with the Marine Fisheries Council blue crab committee, comprised of Council members, representatives from the commercial crab pot and crab dredge industries, rental boat liveries and recreational crabbers, established crab pot limits and pot checking requirements to help slow down growth in the fishery and insure that gear is tended on a regular basis. The regulations will have no impacts on the majority of commercial crabbers who fish less than the recommended pots and tend pots on a regular basis. The Department continues to believe the number of pots proposed and pot checking are reasonable regardless of the time of year.

29. COMMENT: Floats on crab pots should be eliminated in Barnegat Bay between Memorial Day and Labor Day to reduce conflicts (26, 25).

RESPONSE: The Department is in favor of ways to reduce user conflicts such as reducing crab pot floats. Many crabbers, however, have traditionally used floats to mark their pots, but the Department does not mandate floats to mark crab pots. Many crabbers who fish Barnegat Bay currently do not mark their pots with buoys. The Department has taken further steps to reduce conflicts by limiting entry, requiring buoy marking, establishing pots limits and setting areas restricted to the use of commercial crab pots.

30. COMMENT: Regulations should be instituted to prevent non-residents from entering the crab fishery (7, 32, 37, 39, 46, 19, 18, 17, 62, 70, 71, 105, 106) or there should be reciprocity with other states (25, 33).

RESPONSE: Because the constitution demands the even-handed treatment of residents and non-residents, the Department has instituted a limited-entry system providing fair access to the fishery for both residents and non-residents. Included in this adoption at N.J.A.C. 7:25-14.4(a)8 is a reciprocal fee system for commercial licenses which in certain cases may require non-residents to pay a license fee five times higher than a resident. Based on the fact that management of the crab resource is funded through appropriations derived from New Jersey general taxes and due to the increased cost of enforcement for out-of-State residents, such a reciprocal fee system is both reasonable and constitutional.

31. COMMENT: The increase in striped bass is hurting crabbing because striped bass are eating all the small crabs. In order to conserve crabs, the harvest of striped bass should be liberalized (7).

RESPONSE: The Department disagrees with the commenter's statement. Studies by the states of Virginia and Maryland in the Chesapeake Bay have shown that blue crabs are found in the diet of striped bass, but always in insignificant numbers. In addition, no relationship has been shown to exist between indices of abundance for striped bass and blue crabs.

32. COMMENT: Earlier tending times of crabbing gear should be allowed to reduce user conflicts (26, 27, 54, 25).

RESPONSE: The Department originally instituted tending times at the request of the commercial industry to reduce night time theft of gear. The Department, therefore, has no specific objections to expanded gear tending times, but believes this should be proposed in the future to allow full public discussion.

33. COMMENT: Commercial crab pots should be set in at least four feet of water at mean low water (19, 57, 17, 70, 71, 101).

RESPONSE: The Department agrees that setting of crab pots in shallow water can lead to additional user conflicts. Indicating a minimum depth of four feet at mean low water, however, would eliminate a large portion of crabbing area in shallow coastal bays and would be extremely difficult to enforce. The Department does, however, intend to address the issue of limited crabbing zones in the near future.

34. COMMENT: Current regulations are not being enforced. Adding more regulations will create an additional enforcement burden (52).

RESPONSE: The Department agrees that additional enforcement officers are always needed to enhance enforcement of fish and wildlife regulations. These additional regulations, however, are not meant to create an additional enforcement burden, but to initiate an effective crab management program. Enforcement of these regulations will occur during routine enforcement patrols in addition to responding to specific complaints, as is the case with most other fish and wildlife regulations.

31. COMMENT: Crab pot lines should be no longer than 1,500 feet and should be clearly marked at each end (42, 68).

RESPONSE: The Department did not address crab pot line length or marking in this set of regulations but agrees that restrictions on length and additional marking may serve to reduce user conflicts. The Department intends to address this issue in the future.

36. COMMENT: All crab pots should have non-galvanized or non-stainless steel hog rings or other fasteners on at least one side of pot, ensuring corrosion and reducing the impact of ghost pots (82), or recreational pots should be constructed of galvanized wire to allow faster disintegration if lost or abandoned (25).

RESPONSE: The Department appreciates the intent of this comment and agrees that reducing the effectiveness of ghost pots is beneficial. The Department, however, is not prepared at this time to regulate crab pot construction materials that would make the majority if not all crab pots currently in use illegal without additional literature and/or field research and full public discussion.

37. COMMENT: Tooth length on dredges should be measured from the bottom of the tooth bar as this is the only part of the tooth that digs into the bottom and spacing between teeth should be changed to 2¾ inches for better retention of crabs (25).

RESPONSE: The Department agrees that tooth length should be measured from the bottom of the tooth bar, and in fact, this is the current practice. Spacing between teeth is set at three inches to allow for escapement of hard clams.

38. COMMENT: The current proposed regulations are unconstitutional because of higher non-resident license fees and the limited entry scheme gives New Jersey residents a preference over non-residents to practice in the industry based on years of non-residents being precluded from crab potting (85).

RESPONSE: Based on the fact that management of the crab resource is funded through appropriations derived from New Jersey general taxes and due to the increased cost of enforcement for out-of-State residents, the Department's higher commercial non-resident license fee, which may be assessed in certain cases under the reciprocal fee system is both a reasonable and constitutional fee system. The Department also notes that the current limited-entry system provides even-handed treatment of both residents and non-residents, and therefore is a constitutional means of stabilizing participants and the amount of gear in the commercial fishery and protecting the reproductive potential of crab stocks. The Department also provides commercial fishermen with a substantial investment in the fishery, as evidenced by the possession of a valid 1991, 1992, or 1993 license (issued prior to July 9, 1993), the opportunity for continued access to the resource. Providing these fishermen continued access is recognized as both a reasonable and constitutional means of fisheries management.

39. COMMENT: In order to control commercial harvest, a per license catch quota should be established (92).

RESPONSE: Individual quota systems are extremely ambitious management strategies that require significant personnel time to administer and a data collection system that does not currently exist. The allocation system to establish individual quotas is also very complex and would require full public discussion. The Department is attempting to manage blue crabs using methods based upon traditional harvest practices. An individual quota system, at this time, would place undue hardships on the participants.

40. COMMENT: Keeping of adult female crabs should be outlawed (97).

RESPONSE: Egg bearing adult female crabs currently must be returned to the water. The Department believes that this regulation along with increases in hard crab size limits is sufficient to protect the crab resource.

41. COMMENT: Separate regulations should be established for conchs. They should not be managed as a "by-catch" in the crab fishery (22).

RESPONSE: The Department agrees with the commenter's statement and is now in the process of adopting regulations to establish a conch pot fishery. The ability to retain conchs as a by-catch in the crab fishery will, however, be retained in the conch management strategy.

42. COMMENT: After January 1, 1997, use of recreational pots would become illegal because the proposed regulations make no provisions for a recreational license (107).

RESPONSE: The Department disagrees that the regulations make no provisions for a recreational license. The proposed regulation indicated that after January 1, 1997, non-commercial crab pot licenses would not be issued for commercial size pots. It was intended that the license would be issued for recreational crab pots. The authority to issue a commercial or recreational pot or trot line license is specified in N.J.S.A. 23:5-35.2 and N.J.A.C. 7:25-14.2(a).

43. COMMENT: Regulations cannot be enforced because the proposed regulations do not give law enforcement officials the authority to pull and inspect pots (107).

RESPONSE: The Department disagrees with the commenter's statement. N.J.S.A. 23:10-21 and 21.1 allow for inspection, seizure and forfeiture of gear in violation of crabbing provisions.

44. COMMENT: Regulations should provide for emergency closure of crabbing during years of low abundance (107).

RESPONSE: The Department does not conduct any Statewide annual crab inventory that would provide the data necessary upon which to base such a decision. Should a true emergency exist the Commissioner, with the concurrence of the Governor, may implement such emergency measures as may be required.

45. COMMENT: Language proposed at N.J.A.C. 7:25-14.7(b) and (c) regarding the taking of clams and oysters while crab dredging is contradictory to language which permits this activity in the law that provides for crab dredging in Areas 2 and 3 of Delaware Bay (111).

RESPONSE: The Department concedes that the language in the sections referred to by the commenter is confusing. However, since the provisions regarding crab dredging in Delaware Bay are being withdrawn, this issue is of no concern at this time. It will be addressed in the process of establishing provisions for a Delaware Bay dredge fishery.

N.J.A.C. 7:25-14.2(c)

46. COMMENT: There is no biological data to support prohibiting retention of by-catch in crab pots (21, 37, 40, 25, 90, 15) or the regulation is just not needed because by-catch is small (54, 42, 97).

RESPONSE: The Department disgrees with the commenters' statements. Capture and possession of fish from most pots in bays and estuaries is already prohibited under N.J.A.C. 7:25-18.5(g)11 regulating the use of fish and lobster pots. This regulation clarifies the Department's intent and long-standing policy to prohibit fish pots in bays and estuaries. It will prevent someone from modifying a legal crab pot to make it more efficient to catch fish or from placing crab pots in areas specifically to harvest fish.

47. COMMENT: Possession of by-catch from crab pots should be allowed but should not be sold (31, 34, 65, 96, 102).

RESPONSE: The Department believes that because crab pots are commercial gear, only those species which are legal to harvest and sell should be allowed to be kept. In addition, enforcement of a no sale provision would be almost impossible to enforce once the fish are landed and leave the dock.

48. COMMENT: By-catch that is prohibited to keep should be identified to species (96).

RESPONSE: The Department intends that all by-catch except for conchs is illegal to retain. To reverse the proposal and list those species prohibited rather than those allowed would create a very large list and be confusing to participants in the fishery with no change in the results.

49. COMMENT: Blowfish should be allowed as a by-catch (68).

RESPONSE: The Department disagrees with the commenter's statement. Capture and possession of fish from pots in bays and estuaries is already prohibited. Any request to modify the long-standing policy to prohibit the harvest of blowfish or any other finfish species by use of pots in small coastal bays would require a separate regulatory proposal with full opportunity for public comment.

N.J.A.C. 7:25-14.2(d)

50. COMMENT: The pot checking requirement is supported to ensure that crabbing gear is being tended on a regular basis (5, 68, 82, 92).

RESPONSE: The Department agrees with the commenters' statement.

51. COMMENT: Pot checking requirement is unrealistic because boat breakdown or bad weather can prevent a crabber from checking pots (21, 31).

RESPONSE: The Department understands that boat breakdown or bad weather can prevent a crabber from checking pots. It is not the intent of this regulation to prosecute crabbers who experience boat breakdowns or bad weather, but rather to discourage individuals from setting pots and purposely not tending for long periods of time and to allow pots that have been lost or abandoned to be identified and returned to the owner or removed from the water.

52. COMMENT: Several commenters suggested different levels of crab pot limits, including a number that will effectively reduce the number of pots (38, 39, 57, 59, 61, 91, 99) 150 per crabber (12), 200 per crabber (19, 70, 71, 88), 300 per crabber (82, 97), 400 per crabber (16, 42, 40, 63, 68), 500 per crabber (5, 21), 600 per crabber (25), and 100 pots per crabber with no limited entry (23).

RESPONSE: The Department gave careful consideration to the number of pots that should be allowed under pot limits. The Department, along with the Marine Fisheries Council Blue Crab Committee, comprised of Council members, representatives from the commercial crab pot and crab dredge industries, rental boat liveries and recreational crabbers, continue to believe the numbers proposed are reasonable, will help to slow down growth in the fishery, and will have minimum impacts on the majority of commercial crabbers.

53. COMMENT: Pot limits are supported because there are too many pots in several areas (20, 40, 46, 81, 91).

RESPONSE: The Department agrees with the commenters' statement.

54. COMMENT: Instituting pot limits will create a loss of jobs because crabbers fishing a large number of pots will no longer hire helpers to tend pots (9, 22, 26, 27).

RESPONSE: It is not the intent of pot limits to reduce employment in the crab industry. The Department believes that the employment impact of pot limits will be extremely small as only a very few crabbers report using more than the maximum number of pots allowed. In addition, the Department received favorable comments from the commercial industry regarding pot limits.

55. COMMENT: Each crab pot should be tagged with a tag issued by the State to aid enforcement of pot limits (17, 57, 59).

RESPONSE: The Department appreciates the intent of this comment to aid enforcement of pot limits and considered instituting some type of tagging program with the original proposal. The Department, however, recognized that a tagging program would be difficult to enforce because of normal pot loss and pot theft, whereby a crabber could claim loss or theft greater than actual and receive more tags than he would be entitled.

56. COMMENT: Pot limits will not have any effect on the number of pots fished because most crabbers use less pots than the regulations would allow (22).

RESPONSE: The Department agrees that most crabbers use less than the number of pots allowed under pot limits. The intent of pot limits is to prevent large scale future growth in the fishery without immediately impacting a large number of crab potters.

57. COMMENT: Pot limits will not solve gear conflicts (27).

RESPONSE: The Department does not expect pot limits alone to solve gear conflicts or that gear conflicts will ever totally be eliminated. The Department does believe, however, that pot limits in conjunction with gear marking requirements, increasing creek width for potting, and a limited entry system will stop the trend of increasing gear conflicts and lessen gear conflicts over time.

58. COMMENT: Pot limits should not be instituted because at least 600 pots are needed to make a living (34) or every crabber should have the right to decide how many pots to use (62, 46).

RESPONSE: The Department disagrees with the commenters' statements. Very few commercial crabbers are currently using more than the maximum number of pots allowed under pots limits. In fact, the average number of pots used by crabbers in 1993 was 157. Fulltime crabbers are certainly making a living using less than 600 pots.

59. COMMENT: Pot limits should be the following: 600 pot limit with 300 pots for an individual crabber and 100 additional pots allowed for each crew member between Memorial Day and Labor Day. Before Memorial Day and after Labor Day, 800 pot limit with 400 pots for an individual crabber and 100 pots for each crew member. Institute a crew member license of $50.00 (25).

RESPONSE: The Department believes that the suggested high number of pots is excessive. In addition, pot limits will be difficult enough to administer and enforce without the added factor of number of crew onboard at any one time determining how many pots can be fished at any one time.

60. COMMENT: Pot limits are not supported because they will allow the number of commercial pots to increase from 56,000 to 250,000 (110).

RESPONSE: The Department disagrees with the commenter's statement. The commenter is suggesting that all licensed crabbers will increase the number of pots being fished to the maximum allowed. This assumes a dramatic change in the traditional fishery, which is dominated by parttime participants. Even if this were to occur, the pot limit would restrict growth which would be unlimited without such a limit.

N.J.A.C. 7:25-14.2(f)

61. COMMENT: There is no need for a potting season as environmental factors influence when crabs can be potted (54, 61, 97).

RESPONSE: The Department agrees that environmental factors influence when crabs can be potted. The intent of a potting season, however, is to prevent crabbers from setting pots before crabs can be potted solely to claim fishing grounds and also to allow law enforcement authorities to remove abandoned pots or associated crabbing gear after the season is closed.

N.J.A.C. 7:25-14.4(a)1 through 6

62. COMMENT: Limited entry is supported for commercial crabbing, but 1994 licenses should be increased by 10 percent (17, 31, 57, 59, 22) or five percent (102) of 1993 licenses issued, not 20 percent as proposed.

RESPONSE: Based on comments received and the high level of activity currently in the fishery, the Department agrees that increasing licenses by 20 percent may escalate fishing pressure and user conflicts. However, to reduce the percentage to less than 20 percent is considered to be too substantive a change to make upon adoption. To repropose the rule with a lower percent increase would require an additional period of time and would most likely result in the issuance of more licenses than will occur under the existing proposal. Therefore, the Department has decided to adopt the rule as proposed.

63. COMMENT: The July 9, 1993 cutoff date for eligibility to purchase licenses under limited entry is not fair. No one was notified of the cutoff date prior to it taking effect and some participants in the commercial fishery will not be eligible to purchase a 1994 license (30, 33, 13, 37, 63, 76, 77, 78, 100, 103, 111).

RESPONSE: The purpose of the limited entry system is to control growth in the fishery. The Department believes that announcing a cutoff date in advance of that date would cause mass purchasing of licenses and defeat the purpose of limited entry. In addition, anyone purchasing a license after July 9, 1993 was notified that they may not be eligible to purchase a 1994 license and should use extreme caution in investing in the fishery. The Department does propose to individually contact those individuals who did purchase crab licenses after July 9, 1993 to notify them of the opportunity to apply for a 1994 license through the lottery system.

64. COMMENT: A certain percentage of licenses from the limited entry lottery should be reserved for handicapped people (50).

RESPONSE: The Department has no intention of discriminating against handicapped individuals during the limited entry lottery. To that end, handicapped individuals will be provided the same opportunity to enter the lottery with the same chance to be selected as anyone else.

65. COMMENT: In place of a limited entry system, there should be a two year delayed entry system to allow for people to get into the fishery who are willing to wait (25).

RESPONSE: On April 5, 1993, the Department proposed a delayed entry system for the blue crab fishery. A public hearing on the proposal was subsequently withdrawn due to public comments indicating that the delayed entry system would not work to reduce participation in the fishery.

N.J.A.C. 7:25-14.4(a)7

66. COMMENT: Commercial crab licenses should be transferable to anybody. If not, the license and fishing gear will have no value under the limited entry system (6, 13, 20, 22, 23, 30, 31, 32, 33, 36, 38, 39, 40, 41, 43, 45, 14, 34, 46, 42, 17, 34, 61, 65, 80, 81, 91, 105, 106, 102).

RESPONSE: The Department recognizes that non-transferability of licenses except to spouse, son or daughter will somewhat diminish the number of buyers for crabbing equipment if an individual wishes to leave the fishery. Potential buyers will be limited to those individuals currently in the fishery in New Jersey along with current and new fishermen in other jurisdictions. Vessels could also be sold to individuals in other commercial fishing industries or for recreational uses. The Department also believes, however, that if licenses were transferable to anyone, the number of crab pot licenses issued would never be reduced to 1991 levels. Reducing the numbers of crab pot licenses issued to 1991 levels is a major goal of the proposal. Once crab pot licenses are reduced to the 1991 levels, the Department will re-address the issue of transferability of licenses.

67. COMMENT: Transferability of licenses to anyone should not be allowed. This would create a monopoly and the number of commercial licenses would never be reduced (108).

RESPONSE: The Department agrees with the commenter's statements.

N.J.A.C. 7:25-14.5(a)1

68. COMMENT: A myriad of comments were received regarding the proposed pot size for recreational crabbers. Some commenters expressed concern that requiring recreational crabbers to use half pots is a hardship and discriminating because half pots catch less crabs (5, 8, 12, 16, 36, 19, 42, 57, 17, 59, 61, 51, 70, 71, 72, 73, 82, 88, 91, 94, 99, 108). Some commenters supported recreational pots as a way to differentiate between recreational and commercial fisheries (62, 63). Other commenters suggested that recreational pots should be larger than proposed with four funnel entrances instead of two (49, 107), or that one commercial pot should continue to be allowed under the recreational pot license (69). One commenter suggested that instituting half pots for recreational crabbers should be done immediately as opposed to being phased in (81).

RESPONSE: The Department has carefully considered comments regarding use of recreational pots and has decided to eliminate that aspect of the proposal to phase out the use of traditional commercial pots by recreational crabbers. The use of two commercial crab pots under a non-commercial license will continue to be permitted.

69. COMMENT: Marking crab pot buoys with fluorescent paint is a bad idea because everyone's buoys will look the same, making it very difficult to find particular pots (22, 24, 31, 32, 33, 43, 45, 34, 65, 81, 84, 96, 102, 46, 105, 106).

RESPONSE: The Department's intent in requiring ends of buoys to be flourescent orange or have reflectors was to increase visibility under poor light conditions to reduce user conflicts. Because of the large number of comments suggesting that this requirement would make it extremely difficult to distinguish between buoys of different fishermen, the Department is changing the requirement to require that all crab pot buoys have reflectors, reflecting tape or fluorescent paint on any visible part of the buoy. The Department believes that this will give crabbers the required flexibility to personalize buoy marking while at the same time increasing visibility to reduce user conflict.

70. COMMENT: Some commenters suggested that polypropylene line should be allowed on crab pots to prevent line from getting tangled (22, 24, 81, 84) while others advocated the use of a non-floatable line or weighted line on all crab pots (5, 22).

RESPONSE: The Department's intent in prohibiting the use of polypropylene line was to reduce the incidence of line entanglement in boat propellers. Comments suggesting that polypropylene line be allowed, but weighted in some way so it will not float, is acceptable to the Department and the adoption has been modified accordingly.

N.J.A.C. 7:25-14.6(c)

71. COMMENT: Opposing comments were received regarding the proposed increase in creek width where crab pots could not be set. Some suggested that minimum width of creeks allowed to be potted should be increased to 100 feet instead of the recommended 50 feet (12, 17, 57, 59, 97), while others recommended that creek width for potting should not be increased because it will hurt the commercial fishery and increase the number of pots being fished in the bays (15, 22, 24, 41, 44, 45, 21, 111).

RESPONSE: The Department considered the creek width issue carefully and continues to believe that increasing creek width is an important step in reducing user conflicts and terrapin mortality. Increasing the minimum width if creeks allowed to be potted to 100 feet, however, would eliminate large crabbing areas. The Department believes that a 100 foot minimum creek width is excessive at this time and will keep the creek width set at 50 feet as proposed. To reduce potential impact of creek width increase, the Department will modify the adoption to allow for the use of trot lines in smaller creeks.

N.J.A.C. 7:25-14.7(a)2 through 5

72. COMMENT: The dredge size of 54 inches in Delaware Bay is too small (1, 14, 24, 46, 67, 80) and should be two eight-foot dredges or one 12-foot dredge (46, 105, 106).

RESPONSE: As explained in the response to Comment 19, the Department is withdrawing its proposal to establish a dredge fishery in Delaware Bay and will address all dredge sizes in a separate proposal.

73. COMMENT: Delaware Bay tooth spacing on dredges should be three inches like the rest of the State (54, 25).

RESPONSE: As explained in the response to Comment 19, the Department is withdrawing its proposal to establish a dredge fishery in Delaware Bay and will address all dredge sizes in a separate proposal.

74. COMMENT: Weights of dredges for the Atlantic coast bays should be raised to approximate similar increases for Raritan Bay and Delaware Bay (54, 25).

RESPONSE: The Department disagrees with the commenters' statement. Dredge weights are being raised for larger bays to enable crabbers to use dredges more appropriate to dredging in deep water. Atlantic coast bays are small and shallow, not requiring any increase in dredge weight.

N.J.A.C. 7:25-14.7(d)1 and 2

75. COMMENT: The December 1 start date for the Atlantic coast dredge season is too early and should be the same over the entire State (54, 40).

RESPONSE: Because the Department has withdrawn its proposal to establish a Delaware Bay dredge fishery, the opening of dredge season will have a uniform date of December 1. The December 1 opening already delays all legal dredging areas South of Route 40 from opening for two weeks from a previous opening of November 15. Any crab dredgers who believe December 1 to be too early to dredge crabs may choose not to dredge until they believe conditions are conducive to harvesting crabs by dredge.

N.J.A.C. 7:25-14.10

76. COMMENT: The hard crab size limit should not be increased because there is no tolerance to protect crabbers (14, 22, 24, 31, 81, 84, 65).

RESPONSE: The Department understands the concerns of the commenters but disagrees with the concept. Tolerance for size limits, where a fisherman is allowed to keep a certain number of undersized animals, is not allowed in most fisheries. Fishermen in these other fisheries harvest large numbers of fish, are required to abide by size limits, and have been able to operate in an efficient manner without a tolerance. The Department does not recognize any difference in the commercial crab industry that would require a tolerance.

77. COMMENT: The hard crab size limit should not be increased because it will create an economic hardship on businesses depending on recreational crabbers (22) and to commercial crabbers that sell crabs less than 4¾ inches (102).

RESPONSE: Because of the hardship placed on recreational crabbers and crabbing businesses, the Department is changing the recreational size limit to 4½ inches. The size limit for crabs offered for sale will be 4¾ inches. The market for crabs less than 4¾ inches is small and those crabs are of less value, therefore economic impact to the commercial fishery will be extremely small.

78. COMMENT: The hard crab size limit should be 4½ inches for recreational crabbers (16, 17, 27, 57, 59, 68).

RESPONSE: The Department agrees with the commenters' statement and has made the necessary change.

79. COMMENT: Commenters had different suggestions regarding the appropriate minimum size for hard crabs. They either supported the increase in hard crab size limit (40), or indicated it should be at least 4¾ inches (25, 19, 61, 82, 91, 92) while two individuals suggested five inches was more appropriate (88, 97).

RESPONSE: The Department agrees that an increase is needed in the hard crab size limit. The Department believes that a 4½ inch size limit for crabs not for sale and a 4¾ inch size limit for crabs for sale are appropriate to decrease the keeping of small crabs without impacting the recreational or commercial fisheries.

N.J.A.C. 7:25-14.11(a)

80. COMMENT: Taking of crabs under a bait seine license should not be restricted to recreational use only. Commercial harvest by bait seine has been permitted in the past (111).

RESPONSE: The Department acknowledges receipt of the comments and agrees with the statement. The Department inadvertently excluded language from the proposal that would have clarified the Department's policy regarding the use of bait seines for taking of crabs. However, to incorporate the necessary language to reflect the current policy is deemed to be too substantive a change to incorporate upon adoption. Therefore, the Department has deleted this section from the adoption and will address the taking of crabs by bait seines in a future amendment.

N.J.A.C. 7:25-14.11(b)

81. COMMENT: Closing of Newark Bay to any form of crabbing is supported, but there should be a fine included to dissuade people from crabbing in this area (17).

RESPONSE: Penalties for violation of N.J.A.C. 7:25-14.11(b) are specified under N.J.A.C. 7:25-14.13 and N.J.S.A. 23:2B-14.

N.J.A.C. 7:25-14.12(a)

82. COMMENT: Permit suspensions for failing to report harvest are excessive (14, 22, 24, 31, 32, 42, 46, 25, 34, 43, 45, 27, 65, 84, 96, 105, 106).

RESPONSE: The Department agrees that penalties proposed for failing to submit monthly reports were somewhat excessive and is modifying the penalties from allowing license suspension on the first offense to allowing suspension on the second and subsequent offenses to 120 days. Permanent revocation of the license on the third offense has also been deleted.

Summary of Hearing Officer's Recommendations and Agency Responses:

Steve Herb, Assistant Director, Division of Fish, Game and Wildlife served as hearing officer at the November 17 and November 24, 1993 public hearings regarding the Department's proposal on crab management. After reviewing testimony presented at the public hearings and written comments received during the comment period, he recommended that the Department adopt the repeal of N.J.A.C. 7:25-7.13, the repeal and new rule at N.J.A.C. 7:25-14.1, amendments N.J.A.C. 7:25-14.2, 14.4, 14.5, 14.6 and 14.10, new rules N.J.A.C. 7:25-14.7, 14.8 and 14.11, recodification and amendments of N.J.A.C. 7:25-14.7 and 14.8 to N.J.A.C. 7:25-14.12 and 14.13 with the following changes:

1. At N.J.A.C. 7:25-14.1 the definition of "crab dredge area" should be modified to exclude Delaware Bay. Crab dredging in Delaware Bay should be addressed under a separate amendment.

2. At N.J.A.C. 7:25-14.1 the definition of "recreational crab pot" should be deleted. The size of crab pots used by both commercial and recreational crabbers should remain the same.

3. At N.J.A.C. 7:25-14.2(a), 14.4(a), 14.5(a), and 14.7(a) the term "person" should be replaced by the term "individual" to clarify a longstanding policy that the license is issued to an individual.

4. At N.J.A.C. 7:25-14.2(a)2 and 3 the language should be modified to clarify that a commercial pot licensee may have an agent tend his or her pots with the appropriate documentation. The reference to penalty provisions is cited as N.J.A.C. 7:25-14.8. The section on penalties was recodified as 14.13 and therefore, the reference to penalties in 7:25-14.2(a)3 should be corrected.

5. At N.J.A.C. 7:25-14.4(a)1 and 4 language should be added to clarify how applicants for a crab pot or dredge license who were on active military service during the eligibility period may obtain a license.

6. At N.J.A.C. 7:25-14.4(a)2 and 5, language should be added to clarify that successful applicants will be chosen, by lottery if necessary, from all applications received within 30 days of the effective date of this amendment.

7. At N.J.A.C. 7:25-14.4(a)3 the number of 1991 crab pot licenses should be corrected from 308 to 312.

8. At N.J.A.C. 7:25-14.4(a)4 the oyster boat license and the Area 2 and 3 license should be deleted from the list of criteria used to determine eligibility for a crab dredge license. These licenses are specific to Delaware Bay and will no longer represent valid criteria for determining an individual's eligibility if all references to crab dredging in Delaware Bay are to be withdrawn from this amendment as suggested at Recommended Change Numbers 1 and 13.

9. At N.J.A.C. 7:25-14.5(a)1 the reference to recreational crab pots should be deleted. This reference is no longer necessary if the size of crab pots used by both commercial and recreational crabbers will remain the same as suggested at Recommended Change Number 2.

10. At N.J.A.C. 7:25-14.6(a) the language should be modified to clarify that any fluorescent or reflective paint or tape, other reflective material or reflectors may be used to mark crab pot buoys. The prohibition on the use of polypropylene line should be modified to indicate that floating line be prohibited on crab pots and crab pot buoys.

11. At N.J.A.C. 7:25-14.6(c) the rule should be modified to permit the use of trot lines in creeks less than 50 feet in width.

12. At N.J.A.C. 7:25-14.6(d) the Marine Fisheries Council should be consulted as well as the Shellfisheries Council when determining areas where crab pots or trot lines should not be set.

13. At N.J.A.C. 7:25-14.7(a)1, 2, 3, 4, 5, and 8, (d) and (e) all references to Delaware Bay should be deleted. Dredging of crabs in Delaware Bay should be addressed in a future amendment.

14. At N.J.A.C. 7:25-14.7(c) punctuation and spelling errors should be corrected.

15. At N.J.A.C. 7:25-14.10(a) and (b) the minimum size limit on hard crabs should be changed to reflect a 4½ inch limit for possession and a 4¾ inch size limit for sale.

16. At N.J.A.C. 7:25-14.11(a) should be deleted. The Department inadvertently excluded language from the proposal which reflected the existing policy. To provide the public the opportunity to comment on the correct language, the Department should address the issue of harvesting crabs by bait seine in a future proposal.

17. At N.J.A.C. 7:25-14.12(a) and (b) the proposed 60 days suspension of a commercial license for the first offense of failing to provide monthly reports should be deleted. The proposed permanent revocation upon a third offense should also be deleted. In place of the periods of suspension and revocation deleted, the period of license suspension should be 120 days for the second and any subsequent offense for failing to provide monthly reports.

As set forth above, these recommendations were adopted by the Department. The record of the public hearing may be inspected by contacting Janis E. Hoagland, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN 402, Trenton, NJ 08625.

Summary of Agency-Initiated Changes:

At N.J.A.C. 7:25-14.2(a)2 the language is modified to clarify an existing policy that a commercial licensee may have an agent tend his or her pots or trot lines provided that agent possesses his or her own license, the license of the individual whose pots are being tended and a letter of authorization issued by the Division.

At N.J.A.C. 7:25-14.2(a)3, the reference to the penalty section in the proposal is cited as N.J.A.C. 7:25-14.8. The proposal and adoption recodifies the penalty section from N.J.A.C. 7:25-14.8 to N.J.A.C. 7:25-14.13. It is, therefore, necessary to correct the reference to the penalty section cited at N.J.A.C. 7:25-14.2(a)3.

At N.J.A.C. 7:25-14.4(a)1 and 4, an exemption to the crab pot and crab dredge licensing eligibility criteria is made for future applicants who were on active military service during any part of the qualifying period of January 1, 1991 through July 8, 1993. The intent of the amendment was to allow individuals on active military service during the eligibility period an opportunity to apply and receive a license provided they did so within 90 days of their discharge. The language of the adoption has been clarified to reflect the intent. In addition, language was also incorporated to extend the exemption for the licensing criteria to individuals completing military service between July 9, 1993 and the effective date of the rule. Without this change, individuals on active military service during the eligibility period and being discharged after July 9, 1993 and before the effective date of the rule may not have had the opportunity to apply for and receive a license because they could not have applied within the required 90 days.

At N.J.A.C. 7:25-14.4(a)3, the number of 1991 crab pot licenses issued is stated as 308. Upon further review of the computer file of 1991 licenses it has been determined that 312 1991 crab licenses were actually issued. Therefore, the Department has modified this section of the rule to reflect the correct number.

At N.J.A.C. 7:25-14.6(d), the Division, after consultation with the Shellfisheries Council, may designate areas off limits to the use of crab pots or trot lines. This section has been revised so the Division must consult with both the Shellfisheries Council and the Marine Fisheries Council before designating areas off limits to the use of crab pots or trot lines. This action merely formalizes an existing policy but at the same time provides additional opportunity for the public to be involved in the decision-making process.

At N.J.A.C. 7:25-14.7(c), the Department has corrected spelling errors and added punctuation (a comma) to clarify the rule.

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

SUBCHAPTER 14. CRAB MANAGEMENT

7:25-14.1 Definitions

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

"Crab dredge area" means all marine waters of the State including the Atlantic Ocean with the exception of the Newark Bay Complex, the State oyster beds defined in N.J.A.C. 7:25-19.1, any marked shellfish grounds leased pursuant to N.J.S.A. 50:1-23 and the Delaware Bay *[north and west of a line:

1. Beginning at a point (Corner 1) on the shore line of Cape May County (Lat. 39 deg 04.35'N; Long. 74 deg (54.83'W) thence running 247 deg 38.08' (T) 21,127 feet to a point (Corner 2) where the Clam Line intersects the Brandywine-Dennis Creek Line (Lat. 39 deg 05.66'N; Long. 74 deg 58.96'W);

2. Thence running 221 deg 14.32' (T) 4,871 feet to a point (Corner 3) (Lat. 39 deg 05.06'N; Long. 74 deg 59.64'W) located on the Dennis Creek Range Line;

3. Thence running 319 deg 24.57' (T) 13,749 feet to a point (Corner 4) (Lat. 39 deg 06.77'; Long. 75 deg 01.54') located in the Delaware Bay;

4. Thence running 270 deg 50.95' (T) 40,487 feet to a point (Corner 5) (Lat. 39 deg 06.84'N; Long. 75 deg 10.10'W) in Delaware Bay;

5. Thence running 329 deg 27.45' (T) 25,825 feet to a point (Corner 6) (Lat. 39 deg 10.49'N; Long. 75 deg 12.90'W) on the Southwest Line; and

6. Thence running 235 deg 24.00' (T) 7,561.25 feet to the ruins of the former lighthouse known as Cross Ledge Shoal in Delaware Bay.]*

"Commercial crab pot" means a cube or rectangular shaped device not larger than 30 inches on a side with openings inward for the entrance of crabs. Any similar device may be approved by the Division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval and not larger than seven inches wide and four inches high.

"Delaware Bay," for the purpose of this subchapter, consists of the marine waters under the jurisdiction of the State of New Jersey north and west of the COLREGS Demarcation Line which runs from the Cape May Point Lighthouse in Cape May, New Jersey to F1 5sec Horn at Cape Henlopen, Delaware.

"Department" means the Department of Environmental Protection and Energy.

"Division" means the Division of Fish, Game and Wildlife.

"Land" means to transfer the catch of crabs from any vessel to any land, pier, wharf or dock.

"Newark Bay Complex" means the tidal Passaic River, the tidal Hackensack River, the Newark Bay, the Arthur Kill, and the Kill Van Kull.

["Recreational crab pot" means a cube or rectangular shaped device not larger than 30 inches on a side and 18 inches high with no more than two openings inward for the entrance of crabs. Any similar device may be approved by the Division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval or square and not larger than seven inches wide and four inches high.]

"Trot line" means a single length of anchored line no longer than 3,000 feet to which baits or baited barbless hooks are attached.

7:25-14.2 Use of crab pots and trot lines

(a) No *[person]* ***individual*** shall tend or remove crabs from any pot or trot line unless he ***or she*** is the holder of a valid license, or as otherwise herein provided.

1. *[A person]* ***An individual*** tending crab pots or trot lines shall have in his ***or her*** possession his ***or her*** numbered license which corresponds to the vessel number and the number market on the pots or trot lines tended; *[or]*

2. *[The]* ***A commercial licensee may authorize an agent to tend his or her pots or trot lines provided the agent is in possession of his or her own license, the*** license ***of the individual whose pots are to be tended*** and a letter of authorization from *[the]* ***said*** licensee, issued and notarized by the Division *[of Fish, Game and Wildlife]* indicating the number marker of the pots or trot lines that the agent is authorized to tend.

3. The ***commercial*** licensee may be held liable and subject to the penalty provisions provided in N.J.A.C. 7:25-*[14.8]****14.13*** for the violation of provisions of this subchapter actually committed by the agent based upon the apparent authority of the agent to act for his ***or her*** principal.

(b) (No change.)

(c) All other organisms other than crabs and conchs shall be immediately released to the waters from which such organisms were taken.

(d) All crab pots must be checked and emptied of all crabs and other organisms at least once every 72 hours.

(e) No license holder shall fish more than 600 crab pots in Delaware Bay nor more than 400 crab pots in all other waters.

(f) No license holder shall set any crab pots except between April 16 to December 14 in Delaware Bay and between March 15 to November 30 in all other waters.

(g) All gear associated with crab potting must be removed from the water within three days of the end of the season.

7:25-14.4 Commercial licenses for crab pots/trot lines and crab dredges

(a) No *[person]* ***individual*** shall take or attempt to take crabs by any means for the purpose of sale or barter without having in his or her possession *[a]* ***his or her*** valid commercial crab pot/trot line or crab dredge license issued by the Division pursuant to N.J.S.A. 23:5-35.2.

1. To be eligible for a 1994 commercial crab pot license, the applicant must provide a copy of a previously valid New Jersey 1991, 1992 or 1993 commercial crab pot license issued in the applicant's name prior to July 9, 1993. In subsequent years, the applicant must provide a copy of a previously valid commercial crab pot license held by the applicant from the preceding year. Any person on active military service during any part of the period from January 1, 1991 through July 8, 1993, will also be eligible for a license *[for]* ***provided application is made to the Department within*** a 90 day period following completion of that active military service, upon submission of official documentation indicating duration of military service and date of discharge. ***Qualified applicants completing military service between July 9, 1993 and March 21, 1994 will have until June 19, 1994 in which to apply.***

2. Any applicant applying for a commercial crab pot license between July 9, 1993 and *[30 days after adoption of this amendment]* ***April 20, 1994*** will be eligible to participate in a lottery to purchase a commercial crab pot license. ***Successful applicants will be chosen, by lottery if necessary, from all completed applications received by the Department by April 20, 1994.*** The number of licenses issued pursuant to this lottery will not be more than 20 percent of the number of 1993 licenses issued.

3. No additional crab pot licenses will be issued until the number of licenses issued decreases below the number issued in 1991 (*[308]* ***312*** licenses).

4. To be eligible for a 1994 commercial crab dredge license, the applicant must provide a copy of a previously valid New Jersey 1991, 1992 or 1993 commercial crab dredge license*[, oyster dredge boat license or Delaware Bay Area 2 or 3 license]* issued in the appli-

cant's name prior to July 9, 1993. In subsequent years, the applicant must provide a copy of a previously valid commercial crab dredge license held by the applicant from the preceding year. Any person on active military service during any part of the period from January 1, 1991 through July 8, 1993, will also be eligible for a license *[for]* ***provided application is made to the Department within*** a 90 day period following completion of that active military service, upon submission of official documentation of military service and date of discharge. ***Qualified applicants completing military service between July 9, 1993 and March 21, 1994 will have until June 19, 1994 in which to apply.***

5. Any applicant applying for a 1994 commercial crab dredge license between July 9, 1993 and 30 days after adoption of this amendment will be eligible to participate in a lottery to purchase a commercial crab dredge license. ***Successful applicants will be chosen, by lottery, if necessary, from all completed applications received by the Department by April 20, 1994.*** The number of licenses issued pursuant to this lottery will not be more than 20 percent of the number of 1993 licenses issued.

6. No additional crab dredge licenses will be issued until the number of licenses issued decreases below the number issued in 1993 plus 20 percent.

7. Commercial crab pot and crab dredge licenses are non-transferable except that a license holder may transfer the license at any time to the license holder's spouse, son or daughter upon application to the Division.

8. The license fee for New Jersey residents shall be $100.00 for a crab pot/trot line license and $100.00 for a crab dredge license. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be an amount equal to five times the $100.00 New Jersey resident license fee. All licenses shall expire on December 31 of the calendar year for which they were issued.

9. For crab pots and trot lines, the license number shall be displayed on both sides of the crabber's boat amidship, in numerals not less than 12 inches high and of a color contrasting with their background.

(b) (No change.)

7:25-14.5 Noncommercial licenses for crab pots/trot lines

(a) No *[person]* ***individual*** shall take or attempt to take crabs by means of *[commercial or recreational]* crab pots or trot lines without having in his or her possession a valid license issued by the Division.

1. The Division will issue a noncommercial license for no more than two *[commercial or three recreational]* crab pots or two trot lines *[up to January 1, 1997. After January 1, 1997, non-commercial crab pot licenses shall not be issued for commercial crab pots]*. Trot lines shall not exceed 150 feet in length with a maximum of 25 baits attached. Pots and trot lines shall be marked with the license number. There is no fee for this noncommercial license. All licenses shall expire on December 31 of the calendar year for which they were issued.

2. (No change.)

7:25-14.6 Placement and marking of pots and trot lines

(a) Each crab pot shall be clearly and visibly marked with a buoy, stake or permanent identification tag bearing the license number of the owner. All crab pot buoys *[must have]* ***shall be marked with*** fluorescent *[orange ends]* ***or reflective paint, tape or other reflective material*** or reflectors. *[Polypropylene]* ***Floating*** line shall not be used on any crab pot *[float lines]* ***or crab pot buoys***.

(b) (No change.)

(c) No pot *[or trot line]* shall be placed in a creek, ditch or tributary less than 50 feet wide at mean low water unless approved by the Division. No pot or trot line shall be placed in any man-made lagoon or in any marked or charted channel, except noncommercially licensed pots fastened to a pier or other shore connected structure by a line no longer than twice the depth of the water at that point.

(d) No pot or trot line shall be placed in areas designated by the Division *[of Fish, Game & Widlife]* after consultation with the Shellfisheries Council ***and the Marine Fisheries Council***, as off limits for the catching of crabs by means of pots or trot lines, except noncommercially licensed pots fastened to a pier or other shore connected structure by a line no longer than twice the depth of the water at that point.

(e) (No change.)

Agency Note: N.J.A.C. 7:25-14.7 and 14.8 are recodified with amendments as N.J.A.C. 7:25-14.12 and 14.13.

7:25-14.7 Use of crab dredges

(a) *[A person]* ***An individual*** shall not catch or take crabs by dredges without having *[a]* ***his or her*** valid crab dredge license in his or her possession. Crab dredges shall only be used in crab dredge areas and shall conform to the following specifications:

1. No boat shall have more than four dredges working at the same time*[, except in Delaware Bay where no boat shall have more than two dredges working at the same time]*.

2. The maximum length of each tooth bar shall be 75 inches north of Route 36 (Highlands Bridge) and in the Atlantic Ocean, but if two or fewer dredges are in possession north of Route 36 (Highlands Bridge) or in the Atlantic Ocean then the maximum length of each tooth bar shall be 96 inches. The maximum length of the tooth bar *[in Delaware Bay shall be 54 inches and]* in all other crab dredge areas shall be 38 inches.

3. The maximum weight of each dredge shall be 400 pounds north of Route 36 (Highlands Bridge) and in the Atlantic Ocean, but if two or fewer dredges are in possession north of Route 36 (Highlands Bridge) or in the Atlantic Ocean then the maximum weight of each dredge shall be 500 pounds. The maximum weight of each dredge *[in Delaware Bay shall be 400 pounds and]* in all other crab dredge areas shall be 60 pounds.

4. The maximum length of the teeth shall be six inches north of Route 36 (Highlands Bridge)*[, in Delaware Bay]* and in the Atlantic Ocean and three inches in all other crab dredge areas.

5. The minimum space between teeth shall be *[two inches in Delaware Bay and]* three inches in all *[other]* crab dredge areas, measured at the base.

6. A chain or toothless bar shall be allowed in place of a tooth bar in all waters.

7. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two inches in diameter and shall be connected with no more than six "S" hooks that measure not less than two inches in length as measured to the inside of the "S" configuration.

8. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line; except that two dredges can be towed by a single line in the Atlantic Ocean*[,]* ***and*** north of Route 36 (Highlands Bridge) *[and Delaware Bay]* provided that the dredges are not solidly attached to each other in any way and are fastened to the tow line by a bridle that allows the dredges to act independently of each other.

(b) No person shall catch, take, or attempt to take crabs by dredge from any area except the "crab dredge area" as defined in the definitions section. No person shall dredge or attempt to dredge crabs on any marked leased shellfish grounds. No person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds.

(c) Any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish, which may be caught incidentally to the catching of crabs by dredge, shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels, other bivalve mollusks, or finfish are caught. No person, while engaged in the catching and taking of crabs by dredge, shall have in his or her boat or possession any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish obtained from any source. Conchs may be retained in the crab dredge fishery as a by-catch only. The *[possesion]* ***possession*** of bivalve mollusks or finfish*,* dredges and crabs simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this section.

(d) No person shall catch, take or attempt to catch or take crabs by means of a crab dredge except from one-half hour after sunrise to one-half hour before sunset *[and within the following seasons:

1. From December 15 through April 15 in Delaware Bay; and

2. From]* ***from*** December 1 through March 31 *[in all other waters]*.

(e) No person shall catch, take or attempt to catch or take crabs by means of a crab dredge at any time on Sunday except north of Route 36 (Highlands Bridge)*[,]* ***or*** in the Atlantic Ocean *[or in Delaware Bay]*.

7:25-14.8 Landing crabs

All crabs harvested commercially in State waters shall be landed in this State.

7:25-14.10 Size of crabs taken

(a) No person shall take from any tidal waters of this State or have in his or her possession any peeler or shedder crab measuring less than three inches across the back from the tip of the longest lateral spine to the other or a soft crab measuring less than three and one-half inches across the back from the tip of the longest lateral spine to the other, or hard crab measuring less than four and *[three-quarters]* ***one-half*** inches across the back from tip to tip of spike.

1. (No change.)

(b) A person shall not purchase, sell, offer for sale or expose for sale any hard crab measuring less than four and three-quarter inches across the back from tip to tip of spike.

7:25-14.11 Harvesting crabs

[(a) Crabs may be taken by licensed bait seines authorized pursuant to N.J.S.A. 23:5-24.2 and N.J.A.C. 7:25-18.5. Crabs taken by bait seines shall not be sold or used for barter. The maximum harvest and/or possession of crabs taken by bait seines is one bushel per day per individual.]

*[(b)]****(a)*** No person shall take or attempt to take any crabs by any means in the Newark Bay Complex.

7:25-14.12 Filing of reports

(a) All persons commercially licensed to take crabs shall keep, on forms furnished by the Division *[of Fish, Game and Wildlife]*, accurate records of the number of bushels of hard crabs, peelers and soft crabs caught, the type of gear used and the area fished. These records shall be filed by the 10th day of each month with the Division *[of Fish, Game and Wildlife]*. If no crabs were harvested during the month, a report to that effect shall be provided. Failure to file on or before the 10th of the month following the month of record may lead to suspension *[or revocation]* of said license by the Department according to the following schedule:

1. First offense: *[60 days]* ***no*** suspension;

2. Second ***and subsequent*** offense***s***: 120 days suspension*[; and]****.***

[3. Third offense: permanent revocation.]

(b) All license suspensions shall be imposed during the open season for the respective fishery; any period of suspension not occurring during the existing season shall be applied during the next open season even if such season falls in a different calendar year. Prior to suspension *[or revocation]* of the license, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:25-14.13 Penalties

(a) (No change.)

(b) Any person not having a valid license in possession or failing to exhibit same for inspection by an authorized law enforcement officer while tending a pot or trot line or dredging crabs, or violating the provisions of N.J.A.C. 7:25-14.5 or 14.6 shall be liable to a penalty of $20.00 for the first offense and $40.00 for each subsequent offense.

(c) Any person failing to check crab pots at least once every 72 hours pursuant to N.J.A.C. 7:25-14.2(d) shall be liable to a penalty of $20.00 for each pot in violation.

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

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: March 1, 1993 at 25 N.J.R. 875(a).

Adopted: February 25, 1994 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: February 25, 1994 as R.1994 d.155.

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

Effective Date: March 21, 1994.

Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:

No comments were received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on March 29, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. One person attended the hearing. No comments were submitted. The hearing officer recommended that the decisions be made based upon available biodata. The Council adopted the products specified as "adopted" and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Procainamide HCl SR tabs 500 mg, 750 mg	Copley

(OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 25 N.J.R. 1970(c), 2881(b), 4497(b) and 6060(b)).

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: November 1, 1993 at 25 N.J.R. 4844(a).

Adopted: February 25, 1994 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: February 25, 1994 as R.1994 d.156, **with portions of the proposal not adopted but still pending.**

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

Effective Date: March 21, 1994.

Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received **no comments** pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on November 29, 1993. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. One comment was received as summarized in a previous issue of the New Jersey Register (26 N.J.R. 362(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted" and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Alprazolam tabs 0.25 mg, 0.5 mg, 1 mg, 2 mg	Mylan
Chlorzoxazone tabs 250 mg, 500 mg	Ohm
Clotrimazole cream 1%	Taro
Pindolol tabs 5 mg, 10 mg	Mutual

The following products and their manufacturers were **not adopted and still pending**:

Adenosine phosphate inj 25 mg/ml	Steris
Allopurinol tabs 300 mg	Geneva
Amiodarone tabs 200 mg	Alphapharm
Ascorbic Acid inj 222 mg/ml	Steris
Atenolol tabs 25 mg	Danbury
B Complex 100 inj	Steris
B Complex with C & B-12 inj	Steris
Betamethasone sod. phosphate inj 4 mg/ml	Steris
Bromocriptine mesylate tabs 2.5 mg	Danbury
Brompheniramine maleate inj 10 mg/ml	Steris
Bumetanide tabs 0.5 mg, 1 mg, 2 mg	Zenith
Buspirone HCl tabs 5 mg, 10 mg	Danbury
Calcitonin-salmon inj 200 iu/ml	Arcola
Cefaclor caps 250 mg, 500 mg	Zenith
Chlorpheniramine maleate inj 10 mg/ml	Steris
Chlorpromazine HCl inj 25 mg/ml	Steris
Chorionic gonadotropin 5,000 u, 10,000 u	Steris
Cimetidine tabs 200 mg, 300 mg, 400 mg, 800 mg	Mylan
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Desipramine tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg, 150 mg	Danbury
Dexamethasone acetate susp. inj 8 mg/ml	Steris
Dexamethasone NaPO4 inj 4 mg/ml, 10 mg/ml	Steris
Dexpanthenol inj 250 mg/ml	Steris
Diazepam inj 5 mg/ml	Steris
Dicyclomine HCl inj 10 mg/ml	Steris
Dimenhydrinate inj 50 mg/ml	Steris
Diphenhydramine HCl inj 10 mg/ml, 50 mg/ml	Steris
Dyphylline GG liquid	Hi-Tech
Edetate disodium inj 150 mg/ml	Steris
Estradiol cypionate inj 5 mg/ml	Steris
Estradiol valerate inj 20 mg/ml, 40 mg/ml	Steris
Fiorinal tabs substitute	Danbury
Fluphenazine HCl tabs 1 mg, 2.5 mg, 5 mg, 10 mg	Danbury
Isosorbide dinitrate tabs 20 mg, 30 mg, 40 mg	Danbury
Methylprednisolone tabs 4 mg, 16 mg	Danbury
Metoclopramide HCl tabs 5 mg	Danbury
Metoprolol tartrate tabs 50 mg, 100 mg	Purepac
Nadolol tabs 20 mg, 40 mg, 80 mg, 120 mg, 160 mg	Zenith
Nadolol tabs 40 mg, 80 mg, 120 mg	Danbury
Naproxen sodium tabs 275 mg, 550 mg	Mylan
Naproxen tabs 250 mg, 375 mg, 500 mg	Mylan
Nortriptyline caps 10 mg, 25 mg, 50 mg, 75 mg	Mylan
Primidone tabs 250 mg	Linnett
Propoxyphene/APAP tabs 100/650	Danbury
Spironolactone/HCTZ tabs 50/50	Danbury
Terfenadine tabs 60 mg	Geneva
Trazodone HCl tabs 150 mg	Danbury
Triamterene/HCTZ caps 50/25	Zenith
Triazolam tabs 0.125 mg, 0.25 mg	Alphapharm

(OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 26 N.J.R. 362(b)).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: January 3, 1994 at 26 N.J.R. 13(b).

Adopted: February 25, 1994, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: February 25, 1994 as R.1994 d.157, **with portions of the proposal not adopted but still pending.**

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

Effective Date: March 21, 1994.

Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: In opposition to Hoechst-Roussel's glyburide tablets, the Upjohn Company stated that the Council was "impliedly preempted" from determining the bioequivalency of Hoechst's glyburide product to the brand, Micronase, by the Federal Food, Drug, and Cosmetic Act. In addition, the Council was "preempted" from violating the patent protection afforded to Micronase.

Upjohn also commented that there was apparent significant differences in lag time which suggested differences in pharmacodynamic characteristics. In addition, Upjohn contended that the Hoechst's protocol for assay procedures were inadequate and/or not appropriately followed in its most recent biostudy.

RESPONSE: The Council agreed to defer taking action on this pending the input from Dr. Louis Amorosa, a board certified endocrinologist and member of the Drug Utilization Review Council.

COMMENT: Procter & Gamble (P&G) in opposition to Duramed's Entex PSE substitute pointed out that Entex PSE is a controlled-release product and no generic form has demonstrated therapeutic equivalence. P&G cautioned the Council of potential dose dumping and the resulting negative therapeutic effects with generic products that have not demonstrated reproducible bioavailability. P&G requested that Duramed's application for an Entex PSE substitute be rejected.

RESPONSE: Procter & Gamble was correct in that no bioequivalency data had been submitted to support Duramed's product. Since the Council has required biodata for all controlled-release formulations this product was deferred pending the submission of data to support therapeutic equivalency.

COMMENT: Zenith noted that they are not the producers of metaprolol tartrate tabs, as shown in the January 3, 1994 proposal.

RESPONSE: The Council acknowledges the comment and has made the necessary change on adoption to reflect the correct producer, Mutual.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on January 24, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. No one attended the hearing. Two comments were received as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata. For the Hoechst glyburide product, the hearing officer recommended that a decision be made based on the legal advice provided by the Deputy Attorney General's Office, as well as, bioequivalency data and supporting clinical information. The Council adopted the products specified as "adopted" and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted** (addition to proposal indicated in boldface with asterisks ***thus***; deletion indicated in brackets with asterisks *[thus]*):

Clemastine fumarate syrup 0.5mg/5ml	Barre-National
Clotrimazole cream 1%	Warrick
Desoximetasone cream 0.05%	Taro
Desoximetasone cream 0.25%	Taro
Diltiazem HCl SR caps 60mg, 90mg, 120mg	Prographarm
Ergotamine tartrate/caffeine tabs 1/100	Geneva
Estropipate tabs 0.75mg, 1.5mg, 3mg, 6mg	Watson

Gemfibrozil tabs 600mg	TEVA
Glyburide tabs 1.25mg, 2.5mg, 5mg	Greenstone
Metoprolol tartrate tabs 50mg, 100mg	*[Zenith]* ***Mutual***
Norethindrone acetate 5mg	ESI/Ayerst
Polyhistine DM syrup substitute	DSC Labs
Polyhistine DM syrup substitute	KV Pharm
Prenate 90 tabs substitute	KV Pharm
Tolmetin sodium tablets 600mg	Geneva
Triamterene/HCTZ 37.5/25 tablets	Watson
Verapamil HCl tablets 40mg	Watson
Yohimbine tablets 5.4mg	Norton

The following products and their manufacturers were **not adopted and still pending**:

Acebutol HCl caps 200mg, 400mg	Mylan
Amiloride/HCTZ 5/50 tablets	TEVA
Atenolol/chlorthalidone tablets 100/25, 50/25	Mylan
Cimetidine tablets 200mg, 300mg, 400mg, 800mg	Geneva
Clomipramine caps 25mg, 50mg, 75mg	Geneva
Diltiazem tabs 30mg, 60mg, 90mg, 120mg	Zenith
Flurbiprofen tabs 50mg, 100mg	Mylan
Glyburide tabs 1.25mg, 2.5mg, 5mg	Hoecht-Roussel
Histussin HC syrup substitute	DSC Labs
Morphine Sulfate SR tabs 30, 60, 100mg	Roxane
Nadolol tabs 20mg, 40mg, 80mg	Mylan
Naproxen sodium tabs 275mg, 550mg	Zenith
Naproxen tabs 250mg, 375mg, 500mg	Zenith
Neomycin/dexamethasone ophth soln	Pharmafair
Nitrofurantoin caps 25mg, 50mg, 100mg	Geneva
Piroxicam caps 10mg, 20mg	Purepac
Poly-Histine-D elixir substitute	DSC Labs
Propoxyphene napsylate/APAP 100/650	Lemmon
Pseudophedrine/guaifenesin 120/600 tablets	Duramed
Sulfamethoxazole/trimethoprim suspension	TEVA

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT
Public Assistance Manual
Computerized Support Enforcement System
Adopted Amendments: N.J.A.C. 10:81-11.7 and 11.9

Proposed: January 3, 1994 at 26 N.J.R. 84(a).
Adopted: February 28, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: March 1, 1994 as R.1994 d.159, **without change.**
Authority: N.J.S.A. 44:10-3; Family Support Act of 1988 (Public Law 100-485), Section 123; 45 C.F.R. 307.10 and 45 C.F.R. 303.2(b).
Effective Date: March 21, 1994.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:81-11.7 Responsibilities of the State agency

(a) The State Office of Child Support and Paternity Programs, located in the Division of Family Development, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Office of Child Support and Paternity programs (OCSPP). Responsibilities of the OCSPP include, but are not limited to, the following:

1.-11. (No change.)

12. The operation of the Automated Child Support Enforcement System (ACSES), which will control, account for and monitor all the factors in the support collection and paternity determination processed under the State plan. At a minimum, this shall include:

i. Maintaining identifying information, such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as required by OCSPP;

ii. Periodically verifying the information on individuals referred to in (a)12i above with Federal, State and local agencies, both intrastate and interstate;

iii. Maintaining data necessary to meet Federal reporting requirements on a timely basis as prescribed by OCSPP;

iv. Maintaining information pertaining to:

(1) Delinquency and enforcement activities;

(2) Intrastate, interstate and Federal location of absent parents;

(3) The establishment of paternity; and

(4) The establishment of support obligations;

v. Collecting and distributing both intrastate and interstate support payments;

vi. Maintaining and distributing incentive payments to political subdivisions which share in the cost of funding the program and to other political subdivisions, based on efficiency and effectiveness in accordance with N.J.A.C. 10:81-11.6;

vii. Maintaining accounts receivable on all amounts owed, collected, and distributed;

viii. Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;

ix. Accepting electronic case referrals and updating information from the State's Title IV-A program and using that information to identify and manage support enforcement cases;

x. Transmitting information electronically to provide data to the State's AFDC system so that the IV-A agency can determine (and report back to the IV-D system) whether a collection of support causes a change in eligibility for, or the amount of aid, under the AFDC program;

xi. Providing security to prevent unauthorized access to, or use of, the data in the system;

xii. Providing management information on all IV-D cases under the State plan from initial referral or application through collection and enforcement;

xiii. Providing electronic data exchange with the State Medicaid system to provide for case referral and the transfer of the medical support information;

xiv. Providing electronic data exchange with the State IV-F program for purposes of assuring that services are furnished in an integrated manner unless the requirement is otherwise met through the exchange conducted under ix above;

xv. Using automated processes to assist the State in meeting State plan requirements and standards for program operations, including, but not limited to:

(1) The automated maintenance and monitoring of accurate records of support payments;

(2) Providing automated maintenance of case records for purposes of management and tracking requirements;

(3) Providing Title IV-D case workers with on-line access to automated sources of absent parent's employer(s) and wage information maintained by the State when available, by establishing an electronic link or by obtaining an extract of the data base and placing it on-line for access throughout the State;

(4) Providing locate capability by automatically referring cases electronically to locate sources within the State (such as the Division of Motor Vehicles, Department of Labor, and other State agencies), and to the Federal Parent Locator Service, and utilizing electronic linkages to receive return locate information and place the information on-line to Title IV-D case workers throughout the State;

(5) Providing capability for electronic funds transfer for purposes of income withholding and interstate collection; and

(6) Integrating all processing of interstate cases with the computerized support enforcement system, including the central registry; and

xvi. Providing automated processes to enable OCSPP to monitor State operations and assess program performance.

10:81-11.9 Responsibilities of the CWA/CSP Unit

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

(e) Rules on CSP case record are as follows:

1. CSP case record: Automated CSP case records shall be maintained for all AFDC cases referred to the CSP Unit. The case record shall be established on the Automated Child Support Enforcement System (ACSES) within 20 calendar days after receipt of referral from IV-A or the filing of a IV-D application. The case record shall be updated with new information within five working days of receiving such information.

i. Purpose of CSP case record: The purpose of the automated CSP case record is to compile, in one easily accessible location, all information relevant to CSP activities.

ii. The automated CSP case record shall contain the following information as applicable to each case:

(1) The date of the referral from IV-A to IV-D for each AFDC applicant/recipient or the date an application was filed for those individuals requesting nonpublic assistance (NPA) services.

(2) Information such as social security numbers, names, dates of birth, home addresses and mailing address on individuals against whom support obligations are sought to be established or enforced and on individuals to whom support obligations are owed.

Recodify existing (2) and (3) as (3) and (4) (No change in text.)

(5) A record of all efforts to utilize locate sources, including the dates and results of these efforts.

(6) Paternity establishment information.

(7) A record identifying the court order and information regarding delinquency and enforcement activities, as well as collection and distribution.

(8) Medical support information.

(9) A record of communications to and from the Office of Child Support and Paternity Programs or any other CSP agency.

Recodify existing (8) and (9) as (10) and (11) (No change in text.)

iii. (No change.)

(f)-(l) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Residential Child Care Facilities

Adopted Amendment: N.J.A.C. 10:127-6.5

Proposed: December 20, 1993 at 25 N.J.R. 5751(a).

Adopted: February 28, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: March 1, 1994 as R.1994 d.158, **without change.**

Authority: N.J.S.A. 30:1-14 and 30:4C-4.

Effective Date: March 21, 1994.

Expiration Date: August 16, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received jointly from Cindy E. Gustafson, M.S., Hunterdon County CART/CIACCC Coordinator, and Angelo F. DiOrio, Administrator, Hunterdon County Department of Human Services. The commenters suggested changes in the proposal regarding restitution payments by children who have damaged property at a residential child care facility. The proposed amendment sets a limit of 50 percent of a child's allowance that the facility may withhold as restitution instead of the existing 30 percent limit. The commenters suggested that a restitution schedule would be more appropriate for pregnant and parenting adolescents, rather than a rigid 50 percent limit. They noted that funds should not be withdrawn from an adolescent for restitution if the funds are necessary to support or provide care for the adolescent's infant or to obtain pre-natal care.

RESPONSE: The Division agrees with the intent of the comment, but no changes to the proposed amendment are necessary. The proposed restitution limit does not preclude a facility from establishing a gradual payment schedule, withholding less than 50 percent of a child's allowance, or choosing not to withhold restitution payments at all. The proposed limit also specifically applies to the child's weekly income from allowance, so that restitution payments can not be withheld from a child's income from other sources (such as contracted funds for care and treatment of a pregnant or parenting adolescent or her infant).

In addition, there are several rules in the existing Manual of Requirements that apply to resident children generally, and to pregnant and parenting adolescents specifically, that prevent restitution payments from having any adverse effects on a child's care and treatment. The existing rules specifically prohibit residential facilities from requiring a child or a pregnant/parenting adolescent to assume responsibility for expenses for the child's, adolescent's or infant's care and treatment, except for restitution of damages (N.J.A.C. 10:127-6.5(b) and 10.12(b)). The existing rules also require facilities to provide opportunities for all children to receive or earn an allowance (N.J.A.C. 10:127-6.5(a)), so that the child will be able to make restitution payments if necessary. The existing rules also permit facilities to offer the child or adolescent the option of performing additional chores in lieu of restitution payments (N.J.A.C. 10:127-6.5(b)4 and 10.12(b)5). The Division is confident that these rules provide adequate safeguards to ensure that restitution payments are withheld in an appropriate manner that does not compromise the care and treatment of children.

Full text of the adoption follows:

10:127-6.5 Money and allowance

(a) (No change.)

(b) The facility shall not require a child to assume responsibility for expenses for his or her care or treatment, except for amounts needed to pay for damage done to the facility by that child.

1. (No change.)

2. The restitution payments shall not exceed 50 percent of a child's weekly income from allowance.

3.-4. (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Medical Clemency

Adopted Amendments: N.J.A.C. 10A:16-8.1, 8.2 and 8.3

Proposed: January 18, 1994 at 26 N.J.R. 326(a).

Adopted: February 25, 1994 by William H. Fauver, Commissioner, Department of Corrections.

Filed: February 28, 1994 as R.1994 d.154, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: March 21, 1994.

Expiration Date: July 6, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10A:16-8.1 Eligibility requirements

(a) Application for medical clemency may be made in cases when the physician of the correctional facility has determined that an inmate's medical condition is such that:

1. (No change.)

2. Death is imminent; or

Recodify existing 4. as 3. (No change in text.)

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

10A:16-8.2 Petition for medical clemency

(a) (No change.)

(b) The inmate who wishes to apply for medical clemency shall obtain and complete PETITION FOR EXECUTIVE CLEMENCY.

The completed Form shall be forwarded to the Superintendent for submission to the Office of the Deputy Commissioner.

(c) (No change.)

10A:16-8.3 Role of the Superintendent

(a) (No change.)

(b) The Superintendent shall obtain from the Medical Department a copy of the following:

1. Charted records, if deemed necessary;

2. A current medical status report which includes:

i. A letter from the consulting physician which includes his or her diagnosis and prognosis of the inmate's medical condition and a description of the continuing medical/nursing care which will be required; and

ii. A letter from the physician of the correctional facility confirming the opinion of the consulting physician.

(c) The Superintendent shall send the following to the Deputy Commissioner, Department of Corrections:

1. (No change.)

2. One copy of the medical material as outlined in (b) above;

3.-4. (No change.)

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer Standards of Conduct: Management of Funds Record Maintenance

Adopted Amendment: N.J.A.C. 11:17C-2.6

Proposed: January 18, 1994 at 26 N.J.R. 328(a).

Adopted: February 28, 1994 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: March 1, 1994 as R.1994 d.160, **without change.**

Authority: N.J.S.A. 17:1C-6(e), 17:22A-1 et seq., and 17:46B-9.

Effective Date: March 21, 1994.

Expiration Date: January 2, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

11:17C-2.6 Record maintenance and examination; electronic record keeping

(a) All required books and records of account, including bank records, shall be maintained for a period of five years after the termination of coverage. With respect to title insurance only, to the extent that the provisions of this section are in conflict with N.J.S.A. 17:46B-9, the latter shall be deemed to apply.

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

(b)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Performance Standards and Filing Requirements

Adopted New Rules: N.J.A.C. 11:20-10

Proposed: January 28, 1994 in accordance with P.L. 1993, c.164, section 8, at 26 N.J.R. 1202(a).

Adopted: February 22, 1994 by the New Jersey Individual Health Coverage Program Board of Directors, Charles Wowkanech, Chair.

Filed: February 23, 1994 as R.1994 d.142, **without change.**

Authority: N.J.S.A. 17B:27A-2.

Effective Date: February 23, 1994.

Expiration Date: August 13, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

SUBCHAPTER 10. PERFORMANCE STANDARDS AND REPORTING REQUIREMENTS

11:20-10.1 Purpose and scope

(a) The purpose of this subchapter is to establish performance standards and reporting requirements which a member shall meet in order to receive reimbursement for losses reported pursuant to N.J.A.C. 11:20-8 for calendar year 1993 and thereafter.

(b) This subchapter applies to all members that seek reimbursement for losses.

11:20-10.2 Definitions

Words and terms used in this subchapter shall have the meanings defined in N.J.S.A. 17B:27A-2 and N.J.A.C. 11:20-1.

11:20-10.3 Filing requirements and Board review

(a) Every member seeking reimbursement for losses, in accordance with N.J.A.C. 11:20-2.8 and 2.11, shall provide a Performance Report to the IHC Program Board, annually no later than April 1, which contains the following:

1. A statement certified by the Chief Executive Officer of the member that:

i. The member's performance for the preceding calendar year reflected good faith efforts to apply sound risk management principles in an efficient manner; and

ii. If applicable, the member applied the same individual case management and claims handling techniques and other methods of operation to its group and non-group business, for the same delivery system, as provided in its health benefits plan policies and contracts; and

2. An audit statement of an annual audit of the member's accounts receivable, premium billing operations, and claims eligibility systems, performed by an independent auditor at the member's expense.

(b) A member shall demonstrate to the IHC Program Board's satisfaction that the member has met the performance standards set forth in (a)1 above.

(c) The IHC Program Board shall review and may audit a member's Performance Report. The IHC Program Board shall choose and direct the independent auditor. The costs of an independent audit of a member's Performance Report shall be shared equally by the IHC Program Board and the member being audited.

(d) The IHC Program Board shall adjust a member's reported net paid losses to account for the member's failure to meet performance standards and filing requirements.

11:20-10.4 Hearings

Any member that is denied reimbursement for losses, in whole or in part, on the grounds that the member has failed to meet the performance standards and filing requirements of this subchapter, may request a hearing within 20 days of the date that the IHC Program Board notifies the member of its final determination, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A request for a hearing shall include a detailed explanation of the reasons that the Board's action should be reconsidered.

11:20-10.5 Penalties

A member's failure to meet the performance standards and filing requirements set forth in this subchapter may result in the imposition of penalties provided by law.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Policy Forms
Certification of Utilization Compliance
Adopted New Rules: N.J.A.C. 11:21-4.2, 4.3 and Appendix Exhibit BB, Parts 1 and 2
Adopted Amendment: N.J.A.C. 11:21-17.3

Proposed: December 15, 1993 in accordance with N.J.S.A. 17B:27A-51 at 26 N.J.R. 741(a).

Adopted: February 16, 1994 by the New Jersey Small Employers Health Benefits Program Board of Directors, Maureen Lopes, Chair.

Filed: February 28, 1994 as R.1994 d.153, **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. 17:1-8.1, 17:1C-6(e) and 17B:27A-17 et seq.

Effective Date: February 28, 1994.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

A new subsection (c) at N.J.A.C. 11:21-4.2 has been added to require that any alternate utilization review provisions or combined form policies which are approved by the Board pursuant to N.J.A.C. 11:21-4.3 contain language to indicate that they have been approved by the Board.

The purpose of subsection (c) is to require the carrier to incorporate a standard notification which is intended to indicate to the small employer that the utilization review provision contained in the policy or contract has been modified from that contained in the standard SEH forms, and also alert the small employer that the modification has been approved by the Board consistent with the procedure established by the Board at N.J.A.C. 11:21-4.3. The further purpose of subsection (c) is to require a carrier using approved combined forms to indicate to the small employer, using a standard notice, that the forms, as combined, provide the coverage specified in N.J.A.C. 11:21-3.1 and have been approved by the Board.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

11:21-4.2 Certification or filing of forms

(a) No carrier shall issue any health benefits plan certificate or evidence of coverage to a small employer or the employees of a small employer or use any application form, employer or employee certification, waiver or enrollment form or make any amendments thereto until the carrier has certified that its health benefits plans and forms are in compliance with the small employer health benefits plans and all provisions of N.J.A.C. 11:21-4 and 6.

1. A carrier shall submit, in triplicate, completed Certification of Compliance forms, set forth in Part 1 of Exhibit BB of the Appendix to this chapter and incorporated herein by reference.

2. Completed Certification of Compliance forms shall be submitted to the Board at the address set forth at N.J.A.C. 11:21-1.3, and to the Commissioner at the following:

Attn: SEH Form Certification of Compliance
Division of Life and Health Actuarial Services
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

3. Certification of Compliance forms shall be certified by a duly authorized officer of the carrier.

(b) A carrier that elects to include in its health benefits plans an alternative method of utilization review shall submit, in addition to the required Certification of Compliance, its alternative method of utilization review as specified at N.J.A.C. 11:21-4.1 with copies in triplicate submitted to the Commissioner as set forth in (a)2 above.

(c) As a condition of approval, all alternate methods of utilization review provisions shall contain the statement that the utilization review modifies the small employer health benefits policy form language and has been approved for use by the carrier pursuant to N.J.A.C. 11:21-4.3. As a condition of approval, all combined form policies shall contain a statement that together, the two policies provide coverage as specified in N.J.A.C. 11:21-3.1, and have been approved pursuant to the requirements of N.J.A.C. 11:21-4.3.

*[(c)]***(d)*** Any amendment to an approved alternative method of utilization review shall be submitted to the Board and simultaneously to the Commissioner for review and approval as set forth in (b) above.

*[(d)]***(e)*** Carriers that submit Certification of Compliance forms may issue and make effective small employer health benefits plans upon filing such forms with the Board and the Commissioner, or January 1, 1994, whichever date is later, and may continue to do so until such time as the filing is disapproved in writing by the Board (in consultation with the Commissioner), following an opportunity for a hearing held in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and any rules promulgated thereunder.

*[(e)]***(f)*** Notwithstanding *[(d)]***(e)*** above, a carrier shall neither issue nor make effective any health benefits plan to which an alternative method of utilization review or amendment thereto will apply until approved by the Board in consultation with the Commissioner.

*[(f)]***(g)*** All forms to be used by a hospital service corporation and another carrier in conjunction in order to offer the small employer health benefits plans pursuant to N.J.S.A. 17B:27A-19e shall be submitted simultaneously to the Board and the Commissioner, and shall not be used until approved by the Board in consultation with the Commissioner.

1. Forms shall be submitted in triplicate as set forth in (a)2 above.

2. Carriers shall submit a certification of substantial compliance and a description of the differences between the combined forms and the forms promulgated by the Board. The certification of substantial compliance shall be certified by a duly authorized officer of each of the carriers.

3. The Board shall notify the small employer carriers in writing within 60 days of receipt by the Board and the Commissioner of a completed submission, whether the combined forms are approved.

4. The small employer carriers shall have a right of appeal if the Board, in consultation with the Commissioner, disapproves the combined forms, in accordance with procedures established by the Board in its Plan of Operation.

11:21-4.3 Standards for review

(a) In determining whether to approve an alternative method of utilization review or combined forms (of a hospital service corporation and another small employer carrier), a carrier shall consider in submitting in its Certification of Compliance (with respect to an alternative method of utilization review), and its certification of substantial compliance (with respect to combined forms), and the Board and Commissioner shall consider in their review whether:

1. The inclusion of words, terms and descriptions that are not contained in the Board's forms changes the meaning or effect of any material aspect of the small employer health benefits plans and other attendant Board forms;

2. The alternative method of utilization review or combined forms contain all provisions required by New Jersey law and the small employer health benefits plans forms which, if not the same as that required by law or in the small employer health benefits plans forms, is at least as favorable to the covered person;

3. The alternative method of utilization review or combined forms contain all coverages, coverage limits and exclusions set forth in the small employer health benefits plans forms;

4. There is any deviation from the effective date of coverage, renewal or termination provisions in the small employer health benefits plans forms; and

5. Easy comparison with the appropriate small employer health benefits plans forms by the consumer, the Board or the Commissioner is impeded.

(b) In addition to (a) above, the Board, in consultation with the Commissioner, may disapprove an alternative method of utilization review or combined forms on the grounds that its provisions are unjust, unfair, inequitable, misleading, contrary to law or to the public policy of this State.

11:21-17.3 Certification

(a) Each small employer carrier disseminating marketing and promotional material shall certify that its marketing and promotional material conforms with the requirements of this subchapter. The certification, set forth in Part 2 of Exhibit BB of the Appendix, incorporated herein by reference, shall be signed by a duly authorized officer of the small employer carrier. Each small employer carrier shall file its initial certification with the Board no later than the first day upon which the small employer disseminates promotional or marketing materials for the health benefits plans to consumers, producers or the public in general, or by February 15, 1994, whichever date is later.

(b) (No change.)

APPENDIX TO N.J.A.C. 11:21
EXHIBIT BB
PART 1
CERTIFICATION OF COMPLIANCE

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. INFORMATION ABOUT THE CARRIER AND RESPONDENT

Carrier Name: ____________________ NAIC #: ________

If an HMO, is the Carrier federally-qualified?
_____ Yes _____ No

Respondent's Name: ____________________

Respondent's Title: ____________________

Respondent's Address: ____________________

____

Respondent's Telephone: ____________ FAX: ____________

2. COMPLIANCE

Check the appropriate response(s).

_____ (a) Plans A, B, C, D and E comply fully with the SEH Board's small employer health benefits plans forms and Explanation of Brackets set forth at Exhibits A through F and Exhibit K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (b) Plans A, B, C, D and E comply with the SEH Board's small employer health benefits plans forms and Explanation of Brackets set forth at Exhibits A through F and Exhibit K, respectively, of the Appendix to N.J.A.C. 11:21, BUT an alternative method of utilization review, as permitted at N.J.A.C. 11:21-4, is being submitted for review and approval.

_____ (c) HMO Plan complies fully with the SEH Board's small employer health benefits plans form and Explanation of Brackets set forth at Exhibit G and K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (d) All riders applicable to Plans A through E comply fully with the SEH Board's small employer health benefits plan rider forms and Explanation of Brackets as set forth at Exhibits H, and I and Exhibit K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (e) All riders applicable to HMO Plan comply fully with the SEH Board's small employer health benefits plan rider forms and Explanation of Brackets as set forth at Exhibit J and K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (f) All applications, certifications, enrollment forms, waiver forms, certificates or evidences of coverage comply with the SEH Board's forms set forth in Exhibits N, O, Q, R, S, T, V, W, Y, Z, and AA, and the Explanation of Brackets set forth at Exhibit X in the Appendix to N.J.A.C. 11:21.

3. PLAN OPTIONS AND VARIABLES

Complete each relevant section (please use "NA" to indicate when a section is not relevant). Attach additional pages as necessary.

(a) Plans A through E

(1) List all plans to be offered as a traditional contract, if any.

____
____
____
____
____

(2) List all plans to be offered in conjunction with a selective contracting arrangement (defined at N.J.A.C. 11:4-37), if any.

____
____
____
____
____

(3) For all plans to be offered in conjunction with a selective contracting arrangement, specify the coinsurance differentials and whether the plan requires election of a primary care physician.

____
____
____
____
____

(4) Do contracts provide for direct payment to health care practitioners without assignment? (Note: this option is available only on health service corporation contracts and other plans offered in conjunction with selective contracting arrangements.)

_____ Yes _____ No

(5) List the riders being offered, if any, and specify which plans with which they will be offered.

____
____
____
____
____

(6) If offering the Mental/Nervous and Substance Abuse rider, indicate the applicable copayments.

____
____

(7) Do the participation requirements comply with applicable statute and rules?
(Note: 75% participation.)

_____ Yes _____ No

If No, has the Board approved the carrier's use of an alternate participation requirements?

_____ Yes _____ No

(8) Do the plans include any of the following as set forth by the SEH Board?

i. Utilization Review Features
_____ Yes _____ No

ii. Required Hospital Stay Review
_____ Yes _____ No

iii. Required Pre-surgical Review
_____ Yes _____ No

iv. Alternate Treatment Features
_____ Yes _____ No

v. Centers of Excellence Features

_____ Yes _____ No

If No to the Utilization Review Feature, is an alternate method of utilization review included in the Plans?

_____ Yes _____ No

If Yes, is it included with this submission?

_____ Yes _____ No

(b) HMO Plan

(1) List the copayment options being offered.

____

____

____

____

____

(2) How is the in-plan prescription drug coverage being offered?

____

(3) List the riders being offered, if any, and specify the plan with which they will be offered.

____

____

____

(4) Do the participation requirements comply with applicable statutes and rules?
(Note: 75% participation)

_____ Yes _____ No

If No, has the Board approved the carrier's use of an alternate participation requirement?

_____ Yes _____ No

(c) Additional Forms

(1) Is the Health Statement form, Exhibit S, being used?

_____ Yes _____ No

(d) Additional Options

(1) Is payment by automatic bank withdrawal required?

_____ Yes _____ No

(2) Is payment by automatic bank withdrawal offered?
(Note: If offered, must be offered on all plans to all small employers.)

_____ Yes _____ No

4. CERTIFICATION

I, the undersigned, certify that this completed form 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 N.J.A.C. 11:21-7.4, no stop loss or excess risk insurance shall be issued or renewed for any small employer for which the company provides administrative services, and further, that all small employers or groups of small employers for which this company may act as administrator utilize self-funded plans meeting the definition of 26 U.S.C. 1002(1), the specifications of 26 U.S.C. 1002(4)(B) if a group of small employers, and are not multiple employer welfare arrangements, in whole or in part, as defined at 26 U.S.C. 1002(40).

_______________ _______________________
Date Signature

____
Title

PART 2

CERTIFICATION OF PROMOTIONAL AND MARKETING MATERIAL

Submit this form pursuant to N.J.A.C. 11:21-17.3 and annually thereafter to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the Division of Life and Health Actuarial Services, New Jersey Department of Insurance, 20 W. State Street, CN 325, Trenton, NJ 08625-0325, Attn: SEH Promotional and Marketing Certification.

Carrier's Name: _______________________ NAIC #: ____

Respondent's Name: _______________________________

Respondent's Title: _______________________________

Respondent's Address: _____________________________

____

Respondent's Phone: _______________ FAX: __________

I, the undersigned, hereby certify that the promotional and marketing material to be disseminated regarding the small employer health benefits plans (Plans A, B, C, D, E and HMO), including all terms, definitions and text, are consistent with N.J.S.A. 17B:27A-17 et seq., and N.J.A.C. 11:21.

I certify that this completed form is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

_______________ _______________________
Date Signature

____
Title

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Notice to Stay Operative Date
Hair Replacement Techniques

N.J.A.C. 13:35-6.21

Take notice that on February 22, 1994, the President of the Board of Medical Examiners stayed the above rule until February 23, 1994. On February 23, 1994, the Board of Medical Examiners voted to stay the February 22, 1994 operative date of N.J.A.C. 13:35-6.21 until further review by the Board at its meeting of April 13, 1994. The rule shall be operative following the Board meeting on April 13, 1994 unless a further stay is issued.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Claimed Horse

Adopted Amendment: N.J.A.C. 13:70-12.4

Proposed: March 15, 1993 at 25 N.J.R. 1059(a).
Adopted: February 14, 1994 by the New Jersey Racing Commisison, Frank Zanzucchi, Executive Director.
Filed: February 17, 1994 as R.1994 d.134, **without change**.
Effective Date: March 21, 1994.
Expiration Date: January 25, 1995.

AGENCY NOTE: The New Jersey Racing Commision on February 14, 1994 and pursuant to N.J.S.A. 5:5-30, and in accord with the applicable provisions of the Administrative Procedures Act, adopted an amendment to N.J.A.C. 13:70-12.4. The proposed amendment was advertised for public comment in the alternate ("Alternate A and B") on March 15, 1993 at 25 N.J.R. 1059(a). The Commission, on December 15, 1993, determined to adopt the proposal advertised as "Alternative A." Comments relevant to N.J.A.C. 13:70-12.4 were received by the Racing Commission as propounded by the New Jersey Thoroughbred Horsemen's Benevolent Association Inc. (THBA), Trainer V.W. Raines, Trainer William C. Martucci and Trainer Dan Perlsweig, on behalf of New Jersey horsemen stabled at Gulfstream Park. A summary of these comments, as they relate to N.J.A.C. 13:70-12.4 and the Racing Commission's respective responses, are set forth immediately below.

COMMENT: The New Jersey THBA, in its comments, stated that it suggested to the Commission that the existing "claiming rule" be relaxed for calendar year 1993 on a trial basis, with the stipulation that the relaxation of the rule could be terminated during 1993 if it appeared the trial experience was not good. Additionally, the organization suggested to the Commission that it defer formal action with respect to either of the proposed alternatives until such time as the collective experience of the thoroughbred horsemen is made known toward the end of 1993 or the early part of 1994.

RESPONSE: Accepted. The Racing Commission, after months of discussion and input from representatives of the horsemen's group, decided to advertise the alternative regulations to N.J.A.C. 13:70-12.4. At its December 1992 meeting, the Commission permitted the relaxation of N.J.A.C. 13:70-12.4 at the Garden State Park meet, on an experimental basis. This action allowed claimed horses to start at any time and at any level the owner or trainer deemed appropriate, which parallels "Alternative A" to the rule as proposed and as adopted by the Commission. Although the Racing Commission could have adopted the proposed rule amendment at its April 1993 meeting, it decided to continue the experimental program at Monmouth Park, where there was more claiming activity, enabling the Commission to see the effects of how the program was working. The Commission monitored the situation and could have rescinded the experimental program if it proved to be of negative effect.

COMMENT: Trainer V.W. Raines commented that the Commission should not change the existing claiming rule which he indicated has worked well for many years. The new rule would allow a person to race his or her horse more frequently, to drop him down, make him tired and break him down.

RESPONSE: Rejected. The old rule is believed to be archaic and would result in forcing the small owner out of the business. The business has changed over the last 20 years and the Commission believes this to be an improvement. The amended rule will allow a claimed horse to start at the time and at the level the owner or trainer deem appropriate, thus creating more opportunities for the owners to compete.

COMMENT: Trainer William C. Martucci commented that he was happy and excited to hear of the reduction of "jail time" from 30 days to 15 days and encouraged a further reduction to zero days in "jail." With the elimination of the "jail time," owners are provided the opportunity of full freedom and rights to their purchases. Additionally, racing fields and betting would be increased.

RESPONSE: Accepted. The Commission, on an experimental basis, permitted the relaxation of N.J.A.C. 13:70-12.4 at the Garden State and Monmouth Park thoroughbred race meetings. This action allowed claimed horses to start at any time and at any level the owner or trainer deemed appropriate. The Commission accepts the comment as evidencing the desirability of the rule.

COMMENT: Trainer Dan Perlsweig submitted a petition to the Racing Commission, on behalf of the New Jersey horsemen, stabled at Gulfstream Park. Mr. Perlsweig indicated the rule change would be detrimental and create loss of owners, cause a higher equine breakdown rate, less breeder activity, smaller stables forced out of business, and create more drug violations. For other than top claiming trainers, the rule would be detrimental, not stimulating.

RESPONSE: Rejected. The Commission rejects the argument that owners would be lost. This has not happened in the harness industry. The Commission believes this change will stimulate the industry and provide owners and trainers with more opportunities to compete. According to the THBA, the experience at Garden State and Monmouth Park indicate that the owners and trainers who either claimed or had horses claimed were satisfied and there was no significant change in the number of claims or hardship on any party. The Commission also rejects the notion that this rule change would cause a higher rate of equine breakdowns or more drug violations. There is no scientific data or other evidence to support these statements.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

[Alternative A]

13:70-12.4 Claimed horse

A claimed horse may start in a race following said horse being claimed, subject to compliance with this chapter, with no restriction imposed as to that horse's ability to compete by virtue of its having been claimed.

*[Alternative B

13:70-12.4 Claimed horse

(a) A claimed horse shall not start for 15 days after the date upon which it was claimed in any race wherein the determining eligibility price is not less than 25 percent more than the price for which it was claimed.

(b) This provision shall not apply to starter handicaps.]*

(a)

NEW JERSEY RACING COMMISSION
Thoroughbred Rules
Trainer Fees
Adopted New Rule: N.J.A.C. 13:70-20.13

Proposed: November 15, 1993 at 25 N.J.R. 5107(b).

Adopted: February 14, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: February 17, 1994 as R.1994 d.135, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: March 21, 1994.

Expiration Date: January 25, 1995.

On February 14, 1994, the New Jersey Racing Commission ("Racing Commission"), pursuant to N.J.S.A. 5:5-30, and in accordance with the applicable provisions of the Administrative Procedures Act, adopted N.J.A.C. 13:70-20.13 as a new rule. This rule was adopted as proposed in the notice published November 15, 1993 at 25 N.J.R. 5107(b), with substantive and technical changes not requiring additional public notice and comment.

With regard to the adopted new rule, comments were received from: the New Jersey Thoroughbred Horsemen's Benevolent Association, Inc.; Frank X. Keegan, Jr., First Vice President, Investments, Paine Webber Incorporated; Richard D. Schibell, Esquire, Schibell and Schibell; Greg G. Mordas, Esquire; Stanley Panco; William C. Martucci; and Celeste Tracy. A summary of the received comments, and the agency responses, is set forth immediately below.

COMMENT: The Thoroughbred Horsemen's Benevolent Association, Inc. ("THBA"), recognized as representing the thoroughbred owners and trainers who participate in racing in this State, indicated that the "organization is very much in favor of the proposed rule." According to the THBA, which recommended that the proposed new rule be advertised for public comment, the rule is necessary as in many instances no written contract the trainers' commissions exists and, as a result, trainers are neither paid as contemplated or, if paid, are not paid in a timely fashion. The THBA further represented to the Commission that a THBA membership poll in this area resulted in 67 percent (116 of 173) of the responding THBA constituency responding affirmatively to the proposal.

RESPONSE: Accepted. The Commission accepts the comments of the THBA as evidencing that the promulgation of the subject rule would inure to the benefit of the race industry.

COMMENT: Frank X. Keegan, Jr., commented that he supports the payment of 10 percent to trainers out of owner's account for any first place finish. Mr. Keegan further commented that the rule would be beneficial in that trainers are always short of cash, and a prompt payment of monies they are going to get anyway should not pose a problem for the owner. Mr. Keegan further "commended" the Commission for its consideration of the rule, indicating it is "something the racing game needs."

RESPONSE: Accepted. The Commission accepts the comments of Mr. Keegan as evidencing that the promulgation of the subject rule would be beneficial.

COMMENT: Richard D. Schibell, Esquire, an owner and breeder actively racing horses in New Jersey since 1983, commented that he "heartily recommend[s]" approval of the rule. He stated that he sees "no reason why the trainers' position should be inferior to that of jockeys where the rule already applies." He also noted that he has "not spoken to one owner who objects to the rule."

RESPONSE: Accepted. The Commission accepts the comments of Mr. Schibell as evidencing that the promulgation of the subject rule would be beneficial. The Commission would note that the rule as to jockeys referred to in the comments of Mr. Schibell, N.J.A.C. 13:70-9.18, is different than that here adopted to the extent that it sets forth jockey fees in the absence of a contract. The Commission would however note that a rule analogous in a general sense to that adopted has been promulgated with respect to trainers in the standardbred industry. That rule, N.J.A.C. 13:71-21.8, provides for the deduction of a percentage of the owner's share of purse to the trainer.

COMMENT: Greg G. Mordas, a New Jersey thoroughbred owner, commented that the rule would benefit both owners and trainers. Mr. Mordas explained that "[i]n these hard economic times and to protect against the few who fail to honor their responsibilities on a timely basis, trainers should receive the benefit of direct access to monies that they have earned through their hard work."

RESPONSE: Accepted. The Commission accepts the comments of Mr. Mordas as evidencing that the promulgation of the rule would be beneficial.

COMMENT: Stanley Panco commented that the rule could have a tendency to imply that owners cannot manage their business affairs, that it is not fair that an owner have to make public his or her business arrangements with a trainer, and that the 10 percent fee subject of the rule is a small portion of the trainer's income and does not therefore assure that trainers get paid from owners. Mr. Panco, through his comments, added that the industry needs less regulation and that this is an area where "good business practices should prevail, not regulations." Mr. Panco further commented that he can foresee problems that would arise in implementing the rule. These potential problems, according to Mr. Panco, include: that the rule will cause confusion to owners who "ship in" for a particular race who may not be familiar with the rule; that some owners have different fee arrangements with each trainer and as to certain horses, which will also cause confusion; and that the rule will raise questions as to compliance with Internal Revenue Service requirements on the part of the trainer. Additionally, Mr. Panco commented that the regulations of the Racing Commission (N.J.A.C. 13:70-6.30; subchapter 22) cover the same areas to which the rule is directed and, further, that the situation of the trainer is not analogous to that of the jockey and the rule allowing for jockey fees.

RESPONSE: Rejected. The rule neither provides, nor in any way is intended to imply, that owners cannot manage their business affairs. The rule was considered as a result of a request from the THBA, recognized as representing both owners and trainers who participate in racing in this State, as being of overall benefit to the sport. Indeed, the Commission has received comment from owners who, rather than being of the view that the rule has negative connotations to owners, themselves display support for it. While the comment suggests that this is not an area appropriate for regulation, other received comments reflect a contrary view and are in accordance with the Commission's determination that the rule will be beneficial. Contrary to what this comment suggests, the rule does not require that an owner "make public" his or her business arrangements with a trainer. The rule provides for a 10 percent deduction of an owner's winning purse to be paid to the trainer in those situations where the owner does not provide the horsemen's bookkeeper with written evidence of an existing contract with the trainer, or with a written certification that a genuine and meritorious dispute exists with the trainer concerning the Commission fee due. The rule does not require disclosure as to the contents of any written contract to the horsemen's bookkeeper, but rather, a writing indicating that same exists. As concerns Mr. Panco's comment that the rule may prove difficult to implement, the Commission would note that the above-cited rule of similar intent in the Commission's regulations governing harness racing (N.J.A.C. 13:71-21.8) does not result in the receipt of complaints which parallel the concerns expressed in the comments. Additionally, while the rules cited in the received comments from Mr. Panco do provide a mechanism to penalize an owner in arrears, the instant is directed to the actual payment of monies due and owed the trainer. Further, while the situation of a jockey may be different than that of the trainer, the present rule is considered by the Commission as being of overall beneficial to the sport.

COMMENT: William C. Martucci, in comments dated March 31, 1993, indicated that he "... conducted an impromptu poll, which yielded results of discontentment, disapproval, and overall unsatisfactory responses" to the rule. Mr. Martucci noted that an owner does not wish to be forcibly accountable for relinquishing a percentage of his purse monies to his trainer. He added that such a rule would not be conducive to the owner-trainer relationship, which is unique in each instance, and that there is no basis for which the State could reasonably come up with a universal figure to uniformally and adequately benefit and serve each owner/trainer. In supplemental comments dated May 18, 1993, submitted according to Mr. Martucci "on behalf of the entire New Jersey thoroughbred owners," Mr. Martucci reiterated that the rule is considered unacceptable and commented generally that it is inappropriate from a legal perspective.

RESPONSE: Rejected. The rule does not seek to disrupt the owner-trainer relationship and, in the Commission's view, will serve to enhance that relationship. The rule provides for the trainer's commission to correspond to the generally accepted and uniform industry standard of 10 percent and, in the absence of a contract, for that amount to be deducted from the owner's winning purse. However, as noted, where a contract does exist and written evidence of that contract is furnished to the horsemen's bookkeeper in accord with the rule, no such deduction is to be made under the rule. Further, should a dispute arise between the owner and trainer, the rule provides a mechanism by which such automatic deductions may cease. Accordingly, while the rule seeks to insure payment and timely payment to trainers, it has incorporated into it mechanisms to allow the owner and trainer to continue with any unique financial arrangements as they may desire. Further, while these comments refer to an impromptu poll and indicate that aspects thereof were filed on behalf of the entire New Jersey thoroughbred owners, the Commission has not been provided with supporting documentation or data in this regard. As noted above, the THBA, recognized as representing thoroughbred owners and trainers who participate in this State, indicated that its "organization is very much in favor" of the rule.

COMMENT: Celeste Tracy, a thoroughbred race horse owner, commented that she never found it necessary to have a written contract with a trainer for the standard 10 percent fee and, to require a written contract, would result in additional bureaucracy. Ms. Tracy further commented that: the horsemen's bookkeeper should not be the bill collector for trainers who do not take care of their own financial arrangements and a rule to this effect could set unnecessary precedent; the owner should not be responsible for any fees due to the bookkeeper as a result of the rule; the situation of the jockey differs from that of the trainer, as there are fees due the trainer regardless of the outcome of a race; Ms. Tracy questions whether the rule pertains to a horse finishing second through fifth; and also questions what constitutes "written evidence of any existing contract for commission fees" as referenced in subsection (b) to the rule.

RESPONSE: Rejected. In order to clarify the rule, as noted below, the Commission has determined to, as an agency-initiated change, delete the word "written" from the first sentence of subsection (a) to the rule. This was accomplished to clarify that the rule is not intended to require that the owner and trainer enter into a "written contract" to avoid the 10 percent fee deduction for winning purse as set forth in the rule. The rule does require in subsection (b), however, that the owner must provide written evidence of the existence of the contract (which contract may be written or verbal) to the horsemen's bookkeeper. The rule does not impose any requirements as to whether that writing is to be prepared by the owner or a designated representative of the owner. The rule does not impose any fee on the owner for any additional duties imposed on the horsemen's bookkeeper as a result of implementing same. As evidenced by the "Regulatory Flexibility Analysis" accompanying the rule when proposed, the track association's recordkeeping and disbursement functions will be implicated as a result of the accounting responsibility imposed by the rule on the horsemen's bookkeeper as its employee. No comments were received from any of the State's track associations in connection with the instant rule. As noted above, while the situation of a jockey may differ from that of a trainer, the instant rule is considered to be overall beneficial. Additionally, in terms of applicability, the rule refers to winning purse only and not place, show or other placements.

Summary of Agency-Initiated Changes:

1. For clarification purposes, N.J.A.C. 13:70-20.13 has been revised in subsection (a) to delete the word "written" from the first sentence. This is consistent with the remaining portion of the rule, which does not require that the owner and trainer have a written contract in force to avoid application of the rule. In order to avoid such applicability, rather than have a written contract, the intent of the rule as adopted is that the horsemen's bookkeeper be furnished with a writing evidencing that a contract (oral or written) is in place.

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

13:70-20.13 Trainer commissions

(a) A trainer's commission, in the absence of a *[written]* contract between the owner and trainer addressing such fees or providing for no such fees, shall be 10 percent of an owner's share of winning purse to be deducted from an owner's account at the horsemen's bookkeeper's office. It shall be the responsibility of the owner to furnish the horsemen's bookkeeper, at the horsemen's bookkeeper's office, with written evidence of any existing contract concerning commission fees between said owner and trainer. Following receipt of such written evidence of an existing contract from the owner, the horsemen's bookkeeper shall not cause any deduction to be made from the owner's share of winning purse.

(b) In the event the owner fails to provide the horsemen's bookkeeper's office with written evidence of any existing contract for commission fees between said owner and trainer, pursuant to (a) above, the owner may in writing certify to the horsemen's bookkeeper that a genuine and meritorious dispute exists with the trainer concerning commission fees due. In such case, the horsemen's bookkeeper shall not cause any deductions to be made from the owner's account on behalf of the trainer.

(c) The owner, trainer or agent thereof shall have no recourse against the horsemen's bookkeeper, or any agent thereof, for any acts or omissions in administering this rule.

(d) Nothing contained in this rule shall preclude the owner and trainer from entering into an agreement for the payment of fees due the trainer for services provided or expenses incurred.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Standardbred Sulky Standards

Adopted New Rules: N.J.A.C. 13:71-29

Proposed: January 3, 1994 at 26 N.J.R. 95(a).
Adopted: February 17, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: February 24, 1994 as R.1994 d.143, **without change.**

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

Effective Date: March 21, 1994.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

SUBCHAPTER 29. SULKY

13:71-29.1 Standardbred sulky standards

(a) A sulky is a dual shafted dual wheeled vehicle designed to be drawn by a horse and driven by a person.

(b) The following requirements apply to sulky wheels:

1. Each sulky shall contain two wheels.
2. The wheels shall be 26 inches to 28 inches with tire attached.
3. All wheels shall be covered by wheel disc covers constructed in such a manner so that they are lightweight and durable.

(c) Wheel discs shall be either unicolored or colorless.

(d) The following requirements apply to sulky shafts:

1. Each sulky shall be equipped with two shafts that are attached independent of one another to the horse.
2. Inside to inside measurement shall be within a range of 42 inches to 50 inches at the front of the arch.
3. The sulky must be attached to either side of the horse by an approved method with each shaft hooked separately on each side.
4. All shafts will be equipped with quick hitch fixtures or attachable by conventional tie-downs.
5. All quick hitches shall have safety straps. The forward ends of the sulky shaft shall not project beyond the shoulder of the horse.
6. The shaft shall not be higher than the withers of the horse.

(e) The following requirements apply to the sulky arch:

1. The style of arch must be no narrower than 47 inches or wider than 56 inches in distance measuring from the inside of each side of the arch at the axle nuts.
2. The front of the arch to the center line of the harness where a horse is hitched shall be no greater than 76 inches as measured along the shaft. The distance from the front of the arch to the back of the seat shall be no greater than 19 inches.
3. The distance from the ground to the bottom of the arch shall be between 28 inches and 35 inches measured with the wheels attached.
4. The arch shall be parallel to the ground and located at a minimum of one inch higher than the tire at all points.

(f) The following requirements apply to the sulky fork:

1. Inside measurements between the inside fork assemblies shall be six inches greater than the inside measurement between the shafts as measured at the front of the arch; that is, shafts 40 inches/inside forks 46 inches, shafts 46 inches/inside forks 52 inches (fork measurements taken from the inside of each side of the arch at the axle nuts).
2. There shall be a fork assembly on both sides of each wheel.

(g) The following requirements apply to sulky stirrups:

1. Each sulky shall be equipped with two stirrups. Each stirrup shall be not more than eight inches wide.
2. The stirrups shall be attached to the inside of each shaft no closer than 30 inches from stirrup to stirrup.
3. The measurement from the ground to the heel of the stirrup and ground to seat plate shall have a spread of no more than six inches as measured with the bike hitched at 54 inches.

(h) The following requirements apply to sulky seats:

1. The seat plate shall be no lower than one inch below the arch.
2. The seat shall be securely attached to the seat bracket in a fixed position.
3. The back of the seat shall be no higher than four inches. No high back (bucket type) seats shall be permitted.
4. All seats shall have adequate padding to provide comfort for the driver.

(i) The mud fenders shall be easily attached to the sulky in such a manner as to make them totally secure to the sulky.

13:71-29.2 Inspection stickers

(a) Each sulky in use must contain an inspection sticker indicating the year and month the sulky was inspected, affixed in a visible location on the arch and shaft.

1. The sticker shall be affixed to the sulky by a representative of the manufacturer. It shall represent that the sulky is free of any stress marks, broken equipment, rust or rot spots.
2. The sticker shall be color coded to indicate the life cycle of each sulky and placed on file with the New Jersey Racing Commission and a copy to the Paddock Judge.

13:71-29.3 Certification

(a) No sulky shall be used after the expiration of eight years from the year of manufacture or the recommended period for use by the manufacturer, whichever is less.

1. No sulky shall be used that does not have affixed to it in a visible location on the arch or shaft a current inspection sticker.
2. A current inspection sticker shall have been issued no more than two years prior to the date of use.
3. The sticker shall be affixed to the sulky by a representative of the manufacturer after the sulky passes a visual inspection.
4. The sulky shall fail inspection if it fails to satisfy any requirements of this subchapter.

13:71-29.4 Serial numbers

(a) Newly manufactured sulkies shall contain individual serial numbers placed on the arch and shaft by the manufacturer denoting the date of manufacturing and space made to reflect that the sulky passed a scientific testing for use by a reputable firm to be designated by the Racing Commission.

1. Serial number and verification documents on sulkies competing in New Jersey shall be filed with the New Jersey Racing Commission Steward.

13:71-29.5 Liability insurance

Each manufacturer shall be required to annually file a true copy of their current product liability insurance/occurrence insurance in the minimum amount of one million dollars per occurrence with the New Jersey Racing Commission Steward.

TRANSPORTATION

(a)

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

Restricted Parking and Stopping
Routes N.J. 49 in Cumberland County and N.J. 67 in Bergen County

Adopted Amendments: N.J.A.C. 16:28A-1.34 and 1.71

Proposed: December 20, 1993 at 25 N.J.R. 5760(a).
Adopted: February 25, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: February 25, 1994 as R.1994 d.149, **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: March 21, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.34 Route 49

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

(e) The certain parts of State highway Route 49 described in this subsection shall be designated and established as restricted parking space, for the use of persons who have been issued Special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Along the north side (Main Street) in the City of Millville, Cumberland County:

i. Beginning 35 feet from the easterly curb line of North 6th Street to a point 57 feet easterly therefrom.

16:28A-1.71 Route 67

The certain parts of State highway Route 67 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 bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. Far side bus stop:

(1) Tom Hunter Road—Beginning at the southerly curb line of Tom Hunter Road and extending 155 feet southerly therefrom.

ii. Near side bus stops:

Recodify existing (B)-(C) as (1)-(2) (No change in text.)

(3) Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending 155 feet northerly therefrom.

iii. Mid-block bus stop:

(1) Between Main Street and Bridge Plaza South—Beginning at a point 132 feet north of the northerly curb line of Main Street and extending 170 feet northerly therefrom.

2. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Far side bus stops:

(1) Euclid Road—Beginning at the northerly curb line of Euclid Road and extending 155 feet northerly therefrom.

(2) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 155 feet northerly therefrom.

(3) Main Street—Beginning at the northerly curb line of Main Street and extending 155 feet northerly therefrom.

(4) Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending 155 feet northerly therefrom.

(5) Lincoln Avenue—Beginning at the prolongation of the northerly curb line of Lincoln Avenue and extending 155 feet northerly therefrom.

ii. Mid-block bus stop:

(1) Between Bridge Plaza North and Lincoln Avenue—Beginning 326 feet north of the northerly curb line of Bridge Plaza North and extending 155 feet northerly therefrom.

iii. Near side bus stops:

(1) Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.

(2) Palisade Avenue—Tom Hunter Road—Beginning at the southerly curb line of Palisade Avenue and extending 155 feet southerly therefrom.

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

(b)

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

Mid-Block Crosswalk
Route N.J. 71 in Monmouth County

Adopted Amendment: N.J.A.C. 16:30-10.16

Proposed: December 20, 1993 at 25 N.J.R. 5762(a).
Adopted: February 25, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: February 25, 1994 as R.1994 d.150, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.

Effective Date: March 21, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:30-10.16 Route 71

(a) The certain parts of State highway Route 71 described in this subsection shall be designated as a mid-block crosswalk:

1. In Monmouth County:

i. (No change.)

ii. Borough of West Long Branch:

(1) From a point 230 feet north of the northerly curb line of College Road to a point 15 feet northerly therefrom.

iii. Borough of Eatontown:

(1) From a point 40 feet south of the southerly curb line of Park Avenue to a point 6 feet southerly therefrom.

(a)

REGIONAL OPERATIONS, REGION V
OFFICE OF OUTDOOR ADVERTISING SERVICES
Motorist Service Signing for Non-Urban Interstate and Limited Access Highways
Adopted New Rules: N.J.A.C. 16:41D

Proposed: July 6, 1993 at 25 N.J.R. 2836(a).

Adopted: February 17, 1994 by W. Dennis Keck, Acting Assistant Commissioner, Policy and Planning.

Filed: February 25, 1994 as R.1994 d.148, **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. 27:1A-5, 27:1A-6, 27:1A-44, 27:5-10, 27:5-11, 27:5-12, 27:7-21, 39:4-183.1, 39:4-183.6 and 39:4-183.27.

Effective Date: March 21, 1994.

Expiration Date: March 21, 1999.

The New Jersey Department of Transportation (Department) is adopting new rules to implement the provisions of parts 2G-5.1 et seq. of the "Manual on Uniform Traffic Control Devices" (MUTCD), concerning logo signing on New Jersey highways, at N.J.A.C. 16:41D, Motorist Service Signing for Non-Urban Interstate and Limited Access Highways.

As drafted, the new rules will help provide the travelling public on non-urban interstate and limited access highways with timely and specific directions to nearby fuel, food, lodging and camping services readily accessible from highway exits.

The adopted new rules appeared in the July 6, 1993 New Jersey Register at 25 N.J.R. 2836(a). The comment period closed on August 4, 1993. Thirty-one persons commented on the proposed new rules. A public hearing concerning the proposed new rules was held on July 21, 1993, at the New Jersey Department of Transportation, Multi-Purpose Room, 1035 Parkway Avenue, Trenton, New Jersey. Thirty-three persons attended the public hearing. Ten persons presented comments. John Mycoff, of the Department's Bureau of Community Involvement, conducted the hearing. Mr. Mycoff made no recommendations concerning the proposal. A transcript of the hearing was made by a court reporter. The Department evaluated the verbal and written comments submitted at the hearing and the other written comments submitted to the docket. Responses to all public coments are included in this adoption.

The docket and hearing record may be reviewed by the public by contacting Mr. Thomas P. Thatcher, Administrative Practice Officer, Office of Policy and Legislative Analysis, Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625, telephone (609) 530-2036.

The following individuals submitted written comments to the docket and/or made oral comments at the public hearing:

Clem & Kathie Biddle—Newton, New Jersey

Dean Cook—The Inn at Panther Valley, Allamuchy, New Jersey

Suresh Desai—Sleep-E-Hollow Motel, Lawrenceville, New Jersey

Eugene Dilbeck—Department of Commerce and Economic Development, Trenton, New Jersey

Lawrence M. Fidel—New Jersey Restaurant Association, Somerset, New Jersey

Thomas Fox—Hotel Owner, Atlantic City, New Jersey

Shannon Gibson—New Jersey State Chamber of Commerce, Trenton, New Jersey

Jeffrey M. Hall—Outdoor Advertising Association, Princeton, New Jersey

William J. Hanley—Forte Hotels, Inc., El Cajon, California

Jonathan Holt—McDonald's Corporation

Brenda James—Triplebrook Family Camping Resort, Blairstown, New Jersey

Robert Kern—Prime Hospitality Corp., Fairfield, New Jersey

Barbara K. Langley—Skylands of New Jersey Tourism Council, Inc., Newton, New Jersey

Joel R. Laser—Red Roof Inns, Inc., Hilliard, Ohio

John Maracci—Mountainview Chalet, Asbury, New Jersey

Nimmer Mattar—BLD's Grille, Inc., Allamuchy, New Jersey

David Maxwell—RC Maxwell, Trenton, New Jersey

John Maxwell—New Jersey Petroleum Council, Trenton, New Jersey

Gerald Mosca—Gannett Outdoor, Fairfield, New Jersey

Neils Olsen—New Jersey Hotel Motel Association, New Jersey Travel Industry Association, American Hotel Owners Association, Atlantic City Hotel Association, Ocean Hotel Association, Trenton, New Jersey

Raj Parikh—Trent Motel, Trenton, New Jersey

Ray Parikh—HoJo Inn, Blackwood, New Jersey

Anil Patel—The Monticello Motor Lodge, Bellmawr, New Jersey

Rajesh R. Patel—Comfort Inn, Runnemede, New Jersey

Loretta Pulsinelli—Howard Johnson, Lawrenceville, New Jersey

Ed Risdon—Skylands Campground Association, Branchville, New Jersey

Paul Samperi—Samperi Restaurant & Lodging Services, Allenwood, New Jersey

Gary Scherlis—Oritani Hotel, Hackensack, New Jersey

George M. Ververides—Middlesex County Planning Board, New Brunswick, New Jersey

Quentin J. Villa—Howard Johnson, Clark, New Jersey

One comment letter was signed: "A Concerned N.J. Citizen"

Summary of Public Comments and Agency Responses:

COMMENT: The Department received the following general comments which are supportive of the proposed logo signing rules. All of the following comments are direct verbatim quotes from either the written comment, or from the certified hearing transcript. The comments follow:

"This program will be helpful to New Jersey motorists and out-of-state travelers alike who seek more information about the locations of branded service stations and businesses in New Jersey. When driving through other states that permit motorist service signing, motorists unfamiliar with the local area find these signs useful and convenient. Should an emergency arise these signs may also benefit a potential distressed motorist or vehicle. Likewise, New Jersey motorists will be more convenienced by the posting of these signs and businesses will benefit by attracting additional customers."

"When travelling in most other states, we find these small signs quite useful. They help save time enroute, and probably promote safety when they give notice of one or another service available, in time to permit safe exit from the highway. For New Jersey, to the extent that tourism is considered important, the use of these simple signs should be of serious benefit."

"The State Chamber (of Commerce) has reviewed NJDOT's proposal in detail and considers the general and specific eligibility requirements, application procedures, selection criteria and terms of agreement to be fair. It is encouraged that over 40 states have implemented similar programs."

"I commend the New Jersey Department of Transportation in its concern to place signage at intersections to direct the public to food, fuel, lodging and camping services."

"In closing, the logo service signing proposal is a good one, because it will benefit motorists, tourists, business travelers, residents, and businesses."

"We know from experience in other states that a logo sign program is viewed as a positive by both the travelers on major highways and the small business people who provide services along those routes."

"We are pleased to hear that the DOT is listening to our requests. This new rule is very important to businesses like mine. The state of N.J. will also benefit from the taxes brought in by motorists to our area for lodging and shopping."

"The New Jersey Department of Transportation has developed what we feel is a fair and workable plan for the implementation of a successful statewide logo sign program."

"I have reviewed proposed new rules N.J.A.C. 16:41D "Motorist Signing for Non-Urban Interstate and Limited Access Highways". The campground association agrees with you for the need for logo signs on highways. Surveys indicate that over 50 percent of campers are coming from greater than 75 miles away from outside the region. These campers are not familiar with the area roads and logo signs would be useful information."

"When I am in a new community, I find it very helpful to have these trailblazers (to) direct me to these facilities, and I am sure the majority of the public share in this feeling."

"It is my personal belief that going forward with a logo program for our state highways would be extremely beneficial to our individual hotels and also for our state.

"We feel that these signs will encourage travelers to stay at Howard Johnson instead of traveling onto another state. These signs can only benefit our state and increase revenue for all service oriented businesses."

"The objective of a logo sign is to provide individuals with timely and specific directions (and) to keep them mobile—an objective which is compatible with the state's current focus on traffic reduction and air quality control."

"We have had experience with similar logo programs in many other states and find them highly beneficial. Motorists indicate they are extremely helpful in that they point out what services are available at each individual exit or intersection. The use of logos on these signs is also helpful to motorists since many of them have brand loyalties and are seeking a specific provider."

"We would like to compliment the Department because many of our incorporated hotel owners feel that logo signs would support their business."

"As many other states have similar 'logo' service sign programs, NJRA (New Jersey Restaurant Association) believes this would not only keep New Jersey in the mainstream, it would also assist travelers in our state and increase business."

"I am sure the reasons the proposal will be accepted are numerous, therefore, I won't continue the many reasons that I am inspired by the action."

"The logo sign program is an obvious service to motorists and could promote local economic development at no real cost to New Jersey DOT. It pays for itself in that all expenses are incurred by the individual restaurant, gas station, lodging facility or campsite that chooses to participate and benefits from increased customer exposure."

"In closing, we believe that the eligibility standards, specific requirements, selection process and fee structure set out in the proposed rule are fair and equitable."

"We welcome this proposal of 'logo' signage in (the) State of N.J. (it) will benefit both the small business community as well as (the) State in terms of sales tax. At present many highway travelers are bypassing N.J. as a result of lack of signage."

"Overall, 'logo' signs are an asset to the consumer-tourist, the regional area and, of course, to the company."

"(Our) restaurant would greatly benefit by being able to place an appropriate and acceptable (logo) sign."

"We have had many traveling customers comment on how hard it is to find a restaurant just off the highway on the way to the Delaware Water Gap and they have questioned why there are no signs. The proposal would make New Jersey tourists happy."

"I know I wouldn't want my daughter traveling without knowing where the nearest gas stations, hotels, and restaurants are. Please do your very best to achieve the approval of the proposal as many, many New Jersey residents, business owners, and tourists alike will benefit."

"Campers need good directions especially when driving trailers, RV's, motor-homes, pop-ups. These logo signs would benefit the tourist-camper as well as our campground.

"Many of us residents have panicked at times, while on the highways of New Jersey, not knowing where to find the nearest 'Shell Gas Station,' your proposal would eliminate this problem."

"During these hard business times the economy will be stimulated by the proposal's acceptance. It will allow us to increase our business to hungry travelers who don't know the area."

"I do not see any reason why New Jersey should not follow the example of most other states and permit logo signage along the Garden State Parkway. After all what is good for the merchants and travelling public is a benefit to the state."

(Technical Note: Please be advised that the adopted rule does not apply to the Garden State Parkway.)

RESPONSE: The prior comments are supportive of the proposed logo signing program for a diverse range of reasons. Although the principal purpose of the Department in proposing the rules is to better serve the motoring public, comments from the business community also indicate that the rules will stimulate business and would be a boost to the state economy. Other reasons cited in support of the rules include motorist convenience, safety, increased sales tax revenue, air quality improvement, and increased tourism. The Department is pleased that the rules have been favorably received for such a wide range of reasons.

COMMENT: Numerous comments said that a New Jersey logo program should be implemented "immediately," or "without delay." Some noted that New Jersey is one of the last states to implement a logo program or that the Department should have implemented a logo program years ago. Verbatim comments on this general subject matter follow:

"Your summary says that more than 40 states have such a program (logo). What took so long?"

"Other states have shown consideration for business owners along their roadways and it is about time New Jersey follow the foot steps of other states."

"This wonderful proposal, though belated, not only would provide directional information, but would also ensure, to a very great extent, growth of business travel and leisure travel in our State of New Jersey, particularly when new trends amongst travelers are springing up."

"We strongly recommend passing of this proposal, as expeditiously as possible."

"I believe that this proposal should be approved without delay."

"Along with providing safety and convenience to the travelers I believe these new regulations will also attract new businesses close to exit roads which will help New Jersey's economy and create new jobs. It is commendable that the New Jersey DOT now joins the rank of 46 (sic) other states that have been using this information signage with great success."

"We would like to see a log service sign program started in New Jersey as soon as possible. Please send us information as it becomes available so that we can participate."

"I look forward to hearing from the State soon on the implementation of the Sign Program."

RESPONSE: There is a substantial constituency which wants a logo program implemented without delay, or believes that the Department should have done so long ago. Prior to these proposed new rules, New Jersey was one of only a few states without a logo program. The Department has received requests for logo signs for many years. These requests have been from numerous businesses and various local and State elected officials. With the adoption of these rules, the Department is commencing implementation of a New Jersey logo sign program.

It is the policy of the U.S. Department of Transportation, Federal Highway Administration, to encourage state participation in logo sign programs. The Department proposed the new rule in July of 1993. At that time, the best information available to the Department indicated that more than 40 states had logo programs. In August of 1993, the U.S. Department of Transportation, Federal Highway Administration, issued a report to the United States Congress regarding logo and tourist oriented directional sign programs. The statistics in that report are the most authoritative available and show that 39 states have active logo sign programs and that four more states are considering or implementing logo sign programs.

COMMENT: The following comment was received from the Division of Travel and Tourism, New Jersey Department of Commerce and Economic Development:

"In response to the Department of Transportation proposal to install motorist service signing for non-urban interstate and limited access highways, the Division of Travel and Tourism fully supports the initiative. Logo signage will be of great benefit to the tourism industry businesses that it is designed to help. The New Jersey Department of Transportation is to be commended for its decision to bring logo signage to the state. The benefits realized in other states that have adopted the service signing program more than justify adopting the same program for New Jersey."

RESPONSE: The Department of Transportation appreciates this comment and is pleased to find that the logo signing program advances purposes of both the Department of Transportation and the Department of Commerce and Economic Development. It should be noted that the logo rules were proposed by the Department of Transportation for the purpose of assisting motorists and that the Department of Commerce and Economic Development was not a party in the development or proposal of the rules. Their support is wholly based upon their independent assessment of the merits of the rules.

COMMENT: Some commenters associate logo signing program with billboard type advertising or have made comments which mention billboards. Such comments included the following:

"Drive-by traffic is a huge source of customers for our company. We currently participate in logo programs in several states and have found the additional advertising to be very beneficial to our company."

"With the current economic environment, many hotels cannot afford the current billboard rates and would benefit from this program."

"Thank you for the invitation to the public hearing on July 21, 1993. It was very encouraging to hear the State Chamber (of Commerce) and others speak in favor of the Motorist Service Sign Program. The Inn at Panther Valley supports the program because it will mean an increase in business, and it will keep Warren County free of unsightly billboards."

"An obvious additional benefit is that these 'logo' service/sign programs are discreet. Specifically, they are not visually intrusive and do not create eyesores or environmental blights. The resulting reduction in some of the billboard advertising would actually enable many of our motorists to '*see* America first.' "

RESPONSE: Under both Federal and State law, logo motorist service signs do not constitute outdoor advertising and are not subject to the specific regulatory requirements applicable to commercial outdoor advertising and billboards. The logo sign program is a specialty sign program that provides travelers with business identification and directional information for certain essential motorist services (fuel, food, lodging, camping). State participation in logo signing programs is voluntary. It is specifically intended by the Federal government to allow the display of actual business logos for certain types of commercial services that are routinely needed by motorists. Logo signage may be used on any class of highway. The logo program was first envisioned by the Federal Highway Administration in 1965 for use primarily in rural areas and was developed pursuant to provisions of the "Highway Beautification Act of 1965." Over time, the Federal Highway Administration evolved from merely allowing the program, to actually encouraging and promoting it. Over the years the FHWA has also given the states progressively broader discretion in the implementation of logo programs.

The Department agrees that logo signing can often yield positive promotional results for participating businesses. The Department also agrees that some participating businesses view logo signing as customer advertising. There are, however, many significant differences between logo programs and roadside billboard commercial advertising. The regulatory purpose of logo signs is to notify motorists of essential available services. The purpose of commercial billboard advertising is to generate revenue for the sign owner and convey commercial and non-commercial messages to the general public. In recognition of these different purposes, the Federal statutes and guidelines which govern logo signs are significantly different from those which govern outdoor advertising. Logo signs are severely limited in their size, dimensional shape, and placement; outdoor advertising is not. The content of the sign copy, background color, and manner of lettering are also regulated. In addition, businesses participating in the logo program must meet various public service and accommodation standards. Fees charged to participating businesses are set by regulation and are open public records. Outdoor advertising sign owners have certain "grandfather" rights under New Jersey law; logo signs do not have "grandfather" protections. Conditions and severe restrictions such as these are acceptable for logo signs; they would be totally unacceptable for outdoor advertising. The character and nature of logo signage and outdoor advertising signage is totally different.

In summary, logo and billboard outdoor advertising are wholly distinct and separate forms of signs with completely separate functional roles, conditions, restrictions, and wholly different controlling regulations and statutory standings.

COMMENT: Two commenters noted that signage for purposes other than food, fuel, lodging, and camping should also be addressed. These specific comments were:

"In addition to logo signs, has the Department of Transportation considered signs for major attractions, historic sites and/or historic villages?"

"Signage specifically pointing the direction to medical centers with the mileage posted should be emphasized. A second priority I feel should receive serious consideration is directional signs to offices of police and municipal complexes."

RESPONSE: The Manual on Uniform Control Devices (MUTCD) is published by the U.S. Department of Transportation, Federal Highway Administration. The MUTCD prescribes national, general and specific standards for traffic control devices. This includes logo and other forms of directional signs. Sections 2H and 2I of the MUTCD outline standards for "recreational and cultural interest area signs," and "tourist oriented directional signs (TODS)." Logo signs are limited to food, fuel, lodging and camping services.

Provisions of the MUTCD permit states, counties, and municipalities to post signs of various specific designs which indicate the direction of major attractions, historic sites, medical facilities and public complexes. The signs discussed in the two comments above are not, however, appropriate for logo signage.

COMMENT: A comment suggested that logo signage should only be allowed for businesses open 24 hours a day, 365 days a year.

RESPONSE: The Federal Highway Administration has guidelines regarding hours of service for logo sign participating businesses. The FHWA has an hours of operation guideline for gas stations of "at least 16 hours per day, 7 days per week, for freeways and expressways, and continuous operation for at least 12 hours per day, 7 days per week, for conventional roads." For food establishments, the guideline is continuous operation to serve three meals a day, seven days a week. There is no specific hours of operation guideline for lodging or camping facilities. Requiring businesses to be open 24 hours a day, 365 days a year, does not conform with Federal Highway Administration guidelines and is excessive. Department policy on hours of operation will be modeled after the applicable Federal guidelines approach.

COMMENT: One commenter said that:

"We are completely hidden from the Garden State Parkway and I feel it is your obligation to remedy this problem, not only (for) our Hotel but for all other service establishments in the same position."

RESPONSE: In situations where a business establishment does not have roadway visibility, there is no general legal obligation of the State or the Department to provide such visibility. In the specific case of the Garden State Parkway, it should be noted that the Parkway is under the jurisdiction of the New Jersey Highway Authority, not the New Jersey Department of Transportation. The adopted rules pertain to roads under the jurisdiction of the Department of Transportation and do not apply to the Garden State Parkway.

The New Jersey Highway Authority was petitioned by a citizen on September 13, 1993, to permit logo signs on the Garden State Parkway. The Authority formally responded to the petition in the December 6, 1993, New Jersey Register, see 25 N.J.R. 5706(c). The Highway Authority responded by saying that the Regulation Committee of the Authority had met to consider the petition. The Regulation Committee concluded that logo signs on the Parkway were subject to New Jersey Department of Transportation regulations controlling outdoor advertising, and furthermore that logo signs were prohibited on the Garden State Parkway under the provisions of N.J.A.C. 16:41C-3.1 and 16:41C-3.2(1). The cited rules prohibit outdoor advertising signs within the right-of-way highways and also along the Garden State Parkway.

The statutory authority and responsibility to supervise and regulate signs and outdoor advertising was expressly given to the Commissioner of Transportation under the provision of P.L. 1991, c.413 (N.J.S.A. 27:5-5 et seq.). The Department agrees that the Highway Authority has the right to deny the petition and prohibit logo signage on the Parkway; however, the Department finds the conclusion of the Highway Authority Regulation Committee that logo signs are outdoor advertising within the meaning of N.J.S.A. 27:5-5 et seq. and N.J.A.C. 16:41C to be in error. Neither the U.S. Department of Transportation, Federal Highway Administration, nor the New Jersey Department of Transportation, consider logo signage to be outdoor advertising. Logo signage is not outdoor advertising within the meaning of N.J.S.A. 27:5-5 et seq. and N.J.A.C. 16:41C. The installation of new logo signage, for example, within limited access interstate highway rights-of-way does not violate the Federal prohibition on outdoor advertising in such areas and furthermore conforms with the provisions of the Manual on Uniform Traffic Control Devices, as published by the Federal Highway Administration and as adopted by the New Jersey Department of Transportation. Logo signage is not outdoor advertising and may be installed in locations where outdoor advertising is expressly prohibited.

COMMENT: Several commenters involved in the business of outdoor advertising, asked the Department not to adopt the logo rules, and instead establish an advisory committee to review logo program issues. These comments included the following:

"We would suggest the formation of a (advisory) committee and deferral of the adoption of these rules so that the issues that have been raised by our members (outdoor advertising companies) and other issues can be explored."

"(Therefore we) ask the DOT consider extending the period and opening it up to an advisory committee for further exploration."

". . . we would like the opportunity to meet and to formulate specific rules so that the proper guidance for the placement of these signs (is specified in the rule) . . ."

RESPONSE: In proposing and adopting these rules, the Department has met or significantly exceeded all notice, hearing, and other requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., whose provisions guide and control the process for the proposal and adoption of rules. The proposed new rules conform with Federal Highway Administration guidelines pertaining to logo problems and will be administered pursuant to applicable requirements of the Manual on Uniform Traffic Control Devices. At least 39 other states already have logo programs. Logo programs have been in existence for over 20 years, and were specifically authorized by the United States Congress.

This program is not on the cutting edge of public policy or program implementation. In fact, the Department has been severely criticized, both inside and outside of the context of this rulemaking, by business and elected officials for not having a logo program. Given the long history of logo programs in other states and the oversight exercised by Federal officials, the Department does not see merit in further deferral of implementation of a State logo program. The formation of a logo advisory committee would further delay implementation, for perhaps a year or more. Given the strident comments from many persons saying that immediate implementation of a logo program was necessary, and that all interested persons have already had extensive opportunity to study and comment on the rule, the Department will not hold implementation of the program to convene further studies.

COMMENT: Several commenters expressed concern that the program fees were high. Their comments included the following:

"... after reviewing the fee schedule 16:41D-3.4, I am aghast at the cost. Most campgrounds are small family run businesses and could not afford close to $10,000 for a logo sign. Also, after reviewing the fee schedule, is this just for one sign? What is the cost for two signs? Double the amount? Could there be some consideration for a small business campground?"

"There is no way that the small country grocery store with limited access, limited financial resources in a non-urban area would compete with a national chain."

"16:41D-3.4 Fees. This area is confusing. Is this for one logo sign? If a company required two logo signs is the cost double?"

"16:41D-3.4 Fees. The cost of $7,450 for the design, fabrication and installation fee appears to be high."

"16:41D-3.4 Fees. The cost of $7,450 is prohibitive to many tourist businesses, i.e., campgrounds. The campground industry as a whole provides a major economic impact on the Skylands five county region. However, they are family run businesses and do not have the resources to pay these fees. Could another fee schedule be designed to accommodate campgrounds?"

"The fee structure 16:41D-3.4 Fees, is not within the reach of these family owned businesses."

RESPONSE: The fees for business participation in the logo program are shown at N.J.A.C. 16:41D-3.4. There is a one time initial fee for design, fabrication and installation of the logo signs of $7,450. There is an annual renewal and maintenance fee of $1,170. If a business changes its logo design, there is a design change, fabrication, and reinstallation fee of $1,950. When a business applies to participate in the logo sign program, they are required to pay an application fee of $300.00 (see N.J.A.C. 16:41D-3.1).

These fees were established after study of all costs associated with the program. This includes direct, indirect and overhead costs. It is the purpose of these fees to recover 100 percent of the total State costs associated with implementing a logo program. The costs to all participating businesses are the same, regardless of the size of the business. This uniform charge to all businesses, both large and small, is recognized by the Federal Highway Administration as appropriate, and the Federal Highway Administration has specifically reported to Congress that such uniform charges to all businesses is not discriminatory.

Specific comment was made that larger businesses have more financial resources and therefore are better able to budget and pay for logo signage. The Department did evaluate the possibility of making its fees proportional to the size of the business enterprise involved. Upon further analysis, however, it became clear that this was neither an equitable nor practical option.

From a practical standpoint, the Department does not have a non-intrusive, reliable and equitable way to determine if a business or franchise enterprise is in fact large or small, profitable or unprofitable. If the Department is not able to objectively and non-intrusively make such basic determinations, obviously it would be unable to implement a fee schedule equitably based upon business size and/or profitability. As to the general approach of linking fee size to the size of the business enterprise, it seems contrary to the policy of the Federal Highway Administration to do so. The Federal Highway Administration recognizes unit cost pricing as the nondiscriminatory method of levying fees for logo sign programs.

As stated when the Department originally proposed the new rules, each individual prospective participating business will have to make an independent assessment regarding the economic desirability of logo signage for their business. The Department presumes that businesses will only participate in the logo program if they believe it to be advantageous from a business standpoint.

The fees charged under N.J.A.C. 16:41D-3.4 pertain to a single business at one intersection complex. The fees would cover the cost of the installation of logo signs on specific service signs for each exit ramp at said intersection, as well as the installation of trailblazer signs to direct motorists to the participating business.

COMMENT: A person representing an outdoor advertising company made the following comment:

"We feel that certain businesses may benefit and others may not, and that we would like to know whether DOT has studied that in detail. Clearly, there may be an impact on our business (outdoor advertising) and we would like that studied as well."

RESPONSE: As stated in the Department proposal, each business wishing to participate in the logo program will have to assess whether or not it is appropriate for their business. As shown by the strong support of organizations like the State Chamber of Commerce, the N.J. Department of Commerce and Economic Development, the N.J. Restaurant Association, the N.J. Petroleum Council, McDonald's Corporation, the Skylands of New Jersey Tourism Council, and many small businesses, it is clear that a logo program is broadly viewed by New Jersey businesses as beneficial. The 20 year history of logo programs and their existence in at least 39 states demonstrate that logo sign programs are desirable and that logo programs and the business of outdoor advertising can coexist.

Currently, there are approximately 14,000 permits issued annually in New Jersey for outdoor advertising signs. By comparison, the Department expects to erect logo signs on only about 100 intersections. The size and scope of these two classes of activity will differ significantly. No existing outdoor advertising sign will be displaced or removed as a result of logo signage. Logo signage is more strictly regulated and constrained as to content as compared to billboard outdoor advertising. Furthermore, no person has claimed nor demonstrated that logo programs implemented in any other state have had a significant impact on outdoor advertisers. The Department believes that New Jersey State implementation of a logo program will also have a significant impact on the outdoor advertising industry.

COMMENT: A person representing an outdoor advertising company made the following comment:

"This (logo signage proposal) could put the small businessman out of business due to the unfair discriminatory excessive advertising which is stated in your proposal. Not to mention the small private sign shops that service and maintain on premises signs of all these small businesses."

RESPONSE: The Department does not consider logo signs to be "unfair discriminatory excessive advertising." The Department also does not consider logo signage to be threatening to either commerce or small businesses. To the contrary, businesses using or aspiring to use roadside informational media, such as logo signage and outdoor advertising, made overwhelmingly positive comments on the rule docket. Business umbrella organizations, such as the Chamber of Commerce, indicated that business oriented direction sign programs stimulate business and economic traffic. The Department sees no evidence that the rules are unfair, discriminatory, or allows excessive advertising.

In respect to small private sign shops that service and maintain on-premise signs, there should be no adverse impact whatsoever. Logo signage is not on-premise signage. Logo signage will not displace any on-premise signage or eliminate the need for continued on-premise business advertising. The Department notes that on-premise outdoor advertising generally does not require a DOT permit and that the Department does not wish to expand its involvement in the regulation of on-premise advertising.

COMMENT: "I'd be interested in knowing what the cost of building these structures are and how much the customer is going to have to pay for the installation of these structures if this work is put up for competitive bids."

RESPONSE: The Department has done detailed analyses of the total cost associated with implementation of a logo sign program. The cost of manufacturing the signs themselves is only one cost component, installation is another. The total cost to the state for the fabrication, installation and maintenance of logo signage is offset by the fees charged under the provisions of the rule.

Although some States have contracted out select elements of their sign programs, the overwhelming majority of States do not contract out logo program responsibilities. The Department already installs and maintains thousands of signs on its rights-of-way and has a signshop for the manufacture of needed signs. The disadvantage of contracting out elements of a Statewide program this small is that any theoretical cost savings made via competitive bidding would be lost due to the necessary contractor supervision and the inherent administrative cost of existing mandated contractor procurement procedures which the Department is obligated to follow. The Department sees no cost, time, or administrative advantages in contracting out this sign program. Nationally, the majority of logo sign programs are operated by the applicable State Department.

COMMENT: A person representing an outdoor advertising company made the following comment regarding the notification and public outreach efforts of the Department regarding the proposed rules:

"The mailing (the notice of public hearing) went out on July the 7th and I don't believe I received a copy of it and I'd like to know how expansive the mailing was that organizations such as the Chamber of Commerce didn't receive it and also some small companies, they may have some very constructive advice they can offer the state in this process."

RESPONSE: The public outreach efforts of the Department in this rulemaking substantially exceeded legal standards and requirements. For example, the Department held a public hearing on the rules, even though no such hearing is required. Although individual notice of hearings is not required, direct and individual notice by mail of the public hearing was provided to all licensed New Jersey outdoor advertising companies. This included the outdoor advertising company represented by the person making the above comment. Direct and individual notice was also provided to the State Chamber of Commerce and numerous other "umbrella" trade and business organizations. Contrary to the claim made in the comment, input from these organizations was actively sought. In testimony to the effectiveness of the Department outreach efforts, it is noted that the State Chamber of Commerce, several umbrella trade organizations, and numerous individual private business persons either sent written comments to the Department or testified at the Department's public hearing.

The commenter stated that the advice of the Chamber of Commerce would be "very constructive." The Department agrees. The State Chamber of Commerce made, in part, the following verbal and written remarks at the public hearing:

"The State Chamber is pleased that the New Jersey DOT has taken steps to establish a logo sign program on the non urban interstate and limited access highways. It also lends support to the quick implementation of the program requirements so that motorists and interested businesses can take advantage of signs not tomorrow, but now. There is no reason to delay progress."

"The State Chamber has reviewed New Jersey DOT's proposal in detail and considers the general and specific eligibility requirements, application procedures, selection criteria and terms of agreement to be fair. It is encouraged that over 40 states have implemented similar programs."

"Given that New Jersey DOT logo sign program conforms with national standards on roadside traffic control devices and that it yields an immediate and cost-effective benefit to the motorist, to the local businessman and New Jersey transportation systems alike, the State Chamber wishes to support it."

The Department of Transportation has gone far beyond applicable notice and hearing requirements in the promulgation of these rules. The depth and diversity of comment from businesses, organizations and individuals stands in testimony to the success of these efforts.

COMMENT: The following comment was made on the general behalf of the New Jersey outdoor advertising industry, referred to within the comment as the "Industry":

"No studies measuring or identifying the benefits of logo advertising, and who benefits most, motorists or advertisers, have been made available to the Industry. Apparently, some groups which could have provided valuable input, such as the AAA, were not contacted."

RESPONSE: The national policy of the AAA (American Automobile Association) in regard to logo signing is as follows:

"AAA urges state governments to permit: Vendor identification signs at appropriate interstate highway exits for such services as gas, food, lodging, and camping. Wherever necessary, such signs should indicate approximate distance in miles to the service."

The AAA supports logo signing and, like the U.S. Department of Transportation, Federal Highway Administration, takes the position that motorists benefit from logo signage programs. The Department agrees with the AAA position that logo signing is good for the motoring public. The Department believes that State implementation of the logo program in these rules is consistent with the policy on logo signage outlined by the AAA.

The comment also states that studies on who benefits most, motorists or "advertisers", that is, logo participating businesses, from logo signage was not made available to the outdoor advertising industry. No such studies were done, or even considered, by the Department. The Department has always believed that any business making the decision to participate in the logo program will do so on the basis that it is good for their business. There is no doubt that many individual businesses perceive logo signage as a form of advertising and a business asset. The reason, however, that the Department is finally implementing a logo signage program is to benefit motorists in New Jersey. The apparent fact that businesses with logo signs also benefit from the program is not a problem for the Department and is viewed to be another positive factor in favor of logo signage.

COMMENT: The following comment was made on behalf of the "Outdoor Advertising Association of New Jersey," referred to within the comment as the "Association":

"The Association takes the position that: (a) the proposed regulations are inadequate, vague, and ambiguous; (b) the implementation and effects of the proposed program appears not to have been subjected to sufficient study; (c) the policy standards set forth in the Manual on Uniform Control of Traffic Devices suggest that any such program of this type may be inappropriate in and for New Jersey and; (d) NJDOT will face a conflict of interest when this program inevitably places it in competition for revenues with the members of the Association."

RESPONSE: The position of the Association in the above comment is clear. The Association, however, has not broadly documented its position with sufficient evidence and specific case studies to illustrate its concerns or demonstrate its points. New Jersey is one of the last States in the nation to implement a logo signage program. Department implementation of said program, as outlined in the adopted rules, is completely ordinary and wholly within the mainstream of national logo program standards, policies and practices. The rules, in combination with guidance from the MUTCD, provide extensive and explicit program control and regulation. The program adopted by the Department is in accord with Federal policy for logo programs and fully outlines all regulatory requirements for business participation in the logo program. The Department does not believe that the adopted rules are "inadequate, vague, and ambiguous," inadequately studied, contrary to Federal guidelines, or destined to create conflicts of interests.

With at least 39 states already having logo programs, and with logo programs being in existence for over 20 years with Federal approval, New Jersey's implementation of a logo program in 1994 can hardly be viewed as innovative or on the leading edge of public transportation policy. The Department believes that the magnitude of study and review suggested in the Association comment could be appropriate for demonstrably innovative transportation programs, but does not believe it is warranted in the case of routine implementation of an orthodox and nationally accepted roadway signage program.

Congress specifically mandated that states control outdoor advertising and also authorized states to implement logo sign programs. Logo programs are overseen by the Federal Highway Administration, whose offices also oversee the regulation of billboard outdoor advertising. The Department has not placed itself into a conflict of interest position by implementing a logo signage program. Concurrent regulation of both outdoor advertising and logo signage by the Federal Highway Administration and state agencies was foreseen and specifically authorized by Congress. National experience with these programs does not indicate that there is a conflict of interest when states implement logo programs.

COMMENT: The following comment was made on behalf of the "Outdoor Advertising Association of New Jersey" (the "Association"):

"This far reaching issue appears to have been given short shrift in the rush to establish this program. For example, will the NJDOT use service signage in areas where billboards exist to serve the same business community? The Association respectfully requests copies of the studies that measure the economic impact of this program. If none were performed, the Association demands that such studies be commissioned prior to the further consideration of this program and these regulations."

RESPONSE: Logo programs have been in existence in other states for over 20 years. Since the State of New Jersey is one of the last states to implement a logo program, the comment that the Department of Transportation has been in a "rush to establish this program" was quite unexpected. Indeed the predominant comment received on this subject was that the Department should have had a logo program years ago. The comment requests studies to determine if billboards and logo sign programs can economically coexist. The fact is that they have been economically coexisting for decades in dozens of states.

Comments to rule docket overwhelmingly support immediate implementation of a logo program. Given the long national experience in logo programs, the Department believes the additional study requested by the Association to be technically unnecessary and of questionable merit. The Department believes that further postponing of implementation of a State logo program so that more study may be done is both unnecessary and contrary to the general public interest.

COMMENT: The following comment was made on behalf of the "Outdoor Advertising Association of New Jersey" (the "Association"):

"The erection of logo signs by the State may have an adverse impact on Association members, depending on the interrelation between this program and the existing regulations controlling outdoor advertising. Has the economic impact on businesses precluded from participating in the program been measured? Was the impact on New Jersey's own outdoor advertising businesses measured or considered?"

RESPONSE: The comment states that logo signs may have an adverse impact on outdoor advertising businesses. If it is the position of the Association that logo signage has had a significant adverse economic impact upon outdoor advertisers in other states, then this impact should have been evident by now. The Outdoor Advertising Association of New Jersey has not documented or submitted testimony on any adverse impacts, either in this or any other state.

When proposing the new rules, the Department stated that it expected approximately 100 highway intersections to ultimately get logo service signing. Currently, the Department issues permits for over 14,000 billboards for New Jersey off-premise advertising. Additionally, there are many tens of thousands more on-premise advertising signs. The scale and scope of logo sign programs does not even remotely approach the size and scale of off and on-premise advertising activity. The Department believes that nationally approved logo programs do not constitute an economic threat to outdoor advertising enterprises and would not displace any existing off or on-premise advertising signs.

COMMENT: The following comment was made on behalf of the "Outdoor Advertising Association of New Jersey" (the "Association"):

"The statement appended to the proposed regulations claims that the State "expects to 'break even' " (on the costs incurred) in this outdoor advertising program. The Association believes that the residents of New Jersey should not assume any part of costs incurred by any outdoor advertiser. Therefore, the Association respectfully requests copies of the studies that support this conclusion. If none were performed, the Association demands that one be commissioned prior to the further consideration of these regulations, and requests that Association members, as outdoor industry experts, be given the opportunity to identify or comment on the cost elements included therein."

RESPONSE: The Department of Transportation analyzed the costs that would be incurred by the State when implementing a logo program. As stated in the proposed new rule, each applicable fee offsets the costs incurred for implementing that segment of the logo program. Start-up and annual fees have been set on a unit cost basis to cover direct and indirect costs. The Department considers its study of these costs to be an open public record and available to the public upon request and by appointment during regular business hours.

COMMENT: The following comment was made on behalf of the "Outdoor Advertising Association of New Jersey" (the "Association"):

"Logo signage has appeared on the 'advertising free' Garden State Parkway. Numerous such signs line the right of way for miles in advance of the Atlantic City Service Area, advertising businesses located within rest areas located on the Parkway. In light of the fact that no need of the type supporting the concept of specific service signage can be shown in this situation, the placement of these signs makes a mockery of the Parkway's advertising ban. Further, these signs, which prejudice off-Parkway business and the outdoor advertising industry, stand as a clear proof of the necessity to include 'need' criteria in the regulations. The Association will consider making a formal request for the removal of these signs to both the NJDOT and Garden State Parkway until motorist need for them has been demonstrated."

RESPONSE: In the specific case of the Garden State Parkway, it should be noted that the adopted new rules at N.J.A.C. 16:41D only pertain to roads in the State Highway System under the direct jurisdiction of the Department of Transportation. N.J.A.C. 16:41D does not apply to the Garden State Parkway.

In respect to specific issues raised by the above comment, it should also be noted that the New Jersey Highway Authority was petitioned by a private citizen on September 13, 1993, to permit logo signs on the Garden State Parkway. The Authority formally responded to the petition in the December 6, 1993, New Jersey Register (see 25 N.J.R. 5706(c)). The Highway Authority advised that the Regulation Committee of the Authority had met to consider the petition. The Regulation Committee concluded that logo signs on the Parkway were subject to New Jersey Department of Transportation regulations controlling outdoor advertising, and furthermore that logo signs were prohibited on the Garden State Parkway under the provisions of N.J.A.C. 16:41C-3.1 and 16:41C-3.2(1). The cited rules prohibit outdoor advertising signs within highway rights-of-way and also along the Garden State Parkway.

The statutory authority and responsibility to supervise and regulate signs and outdoor advertising was expressly given to the Commissioner of Transportation under the provisions of P.L. 1991, c.413 (N.J.S.A. 27:5-5 et seq.). The Department agrees that the Highway Authority has the right to deny the petition and prohibit logo signage on the Parkway; however, the Department finds the conclusion of the Highway Authority Regulation Committee that logo signs are outdoor advertising within the meaning of N.J.S.A. 27:5-5 et seq. and N.J.A.C. 16:41C to be in error. Neither the U.S. Department of Transportation, Federal Highway Administration, nor the New Jersey Department of Transportation, consider logo signage to be outdoor advertising. Logo signage is not outdoor advertising within the meaning of N.J.S.A. 27:5-5 et seq. and N.J.A.C. 16:41C. The installation of new logo signage within limited access interstate highway rights-of-way does not violate the Federal prohibition on outdoor advertising in such areas and furthermore conforms with the provisions of the Manual on Uniform Traffic Control Devices, as published by the Federal Highway Administration and as adopted by the New Jersey Department of Transportation. Logo signage is not outdoor advertising and may be installed in places where outdoor advertising is expressly prohibited.

In conclusion, logo signing does not constitute outdoor advertising under either State or Federal law. Prohibition of outdoor advertising on any route does not also unilaterally preclude logo signage. In respect to "need" criteria, it is clear that Congress authorized logo programs because Congress felt this program was important to the motoring public. Neither the U.S. Department of Transportation, nor the Federal Highway Administration require any entity to demonstrate site specific need for a logo sign. The Department believes that the support of Congress of logo programs, the implementation of logo programs by 39 states over 20 years, and the overwhelmingly favorable comment to this rule docket on logos conclusively demonstrates a public need for logo signage.

COMMENT: The following comments from persons engaged in the business of outdoor advertising industry pertain to "proof of need" for logo signage:

"Without proof of need, the states would improperly be promoting the proliferation of outdoor advertising contrary to well established governmental policies, since the logo signs have a significant and undeniable advertising value. If this were not the case, the companies with logos wouldn't pay for it; they do because it helps them promote or maintain name recognition, one of the most important of all advertising concepts. Call them 'specific service signs' or 'logo signs', they constitute outdoor advertising. There is no indication whether or how motorist "need" has been or will be determined, or what the criteria for measuring it will be. The program's credibility is founded on motorist need. If that cannot be shown to exist, then there is no basis for the program. Need has not been shown."

"While many other states have logo signing programs, none is as urbanized as New Jersey. Therefore, it is important that the element of need be defined and the criteria for measuring it set forth in the regulations in order to avoid economic hardship to businesses precluded from participating in the program."

RESPONSE: Logo signs do not constitute outdoor advertising under either Federal or State law. The Department believes that requiring site specific "proof of need" for either a logo sign or an outdoor advertising sign (billboard) as a condition of permit is both unnecessary and inappropriate. The controlling regulations for both logo signs and outdoor advertising signs, only establish general sign location criteria. They do not require a specific site by site motorist oriented "proof of need" test. A "need test" has never existed for outdoor advertising signs and is not proposed for inclusion in the logo rules. The Department believes that both media convey messages of interest to travelers.

The Department believes that it is not at risk of "improperly promoting the proliferation of outdoor advertising" by allowing the installation of outdoor advertising signs under N.J.A.C. 16:41C, and logo signs under N.J.A.C. 16:41D, without demanding specific proofs that each sign and message is required by motorists.

The location and design criteria for logo signs is established in the MUTCD and the adopted rules. Regulatory controls for logo signs under N.J.A.C. 16:41D are far more restrictive and linked to motorist need then the regulatory controls established under N.J.A.C. 16:41C for outdoor advertisings signs. Equating the programs for outdoor advertising (N.J.A.C. 16:4C) and logo signage (N.J.A.C. 16:41D) is incorrect because the wholly different objectives, standards, regulatory, and statutory backgrounds of these programs.

Logo sign programs have been around for over 20 years and are currently in place in at least 39 states. The longevity of this program, its wide national acceptance, its continued support by Congress, and the overwhelmingly favorable support of business organizations such as the State Chamber of Commerce, demonstrate that logo service signing is a worthy endeavor which enjoys broad based public support.

COMMENT: The following comment was made on behalf of the outdoor advertising industry:

"The Department expects that some national franchise businesses may have increased interest in building in the state as a result of the increased customer exposure that results from the installation of logo service signs. (See Proposed N.J.A.C. 16:41D-1, 'Economic Impact'). This is confirmation that 'advertising works'; however, it has little to do with the salutary public purpose underlying the creation of this program. What began 35 years ago as a service to the stranded motorists in need of services in isolated parts of the country, could grow into a loophole in the control of roadside advertising, created and promoted by the very agency charged with regulating and reducing the activity."

RESPONSE: The Department proposed the implementation of a logo sign program to better serve the motoring public. In doing so, the Department realized that numerous participating businesses would benefit from it. The Department has no problem with this and is pleased that a highway signing program would have favorable economic benefits to State businesses. The Department does not believe that the United States Congress, the U.S. Department of Transportation, or the Federal Highway Administration would permit logo programs to become a loophole to circumvent Federal control of roadside advertising. To the contrary, the logo sign program is so stringently regulated by these Federal agencies that there is great assurance that the program will not become a "loophole."

COMMENT: The following comment was made on behalf of the outdoor advertising industry:

"The proposed regulations state that the program will be managed by the NJDOT 'exclusively for the benefit of the motoring public.' (16:41D-1.1(a)) This enthusiastic, albeit inaccurate, overstatement, is even inconsistent with the preamble to the regulations in which it is contained, which notes that there will be benefits to advertisers."

RESPONSE: The purpose of the logo motorist service sign program, in this and all other states, is to provide directional information to motorists regarding fuel, food, lodging, and camping services. Decisions by the Department in managing this program will be guided by the Department's assessment of what best benefits the motoring public. The Department has maintained throughout the promulgation of these rules that businesses participating in the program are likely to benefit. Let there be no misunderstanding, however, that management decisions in this program will be guided by NJDOT's analysis of the best interest of the motoring public, and not the best commercial interests of businesses along the highway.

COMMENT: The following comment was made on behalf of the outdoor advertising industry:

"There is no definition in the proposed regulation of the term 'non-urban' or any suggestion how that term works in a regulatory sense in this most urbanized of all states. Similary, there is no definition of 'Urban' in the proposed regulations."

RESPONSE: The comment correctly points out that there was no definition in the proposed rule for either of the terms "non-urban" or "urban." The Department appreciates this comment and concurs that inclusion of a definition of at least one of these terms could be useful. The term "non-urban" appears several times in the rule text. The Department has therefore decided to include a definition of the term "non-urban" in the adopted rule at N.J.A.C. 16:41D-1.3 in response to the comment. This is a substantive technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Review of the applicable statutes and the MUTCD indicates that there is no preexisting definition of the term "non-urban" strictly applicable to logo signage. In preparing a definition of non-urban, the Department has referred to the official studies and findings of the State Planning Commission, as authorized by P.L. 1985, c.398 (see N.J.S.A. 52:18A-196 et seq.), and Executive Order No. 114(1994) (Florio). The State Planning Commission has been charged with the task of coordinating and integrating all statewide planning efforts and all development, preservation, and redevelopment strategies. In meeting this charge, the Commission has prepared, as required by statute, the "New Jersey State Development and Redevelopment Plan."

Under the provisions of Executive Order No. 114(1994) (Florio), all State departments and agencies are directed to adopt and incorporate as part of their agency programmatic mission, policies which comport with the "New Jersey State Development and Redevelopment Plan." Additionally, agency policies and programs are further directed to be consistent with the policy objectives of "planning areas" identified within the State Plan.

The "New Jersey State Development and Redevelopment Plan" specifically designates the urban centers of the State. The designated urban centers of New Jersey are Atlantic City, Camden, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton. The Department believes that the authoritative planning area studies and urban center descriptions of the State Planning Commission, and the terms of Executive Order No. 114(1994) (Florio) establish the framework for designation of urban and non-urban areas which the Department must follow for the purposes of these rules. State Planning Commission designations have been utilized to define urban and the remaining "non-urban" areas of the State. The definition added to the adopted rule as a substantive and technical change conforms with the findings and recommendations of the State Planning Commission, and reads as follows:

"Non-urban" means those areas which are outside of the municipal or city boundaries of designated urban centers, said urban centers being Atlantic City, Camden, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton, as specified in the New Jersey State Development and Redevelopment Plan as published by the State Planning Commission.

COMMENT: "The proposed regulations do not state whether the logo signs will be considered 'outdoor advertising structures' or be subject to N.J.A.C. 16:41C-1 et seq."

RESPONSE: Logo signage is not "outdoor advertising," nor are logo structures considered to be "outdoor advertising structures," under either Federal or New Jersey law. Logo signage will not be regulated as outdoor advertising pursuant to N.J.A.C. 16:41C. Logo signage will be regulated pursuant to the provisions of N.J.A.C. 16:41D.

COMMENT: "There is no explanation of the circumstances under which logo signing will be permitted on highways where NJDOT refuses to issue billboard permits and outdoor advertising is banned. Logo signing is outdoor advertising, which just as a code name."

RESPONSE: Logo signage is not outdoor advertising under either Federal or New Jersey law. The criteria for placement of logo signs and commercial billboards are wholly different and not relevant to each other. Outdoor advertising is regulated under the provisions of N.J.A.C. 16:41C. Logo signage will be regulated pursuant to the provisions of N.J.A.C. 16:41D.

COMMENT: Several comments discussed generic service signage verses logo signage and suggested the advantages and disadvantages of each. Some comments favored logo signage, other comments favored generic service signing.

Those supportive of generic signs, in lieu of logo signs, made the following comments:

"Motorist's needs could probably be satisfied by the placement of generic signs showing graphics of fuel pumps, or knives and forks."

"(Generic signs) would be helpful to the needs of the traveling motorist without unfairly discriminating against small private businesses and outdoor advertising industries businesses but to allow a regulation to have a logo service sign program would be a severe detriment to the small businessmen, the outdoor (advertising) industry and the economy."

"I have come to the conclusion that the generic signs are better service and bigger lead to people in our industry for various reasons. Not every hotel can afford the fees or are not in geographical areas that can be outlined to be considered for these signage on these highways and that would be giving an unfair economic advantage . . ."

"I would be interested knowing what the advantage of a logo is over (generic signing). I know the obvious advantage is the customer is more motivated to pay for the service but I would like to know what advantages the state sees in installing in those particular locations."

In contrast to the prior comments, several comments to the docket made specific note that logo signing would be more desirable than generic service signing. Those comments include the following:

"Logo signs are much more user friendly than the generic food, gas and lodging directional signs that many times offer a surprise rather than service for a traveler who ventures off a major highway."

"We have had experience with similar logo programs in many other states and find them highly beneficial. Motorists indicate they are extremely helpful in that they point out what services are available at each individual exit or intersection. The use of logos on these signs is also helpful to motorists since many of them have brand loyalties and are seeking a specific provider."

"Many of us residents have panicked at times, while on the highways of New Jersey, not knowing where to find the nearest 'Shell Gas Station', your proposal would eliminate this problem."

"There are travelers with strong preferences for certain facilities. They appreciate guidance from logos to their favorite places."

RESPONSE: The Department believes that both logo service signage and generic service signage are beneficial and useful to the motoring public. Implementation of a logo service signing program would not prevent the Department from, if necessary, placing generic service signs, in conformance with MUTCD criteria. One consideration is how to pay for a service sign. In a logo program, as outlined in the adopted rules, participating businesses pay 100 percent of all State costs. In a generic signing program, the full cost would come out of the State budget which is funded by general tax revenues, etc. The Department can implement the logo directional sign program outlined in the adopted rule and have all costs offset by the fees charged to the voluntarily participating businesses. Implementing a logo program does not prevent the Department from erecting generic and other MUTCD approved motorist service signs. Adopting logo signage rules does not put benefits which can be derived from other forms of MUTCD signage out of Department reach.

The Department believes that the appropriate course of action is to implement a logo program while retaining the option of installing generic and other MUTCD signs where necessary.

COMMENT: A sign manufacturer suggested that the signs for use in the logo program be constructed by local private sector sign shops. The following advantages were cited by the commenter:

"1. Local businesses, particularly those not franchised or chained, are likely to have their design work resident in the software of one or another sign shop. It would save time and energy for anyone—DOT or local shop—to use this previous work, rather than starting from scratch with designs and type styles.

2. A sign of this nature can be reproduced by a local sign shop in a few days' time, in case of need for replacement.

3. Most sign shops can conform to specifications, as long as those specifications are published and available."

The commenter went on to suggest that the final rules include specifications for unmounted signs, procedures for the acceptance of jobber signs, and electronic data transfer standards.

RESPONSE: The Department already has a sign shop for sign fabrication and sign installation crews. If the Department contracted out elements of a logo sign program, it would still be liable for program quality control and proper sign installation. This means that even when services are contracted for, the Department would have to commit significant resources to oversight and supervision. Oversight and quality control become more difficult as the number of vendors and sign installation sites increases. The Department concludes that there would be significant added complications, without significant cost savings, if logo program sign fabrication, installation or program implementation was contracted out.

If the Department were to contract out logo sign program elements, then the suggestions this specific commenter made would be most useful. Since the Department has decided not to contract out logo program elements, these suggestions are not implementable. The Department, nevertheless, appreciates these comments.

COMMENT: One commenter requested the following changes to the rule:

Section 2.2(a)(1)(iii) (re fuel facilities). Change to: "Have at least one free public rest room that is handicapped-accessible;".

Section 2.2(a)(1) (re fuel facilities). Add a new subsection: "vii. Not discriminate on the basis of race, color, ethnic group, nationality, religion, or gender".

RESPONSE: The rule already provides that businesses participating in the logo program be licensed by all appropriate authorities and possess valid permits from all appropriate health departments. Additionally, to be eligible to participate in the service signing program, each business must remain in conformance with all applicable local, State, and Federal laws concerning public accommodation. The Department believes that the language in the rules as originally proposed is sufficient and appropriate and that further specific detail is not necessary.

COMMENT: "Are the proposed structures to be erected of the traffic safety break-away type?"

RESPONSE: The Department will utilize applicable State, FHWA or AASHTO specifications for all logo signs. If the Department determines that a specific site requires a particular type of post, material, structure or specification, the appropriate type of post, material, structure or specification shall be utilized.

COMMENT: The following suggestion was made: "I would like to recommend that a committee be appointed to review such questions (on the logo signage rule) as these and probably numerous others that you have already received."

RESPONSE: Logo programs have been in existence for more than 20 years and exist in at least 39 states. The Department's logo program conforms with the guidelines of the Federal Highway Administration and the Manual of Uniform Traffic Control Devices. States have been encouraged by Congress to implement logo programs. New Jersey is one of the last states not to have a logo program. Given these facts, the Department believes that it is both unnecessary and inappropriate to further postpone implementation of a New Jersey logo program so that logo signage issues may be further studied.

COMMENT: One commenter requested the following series of editorial changes to the rule:

"Section 3.1 (re ineligible businesses). At the end, in line 7, after the word "Services" and before the sentence-ending period, insert the following: ", including the address and procedure for filing an appeal."

Section 3.2(c)(1) (re waiting list). At the end, in line 3, after the word "list" and before the sentence-ending period, insert the following: ", including the address and procedure filing an appeal."

Section 3.2(c)(2) (re bumping). At the end, in line 9, after the word "participate" and before the sentence-ending period, insert the following: ", including the address and procedure for filing an appeal."

Section 3.4(b) (re fees for businesses on waiting list). In line 2, after the word "annual" and before the word "fee", insert the words "or design."

Section 4.1(a) (appeals). In line 2, after the word "program", insert the following clause: ", has been placed on the waiting list,".

Also in section 4.1(a). In line 5, after the word "of" and before the word "notice", insert the words "receipt of".

Also in section 4.1(a). Is the "Executive Director in charge of the logo sign program" (line 4) the same person as the "Executive Director, Division of Regional Operations" (line 7) and the "Executive Director" (subsection (c), line 1)? These three references should be reworded, to clarify and remove any ambiguity. A definition of the term should be added to section 1.3 (definitions).

Section 4.1(c) (re final decision). In line 3, change the word "businesses" to "business", so it is parallel to the singular usage in subsections (a) and (b).

Section 5.3 (replacement of signs). In line 4, after the word "destroyed" and before the words "or vandalized", insert the word ", damaged,". Sometimes a motor vehicle accident damages a sign without destroying it.

RESPONSE: The commenter suggested that references to the chapters appeal procedures be inserted at N.J.A.C. 16:41D-3.1, 3.2(c)(1) and 3.2(c)(2). The rule already contains specific procedures on how any business may appeal any decision of the Department. It was therefore deemed unnecessary to add new and repetitive references to the appeal procedures of the rule. In addition to the specific procedure cited by the Department in this chapter, persons also have statutory appeal rights in administrative matters which are codified in the "Administrative Procedures Act." Given all of this, no change was made to the rule text.

Specific clarification that the fees in N.J.A.C. 16:41D-3.4(a) do not apply to businesses on a waiting list was determined by the Department to be a useful clarification to the rule. The adopted rule was amended therefore to include this clarification which is wholly consistent with the intent of the Department in respect to fee collection.

The suggested change to N.J.A.C. 16:41D-4.1(a) regarding the appealing of wait listing would allow persons to appeal their placement on a wait list. The Department does not believe that this is an appropriate matter for administrative appeal as a business would only be wait listed pursuant to the specific provisions of N.J.A.C. 16:41D-3.2(c)1. Waiver of wait listing via appeal would overturn the provisions of this section and directly effect the rights of other parties. The Department believes that the changing of wait listing rights and provisions should only be done by formal rule change, not by way of administrative appeal.

The suggested change to N.J.A.C. 16:41D-4.1(a) regarding "receipt of notice" speaks to the larger issues of what constitutes an effective notice and what constitutes actual receipt of such notice. Technical notice by the Department to interested parties, or their authorized agents, could be accomplished in written form (for example, a letter) or verbally (in person or by phone). In either case, the Department would have to document the method and circumstance of notice. The intent of the Department is to provide persons impacted by the rule, 10 days in which to act, after receipt of effective notice. The rule text has been revised to clarify this.

The "Executive Director" cited in the three instances by the commenter is the same person. The rule text has been revised to clarify this.

In respect to damaged signs, the Department expects to replace signs damaged in service. The rule has been clarified at N.J.A.C. 16:41D-5.3 to reflect this.

Additionally, three nonsubstantive typographical errors were found in the published text and have been corrected in the adopted text.

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

CHAPTER 41D
MOTORIST SERVICE SIGNING FOR NON-URBAN INTERSTATE AND LIMITED ACCESS HIGHWAYS

SUBCHAPTER 1. GENERAL PROVISIONS

16:41D-1.1 Purpose

(a) The purpose of this chapter is to establish procedures and policies applicable to a NJDOT official MUTCD and Federal Highway Administration approved motorist service and logo sign program for providing fuel, food, lodging and campsite information to the traveling public. Such signs are to be owned, erected and maintained by the NJDOT, paid by participating businesses, and placed near selected intersections on NJDOT right-of-way on non-urban interstate highways and limited access primary highway routes.

(b) The program will be managed by the NJDOT exclusively for the benefit of the motoring public and in a manner consistent with applicable MUTCD and Federal Highway Administration guidelines.

16:41D-1.2 Scope

This chapter will govern motorist service signs erected by the Department within the right-of-way of non-urban interstate and limited-access State highways.

16:41D-1.3 Definitions

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

"Business" means an individual facility that furnishes fuel, food, lodging or camping services to the motoring public.

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

"Department" or "NJDOT" means the New Jersey Department of Transportation.

"Interstate highway" means a highway constructed within this State and approved by the Secretary of Transportation of the United States as an official portion of the National System of Interstate and Defense Highways pursuant to the provisions of Title 23, "Highways," of the United States Code, as amended.

"Limited access highway" means a highway especially designed for through traffic over which abutters have no easement or right of light, air or direct access, by reason of the fact that their property abuts such way.

"Logo sign panel" means a separate sign which shows a brand, symbol, trademark or name, or combination thereof, and which is designed to be mounted on a service sign.

"Manual On Uniform Traffic Control Devices" or "MUTCD" means the Manual On Uniform Traffic Control Devices for streets and highways as periodically published and revised by the United States Department of Transportation, Federal Highway Administration, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Non-urban" means those areas which are outside of the municipal or city boundaries of designated urban centers, said urban centers being Atlantic City, Camden, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton, as specified in the New Jersey State Development and Redevelopment Plan as published by the State Planning Commission.

"Public telephone" means a coin operated telephone on site or in the immediate vicinity and which is available for public use during all business hours.

"Service sign" means an official sign, erected by the Department, within the highway right-of-way which indicates to motorists that general types of services, such as fuel, food, lodging and camping are available and which are designed to cary logo sign panels.

SUBCHAPTER 2. ELIGIBILITY AND REQUIREMENTS

16:41D-2.1 Eligibility

To be eligible to participate in the service signing program, each business must remain in conformance with all applicable local, State and Federal laws concerning public accommodations and provide fuel, food, lodging or camping accommodations in the manner prescribed in N.J.A.C. 16:41D-2.2.

16:41D-2.2 Specific requirements

(a) Each participating business shall at all times satisfy the specific requirements established for its industry type, as follows:

1. Fuel facilities shall:

i. Be licensed by all appropriate authorities;

ii. Have gas, fuel and oil *[to]* ***for*** cars, trucks and other vehicles;

iii. Have free public rest rooms;

iv. Have a public telephone;

v. Be in continuous operation for at least 16 hours each day and seven days each week throughout the year; and

vi. Be located within three miles of the highway.

2. Food facilities shall:

i. Be licensed by all appropriate authorities and possess valid permits from all appropriate health departments;

ii. Have a public telephone;

iii. Have free public rest rooms;

iv. Be in continuous operation at least 12 hours each day and seven days each week throughout the year; and

v. Be located within three miles of the highway.

3. Lodging facilities shall:

i. Be licensed by all appropriate authorities and possess valid permits from all appropriate health departments;

ii. Have at least 10 units, each with a private bath;

iii. Have off street parking for each unit;

iv. Have a public telephone;

v. Be in continuous operation seven days each week throughout the year; and

vi. Be located within three miles of the highway.

4. Camping facilities shall:

i. Be licensed by all appropriate authorities and possess valid permits from all appropriate health departments;

ii. Have restrooms and showers;

iii. Provide drinking water;

iv. Have public telephones; and

v. Be located within seven miles of the highway.

(b) If, at any designated intersection there are no eligible businesses of a particular industry type, the Department, at its sole discretion, may waive the locational requirements set forth in (a)1vi, 2v, 3vi and 4v above and extend eligibility to other businesses which satisfy the remaining requirements pertaining to that industry type.

16:41D-2.3 Measurement of distances

The measurement of distances from an interstate highway or limited access highway shall be from the centerline between the main lines of the highway and shall be measured along the intersecting roadway to the property line of the particular business.

16:41D-2.4 Seasonal campgrounds

Seasonal campgrounds shall notify the Office of Outdoor Advertising Services 60 days in advance of their opening and closing dates so that the Department may remove or cover the logo sign during the period when the campground is closed.

16:41D-2.5 Temporary closure of participating business

(a) Any participating business which closes temporarily for repairs or emergencies shall not be found to be in violation of the specific requirement concerning continuous operation set forth in N.J.A.C. 16:41D-2.2 provided that:

1. The business shall notify the Office of Outdoor Advertising Services 15 days before a planned temporary closure;

2. The business shall notify the Office of Outdoor Advertising Services within three days of a closure necessitated by an emergency;

3. The duration of the closure shall not exceed seven days, except that the Office of Outdoor Advertising Services may, in its discretion, extend this period for good cause where the public interest is not adversely affected, which extension shall not exceed 30 days;

4. When a business reopens after a temporary closure it shall notify the Office of Outdoor Advertising Services. The Department shall replace or uncover any logo sign panel which it removed or covered within a reasonable period; and

5. During the period of closure the Department may, in its sole discretion, remove or cover up the logo sign panel of the participating business.

SUBCHAPTER 3. APPLICATION AND SELECTION PROCEDURES

16:41D-3.1 Application procedures and fees

All businesses shall make application on the forms and in the manner prescribed by the Department and shall pay a non-refundable application fee of $300.00. Applicants shall include on the form pertinent identifying information and documentation of compliance with N.J.A.C. 16:41D-2. Businesses which are determined to be ineligible shall be so notified by the Office of Outdoor Advertising Services.

16:41D-3.2 Selection of participating businesses

(a) The Department shall select participating business of each industry type from a list of eligible business which have submitted complete applications and paid the application fee.

(b) Participation shall be offered to as many business***es*** as can be accommodated on the service sign of its industry type in accordance with the MUTCD.

(c) If there are more businesses than can be accommodated on a service sign, the Department shall select the businesses which are closest to the highway.

1. The Department shall place any unselected business on a waiting list for the service sign of its particular industry type and shall notify these businesses of their placement on the waiting list.

2. A business which has been on the waiting list for three years may notify the Office of Outdoor Advertising Services of its intention to bump a participating business of the same industry type which is further from the highway. The Office of Outdoor Advertising Services shall determine which business is closer and shall select the closest business to participate. Within 30 days of its receipt of the notice of intention to bump, the Office of Outdoor Advertising Services shall notify both businesses of the business which has been selected to participate.

16:41D-3.3 Agreements

(a) After selection for participation in the program, each business shall enter into a written agreement with the Department allocating responsibilities for the logo sign panel.

1. The initial agreement shall be for three years provided that the business has paid all annual fees, in accordance with this chapter, and annually certifies that it meets all eligibility requirements. Thereafter, the agreement shall be extended each year, provided that the business has paid all fees in accordance with this chapter, certifies that it meets all eligibility requirements, and has not been bumped pursuant to N.J.A.C. 16:41D-3.2(c)2.

2. If the Department determines that a participating business does not comply with the requirements of this chapter, the Department shall direct the business to comply within 30 days. If the business does not comply within 30 days of the Department's directive, the business shall be deemed to be in breach of the agreement and the Department may remove or cover its logo sign panel, terminate the agreement, and allocate the panel space to another eligible business.

16:41D-3.4 Fees

(a) Each participating business shall be charged the following non-refundable fees:

1. Annual renewal and maintenance fee (This is a recurring annual fee)	$1,170
2. Design, fabrication and installation fee (This is a one time initial fee)	$7,450
3. Design change, fabrication and installation fee (Charged only if there is a logo design change)	$1,950

(b) Eligible businesses which are placed on a waiting list pursuant to N.J.A.C. 16:41D-3.2(c) are not required to pay any annual fee ***pursuant to (a) above*** until they participate in the program.

SUBCHAPTER 4. APPEALS

16:41D-4.1 Appeals

(a) Any business that has been determined to be ineligible or has been denied participation in the logo sign program or has been bumped may submit a written request for reconsideration to the Executive Director in charge of the logo sign program within 10 days ***of receipt*** of notice from the Office of Outdoor Advertising Services. The request shall include the reasons for the requested reconsideration. The Executive Director*[, Division of Regional Operations,]* shall schedule an informal meeting within 30 days of his or her receipt of the request.

(b) At the reconsideration meeting, the aggrieved business will be accorded an opportunity to present additional information in support of its desire to be an eligible participant in the logo sign program.

(c) The Executive Director shall render a final agency decision within 10 days of the informal meeting and shall so notify the business*[es]* in writing.

SUBCHAPTER 5. CONSTRUCTION AND MAINTENANCE OF SIGNS

16:41D-5.1 Fabrication and installation

Logo sign panels and service signs shall be fabricated and installed by the Department in accordance with the standards for specific service signing in the MUTCD, as amended or superseded.

16:41D-5.2 Inspection and maintenance

The Department will conduct routine inspections of the service signs, and logo sign panels and perform maintenance, repairs or replacement as required.

16:41D-5.3 Replacement of signs

Service signs will be scheduled for replacement every 10 years, as needed. Logo sign panels will be scheduled for replacement every five years, as needed. Posts and other hardware will be replaced as necessary. Any sign panel that has been destroyed***, damaged,*** or vandalized will be replaced by the Department as soon as practicable after the Office of Outdoor Advertising Services has received written notice of such destruction.

SUBCHAPTER 6. TERMINATION AND LOCATIONS

16:41D-6.1 Agreement termination

The NJDOT may terminate any agreement or any portion of this program and shall only be liable for the pro-rata reimbursement of fees paid by participating businesses.

16:41D-6.2 Service sign location

The Department reserves the right to specify the routes and intersections available for logo service signing.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Financial Business Tax

Readoption with Amendments: N.J.A.C. 18:8

Proposed: January 18, 1994 at 26 N.J.R. 333(a).

Adopted: February 24, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: February 24, 1994 as R.1994 d.144, **without change.**

Authority: N.J.S.A. 54:10B-22.

Effective Date: February 24, 1994, Readoption; March 21, 1994, Amendments.

Expiration Date: February 24, 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. 18:8.

Full text of the adopted amendment follows:

CHAPTER 8
FINANCIAL BUSINESS TAX

18:8-3.3 Taxpayer doing business in more than one State; allocating value of net worth

(a) (No change.)

(b) Except as may be otherwise provided by law where a taxpayer is entitled to allocate, the gross items of receipts attributable to place of business situated within the State of New Jersey are deemed to include all business receipts generated or originated from transactions made or solicited or services rendered by officers, employees, salesmen and other representatives who work in, or from, or attached to places of business situated within this State.

18:8-4.5 Extension of time; interest extensions

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

(c) Where an extension of time to file a return has been granted and payment is made within the time fixed under the extension, any portion of the tax in excess of the amount paid by the original due date shall bear interest at the rate of nine percent per annum from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987, at the annual rate of three percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the annual rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date the tax was originally due until the date of actual payment.

(d) Where payment of the tax is made after the time fixed under the extension of time to file a return, any portion of the tax remaining unpaid shall bear interest at the rate of one and one-half percent per month or fraction thereof from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987 at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the annual rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year from the date the tax was originally due to the date of actual payment.

(e) Where the estimated tax remitted with the tentative return is less than 75 percent of the tax liability shown on the final return and less than the amount of tax paid for the preceding year, the unpaid portion of the tax in excess of the amount estimated and remitted shall bear interest at the rate of one and one-half percent per month or fraction thereof from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987, at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the annual rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date the tax was originally due until the date of actual payment.

18:8-4.6 Failure to file return or make payment when due

For the effect or failure to file a return or make payments when due, see N.J.A.C. 18:8-4.5 (Extension of time; interest extensions), 4.10 (Delinquent payments; interest) and 4.13 (Deficiency assessments; interest).

18:8-4.10 Delinquent payments; interest

Any taxpayer who fails to pay the tax when due is subject to interest in addition to the tax at the rate of one and one-half percent per month or fraction thereof computed from the date the tax was originally due to the date of actual payment, and on and after December 9, 1987, at the rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date the tax was originally due until the date of actual payment.

18:8-4.13 Deficiency assessments; interest

(a) (No change.)

(b) In addition to the amount of any deficiency, the assessment or reassessment is subject to interest at the rate of one and one-half percent per month or fraction thereof, to be computed from the date the tax was originally due until the date of actual payment, and on and after December 9, 1987 at the rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due to the date of payment, and on and after July 1, 1993 at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date the tax was originally due until the date of actual payment.

18:8-4.17 Waiver of penalty and abatement of interest

(a) The Director may, for good cause shown, remit or waive:

1. (No change.)

2. The payment of any interest in excess of the rate of three percentage points above the prime rate. (See N.J.A.C. 18:2-2.7 for rules on abatements.)

18:8-4.18 Penalties

Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law.

18:8-5.1 Protests, hearings; procedures

(a) Any taxpayer aggrieved by any finding or assessment of the director may, within 90 days of the giving of notice thereof, file a protest in writing in the form and manner described in N.J.A.C. 18:1-1.8.

(b) (No change.)

18:8-6.3 Time limit for refund

All claims for refund must be filed with the Director within two years after the payment of any original or additional tax assessed against the taxpayer. For payments made on or after July 1, 1993, claims for refunds must be filed within four years after the payments of any original or additional tax assessed against the taxpayer.

18:8-6.4 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund the Director determines that there has been an overpayment of the tax, the amount of overpayment and the interest on the overpayment if any, is credited against any liability of the taxpayer under any State tax law.

(b) If there is no liability the taxpayer is entitled to a refund of the tax overpaid and the interest on the overpayment if any.

(c) (No change.)

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than $1.00.

(a)

DIVISION OF TAXATION

Homestead Property Tax Rebate; Extension of Filing Date for Certain Claimants

Adopted New Rule: N.J.A.C. 18:12-7.1

Proposed: January 3, 1994 at 26 N.J.R. 109(b).

Adopted: February 16, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: February 18, 1994 as R.1994 d.136, **without change.**

Authority: N.J.S.A. 54:4-8.57 et seq. and 54:50-1.

Effective Date: March 21, 1994.

Expiration Date: October 4, 1998.

Summary of Public Comments and Agency Response:

COMMENT: The Division received a comment from the New Jersey Tenants Association. There was an objection to the January 15 filing date for nonfilers of gross income tax returns stating that "We are uncertain as to why people who are not required to file tax returns are required to have their claims in prior to all other claimants."

RESPONSE: N.J.A.C. 18:12-7.1(c)2 provides that nonfilers must file a rebate application "no later than January 15 following the date of payment and distribution of rebates for the prior year . . ." Thus, the rule grants an automatic eight month extension of time for nonfiler claimants to make homestead rebate applications. For example, under N.J.A.C. 18:12-7.1(c)2, a nonfiler of a 1993 gross income tax return (due on April 15, 1994) will have until January 15, 1995 to file for the tax year 1993 homestead rebate.

Full text of the adoption follows:

SUBCHAPTER 7. HOMESTEAD PROPERTY TAX REBATE

18:12-7.1 Extension of time to file homestead property tax rebate applications

(a) No homestead rebate shall be allowed pursuant to the Homestead Property Tax Rebate Act of 1990 except upon written application therefor, in a manner and on a form prescribed by the Director of the Division of Taxation in the Department of the Treasury.

(b) Every claimant seeking a rebate shall file the rebate application form as part of a gross income tax return.

(c) Every claimant shall file the rebate application form pursuant to the filing deadlines provided in the New Jersey Gross Income Tax Act; in the case of calendar year claimants, April 15 of each year. The filing deadline for the rebate applications will be extended as follows:

1. For claimants who have properly prepared and timely filed for a Federal and/or New Jersey extension of time to file their New Jersey gross income tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and, in particular, N.J.S.A. 54A:8-1(b) and N.J.A.C. 18:35-1.18, the rebate application must be filed with their NJ-1040 on or before the extended due date. The rebate application will be considered timely filed, even though the request for the extension of time to file the NJ-1040 is subsequently denied by the Division of Taxation for any reason other than untimely filing or the gross income tax return itself is considered to be untimely filed pursuant to law.

2. For claimants who are not otherwise required to file a gross income tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., the rebate application must be filed no later than January 15 following the date of payment and distribution of rebates for the prior tax year, pursuant to N.J.S.A. 54:4-8.63. If the fifteenth day falls on a weekend or holiday, then the application must be filed on or before the next business day.

(d) Paragraphs (c)1 and (c)2 above shall apply to claimants for homestead property tax rebates for tax year 1992 and thereafter.

(b)

DIVISION OF TAXATION

Public Utility Corporation Tax

Readoption with Amendments: N.J.A.C. 18:22

Proposed: January 18, 1994 at 26 N.J.R. 335(a).

Adopted: February 24, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: February 24, 1994 as R.1994 d.145, **without change.**

Authority: N.J.S.A. 54:30-16 through 29, 54:30A-49 through 67, and 54:50-1.

Effective Date: February 24, 1994, Readoption;
March 21, 1994, Amendments.

Expiration Date: February 24, 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. 18:22.

Full text of the adopted amendments follows:

FOREWORD

The first general tax act specifically taxing public utilities was enacted on April 18, 1884. Since that time, the tax rate and classification of property have been the subject of many statutory amendments. In 1940 the basic structure for the present tax law was adopted and the previous statutes repealed. The new law provided for both a Franchise Tax for the use of the public streets, highways, roads or other public places, and a Gross Receipts Tax in lieu of a local tax on personal property. The Franchise Tax is measured by such portion of the taxpayer's Gross Receipts as the length of the lines or mains that are along, in or over any public street, highway, road or other public place bears to the whole length of its lines. The gross receipts tax on certain corporations is in lieu of a local personal property tax; land and buildings are assessed and taxed locally. Chapters 4 and 5 of the Laws of 1940 substituted a uniform tax on public utilities which is administered by the State but all of the revenue, except the expenses of the State incurred in administering the taxes, is apportioned and paid directly to the municipalities.

P.L. 1991, c.184 altered the method of calculating public utility taxes for energy companies as well as the schedule for payment of these taxes for energy companies and telecommunication companies. This Act changed the tax on gas and electric light, heat and power corporations from a tax on gross receipts to a tax based on sales of units of therms of gas or kilowatthours of electricity. Under a procedure specified by statute, the rate of taxation is to be calculated by the Board of Public Utilities in consultation with the Division of Taxation. Additionally, the new law requires payment of the taxes by April 1 of the current year for the affected companies.

The sharing of revenue produced by State-administered taxes with local governmental jurisdictions is a significant feature of State and local fiscal relations.

The Act for which these rules and regulations are promulgated is known as the Taxation of Certain Public Utilities Laws of 1940.

These rules and regulations, when not otherwise modified, are the statements of general applicability and continuing effect, which implement, interpret, or describe, the law or policy of the Division of Taxation. Any reference in these rules and regulations to the "Act" or the "Tax Act" refers to the Taxation of Certain Public Utilities as amended and supplemented (N.J.S.A. 54:30A-16 et seq.).

The Taxation of Certain Public Utilities Laws of 1940 is administered by the Division of Taxation through the Local and Public Utility Branch.

Regulation reference numbers have been designated according to the regulations issued by the Director, Division of Administrative Procedure, pursuant to L. 1968, c.410, for example, Reg. 18:22-1 refers to the section of the New Jersey Administrative Code and should be cited as N.J.A.C. 18:22-1.

18:22-7.1 Imposition of tax and exemption under Act

The Act imposes a tax, measured by gross receipts on sewerage and water companies and measured by units of energy on gas and electric light, heat and power corporations using or occupying the public streets, highways, roads or other public places; and, for the exemption from taxation of the franchises, stock, and certain property of such corporations; and, for the taxation of certain of the property of the corporations not so exempted from taxation.

APPENDIX II

PUBLIC UTILITY TAX
CALENDAR OF TAX EVENTS

Pre-tax Year

. . .

April 1. (On or before.)	Excise taxes payable to the State: The excise taxes payable to the State are due on or before this date. (See N.J.A.C. 18:22-3.3, 18:22-9.6, 9.7)

. . .

(a)

DIVISION OF TAXATION

Railroad Property Tax

Readoption with Amendments: N.J.A.C. 18:23

Proposed: January 3, 1994 at 26 N.J.R. 110(a).

Adopted: February 14, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: February 15, 1994 as R.1994 d.132, **without change.**

Authority: N.J.S.A. 54:29A-6.

Effective Date: February 15, 1994, Readoption;
March 21, 1994, Amendments.

Expiration Date: February 15, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:23.

Full text of the adopted amendments follows:

18:23-1.1 Purpose; scope; history

(a) The first general New Jersey Railroad Tax Law dates back to 1884[1] when railroad property was assessed both by the State and local governments. Since that time, the tax rate and classification of property have been the subject of many statutory amendments. In 1941 the basic structure for the present tax law was adopted[2] and the previous statutes repealed. The new law provided for both a property tax and a franchise tax, based on net railway operating income allocated to New Jersey on the basis of a trackage formula. The Franchise Tax is not a tax on earnings but a Franchise Tax measured by net operating income allocated to New Jersey.[3] In 1948, the tax was extensively amended so as to adopt the present system of classifying railroad property and the current franchise rate of 10 per cent of net railway operating income.[4] Again, in 1964 and 1966, the law was amended so as to exclude main stem and facilities used in passenger service.[5] Furthermore, the 1966 amendment eliminated local rates of taxation of property used for railroad purposes and substituted a uniform tax, collected by the State of New Jersey. The revenues collected are appropriated for payment to municipalities, in lieu of railroad property tax, plus additional sums appropriated as are required for replacement revenues to certain municipalities, in which railroad property is located, in accordance with a formula, known as State Aid, established by the New Jersey Legislature.

(b) The Act for which these rules are promulgated is the Railroad Tax Law of 1948. These rules are issued pursuant to N.J.S.A. 54:29A-6.

(c) These rules, insofar as they are identical in substance to existing rules relating to the same subject matter shall be construed as restatements and continuations and not new rules.

(d) Any reference in these rules to the "Act" or the "Tax Act" refers to the Railroad Tax Act of 1948 as amended, (N.J.S.A. 54:29A-1 et seq.).

(e) The Railroad Tax law of 1948 is administered by the Division of Taxation through Property Administration.

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[1]P.L. 1884, c.101

[2]P.L. 1941, c.291

[3]Delaware Lackawanna & W.R.R.N. Division of Tax Appeals, N.J. State Department of Taxation and Finance, 3 N.J. 27; 68 A.2d 749 (1949), State Department of Taxation and Finance, 3 N.J. 27; 68 A.2d 749 (1949), *appeal dismissed,* 338 U.S. 946.

[4]P.L. 1948, c.40, 41

[5]P.L. 1964, c.251 P.L. 1966, c.139

18:23-1.2 Definitions

(No change in text.)

18:23-5.1 Classification of railroad property

(a) On or before November 1 of the pretax year all real property used for railroad purposes in this State is classified as Class I, Class II or Class III railroad property for tax purposes.

1. Class I real property consists of the length of main stem (roadbed not exceeding 100 feet in width) of each railroad in this State;

2.-3. (No change.)

(b) (No change.)

18:23-6.4 (Reserved)

18:23-8.1 Return of information

(a) Every taxpayer must, on or before March 1 of the pretax year, file with Property Administration statements and/or schedules showing:

1.-2. (No change.)

(b) Property Administration has developed and maintains a perpetual inventory of all property owned by each railroad or system in the State of New Jersey and only changes in the ownership, character or value of such property are required to be reported annually. Such annual returns of information must be submitted to Property Administration on forms R.R.51 through R.R.45 which are available from said office.

(c) (No change.)

(d) On or before April 1 of the tax year, each taxpayer must file with the Director, through Property Administration, at its own expense, a sworn and complete copy of its Railroad Annual Report for the pretax year, which has been filed or will be filed with the Interstate Commerce Commission or with the Department of Transportation of the State of New Jersey.

(e) Furthermore, all taxpayers must complete and file with Property Administration Forms R.R.551 through 556, together with such supplemental statements and schedules as may from time to time be required by the Director or the Assistant Director of Property Administration, acting in his behalf.

18:23-8.2 Monthly statistics report

All taxpayers shall submit monthly reports of net railway operating income to Property Administration, as soon as such information is available or projected. Such report shall include the monthly net railway operating income, and the cumulative net railway operating income for the year up to the month reported.

18:23-9.3 Delinquent payment; interest

Any taxpayer who fails to pay either the railroad franchise tax or the railroad property tax when due is subject to interest at the rate of "prime rate" plus three percent, computed on the amount of tax due, from and including the date the payment was due up to the date payment is actually received by the Director of the Division of Budget and Accounting.

18:23-11.2 Taxpayer's right to informal conference

Where, under N.J.A.C. 18:23-5.6, a taxpayer requests an informal hearing, a conference will be held before Property Administration to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

18:23-11.3 Taxpayers right to formal hearing

(a) Where, under N.J.A.C. 18:23-6.5 (Review of reassessment or assessment), a taxpayer requests an administrative review, such review will be granted by means of a formal hearing, in the following manner:

1. (No change.)

2. After all parties have been given the opportunity of presenting all the evidence in support of the issues, Property Administration shall take the matter under advisement and reach a determination on the record and facts disclosed;

3. Upon reaching a determination, Property Administration shall notify the taxpayer or other party in interest or his representative by mail of the determination made;

4. (No change.)

(a)

DIVISION OF TAXATION

Gross Income Tax
Credit for Excess Contributions

Adopted Amendment: N.J.A.C. 18:35-1.17

Proposed: January 18, 1994 at 26 N.J.R. 336(a).
Adopted: February 22, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: February 24, 1994 as R.1994 d.146, **without change.**
Authority: N.J.S.A. 54A:9-17(a).
Effective Date: March 21, 1994.
Expiration Date: June 4, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

18:35-1.17 Credit for excess contributions

(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment, disability insurance, Workforce Development Partnership Fund and Health Care Subsidy Fund shall be treated as follows:

1. Employers issuing a W-2 form to employees shall include on it:

i.-ii. (No change.)

iii. The combined total amount withheld for Workforce Development Partnership Fund and Health Care Subsidy Fund contributions or, in the alternative, the separate amounts contributed to these funds;

iv.-v. (No change.)

(b) (No change.)

(c) An individual claiming a credit against gross income tax for overpayment of unemployment, disability insurance, Workforce Development Partnership Fund or Health Care Subsidy Fund contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR a completed New Jersey Form 2450. A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. Such claims are not applicable to withholdings made during calendar years prior to 1983.

Examples 1.-2. (No change.)

(d) (No change.)

(b)

DIVISION OF TAXATION

Gross Income Tax
Interest on Overpayments

Adopted New Rule: N.J.A.C. 18:35-1.27

Proposed: January 3, 1994 at 26 N.J.R. 112(a).
Adopted: February 14, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: February 15, 1994 as R.1994 d.133, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Effective Date: March 21, 1994.
Expiration Date: June 4, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: Michael A. Guariglia, Esq., of McCarter & English, on behalf of the Taxation Section of the New Jersey State Bar Association, objected to paragraph (f)1 of the proposed new rule, as it precludes the payment of interest on "monies paid erroneously resulting from an assessment made under the Act . . ."

RESPONSE: Effective with the Taxpayer Bill of Rights, P.L. 1992, c.175, N.J.S.A. 54:49-15.1 provides, in relevant part, that:

". . . interest shall be allowed and paid on *every* overpayment of tax at a rate determined by the director to be equal to the prime rate . . ." (emphasis added)

The Division believes that the expressed intent of N.J.S.A. 54:49-15.1, in part, is that a taxpayer who erroneously overpays is entitled to interest on the overpayment. Consequently, paragraph (f)1 has been deleted upon adoption of the rule.

Full text of the adoption follows (deletions indicated in brackets with asterisks *[thus]*):

18:35-1.27 Interest on overpayments

(a) Interest will be paid on an overpayment of gross income tax which has not been refunded six months and one day after the later of:

1. The last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file; or

2. The date the return, whether original or amended, requesting the refund is actually filed.

(b) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation prior to July 1, 1993, shall be calculated at the rate of six percent per annum.

(c) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation after June 30, 1993, shall be calculated at the rate of six percent per annum up until June 30, 1993. Any interest accruing to the taxpayer after that date will be calculated on the total amount due on June 30, 1993, at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

(d) Interest paid pursuant to (a) above on refunds which are claimed after June 30, 1993 shall be calculated at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

(e) When interest is to be paid pursuant to (a) above, it will be calculated beginning from one day after the later of the last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file, or the date the return, whether original or amended, requesting the refund is actually filed. Interest will continue to accrue to a date (to be determined by the Director) preceding the date of the refund check by not more than 30 days.

(f) An overpayment of gross income tax is deemed to occur on the last date for filing a gross income tax return, as prescribed by statute or permitted by an approved application for extension of time to file, or on the date the return, whether original or amended, requesting the refund is actually filed.

[1. Monies paid erroneously resulting from an assessment made under the Act are not considered an overpayment of gross income tax. Nothing in this section shall be construed to permit the payment of interest on such monies if and when returned to the taxpayer.]

(g) No interest will be paid on any overpayment of gross income tax refunded within six months of the dates indicated in (a)1 and (a)2, above.

(h) For the purposes of this section, a gross income tax return is not considered to be filed unless and until it contains sufficient required information to permit the mathematical verification of tax liability and the resulting overpayment shown on the return. All required schedules and attachments must be submitted in order for the return to be deemed filed.

(i) This section shall take effect immediately and apply to all tax years beginning after December 31, 1990, as well as any other return filed (within the applicable statute of limitations) after April 15, 1992 which results in an overpayment.

(a)

DIVISION OF TAXATION

Gross Income Tax
Setoff of Individual Liability
Adopted Amendment: N.J.A.C. 18:35-2.2

Proposed: December 6, 1993 at 25 N.J.R. 5454(a).
Adopted: February 22, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: February 24, 1994 as R.1994 d.147, **without change.**
Authority: N.J.S.A. 54:50-1.
Effective Date: March 21, 1994.
Expiration Date: June 4, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

18:35-2.2 Definitions

...

"Rebate" means a homestead property tax rebate pursuant to P.L. 1990, c.61 (N.J.S.A. 54:4-8.57 et seq.).

...

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs
Nature and Exchange of Gaming Chips, Slot Tokens and Plaques
Procedure for Accepting Cash and Coupons at Gaming Tables
Rules of the Games; Wagers; Gaming Equipment
Adopted Amendments: N.J.A.C. 19:45-1.1, 1.8, 1.16, 1.18 and 1.46; 19:46-1.4 and 1.5; 19:47-2.3, 2.17, 3.2, 6.5, 7.2, 10.5, and 11.7; and 19:51-1.1

Proposed: December 20, 1993 at 25 N.J.R. 5902(a).
Adopted: February 17, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: February 22, 1994 as R.1994 d.137, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 99, and 100.
Effective Date: March 21, 1994.
Expiration Dates: August 15, 1997, N.J.A.C. 19:45;
April 15, 1998, N.J.A.C. 19:46;
April 15, 1996, N.J.A.C. 19:47;
April 27, 1994, N.J.A.C. 19:51.

Summary of Agency-Initiated Changes:

As a result of intervening amendments proposed at 25 N.J.R. 5905(a) and adopted in this Register, technical codification changes have been made to N.J.A.C. 19:45-1.8(c) and 19:45-1.46(j).

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement and Greate Bay Hotel and Casino, Inc. (Sands Hotel & Casino) indicated that they did not object to the proposed amendments.

RESPONSE: Accepted.

COMMENT: The Claridge at Park Place, Inc. (Claridge Casino Hotel), Adamar of New Jersey, Inc. (TropWorld Casino and Entertainment Resort), Bally's Park Place, Inc., and Resorts International Hotel, Inc. (Merv Griffin's Resorts Casino Hotel) also supported the proposal, but suggested that N.J.A.C. 19:45-1.46(j)4 be modified to delete the requirement that a match play coupon could be used only in games which have individual betting areas for each player on the layout. As these casino licensees correctly noted, this limitation would prevent a match play coupon from being utilized in games such as Roulette and Craps, which do not have individual betting areas. However, they contend that the lack of such betting areas should not preclude the use of a match play coupon in these games.

RESPONSE: Rejected. The initial proposal purposely limited the use of a match play coupon to games with individual betting areas, so that when a wager is made that includes a match play coupon, there would be no question as to which patron had made the wager, and to which wager the coupon belonged.

The use of such a coupon at a Craps or Roulette table, which do not have individual betting areas, presents additional difficulties because of the tight nature of the layout and the way the games are played. The use of coupons at such games is presently being studied; in the interim, the Commission has determined that the use of a match play coupon should be limited as originally proposed.

COMMENT: Resorts and Bally's suggested that a patron should be permitted to wager more than one match play coupon at a time. Additionally, when wagering a match play coupon, a patron should be permitted to wager a gaming chip which equals or exceeds the value of that coupon.

RESPONSE: Rejected. Proposed N.J.A.C. 19:45-1.1 and 1.18(b) only permit the value of the coupon to be matched, in order to provide a simple, standardized arrangement at gaming tables for the acceptance of a match play coupon and the computation of a payoff on a match play coupon. The same is true of the limitation of one coupon per wager in N.J.A.C. 19:45-1.18(b)2; unlike gaming chips, multiple coupons are not necessarily visible when stacked.

COMMENT: Trump Taj Mahal Associates (Trump Taj Mahal Casino Resort) and Bally's supported the proposal, but contended the requirement in N.J.A.C. 19:45-1.18(b)1 that a match play coupon must be placed beneath the patron's matching gaming chips might be cumbersome for patrons and dealers, and would slow down the game if the chips must be precisely positioned on the coupon, in order not to obscure the type and denomination of the coupon. These licensees suggested that the proposal be amended to permit the required gaming chip to be placed beside the match play coupon, in addition to being placed on top of the coupon.

RESPONSE: Rejected. The stacking procedure contemplated by the proposal is simply an extension of the Commission's present procedures and industry practice involving the stacking of chips used in making wagers. In the Commission's judgment, it is needed to provide an orderly way to make and accept wagers which involve the use of a match play coupon. The alternate proposed arrangement would probably require enlargement of the individual wagering areas, which would also probably necessitate a reduction in the number of patrons that could be accommodated at a gaming table at one time.

COMMENT: Taj Mahal and Bally's also suggested that the proposal be revised to permit generic samples of match play coupons to be approved without regard to denomination, so that each new sample coupon need not be submitted and approved every time the denomination is changed in connection with changing marketing programs.

RESPONSE: Accepted in part and rejected in part. The Commission now routinely approves generic designs for certain gaming chips and slot tokens, and may also do so for match play chips if it finds it appropriate. The Commission conceives that such approvals could be granted under the existing language of the proposal, without making a specific exception for such denomination changes.

COMMENT: Taj Mahal and Bally's suggested that a match play coupon not be treated as "gaming equipment," as would be required by its inclusion in N.J.A.C. 19:51-1.1. They note that coupons which are exchanged at gaming tables for gaming chips, pursuant to N.J.A.C. 19:45-1.45(i), are not considered to be gaming equipment, even though they are counted as part of the casino's drop.

RESPONSE: Rejected. Coupons that are exchanged for gaming chips are not considered gaming equipment because the coupons themselves are not being wagered; they are simply exchanged for gaming chips, which are considered to be gaming equipment. Additionally, the exchange of a coupon for gaming chips has no effect upon a casino licensee's gross revenue. Even though the coupon is deposited in the table's drop box, that revenue is offset by the issuance of an equal amount of chips from the dealer's table inventory container, creating a "wash" for accounting purposes. However, match play coupons would actually be wagered by patrons, and may affect gross revenue. Therefore, the Commission believes that match play coupons should be classified as gaming equipment.

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

19:45-1.1 Definitions

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

...

"Coupon" means a document which is issued in accordance with the coupon redemption and complimentary distribution programs in N.J.A.C. 19:45-1.46(a), and includes a match play coupon.

...

"Match play coupon" means a coupon with a fixed, stated value that is issued, utilized and redeemed pursuant to N.J.A.C. 19:45-1.18 and 1.46, and the stated value of which, when presented by a patron with gaming chips which are equal in value to the stated value of the coupon, is included in the amount of the patron's wager in determining the payout on any winning bet at an authorized game.

...

19:45-1.8 Retention, storage and destruction of books, records and documents

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

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1.-*[5.]****4.*** (No change.)

*[6.]****5.*** The following original books, records and documents shall be retained by a casino licensee for a minimum of six months:

i. Coupons entitling patrons to cash, slot tokens, gaming chips or plaques or simulcasting wagers, or match play coupons, including unused, voided and redeemed coupons;

ii.-xii. (No change.)

*[7.-8.]****6.-8.*** (No change.)

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

19:45-1.16 Drop boxes and slot cash storage boxes

(a) Each gaming table in a casino or casino simulcasting facility shall have attached to it a secure metal container known as a "drop box" in which shall be deposited all cash, coupons exchanged at the gaming table for gaming chips and plaques, match play coupons, issuance copies of Counter Checks exchanged at the gaming table for gaming chips and plaques, duplicate Fill and Credit Slips, Requests for Credit forms, Requests for Fill forms, and Table Inventory forms. Each drop box shall have:

1.-5. (No change.)

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

19:45-1.18 Procedure for accepting cash and coupons at gaming tables

(a) (No change.)

(b) Whenever a match play coupon and an equivalent amount of gaming chips are presented as a wager by a patron, pursuant to N.J.A.C. 19:45-1.46(j)6, at an authorized game in which a match play coupon may be used:

1. The coupon shall be placed underneath the gaming chips in the patron's betting area, in such a way that the type and value of the coupon is visible at all times;

2. Only one match play coupon may be used with the wager;

3. If the wager wins, it shall be paid in accordance with the terms and conditions of the coupon; and

4. Whether the wager wins or loses, the coupon shall be deposited by the dealer into the drop box attached to the gaming table at the time the winning wager is paid or the losing wager is collected.

(c) A casino licensee may, in its discretion, require a coupon to be cancelled upon acceptance by the dealer or boxperson, in a manner approved by the Commission, so as to preclude its subsequent use.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) For the purposes of this chapter, a complimentary distribution program is a contest or promotion pursuant to which complimentary services or items are provided directly or indirectly by a casino licensee to the public without regard to the identity or gaming activity of the individual recipients. The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption complimentary distribution programs which entitle patrons to use match play coupons or to redeem coupons for complimentary cash, (gaming chips,) slot tokens (or simulcast wagers) issued in connection with bus (and other complimentary distribution) programs. No match play coupons, complimentary cash, (gaming chips) or slot tokens may be distributed, (or complimentary simulcast wagers accepted,) by a casino licensee under any coupon redemption complimentary distribution program that does not comply with the requirements of this section.

(b)-(h) (No change.)

(i) A coupon redeemable for gaming chips and a match play coupon shall be designed and printed so that the denomination and type of the coupon is clearly visible from the closed circuit television system when accepted or being wagered at a gaming table and when deposited in a drop box. A match play coupon shall contain an area designated for the placement thereon of the required gaming chips, which area shall be located on the coupon so as not to obscure or interfere with visibility of the type and denomination of the coupon. No casino licensee shall issue or use a match play coupon for gaming purposes until a sample coupon has been submitted to and approved by the Commission.

(j) Coupons shall be redeemed in the following manner:

1. Coupons redeemable for coin, currency or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. A coupon redeemable for currency may also be redeemd by slot attendants, who shall accept the coupon in exchange for the stated amount of currency and shall cancel the coupon upon acceptance. Cancellation of coupons by changepersons and slot attendants shall be in a manner that will permit subsequent identification of the individual who accepted and canceled the coupon.

i. Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum.

ii. Notwithstanding the above, an automated coupon redemption machine or bill changer may be utilized to accept coupons provided that the acceptance of coupons by*[:

i. An]* ***an*** automated coupon redemption machine complies with this section and N.J.A.C. 19:45-1.46A*[;]* or ***the acceptance of coupons by a***

[ii. A] bill changer complies with this section and N.J.A.C. 19:45-1.46B.

2. (No change.)

3. A coupon redeemable for gaming chips shall be redeemed only at a gaming table and only by a dealer or boxperson, who shall, in accordance with N.J.A.C. 19:45-1.18, accept the coupon in exchange for the stated amount of gaming chips and shall deposit the coupon into the drop box upon acceptance.

4. A match play coupon shall be redeemed only at a gaming table which offers an authorized game in which patrons wager only against the house and which has an individual betting area for each player on the gaming table layout. Such a coupon shall be redeemed only by a dealer, and only if accompanied by the proper amount of gaming chips required by the coupon. The dealer shall, in accordance with N.J.A.C. 19:45-1.18, accept the coupon as part of the patron's wager and deposit the coupon into the drop box after the wager is won or lost.

(k)-(l) (No change.)

(m) Each casino licensee shall:

1. File a quarterly report for all programs regulated by (a) above, which shall list, by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash, gaming chips, slot tokens, match play coupons or simulcast wagers given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. (No change.)

(n) (No change.)

(o) In addition to the reports required in (m) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including match play coupons, gaming chips, slot tokens and simulcast wagers, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.9.

19:46-1.4 Submission of gaming chips, plaques and match play coupons for review and approval

A casino licensee shall submit to the Commission a sample of each denomination of gaming plaque, a sample of each value and nonvalue chip in its primary and secondary sets, and a sample of each match play coupon, and shall not utilize such chips, plaques or coupons for gaming purposes until approved by the chairman.

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques, and match play coupons

(a) All wagering on authorized games in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that slot tokens or coins shall be permitted for use in slot machines or simulcast wagering and match play coupons shall be permitted for use in wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to (f) below.

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

19:47-2.3 Wagers

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

(d) All wagers at blackjack shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate areas of the blackjack layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and casino supervisor and that such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(e)-(k) (No change.)

19:47-2.17 Permissible additional wager

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

(f) An additional wager shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate area of the blackjack layout, except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt to any player and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(g)-(i) (No change.)

19:47-3.2 Wagers

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

(c) All wagers at Baccarat-Punto Banco shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate areas of the Baccarat-Punto Banco layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and casino supervisor at the table and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(d) (No change.)

19:47-6.5 Procedures for each round of play; wagers; payouts

(a) (No change.)

(b) All wagers at red dog shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate area of the red dog layout, except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(c)-(k) (No change.)

19:47-7.2 Wagers

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

(c) All wagers at minibaccarat shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate areas of the minibaccarat layout except that verbal wagers accompanied by cash may be accepted provided they are confirmed by the dealer and casino supervisor at the table, and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

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

19:47-10.5 Wagers

(a) All wagers at pai gow shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting area of the pai gow layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow.

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

19:47-11.7 Wagers

(a) All wagers at pai gow poker shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting area of the pai gow poker layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow poker.

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

19:51-1.1 Definitions

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

"Gaming equipment" means any mechanical, electrical or electronic contrivance or machine used in connection with gaming or any game and includes, without limitation, roulette wheels, roulette tables, big six wheels, craps tables, tables for card games, layouts, slot machines, cards, dice, chips, plaques, match play coupons, card dealing shoes, drop boxes, and other devices, machines, equipment, items or articles determined by the Commission to be so utilized in gaming as to require licensing of the manufacturers, distributors or services or as to require Commission approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Commission or the Division.

...

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Records Retention

Adopted Amendments: N.J.A.C. 19:45-1.8

Proposed: December 20, 1993 at 25 N.J.R. 5905(a).

Adopted: February 17, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: February 22, 1994 as R.1994 d.138, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69e and 96e.

Effective Date: March 21, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), the Sands Hotel & Casino (the Sands), Trump's Castle Casino Resort (Trump's Castle) and Trump Taj Mahal Casino Resort (Taj Mahal).

COMMENT: The Division and the Sands stated their general support for adoption of the proposed amendments.

RESPONSE: Accepted.

COMMENT: Taj Mahal supports the adoption of the proposal, but suggested that the terms "mail records" and "coin tags" be defined in N.J.A.C. 19:45-1.1 "as the lack of definitions for these terms creates ambiguities."

RESPONSE: Since not all casino licensees will always utilize the same terminology for all documents, N.J.A.C. 19:45-1.8(c) relies, to the extent possible, upon commonly used names of particular documents and the common meaning of words. Though the Commission does not agree that either term noted by the commentator merits separate definition, minor clarification of both terms is added upon adoption. Proposed N.J.A.C. 19:45-1.8(c)3x actually refers to "mailroom records," not "mail records." This term is intended to identify "records generated by the mailroom," and is so modified, Upon adoption, the term "coin tags" is revised to read "coin bag tags."

COMMENT: Trump's Castle suggests that casino hotel survey questionnaires should be allowed to be destroyed at any time without notice. Trump's Castle contends there is no apparent reason to retain survey questionnaires for the six months required by proposed N.J.A.C. 19:45-1.8(c)5xiii.

RESPONSE: Upon reconsideration, the Commission and the Division agreed with the commenter and have determined that survey questionnaires should be added to the list of documents in N.J.A.C. 19:45-1.8(c)8 that may be destroyed at any time without notice.

COMMENT: Trump's Castle suggests that destruction of coin tags be permitted at any time without notice.

RESPONSE: Coin tags presently fall under the five-year retention category for gaming-related documents, N.J.A.C. 19:45-1.8(c)2. The amendment reduced the retention period to three years where the information on the coin tags is duplicative of that on other documents. As such, the amendment attempts to minimize the regulatory burden by eliminating unnecessarily lengthy retention periods. However, the rules must also ensure retention periods that adequately address regulatory and investigatory concerns. With these goals in mind, and upon reconsideration, the Commission and the Division have determined that coin tags containing such duplicative information can be added to the list of documents in N.J.A.C. 19:45-1.8(c)4 that may be destroyed after a period of one year and upon notice. Since this reduces the regulatory burden on the industry, and since both regulatory agencies concur, such modification need not await additional public notice and comment.

COMMENT: The amendment permits destruction at any time of blank or unused forms not required by Commission rules. However, the destruction of blank or unused forms that are required by Commission rules is subject to prior notice to the Commission and the Division. See N.J.A.C. 19:45-1.8(c)7i, (c)8xvii. Trump's Castle maintains that there is no basis for this distinction and contends that the notice requirement is unnecessarily burdensome.

RESPONSE: The Commission disagrees. The proposed amendments reduce the burden of records retention by eliminating minimum retention periods for any blank or unused forms. Nevertheless, as noted above, the retention schedule must also reflect regulatory and investigatory concerns. Where the blank or unused forms are required by regulation, both regulatory agencies require the degree of accountability regarding destruction that is provided by prior notice. The rules simply require 15 days prior written notice of any records destruction (N.J.A.C. 19:45-1.8(f)), which the Commission does not view as unduly burdensome.

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

19:45-1.8 Retention, storage and destruction of books, records and documents

(a) All original books, records and documents pertaining to the casino licensee's operations and approved hotel shall be:

1.-4. (No change.)

5. Destroyed only after:

i. Expiration of the minimum retention period specified in (c) below, except that the Commission may, upon the written petition of any casino licensee and for good cause shown, permit such destruction at an earlier date; and

ii. (No change.)

(b) (No change.)

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1.-2. (No change.)

3. The following original books, records and documents shall be retained by a casino licensee for a minimum of three years:

i.-viii. (No change.)

ix. Credit union records;

x. *[Mailroom records]* ***Records generated by the mailroom***; ***and***

[xi. Coin tags, provided that the information contained thereon is duplicative or less than that recorded on another document; and]

*[xii.]****xi.*** Any gaming-related document for which the casino licensee can demonstrate that the information contained thereon is

duplicative or less than that recorded on another document retained in accordance with (c)1 and 2 above.

4. The following original books, records and documents shall be retained by a casino licensee for a minimum of one year:

i.-ii. (No change.)

iii. Card and dice transaction and inventory reports;

iv. Returned check aging reports, except for year-end reports;

v. Coin bag tags, provided that the information contained thereon is duplicative or less than that recorded on another document;

*[v.]**vi.* Emergency drop box approval forms; and

*[vi.]**vii.* With the exception of cashed pari-mutuel tickets and credit vouchers, the original books, records and documents related to the revenues and expenses of casino simulcasting, including, but not limited to, all reports generated by the totalisator and all records maintained in accordance with N.J.A.C. 19:45-1.2(c)10, shall be retained by a casino licensee or a hub facility for a minimum of one year.

5. The following original books, records and documents shall be retained by a casino licensee for a minimum of six months:

i.-x. (No change.)

xi. Surveillance employee duty logs, VCR/tape logs, and equipment malfunction reports; ***and***

xii. Zeroed-out countercheck envelopes*[; and]**.*

[xiii. Survey questionnaires regarding service in the casino hotel.]

6. (No change in text.)

7. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, but may be destroyed only upon notice in accordance with (f) and (g) below:

i. Any form required by Commission rules that is blank or unused, unless otherwise specified by this section;

ii. Any original book, record or document that has been copied and stored on a microfilm, microfiche or other media system approved by the Commission.

8. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, and may be destroyed without notice otherwise required by (f) below:

i.-xiv. (No change.)

xv. Unsolicited resumes or letters requesting employment;

xvi. Register tapes, provided that the information contained thereon is duplicative or less than that recorded on another document retained in accordance with (c)3 above; *[and]*

xvii. Survey questionnaires regarding service in the casino hotel; and

*[xvii.]**xviii.* Any form not required by the Commission regulations that is blank or unused, unless otherwise specified by this section.

(d) (No change.)

(e) A casino licensee may petition the Commission for approval of a microfilm, microfiche or other suitable media system for the copying and storage of original books, records and documents. Such a system shall be approved if it contains the following elements to the satisfaction of the Commission:

1.-4. (No change.)

(f)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Complimentary Services or Items; Procedures for Complimentary Cash and Noncash Gifts
Limitations on Complimentary Incentive Programs and Complimentary Programs for Invited Guests; Restrictions on the Return of Complimentary Noncash Gifts

Adopted Amendments: N.J.A.C. 19:45-1.9 and 1.9B

Proposed: January 3, 1994 at 26 N.J.R. 113(a).

Adopted: February 17, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: February 22, 1994 as R.1994 d.139, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Effective Date: March 21, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), the Sands Hotel and Casino (Sands), Resorts International Hotel, Inc. (Resorts) and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: The Division, Sands, Resorts and TropWorld each expressed support for the adoption of the proposed amendments to N.J.A.C. 19:45-1.9.

RESPONSE: The Commission agreed with the commenters as evidenced by its adoption of the proposal.

COMMENT: The Division suggested that a minor modification be made to N.J.A.C. 19:45-1.9(f)3ii on adoption to clarify that the calculation of the player's handle must, similar to the alternative standard specified in N.J.A.C. 19:45-1.9(f)3i, be reasonably determined from data maintained pursuant to the approved internal controls for the complimentary incentive program.

RESPONSE: The Commission agreed with the comment of the Division and a clarifying amendment to N.J.A.C. 19:45-1.9(f)3ii was included at adoption.

COMMENT: Sands, with the support of TropWorld, opposed the adoption of the proposed amendments to N.J.A.C. 19:45-1.9B(i) and (j) on the basis that the proposal unrealistically assumes that: 1) only the seller of a gift given to a patron will accept the gift in exchange for cash; and 2) there are no bona fide reasons why a patron might want to exchage a gift for either cash or other merchandise. According to Sands, a patron who receives a noncash gift may: keep the gift; return it to the original seller for exchange or credit; exchange it with a third party for cash or other consideration; or pawn it. Therefore, according to Sands, the proposal, which only addresses the first two possibilities listed above, fails to accomplish its purpose.

RESPONSE: Sands' comment appears to be based on a misunderstanding of the purpose of the proposal. Sands is correct that the proposal does not address every conceivable way in which a patron might dispose of a complimentary noncash gift. But Sands is incorrect in assuming that the proposal was ever intended to achieve this goal. Rather, the proposal was intended to address collusive arrangements between the original seller of the noncash gift and the recipient patron pursuant to which the parties mislead the casino licensee into believing a noncash gift will be issued to the patron when the real intent is to obtain cash for the patron by means of a fraudulent "purchase" of the noncash gift. The rule does not attempt, nor was it intended, to address the disposition of the noncash gift through transactions involving persons other than the original seller.

Sands is also incorrect in its statement that the rule wrongly assumes that there are no bona fide reasons why a patron might wish to return a noncash gift to the original seller for exchange. The rule does not preclude a patron from requesting or effecting the return or exchange of a noncash gift with the original seller. What the rule does do is require the seller of the gift, upon receiving such a request from the recipient patron, to return any cash generated by such a transaction to the casino licesee. This result is entirely consistent with the requirements of the Casino Control Act and the rules of the Commission since the patron should not be able to accomplish indirectly (receive a cash complimentary from the casino licensee) that which he or she was prohibited from doing directly. Moreover, if the noncash gift has a value of $1,000 or more, the recipient patron is still permitted to exchange the gift with the original seller. In order to do so, however, the original seller must obtain the written permission of the casino licensee that purchased the gift. In the opinion of the Commission, these two provisions should have a significant beneficial effect in averting fraudulent schemes involving patrons and the suppliers of noncash gifts and, therefore, the comments of Sands and TropWorld were rejected.

COMMENT: Should N.J.A.C. 19:45-1.9B(j) be adopted, Sands and TropWorld suggested that the $1,000 threshold contained therein be raised to $25,000.

RESPONSE: As noted in the proposal, the amendments to N.J.A.C. 19:45-1.9B will help to prevent schemes whereby the patron prearranges with the seller of the gift to provide the patron with cash rather than the noncash gift itself. To facilitate this purpose, the Commission does not consider it an undue burden to require that a written agreement or purchase order, using language that is in substantial conformity with the new rule, be prepared for a noncash gift with a purchase price of $1,000 or more.

COMMENT: Sands and TropWorld suggested that N.J.A.C. 19:45-1.9B(j) be amended so as to permit a casino licensee to use identifying criteria other than the patron's name on the agreement or purchase order so as to protect the confidentiality of marketing information.

RESPONSE: The purpose of the provision requiring a written agreement or purchase order is to assure that there is a writing which notifies the seller of the gift of its obligation to obtain the consent of the casino licensee if the patron who is the designated recipient of the gift attempts to exchange or return the gift. Obviously, in order for this provision to work, the seller of the gift must know the identity of the recipient of the gift. Therefore, the Commission does not understand how the use of coded identification information on the agreement or purchase order will protect the confidentiality of marketing information, since the seller must be notified of the recipient's identity.

If the concerns of the commenters relate to the ability of the seller to reveal the purchase document or to discuss its contents with the competitors of the casino licensee purchasing the gift, a casino licensee is free to execute whatever confidentiality agreement it deems appropriate with any seller of gifts with which it does business. This would include, of course, a provision which forbids the seller of the gift from revealing the identity of a patron to anyone other than appropriate regulatory authorities. Absent further explanation from the commenters as to how their proposed amendment could be effected in a manner consistent with the purpose of the provision in question, the Commission rejected the comment.

COMMENT: Sands and TropWorld also suggested that N.J.A.C. 19:45-1.9B(i) and (j) be amended to exempt their application to any noncash gifts which may be in a casino licensee's inventory as of the effective date of the amendment.

RESPONSE: The first provision of the proposed amendments, which requires that a noncash gift be delivered directly to the casino licensee or the patron, has, by the terms of the situation suggested by the commenters, already been satisfied so there is no reason to exempt its application. The second provision of the proposed amendments, which requires the casino licensee to require the seller of any noncash gift to pay to the casino licensee any cash generated by the return or exchange of the gift by the patron, can easily be satisfied by simply notifying the seller of the requirement at the time a noncash gift which is currently in inventory is issued to a patron. Moreover, the casino licensee could avoid the issue entirely by simply not telling the patron where the gift was purchased. In either event, there would not appear to be any reason to exempt inventoried gifts from this provision either.

The final provision of N.J.A.C. 19:45-1.9B(j) relates to the obligation of a casino licensee to prepare a written agreement or purchase order which contains certain specified contractual requirements when purchasing a noncash gift for a patron. Obviously, if the gifts have already been purchased before this provision becomes effective, it will be impossible for a casino licensee to comply with this requirement. Accordingly, such gifts are by necessity excempt from this provision of the amendment and no further amendments are necessary.

COMMENT: The Division expressed its support for the adoption of the proposed amendment codified at N.J.A.C. 19:45-1.9B(i) and (j).

RESPONSE: The comment of the Division was accepted.

Summary of Agency-Initiated Change:

In N.J.A.C. 19:45-1.9(h)3v, the reference to N.J.A.C. 19:45-1.8(c)6 is corrected to a reference to N.J.A.C. 19:45-1.8(c)5 due to recodifications adopted elsewhere in this issue of the New Jersey Register.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

19:45-1.9 Complimentary services or items

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

(f) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a table game or slot machine complimentary incentive program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1.-2. (No change.)

3. Each participant in the program is issued complimentaries in accordance with a predetermined schedule as a result of his or her table game or slot play, which schedule shall, with regard to cash complimentaries, be based on and shall not exceed:

i. The theoretical win of the casino licensee from each participant as reasonably determined from data maintained pursuant to the approved internal controls for the complimentary incentive program; or

ii. As to slot play only, a fixed percentage of the player's handle ***as reasonably determined from data maintained pursuant to the approved internal controls for the complimentary incentive program***, which percentage may differ for different denominations of slot machines, but shall not exceed six percent for any denomination of slot machine; and

4. (No change.)

(g) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a complimentary program for invited guests shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1.-3. (No change.)

4. The recipient of any cash complimentary issued as part of the program will not have received more than $100,000 in cash complimentaries from complimentary programs for invited guests conducted by the casino licensee, including the current program, during the previous 12 month period; provided, however, that such limitation shall not preclude a recipient from receiving more than $100,000 in cash complimentaries through participation in complimentary programs for invited guests conducted by that casino licensee during the previous 12 month period if any cash complimentaries issued in excess of $100,000 are otherwise authorized by N.J.A.C. 19:45-1.9B(g) and are recorded in accordance with the requirements of that section; and

5. (No change.)

(h) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a direct mass marketing complimentary program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1.-2. (No change.)

3. A record, which shall be available to the Division upon request, is maintained identifying:

i.-iv. (No change.)

v. If the casino licensee has possession of the data, the names and addresses of the persons to whom cash complimentaries were offered, which data shall be maintained in accordance with the requirements of N.J.A.C 19:45-[1.8(c)6]***(1.8(c)5***.

19:45-1.9B Procedures for complimentary cash and noncash gifts

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

(i) Each casino licensee which purchases a noncash gift for the direct or indirect benefit of a patron shall require the vendor from which the gift is purchased to deliver the gift directly to the casino licensee or the patron. The casino licensee shall also require the vendor to pay to the casino licensee directly any refund or cash balance generated by the return or exchange of the gift by the patron or any representative of the patron.

(j) If a noncash gift to be purchased from a vendor by a casino licensee for the direct or indirect benefit of a patron has a purchase price of $1,000 or more, the purchase shall be authorized by a written agreement or purchase order, a copy of which shall be maintained by the casino licensee in its files for inspection upon request, and shall include a provision in substantially the following form:

"Pursuant to the requirements of New Jersey law, the seller agrees not to effect any transaction with (name of the patron), directly or indirectly, involving the item(s) purchased pursuant to this purchase agreement after delivery without the express written approval of (the casino licensee). If the seller violates this condition of purchase, the seller agrees that this purchase agreement shall be null and void, and the seller further agrees to return the full purchase price of the item(s) purchased pursuant to this purchase agreement to (the casino licensee) as liquidated damages."

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Jobs Compendium Submission

Adopted Amendments: N.J.A.C. 19:45-1.11A

Proposed: January 3, 1994 at 26 N.J.R. 114(a).

Adopted: February 17, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: February 22, 1994 as R.1994 d.140, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 63f, 69, 70g, 70j, 70l, 70m, 99 and 101.

Effective Date: March 21, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement ("Division"), the Sands Hotel and Casino ("Sands"), Resorts International Hotel, Inc. ("Resorts"), the TropWorld Casino and Entertainment Resort ("TropWorld"), and Trump's Castle Casino Resort ("Castle").

COMMENT: Sands does not object to the proposed amended rule.

RESPONSE: The comment has been accepted.

COMMENT: The Division does not object to the proposed amended rule.

RESPONSE: The comment has been accepted.

COMMENT: Resorts indicates that it does not understand the reason for the requirement contained in N.J.A.C. 19:45-1.11A(b)1 to include job codes in the index. Resorts fails to see a practical use to either the casino or the Commission to do so. However, if there is a valid rationale, the inputting of the job codes only involves a one-time update. To do so will not be overly onerous or burdensome.

RESPONSE: The placement of the job codes in the index provides quick, easy reference to track particular employee positions. The electronic tracking system is driven by job codes and its inclusion in the index will allow greater accessibility to the information.

COMMENT: TropWorld indicates that towards the end of the text of subsection N.J.A.C. 19:45-1.11A(d), the word "prior" should be replaced with "after" to be consistent with the intent of the regulation.

RESPONSE: The comment has been accepted. The intent and meaning of the regulation as explained in the proposal Summary published at 26 N.J.R. 114(a), is to allow the filing of certain revisions after their implementation and the use of "subsequent" will make that clear. The proposed amendment has been modified to substitute "subsequent" for "prior." This modification in the proposed amendment does not require republication since the changes will lessen any burden to casino licensees, not increase it, and the change does not involve any information which is submitted to the Division.

COMMENT: Trump indicates that the proposal requires an increase in the number of revisions to approved jobs compendiums required to be filed by a casino licensee increased from an original and two copies to an original and three copies and questions why this is necessary.

RESPONSE: The comment has been accepted. The total number of copies of approved jobs compendium and revisions to the compendium required for casino licensees was again evaluated. It was determined that the total number of copies required to be submitted by casino licensees (as opposed to casino license applicants) could be reduced further by one copy without undermining regulatory efficiency. The proposed amendment has been modified to reduce the copies required from casino licensees to three, that is, one original and two copies. The number of copies required for casino license applicants remains the same. This modification in the proposed adoption does not require republication since the change will lessen any burden to casino licensees, not increase it, and the change does not affect the number of copies required for the Division.

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

19:45-1.11A Jobs compendium submission

(a) (No change.)

(b) A jobs compendium shall include the following sections, in the order listed:

1. An alphabetical table of contents listing the position title and job code for each job description included in (b)3 below and the page number on which the corresponding job description may be found;

2. A table of organization for each department and division illustrating by position title direct and indirect lines of authority within the department or division. Each page of a table of organization shall specify the following:

i. The date of its submission;

ii. The date of the previously submitted table of organization which it supersedes; and

iii. A unique title or other identifying designation for that table of organization.

3. A description of each employee position which accurately corresponds to the position title as listed in the table of organization and as listed in the table of contents. Each position description shall be listed on a separate page, organized by departments or divisions, and shall include, at a minimum, the following:

i.-ix. (No change.)

(c) Except as otherwise provided in (d) below, any proposed amendment to a previously approved jobs compendium shall be submitted to and approved by the Commission before such amendment is implemented by the casino licensee. Unless otherwise directed by the Commission, any amendment required to be preapproved pursuant to this subsection shall be submitted to the Commission at least 60 days prior to the proposed effective date of the amendment and shall contain, at a minimum:

1.-2. (No change.)

(d) The following amendments to an approved jobs compendium may be implemented without the prior approval of the Commission, provided that the amendments are immediately recorded in the jobs compendium maintained by the casino licensee on its premises and a summary of each amendment and the date of implementation with corresponding job descriptions is filed with the Commission no later than five business days *[prior]* ***subsequent*** to the date ***of*** implementation:

1. Amendments to casino hotel registrant position descriptions for positions which report to casino hotel employee registrant position titles. Such amendments may be implemented by a casino licensee without the prior approval of the Commission; provided, however, this subsection shall not apply to casino hotel employee registrant position titles which are departmental or divisional supervisory positions;

2. Amendments to individual job descriptions required by (b)3ix above;
3. Amendments to position titles;
4. Revised page numbers;
5. Amendments to job codes required by (b)1 above;
6. Amendments to the experiential or educational requirements of (b)3iv above;
7. Cost of living salary increases; and
8. Amendments to the projected number of employees in any position other than casino key employee position titles.

(e) (No change.)

(f) Whenever required by this section, a casino licensee shall file *[four]* ***three*** copies of a jobs compendium and *[four]* ***three*** copies of an amendment to a jobs compendium with the Commission. A casino license applicant shall file four copies of a jobs compendium with the Commission and one copy with the Division. Each copy shall be in a format prescribed by the Commission, including a cover indicating the name of the casino licensee or applicant, the date of the submission and the label "Jobs Compendium Submission" or "Jobs Compendium Amendment" as appropriate.

(a)

CASINO CONTROL COMMISSION

Poker
Gaming Schools
Accounting and Internal Controls
Gaming Equipment
Rules of the Games

Adopted New Rules: N.J.A.C. 19:46-1.13E and 19:47-14

Adopted Amendments: N.J.A.C. 19:44-8.3, 19:45-1.1, 1.2, 1.11, 1.12, 1.20 and 1.33 and 19:46-1.17 and 1.18

Proposed: December 20, 1993 at 25 N.J.R. 5906(a).

Adopted: February 17, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: February 22, 1994 as R.1994 d.141, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-5, 69(a), 70(f) and (j); 99 and 100(e).

Effective Date: March 21, 1994.

Expiration Dates: December 15, 1996, N.J.A.C. 19:44;
August 15, 1997, N.J.A.C. 19:45;
April 15, 1998, N.J.A.C. 19:46;
April 15, 1996, N.J.A.C. 19:47.

Summary of Agency-Initiated Changes:

During the comment period, it became apparent to the Commission staff that N.J.A.C. 19:47-14.11 should be amended to clarify subsequent dealing and betting rounds. The cross-reference to N.J.A.C. 19:47-14.10(e) was inadvertently included in the procedures for omaha poker. Further, a clarification was necessary to N.J.A.C. 19:47-1.15(k) since the irregularity applies to any patron who must place a wager. The irregularity was always intended to apply to any player who was required to act. The minimum action the patron can take is to call the wager. During the experiment of poker, it was determined that clarification was necessary since the irregularity applies to a patron who elects to raise the player's previous wager.

Summary of Public Comments and Agency Responses:

COMMENT: Trump Taj Mahal Associates supports the adoption of the proposed amendments.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement (Division) recommends that the stub be counted at least every 10 minutes instead of every 15 minutes.

RESPONSE: Rejected. The Division indicates that they have investigated instances of missing cards found after hours of play, and therefore, the requirement to count the stub should be changed. However, if the dealer was counting the stub as required the missing cards would have been detected and therefore it is not necessary to change the existing requirement.

The Division further indicates that counting the stub every 10 minutes would aid in the detection of defective cards. The purpose of counting the stub is to ensure that all 52 cards are present. When counting the stub, the dealer is not required to examine the quality of the cards. Accordingly, the Commission does not believe counting the stub will assist in detecting defective cards. The regulations require the dealer to inspect all the cards prior to use at the table. In this regard, all defective cards should be removed during the inspection process.

COMMENT: The Division recommends that the dealer be required to count the stub from the hand and not be permitted to spread the stub on the table layout.

RESPONSE: Spreading cards on the layout is used for inspection purposes in other areas of the regulations and therefore the Commission believes it is acceptable for compliance with N.J.A.C. 19:47-14.6.

COMMENT: The Division recommends that poker cards be reused no more than 10 or 12 times.

RESPONSE: Rejected. The inspections required by N.J.A.C. 19:46-1.18(d), (n) and (q) are designed to ensure that no poker card is used which will impact negatively on the integrity of the game.

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

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer shall satisfy the following minimum requirements:

1. For a student being trained to deal a first game the following minimum hours of training and instruction shall be required:

i.-iv. (No change.)

v. 270 hours to deal pai gow;

vi. 180 hours to deal pai gow poker; and

viii. 140 hours to deal poker.

2. For a student being trained to deal a second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student certified to deal blackjack:

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

(5) 210 hours to deal pai gow;

(6) 95 hours to deal pai gow poker; and

(7) 80 hours to deal poker.

ii. For a student certified to deal roulette:

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

(5) 110 hours to deal pai gow poker; and

(6) 95 hours to deal poker.

iii. For a student certified to deal craps:

(1)-(3) (No change.)

(4) 210 hours to deal pai gow;

(5) 110 hours to deal pai gow poker; and

(6) 95 hours to deal poker.

iv. For a student certified to deal baccarat:

(1)-(5) (No change.)

(6) 210 hours to deal pai gow;

(7) 95 hours to deal pai gow poker; and

(8) 80 hours to deal poker.

v. (No change.)

(b) (No change.)

19:45-1.1 Definitions

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

...

"Casino supervisor" means a person employed in the operation of a casino or of the authorized games in a casino simulcasting facility in a supervisory capacity or empowered to make discretionary decisions which regulate casino operations, including but not limited to, boxpersons, floorpersons, pit bosses, poker shift supervisors, casino shift managers, the assistant casino manager, and the casino manager.

...

"Master Game Report (Stiff Sheet)" means a record of the computation of the win or loss or, for the game of poker, the poker revenue, for each gaming table, each game, and each shift.

...

"Poker revenue" means the total amount of rake charged to patrons at the poker tables pursuant to N.J.A.C. 19:47-14.14. The poker revenue is determined by adding the amount of cash, coupons, the amount recorded on the Closer, the totals of amounts recorded on the Credits and issuance copies of Counter Checks removed from a drop box, and substracting the amount on the Opener and the total of amounts recorded on Fills removed from a drop box.

...

"Rake" is defined in N.J.A.C. 19:47-14.1.

...

"Table game win or loss" means the amount of gaming chips and plaques and cash won from patrons at gaming tables other than poker tables less the amount of gaming chips, plaques and coins won by patrons at gaming tables other than poker tables. The table game win or loss is determined by adding the amount of cash, coupons, the amount recorded on the Closer, the totals of amounts recorded on the Credits, and issuance copies of Counter Checks removed from a drop box, and subtracting the amount recorded on the Opener and the total of amounts recorded on Fills removed from a drop box.

...

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

(1) (No change.)

2. Statistical game records to reflect drop and win amounts or, for the game of poker, the poker revenue, by table for each game, by each shift.

3.-10. (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and shall be responsible for the operation and conduct of the following games:

i.-viii. (No change.)

ix. Pai gow;

x. Pai gow poker; and

xi. Poker, except as otherwise authorized by (g) below.

5.-10. (No change.)

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

(g) Notwithstanding the provisions of (b)4 above and N.J.A.C. 19:45-1.12, a casino licensee may operate and conduct the game of poker separately from the other table games. If a casino licensee elects to operate the game of poker as its own unit, the operation and conduct of poker shall be the responsibility of a casino key employee holding a license endorsement approved by the Commission. The supervisor of the poker unit shall report directly to the casino manager or to a casino key employee in a direct reporting line above the casino manager as approved by the Commission.

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, big six, pai gow, pai gow poker and poker table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, roulette, sic bo, minibaccarat, red dog, pai gow, pai gow poker, big six or poker game.

6. (No change.)

7. Poker shift supervisor shall be licensed as a casino key employee and shall be the supervisor assigned and present during a shift with the responsibility for directly supervising all activities related to the operation and conduct of poker. Nothing in this section shall be deemed to preclude the poker shift supervisor from having other responsibilities as may be approved by the Commission pursuant to the standards set forth in N.J.A.C. 19:45-1.11(a).

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

(c) Each casino licensee shall maintain the following standard levels of staffing:

1. (No change.)

2. One dealer shall be assigned to each blackjack, roulette, minibaccarat, sic bo, red dog, pai gow, pai gow poker, big six and poker table;

3.-4. (No change.)

5. One floorperson shall supervise:

i.-ii. (No change.)

iii. Not more than one baccarat or pai gow table; or

iv. Not more than eight poker tables or, if no floorperson assigned to poker by a casino licensee has any responsibilities for seating players, not more than ten tables.

6. (No change.)

(d) Notwithstanding the provision of (c)5 above, if a casino licensee has six or less poker tables opened for gaming activity, no floorperson shall be required and the tables may be supervised by the poker shift supervisor. Once the casino licensee has opened seven or more poker tables for gaming activity, in addition to the poker shift supervisor required by (b)7 above, one floorperson shall be assigned pursuant to the provisions of c(5)iv above.

Recodify existing (d)-(i) as (e)-(j) (No change in text.)

19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino or casino simulcasting facility is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino licensee shall cause or permit gaming chips, coins or plaques to be added to, or removed from, such table inventory during the gaming day except:

1.-3. (No change.)

4. In conformity with the Fill and Credit Slip procedures described in N.J.A.C. 19:45-1.22 and 1.23

5. In conformity with N.J.A.C. 19:47-3.3 and 7.3, coin may be used for the purpose of marking baccarat vigorish; and

6. In conformity with N.J.A.C. 19:47-14.14, the rake collected from patrons playing the game of poker shall always be placed in the table inventory container.

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

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

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

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

1.-7. (No change.)

8. As the contents of each drop box are counted, one count team member shall record on a Master Game Report or supporting

documents, by game, table number, and shift, the following information:

i.-xiv. (No change.)

xv. The table game win or loss or, for poker, the poker revenue.

9.-13. (No change.)

(i)-(j) (No change.)

19:46-1.13E Poker table; physical characteristics

(a) Poker shall be played on a table which is oval in shape and which has places for up to 11 players and a dealer. The design of each poker table shall be approved by the Commission after consultation with the Division. Each poker table shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game. The cloth or nylon covering for the poker table shall have contained thereon the name or trade name of the casino licensee in a manner approved by the Commission.

(b) Each poker layout shall be approved by the Commission and shall contain, at a minimum, a designated holding area located to the right of the dealer for the collection of the rake prior to final placement of the rake in the table inventory container.

(c) Each poker table shall have a designated area, in a location approved by the Commission, for the placement of at least one deck of cards. This area may be part of the table inventory container.

(d) Each poker table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat, pai gow poker, pokette, red dog and poker shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

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

(f) The design to be placed on the backs of cards used by casino licensees shall contain the name or trade name of the casino licensee and shall be submitted to the Commission for approval prior to use of such cards in gaming activity.

(g) Each deck of cards shall be packaged separately and shall contain a seal affixed to the opening of such package. Notwithstanding this requirement, cards used at poker may be packaged and sealed in sets containing two decks of cards in accordance with the provisions of N.J.A.C. 19:47-14.2.

(h) (No change.)

(i) In addition to satisfying the requirements of this section, the cards used by a casino licensee at poker must:

1. Be visually distinguishable from the cards used by that casino licensee to play any other table game; and

2. Be made of plastic.

(j) Each casino licensee which elects to offer the game of poker shall be required to have and use on a daily basis at least six visually distinguishable card backings for the cards to be used at the game of poker. These card backings may be distinguished, without limitation, by different logos, different colors or different design patterns.

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

(a) When decks of cards are received for use in the casino or casino simulcasting facility from the manufacturer or distributor thereof, they shall be placed for storage in a locked cabinet in the cashiers' cage or within a primary or secondary storage area by at least two individuals, one of whom shall be from the casino department and the other from the casino security department. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission. Nothing herein shall preclude a casino licensee from having a separate storage area for the cards to be used at the game of poker; provided, however, the location and physical characteristics of the separate storage area shall be approved by the Commission.

(b) All primary , secondary and poker storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organizational hierarchy shall have access to the casino department key for the primary and secondary storage areas and no person below the poker shift supervisor in the organizational hierarchy shall have access to the casino department key to the poker storage area. Cards stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of decks of cards for that gaming day from a primary storage area, and if applicable, the poker shift supervisor or supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of decks of cards to be used at poker for that gaming day from the poker storage area.

(d) If removed from the primary storage area, the assistant shift manager or casino supervisor thereof and the casino security officer who removed the decks shall distribute sufficient decks to the poker shift supervisor and to the pit boss who shall then distribute the decks to the dealer at each table. If removed from the poker storage area, the decks shall be removed by the poker shift supervisor, in the presence of the casino security officer, and transported to the poker pit stand. Subsequently, the poker shift supervisor shall distribute the decks to the dealer at each poker table either directly or through the floorperson assigned to supervise the dealer. The distribution of the decks to the poker tables shall comply with the provisions of N.J.A.C. 19:47-14.2.

1. The poker shift supervisor or pit boss shall place extra decks for card reserve into the pit stand.

2. Prior to distributing the decks to each table, the poker shift supervisor or floorperson shall examine each package to determine if any replacement cards are necessary pursuant to (n)5 below. If needed, the poker shift supervisor or floorperson shall place the appropriate replacement cards into the deck from the cards held in reserve at the pit stand. Upon insertion of the replacement cards into the deck, the poker shift supervisor or floorperson shall reexamine the front of each card and the back of each card to ensure a consistent shading pattern and to ensure that the condition of the deck with the inclusion of the replacement cards has sufficient quality in order to maintain the integrity of gaming at poker. If the integrity of gaming at poker would in any way be compromised by the use of the deck with the replacement cards, the entire deck of cards shall be placed in a sealed envelope or container, identified with the date and time and shall be signed by the poker shift supervisor. The poker shift supervisor shall maintain the envelope or container in a secure place within the pit stand until collection by a casino security officer.

3. Cards in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the poker shift supervisor or supervisor thereof or the pit boss or casino supervisor thereof.

(e) With the exception of cards used to game at pokette, which are governed by the requirements of N.J.A.C. 19:47-12.3, prior to their use at a table, all decks shall be inspected by the dealer, and the inspection verified by a floorperson. Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck. The dealer shall also check the back of each card to assure that it is not flawed, scratched or marked in any way.

1. If, after checking the cards, the dealer finds that a card is unsuitable for use, a poker shift supervisor or casino supervisor shall bring a substitute card from the card reserve in the pit stand.

2. The unsuitable card shall be placed in a sealed envelope or container, identified by table number, date, and time and shall be signed by the dealer and floorperson assigned to that table. The poker shift supervisor or casino supervisor shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.

(f) (No change.)

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1. (No change.)

2. Cards opened for use on a pai gow poker table and dealt from a dealing show shall be changed at least every eight hours;

3. Cards opened for use on a pai gow poker table and dealt from the dealer's hand shall be changed at least every four hours; and

4. Cards opened for use on a poker table shall be changed at least every four hours.

(h) Cards damaged during course of play shall be replaced by the dealer who shall request a floorperson or supervisor thereof for the game of poker or casino supervisor for all other games to bring cards in substitution from the pit stand.

1. The damaged cards shall be placed in a sealed envelope, identified by table number, date and time and shall be signed by the dealer and the individual who brought the replacement card to the table.

2. The poker shift supervisor or casino supervisor shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(i) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, the floorperson or supervisor thereof for the game of poker or casino supervisor for all other games shall collect all used cards.

1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the dealer and floorperson assigned to the table.

2. The poker shift supervisor or casino supervisor shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(j) (No change.)

(k) All extra decks in card reserve with broken seals shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the floorperson or supervisor thereof for poker and the pit boss for all other games.

(l) (No change.)

(m) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra decks in card reserve. If the casino maintains a separate storage area for poker cards, a poker shift supervisor or supervisor thereof may collect all extra decks in card reserve for the game of poker. If collected, all sealed decks shall either be cancelled or destroyed or returned to the storage area.

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. (No change.)

2. The casino licensee shall also inspect:

i.-ii. (No change.)

iii. All cards used for pai gow poker;

iv. All cards used for pokette, which must be inspected by sorting the cards sequentially by suit; and

vi. All cards used for poker.

3. The procedures for inspecting all decks required to be inspected under this subsection, with the exception of pokette cards, shall, at a minimum, include:

i. (No change.)

ii. The inspection of the backs with an ultraviolet light;

iii. The inspection of the sides of the cards for crimps, bends, cuts and shaving; and

iv. The inspection of the front and back of all plastic cards for consistent shading and coloring.

4. If, during the inspection procedures required in (n)3 above, one or more plastic cards in a deck are determined to be unsuitable for continued use, those cards shall be placed in a sealed envelope or container and a three-part Card Discrepancy Report shall be completed in accordance with n(9) below.

5. Upon completion of the inspection procedures required in (n)3 above, each deck of plastic cards which is determined suitable for continued use shall be placed in sequential order, repackaged and returned to the primary or poker storage area for subsequent use. If a deck has any missing cards pursuant to n(4) above, the individual who repackages the cards shall indicate the need for the appropriate replacement card(s) in a manner approved by the Commission.

6. The casino licensee shall develop internal control procedures for returning the repackaged cards to the storage area.

Recodify existing 4.-6. as 7.-9. (No change in text.)

(o) (No change.)

(p) Where cards in an envelope or container are inspected and found to be without any indication of tampering marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards with the exception of plastic cards used at poker which are of sufficient quality for reuse, shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-3. (No change.)

(q) If a deck of plastic cards has been reused 12 or more times and the deck has been determined to be suitable for reuse by the individual performing the inspection procedures required by (n)3 above, before that deck may be reused at a poker table, the deck must be inspected by a poker shift supervisor or floorperson. A satisfactory inspection shall be documented by the poker shift supervisor or floorperson. If the poker shift supervisor or floorperson determines that the deck may not be reused, the deck shall be placed in a sealed envelope or container, with a label attached which identifies the date and time and shall be signed by the poker shift supervisor or floorperson. At the end of the gaming day or at such other times as may be necessary, said envelope or container shall be collected by a casino security officer and be returned to the casino security department for destruction or cancellation pursuant to (p) above.

SUBCHAPTER 14. POKER

19:47-14.1 Definitions

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

"All-in" means a player who has no funds remaining on the poker table to continue betting in a round of play but who still retains the right to contend for that portion of the pot in which the player has already placed a bet.

"Ante" means a predetermined wager which each player is required to make in some poker games prior to any cards being dealt in order to participate in the round of play.

"Bet" means an action by which a player places gaming chips or gaming plaques into the pot on any betting round.

"Betting round" means a complete wagering cycle in a hand of poker after all players have called, folded or gone all-in.

"Blind bet" means a mandatory wager in some poker games which only players sitting in specific betting positions at the poker table shall be required to place prior to looking at any cards.

"Burn card" means a card taken from the top of a deck which is discarded face down, which is not in play and the identity of which remains unknown.

"Button" means an object which is moved clockwise around the table to denote an imaginary dealer and thereby determine the betting and dealing sequence.

"Call" means a wager made in an amount equal to the immediately preceding wager.

"Check" means that a player waives the right to initiate the betting in a betting round but retains the right to act if another player initiates the betting.

"Common card" means, in any game of stud poker, a card which is dealt face upward if there are insufficient cards left in the deck to deal each player a card individually and which can be used by all players at the showdown.

"Community card" means any card which is dealt face upward and which can be used by all players to form their best hand.

"Cover card" means a yellow or green plastic card used during the cut process and then to conceal the bottom card of the deck.

"Draw" means, in any game of draw poker, an exchange by a player of cards held in his or her hand, after the initial round of betting, for an equal number of new cards from the deck.

"Fold" means the withdrawal of a player from a round of play by discarding his or her hand of cards during a betting round and refusing to equal a wager.

"Forced bet" means a wager which is required to start the wagering on the first betting round.

"Fouled hand" means a hand that either has an improper number of cards or has come into contact with other cards in such a way as to render it impossible to determine accurately which cards are contained in the hand.

"High" means a game of poker in which the highest ranking hand in accordance with N.J.A.C. 19:47-14.3 wins the pot.

"High-low split" means a form of poker in which there is a winner for both the highest and lowest ranking hands.

"High-low split eight or better" means a version of high-low split poker in which a winning low hand must satisfy an eligibility requirement.

"Hole card" means any card dealt to a player face down.

"Low" means a game of poker in which the highest ranking low hand in accordance with N.J.A.C. 19:47-14.3 wins the pot.

"Opening bet" means the first bet in a round of play.

"Pot" means the amount which is awarded to the winning player or players at the conclusion of a round of play and is equal to the total amount anted and bet by the players during the round of play, less any rake extracted pursuant N.J.A.C. 19:47-14.14.

"Protected hand" means a hand of cards which the player is physically holding or has placed under one or more gaming chips.

"Raise" means a bet in an amount greater than the immediately preceding bet in that betting round.

"Rake" means the amount of gaming chips, gaming plaques or coin collected by the dealer as poker revenue in accordance with 19:47-14.14.

"Round of play" means, for any game of poker, the process by which cards are dealt, bets are placed and the winner of the pot is determined and paid in accordance with the rules of this subchapter.

"Showdown" means the action of revealing the hands of each player in order to determine who shall win the pot.

"Side pot" means a separate pot formed when one or more players are all-in.

"Stub" means the remaining portion of the deck after all cards in a round of play have been dealt.

"Suit" means one of the four categories of cards, that is, diamond, spade, club or heart.

"Table stakes" means the currency, gaming chips and gaming plaques on the table is in play and a player may not subtract from his or her currency, gaming chips or gaming plaques at any time during ongoing play.

"Up-card" means, in a game of stud poker, any card dealt to a player face up.

19:47-14.2 Cards; number of decks

(a) Poker shall be played with one deck of cards with backs of the same color and design and one additional solid yellow or green cover card. Two decks of cards shall be maintained for use at each poker table at all times. Each deck maintained at the poker table shall be visually distinguishable in some manner from the other deck. While one deck is in use, the other deck shall be stored in a designated area pursuant to N.J.A.C. 19:46-1.13E.

(b) Each deck of cards maintained at the poker table may be rotated in and out of play; provided, however, that no deck of cards shall be used at the table for more than two hours without the dealer or floorperson placing the 52 cards into suit and sequence. All decks opened for use on a poker table shall be changed at least every four hours.

(c) Each gaming day, decks of cards with distinguishable card backings as required by N.J.A.C. 19:46-1.17(j) shall be distributed among all open poker tables in a manner determined by the poker shift supervisor or supervisor thereof. The distribution of decks among tables shall consider, at a minimum, the table limits, the location of the table and the type of poker available at each table and shall be intended to ensure the integrity of gaming at poker.

19:47-14.3 Poker rankings

(a) The rank of the cards used in all types of poker other than low poker, for the determination of winning hands, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four, three and two. All suits shall be considered equal in rank. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or a "straight" formed with a two, three, four and five.

(b) The permissible high poker hands as determined by the holding of a full five card hand, in order of highest to lowest rank, shall be:

1. "Royal flush" is a hand consisting of an ace, king, queen, jack and ten of the same suit;
2. "Straight flush" is a hand consisting of five cards of the same suit in consecutive ranking, with king, queen, jack, 10 and nine being the highest ranking straight flush and ace, two, three, four and five being the lowest ranking straight flush;
3. "Four-of-a-kind" is a hand consisting of four cards of the same rank regardless of suit, with four aces being the highest ranking four-of-a-kind and four twos being the lowest ranking four-of-a-kind;
4. "Full house" is a hand consisting of "three-of-a-kind" and a "pair," with three aces and two kings being the highest ranking full house and three twos and two threes being the lowest ranking full house;
5. "Flush" is a hand consisting of five cards of the same suit;
6. "Straight" is a hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack and 10 being the highest ranking straight and an ace, two, three, four and five being the lowest ranking straight; provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (e.g., queen, king, ace, two, three);
7. "Three-of-a-kind" is a hand consisting of three cards of the same rank regardless of suit, with three aces being the highest ranking three-of-a-kind and three twos being the lowest ranking three-of-a-kind;
8. "Two pairs" is a hand consisting of two "pairs," with two aces and two kings being the highest ranking two pair and two threes and two twos being the lowest ranking two pair; and
9. "One pair" is a hand consisting of two cards of the same rank, regardless of suit, with two aces being the highest ranking pair and two twos being the lowest ranking pair.

(c) When comparing two hands which are of identical poker hand rank pursuant to the provisions of this section, or which contain none of the poker hands authorized herein, the hand which contains the highest ranking card as provided in (a) above or (d) below, whichever is applicable, which is not contained in the other hand shall be considered the higher ranking hand. If the hands are of identical rank after the application of this subsection, the hands shall be considered tied and the pot shall be equally divided among the players with the tied hands.

(d) The rank of the cards used in low poker, for the determination of winning hands, in order of highest to lowest rank, shall be: ace, two, three, four, five, six, seven, eight, nine, 10, jack, queen and king. All suits shall be considered equal in rank.

(e) The ranking of a low poker hand as determined by the holding of a full five card hand shall be the opposite of the rankings for a high poker hand as set forth in (b) above; provided, however, that straights and flushes shall not be considered for purposes of determining a winning hand at low poker.

(f) In all games of poker, a five card hand shall be ranked according to the cards actually contained therein and not by the player's opinion or statement of its value.

19:47-14.4 Opening the table for gaming

(a) After receiving two decks of cards at the table, in accordance with N.J.A.C. 19:46-1.18 and N.J.A.C. 19:47-14.2, the dealer shall sort and inspect the cards and the floorperson or supervisor thereof shall verify the inspection as required by N.J.A.C. 19:46-1.18.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson or supervisor thereof, the cards shall be spread out face up on the table for visual inspection by the first two players to be seated at the table. The cards shall be spread out according to suit and in sequence.

(c) Immediately prior to the commencement of play and not before a minimum of two players are afforded an opportunity to visually inspect the cards from each deck at the table, each deck shall be separately turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Each deck of cards shall be shuffled in accordance with N.J.A.C. 19:47-14.5. One of the decks shall be cut in accordance with N.J.A.C. 19:47-14.5 and the other deck shall be maintained pursuant to N.J.A.C. 19:46-1.13E for subsequent use pursuant to N.J.A.C. 19:47-14.2. In the alternative, a casino licensee may wash, shuffle and cut only the deck intended for immediate use and maintain the other deck pursuant to N.J.A.C. 19:46-1.13E. Upon rotation pursuant to N.J.A.C. 19:47-14.2, the other deck shall be washed, shuffled and cut in accordance with the requirements herein and N.J.A.C. 19:47-14.5.

19:47-14.5 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after the completion of each round of play, the dealer shall shuffle all cards so that they are randomly intermixed.

(b) After the cards have been shuffled and placed on the table in front of the dealer, the dealer shall, using one hand, cut the deck by taking a stack of at least 10 cards from the top of the deck and place them on top of the cover card. The dealer shall then place the cards remaining in the deck on top of the stack of cards which were cut. The cover card shall always be placed in front of the deck of cards prior to the cut of the cards by the dealer.

(c) If there is no gaming activity at the poker table, each deck of cards at the table shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once at least two players have arrived at the table. After the first two players are afforded an opportunity to visually inspect both of the decks, the procedures required by N.J.A.C. 19:47-14.4(c) shall be completed for one deck and the remaining deck shall be maintained pursuant to N.J.A.C. 19:46-1.13E.

19:47-14.6 Poker overview; general dealing procedures for all types of poker

(a) Poker shall be conducted in a separate and distinct area of the casino floor or the casino simulcasting facility approved by the Commission.

(b) Poker shall be played by a minimum of two players and a maximum of 11 players. Poker shall be dealt by a dealer at a poker table. For all types of poker set forth in N.J.A.C. 19:47-14.8, the dealer shall not participate in the playing or outcome of the game in any way except as otherwise authorized in this subchapter.

(c) A player shall wager on the cards that the player holds in his or her hand. All bets by a player shall be placed by the dealer in the designated area of the table known as the pot. A player may be required to ante or place a blind bet prior to the receipt of any cards. After each round of cards is dealt, a betting round shall be conducted. Each player shall decide whether to continue contending for the pot by calling or raising the bet of the other players.

(d) The object of the game shall be for a player to win the pot either by making a bet that no other player elects to call, or by having the hand of highest rank at the showdown in accordance with the provisions of N.J.A.C. 19:47-14.3. If two or more players are still in contention for a pot after all cards have been dealt and the final betting round has been completed, there shall be a showdown among the players still in contention to determine which player has the hand of highest rank. Based on the type of poker being played, the winning player may be the player who holds the highest ranking high poker hand, the highest ranking low poker hand or both the highest ranking high and low poker hands.

(e) The following procedures shall be utilized by the dealer when dealing the game of poker:

1. The dealer shall choose the hand in which he or she will hold the cards. Once the dealer has chosen a hand, the dealer must use that hand whenever holding the cards. The cards held by the dealer shall, at all times, be held in front of the dealer, as level as possible and over the poker table. If during a round of play, the deck must be set down to handle a transaction, the dealer shall place a marker button on top of the deck until the transaction has been completed.

2. The dealer shall verbalize or physically indicate the action which is occurring at the poker table with regard to the conduct of the game and instruct each player as to his or her various turns to act and options.

3. All burn cards required by this subchapter shall be kept separate from the pile of discarded cards.

4. The dealer shall be required to count the stub, at least once every 15 minutes, in order to determine that the correct number of cards are present. If this count reveals an incorrect number of cards, the deck shall be removed from the table in accordance with N.J.A.C. 19:46-1.18(n).

5. At the completion of a round of play, the dealer shall award the pot to the winning player or players after a showdown or to the last remaining player if all other players have folded. Prior to pushing the pot to the winner and collecting the winning hand, the dealer shall first collect the cards from all losing players.

6. All side pots shall be awarded before the dealer awards the pot in the center of the poker table.

7. All discarded hands shall be counted by the dealer to determine that the proper number of cards have been returned.

8. The dealer shall collect the rake in accordance with N.J.A.C. 19:47-14.14.

19:47-14.7 Wagers

(a) Only players who are seated at the poker table may be permitted to receive cards and participate in each betting round.

(b) Depending upon the particular type of poker game being dealt, a player may be required to:

1. Place an ante prior to receiving any cards;

2. Place a predetermined blind bet prior to receiving any cards; or

3. Place a forced bet to initiate a betting round based on that player's up-card.

(c) A player may only participate in the wagering during a round of play with the gaming chips, gaming plaques or currency which were already on the poker table in front of the player when the round of play commenced.

1. A player may only add to his or her gaming chips, gaming plaques or currency between rounds of play and may not remove any of his or her gaming chips, gaming plaques or currency from the poker table at any time during ongoing play pursuant to the definition of table stakes as set forth in N.J.A.C. 19:47-14.1.

2. Currency which is available for use by a player pursuant to the requirements of this section may be utilized to initiate, call or raise a bet if such currency is expeditiously converted into gaming chips or gaming plaques by the dealer in accordance with the regulations governing the acceptance and conversion of such instruments.

3. In order to participate in a round of play, a player shall be required to have an amount of gaming chips, gaming plaques or currency available on the poker table prior to the start of the round

of play which is sufficient to make any bet required by (b) above and at least one bet at the posted table minimum.

4. A player who satisfies the requirements of (c)3 above but who depletes his or her funds on the poker table prior to the completion of a round of play shall be deemed to be "all-in."

i. An "all-in" player shall retain financial interest in the outcome of the round of play, but shall only be eligible to win the amount of the pot to which he or she contributed;

ii. An "all-in" player shall continue to receive any cards to which he or she would normally be entitled; and

iii. Betting shall continue unimpeded among the other players by generating a separate secondary pot which only those players shall be eligible to win.

(d) A verbal statement of "fold," "check," "call," "raise," or an announcement of a specific size wager by a player, assuming it is within the rules of the poker game being played and the minimum and maximum wager limits for the poker table, shall be binding on the player if it is that player's turn to act.

(e) A player who announces a bet or raise of a certain amount but places a different amount of gaming chips or gaming plaques in the pot shall be required to correct his or her bet or raise to the announced amount in accordance with the instructions of the dealer.

(f) A player shall be considered to have placed a bet if the player:

1. Pushes gaming chips or gaming plaques forward to indicate the intent of placing a bet;

2. Releases gaming chips or gaming plaques into the pot; or

3. Releases gaming chips or gaming plaques at a sufficient distance from the player and towards the pot to make it obvious that it is intended as a bet.

(g) A player shall not be permitted to make a bet and thereafter attempt to increase the amount of that bet.

1. If the player wishes to add additional gaming chips or gaming plaques to the bet, the player must indicate at the time the bet is being made that the bet is not yet complete.

2. A player who puts the proper amount of gaming chips or gaming plaques into the pot to call a bet, without indicating his or her intention to raise, may not thereafter raise the previous bet.

3. Subject to the posted table wagering limits, a player who announces "raise" may continue to bet gaming chips or gaming plaques until both of his or her hands come to rest in front of the pot.

(h) It shall be the dealer's responsibility to ensure that no player touches any of the gaming chips or gaming plaques once placed into the pot.

(i) Unless a raise has been verbally announced by that player, a player who puts into the pot a single gaming chip that is larger than required is assumed to have only called the preceding bet and to be awaiting change from the dealer.

(j) Unless specifically posted to the contrary, a player shall be permitted to raise after he or she has previously checked in a betting round.

19:47-14.8 Types of permissible poker games

(a) A casino licensee may offer the following types of poker games:

1. Seven-card stud (high, high-low split and high-low split eight or better);

2. Hold 'Em (high);

3. Omaha (high, high-low split eight or better);

4. Five-card draw (high and low); and

5. Five-card stud (high).

(b) No casino licensee shall offer or permit the playing of any poker game in its casino room or casino simulcasting facility which is not authorized by this subchapter.

19:47-14.9 Seven-card stud poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of seven-card stud high, seven-card stud high-low split or seven-card stud high-low split eight or better poker offered in its casino room or casino simulcasting facility.

(b) Each poker table shall be restricted to a maximum of eight players as determined by the casino licensee. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) Starting with the first player to the left of the dealer and continuing in a clockwise rotation around the poker table, the dealer shall deal two rounds of cards face down and one round of cards face up to each player.

(d) Once each player has received three cards in accordance with (c) above, the first betting round shall commence by comparing the up-card of each player. For the purposes of this subsection only, in the event that two or more up-cards are of the same rank, the up-cards shall then be ranked by suit, with the highest to lowest ranked suits in order as follows: spades, hearts, diamonds, clubs. Betting shall be commenced by:

1. For high poker, the player with the lowest ranked up-card;

2. For high-low split poker, the player with the highest ranked up-card. For this purpose, an ace shall be considered ranked below a two; and

3. For high-low split eight or better poker, the player with the lowest ranked up-card. For this purpose, an ace shall be considered the highest ranking card.

(e) Following the placement of the forced bet required by (d) above, each subsequent player may, proceeding in a clockwise rotation from the player who placed the forced bet, fold, call or raise the bet. After the last player has responded to the most recent bet, the betting round shall be considered complete.

(f) Upon completion of the first betting round, the dealer shall burn the top card of the deck and then, starting with the first remaining player to his or her left, deal a fourth card face up to each player who has not folded. The next betting round shall commence as follows:

1. The player with the highest ranking poker hand showing shall be required to bet or check; or

2. If the highest ranking poker hand showing is held by two or more players, the player closest to the left of the dealer shall be required to bet or check.

(g) Following the initial bet or check required by (f) above, each subsequent player, proceeding in a clockwise rotation, may fold, call, raise or, if the preceding players have not made a bet, check. Each player may check until a bet has been made. Once a bet has been made, the next player in a clockwise rotation may fold, call or raise. After the last player has responded to the most recent bet, the betting round shall be considered complete.

(h) The dealer shall then deal two additional rounds of cards face up and one round of cards face down to each player who has not folded, with each such round followed by a betting round conducted in accordance with the provisions of (f) and (g) above. Prior to each round of cards being dealt, the dealer shall burn the top card of the deck. If insufficient cards remain in the deck to give each remaining player a seventh and final card, the top card of the deck shall be burned and a common card shall be dealt face up in the center of the table. If there is one or less cards remaining in the deck, the dealer shall shuffle the burn cards, burn a card and then deal the common card.

(i) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. Each player remaining in the game shall form a five card poker hand from the seven cards which he or she was dealt. This five card hand shall constitute the poker hand of that player at the showdown. The winner of the pot shall be:

1. In high poker, the player with the highest ranking five card high hand;

2. In high-low split poker or high-low split eight or better poker, the player with the highest ranking five card high hand and the player with the highest ranking five card low poker hand, subject to the provisions of (j) below, who shall divide the pot equally.

i. If a pot cannot be divided equally, the excess amount, which shall not exceed $1.00, shall be given to the player with the highest ranking high hand.

ii. If a tie exists between two or more players for the highest ranking high hand, the high hand share of the pot shall be divided equally among the tied players. If the high hand share of the pot cannot be divided equally among the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the highest ranking high poker card by suit.

iii. If a tie exists between two or more players for the highest ranking low hand, the low hand share of the pot shall be divided equally among the tied players. If the low hand share of the pot cannot be divided equally among the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the lowest ranking low poker card by suit.

iv. For purposes of this subsection, the cards shall be ranked by suit with the highest to lowest ranked suit in order as follows: spades, hearts, diamonds and clubs.

(j) In seven-card stud high-low split eight or better poker, a winning low hand may not contain any pairs or a nine, 10, jack, queen or king. This defines the qualifying clause known as "eight or better." In the event that none of the hands of the remaining players satisfies this requirement, the entire pot shall be awarded to the player with the highest ranking high hand.

(k) In seven-card stud high-low split poker and seven card stud high-low split eight or better poker, the player may form two different hands of five cards each out of the player's seven available cards, enabling that player to contend for both the high hand and low hand share of the pot. A player may use the same five card grouping to make a high poker hand and a low poker hand. For example:

1. A hand consisting of a two, three, four, five and six would qualify as a straight for purposes of the high hand and as a high ranking low hand; or

2. A hand consisting of five cards of the same suit, none higher than an eight, would qualify as a flush for purposes of the high hand and as a high ranking low hand.

(l) In seven-card stud high-low split poker and seven-card stud high-low split eight or better poker, an ace may be used concurrently as a low card to satisfy a low hand and as a high card to satisfy a high hand.

19:47-14.10 Hold 'em poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of hold 'em high poker offered in its casino room or casino simulcasting facility. Hold 'em poker shall be played to determine a winning high hand only.

(b) Each poker table shall be restricted to a maximum of eleven players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) The order in which the cards shall be dealt and the order in which players shall be required or have the option to bet shall be determined as follows:

1. A flat disk called the "button" shall be used to indicate an imaginary dealer;

2. At the commencement of play, the button shall be placed in front of the first player to the right of the dealer; and

3. Thereafter, the button shall rotate around the table in a clockwise manner after each round of play.

(d) The player to the immediate left of the button shall be required to initiate the first betting round by placing a blind bet in accordance with the posted table requirements. A casino licensee may require additional blind bets to be made immediately subsequent to the initial blind bet. The amount and number of all blind bets required by the casino licensee shall be posted on a sign in accordance with N.J.A.C. 19:47-8.3.

(e) Starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, the dealer shall deal two rounds of cards face down to each player, with the player with the button being the last player to receive a card each time.

(f) Following the placement of the blind bet(s), each player shall in turn, in a clockwise rotation around the poker table, either fold, call or raise the bet. The option to raise shall also apply to the player who made the blind bet(s). After the last player has responded to the most recent bet, the betting round shall be considered complete.

(g) The dealer shall then burn the top card of the deck and proceed to deal three community cards face up in the center of the table. The next betting round shall commence with the option to bet or check belonging to the first player to the left of the button who has not folded. Each subsequent player may, in clockwise rotation, fold, call, raise the bet or, if preceding players have not made a bet, make an opening bet or check. The betting round shall be considered complete when each player has either folded or called in response to the most recent bet.

(h) Upon completion of the betting round required by (g) above, the dealer shall again burn the top card of the deck and then deal a fourth community card face up in the center of the table. The next betting round shall be commenced and completed in accordance with the requirements of (g) above.

(i) Upon completion of the betting round required by (h) above, the dealer shall again burn the top card of the deck and then deal a fifth and final community card face up in the center of the table. The final betting round shall be commenced and completed in accordance with the requirements of (g) above.

(j) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. Each player remaining in the game shall form his or her highest ranking five card high poker hand by using, in any combination, his or her own two cards and the five community cards available on the table. The winner of the pot shall be the player with the highest ranking five card high poker hand. If the highest ranking five card high poker hand that each of the remaining players can form is comprised of the five community cards, all players remaining in the round of play shall share equally in the pot.

19:47-14.11 Omaha poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of omaha high and omaha high-low split eight or better poker offered in its casino room or casino simulcasting facility.

(b) Each poker table shall be restricted to a maximum of ten players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.AC. 19:47-8.3.

(c) The order in which the cards shall be dealt and the order in which players shall be required or have the option to bet shall be determined in accordance with the procedures governing the use of a button as set forth in N.J.A.C. 19:47-14.10(c).

(d) Starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, the dealer shall deal four rounds of cards face down to each player with the player with the button being the last player to receive a card each time.

(e) After each player is dealt four cards face down, an initial blind bet and all subsequent dealing and betting rounds shall be completed in accordance with the provisions of N.J.A.C. 19:47-14.10(d) ***and (f)*** through (i).

(f) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. Each player remaining in the game shall form a five card poker hand by using two of the four cards dealt to the player and three of the five community cards. This five card hand shall constitute the poker hand of the player at the showdown. The winner of the pot shall be:

1. In high poker, the player with the highest ranking five card high poker hand; or

2. In high-low split eight or better poker, the player with the highest ranking five card high poker hand and the player with the highest ranking five card low poker hand, subject to the provisions of (g) below, who shall divide the pot equally.

i. If a pot cannot be divided equally, the excess amount, which shall not exceed $1.00, shall be given to the player with the highest ranking high hand.

ii. If a tie exists between two or more players for the highest ranking high hand, the high hand share of the pot shall be divided equally among the tied players. If the high hand share of the pot cannot be divided equally amoung the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the highest ranking high poker card by suit.

iii. If a tie exists between two or more players for the highest ranking low hand, the low hand share of the pot shall be divided equally among the tied players. If the low hand share of the pot cannot be divided equally among the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the lowest ranking low poker card by suit.

iv. For purposes of this subsection, the cards shall be ranked by suit with the highest to lowest rank suit in order as follows: spades, hearts, diamonds and clubs.

(g) In omaha high-low split eight or better poker, the eligibility requirements of N.J.A.C 19:47-14.9(j) must be satisfied. In the event that none of the hands of the remaining players satisfies this requirement, the entire pot shall be awarded to the player with the highest ranking high poker hand.

(h) The following rules shall only apply in omaha high-low split eight or better poker:

1. A player may form two different hands of five cards each, enabling that player to contend for both the high hand and low hand share of the pot; provided, however, that the distribution of cards contained in each hand shall comply with (f) above;

2. A player may use the same five card grouping to make a high hand and a low hand; and

3. An ace may be used concurrently as a low card to satisfy a low hand and as a high card to satisfy a high hand.

19:47-14.12 Five-card draw poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of five-card draw high and five-card draw low poker offered in its casino room or casino simulcasting facility.

(b) Each poker table shall be restricted to a maximum of eight players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) The order in which the cards shall be dealt and the order in which players shall be required or have the option to bet shall be determined in accordance with the procedures governing the use of a button as set forth in N.J.A.C. 19:47-14.10(c).

(d) Starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, the dealer shall deal five rounds of cards face down to each player with the player with the button being the last player to receive a card each time.

(e) After each player has been dealt five cards face down, an initial betting round shall be completed in accordance with the provisions of N.J.A.C 19:47-14.10(d) and (f).

(f) After completion of the initial betting round, each player remaining in the round of play, starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, shall have an opportunity to draw new cards. This process shall be accomplished one player at a time. Each player may keep his or her original hand or discard as many cards as he or she chooses. Each discarded card shall be replaced by the dealer with a new card dealt from the deck as follows:

1. Prior to the first player receiving any new cards, the dealer shall burn the top card of the deck; and

2. If insufficient cards remain in the deck for each player remaining in the round of play to draw new cards, the discard pile shall be reshuffled and used for this purpose; provided, however, that the cards to be discarded by a player who has not yet requested new cards shall not be included as part of the reshuffled cards.

(g) The final betting round shall commence with the option to bet or check belonging to the first player to the left of the button who has not folded. Each subsequent player may, in clockwise rotation, fold, call, raise the bet or, if preceding players have not made a bet, make an opening bet or check. The final betting round shall be considered complete when the last player has responded to the most recent bet.

(h) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. The winner of the pot shall be:

1. In high poker, the player with the highest ranking five card high hand; and

2. In low poker, the player with the highest ranking five card low hand.

19:47-14.13 Five-card stud poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of five-card stud high poker offered in its casino room or casino simulcasting facility. Five-card stud shall be played to determine a winning high hand only.

(b) Each poker table shall be restricted to a maximum of eight players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) Starting with the first player to the left of the dealer and continuing in a clockwise rotation around the poker table, the dealer shall deal one round of cards face down and one round of cards face up to each player.

(d) Once each player has received two cards in accordance with (c) above, the first betting round shall commence by comparing the up-card of each player. The player with the lowest ranked up-card, which shall be determined by suit in accordance with the provisions of N.J.A.C. 19:47-14.9(d) if two or more players have an up-card of the same rank, shall be required to make a forced bet.

(e) Following the forced bet, each subsequent player may, proceeding in a clockwise rotation from the player who placed the forced bet, fold, call or raise the bet. After the last player has responded to the most recent bet, the betting round shall be considered complete.

(f) Upon completion of the first betting round, the dealer shall burn the top card of the deck and then deal another round of cards face up to each player who has not folded. The next betting round shall be commenced by the player with the highest ranking high poker hand showing. If two or more hands are of equal rank, the player closest to the left of the dealer shall be required to bet. The betting round shall be completed in accordance with the procedures in (e) above.

(g) The dealer shall then deal two additional rounds of cards face up to each player who has not folded, with each such round followed by a betting round conducted in accordance with the provisions of (f) above. Prior to each round of cards being dealt, the dealer shall burn the top card of the deck.

(h) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. The winner of the pot shall be the player with the highest ranking five card high poker hand.

19:47-14.14 Poker revenue

(a) The casino licensee shall derive its poker revenue at all poker tables by extracting a commission known as the "rake." Each casino licensee shall submit to the Commission in its Rules of the Games Submission:

1. The types of rake utilized;
2. The methodology used for calculating the rake; and
3. The amount of maximum permissible rake.

(b) Each casino licensee shall use one or more of the following procedures in determining and extracting the rake:

1. A straight percentage rake, pursuant to which:

i. A fee, not to exceed 10 percent of all sums bet in the betting round, shall be extracted from a pot and any side pots;

ii. The amount to be raked shall be calculated and extracted from the pot and any side pots after the conclusion of a betting round and placed into the designated rake area pursuant to N.J.A.C. 19:46-1.13E as play progresses; and

iii. Upon completion of a round of play, the rake shall be immediately placed by the dealer into the table inventory container.

2. A rake which shall be taken in incremental amounts, pursuant to which:

i. Assessments of predetermined amounts shall be extracted from the pot and any side pots as certain predetermined dollar levels have been achieved;

ii. Upon collection, the amount to be raked shall be placed into the designated rake area pursuant to N.J.A.C. 19:46-1.13E; and

iii. Upon completion of a round of play, the rake shall be immediately placed by the dealer into the table inventory container.

3. A rake based on time charges, pursuant to which:

i. Assessments may be imposed on a "per-player" basis or on a "per-table" basis. If taken on a "per-player" basis, inactive players seated at the table shall also be assessed;

ii. Time charges shall be expressed as an hourly fee based on the particular minimum and maximum wagering limits at a game;

iii. Time charges may be assessed fractionally every 20 or 30 minutes as determined by the casino licensee;

iv. Time charges once assessed shall be placed by the dealer into the designated rake area pursuant to N.J.A.C. 19:46-1.13E; and

v. Upon verification by a floorperson or supervisor thereof of the time charges collected, the rake shall be immediately placed by the dealer into the table inventory container.

(c) A sign describing the type and amount of rake to be collected pursuant to (b) above shall be posted at each poker table in accordance with the requirements of N.J.A.C. 19:47-8.3.

(d) An uncalled final bet shall not be considered part of the pot for purposes of calculating the amount of rake pursuant to methods (b)1 and 2 above.

(e) Once the dealer has extracted the rake and the pot and any side pots have been collected by the winning player or players, no additional rake shall be taken by the casino licensee.

19:47-14.15 General operating rules for all types of poker; handling of irregularities

(a) It shall be the responsibility of each player to ensure that his or her hand has lost to the other hands at the table before discarding the hand.

(b) In all disputes in which a ruling, interpretation, clarification or intervention is required, the decision of the poker shift supervisor shall be final.

(c) Each player shall be required to keep all cards dealt to the player in full view of the dealer at all times. The dealer shall ensure compliance with this requirement.

(d) At the showdown, a winning hand must be clearly displayed in its entirety and properly identified. The player initiating the final wager shall be the first player to show his or her hand at the showdown; all other players who have not folded shall then reveal their hands in a clockwise rotation. Any player holding a losing hand may concede his or her rights to the pot and discard the hand; provided, however, that the casino licensee may require the disclosure of any discarded hands.

(e) If any player folds after making a forced bet or blind bet or on a round of checking, that player's position shall continue to receive a card until there is a subsequent wager at the table.

(f) Misdeals shall cause all the cards to be returned to the dealer for a reshuffle. The following errors shall be cause for a misdeal:

1. Failure to shuffle and cut the cards in accordance with N.J.A.C. 19:47-14.5;

2. Dealing to an incorrect starting position if the error has been detected prior to two players voluntarily placing wagers into the pot;

3. If more than one card is found face-up in the deck; and

4. Failure to deal to an eligible seated player, if the error has been detected prior to two or more players voluntarily placing wagers into the pot.

(g) If one or more cards are mistakenly dealt to an ineligible player, only those cards dealt to that player shall be discarded and the round of play shall be continued.

(h) If at any time during a round of play, missing cards are discovered or additional cards are found, the round of play shall be called dead, all gaming chips and gaming plaques in the pot shall be returned to the appropriate player and the deck shall be placed pursuant to the procedures outlined in N.J.A.C. 19:46-1.18.

(i) A card found face upwards in the deck shall not be used in the game and shall be placed with the pile of discarded cards.

(j) A player who fails to take reasonable means to protect his or her hand shall have no redress if his or her hand becomes a fouled hand or the dealer accidentally collects the hand.

1. Hole cards in a game of stud poker shall be considered protected for purposes of fouling a hand.

2. If a protected hand comes into contact with discarded cards, every effort shall be made to reconstruct the hand and complete the round of play.

3. A player who has a protected hand collected by the dealer or fouled by discarded cards shall be entitled to a refund from the pot of all monies that he or she put in the pot if the player has been a victim of and not a contributor to the error.

4. A player who leaves the table without comment and has an unprotected hand shall be assumed to have no interest in the pot, and his or her cards shall be collected and discarded.

(k) Verbal statements which are clearly audible by and directed to the dealer shall always have precedence over actions and gestures and are considered binding on the player whose turn it is to act.

1. A player shall be deemed to have folded if, when faced with ***making or*** calling a wager, he or she:

i. Discards his or her hand face-down towards the pile of discarded cards or the pot; or

ii. Turns face-down his or her up-cards in a game of stud poker.

2. If a player is obligated to place a wager by virtue of a verbal statement or forced betting situation, throwing away his or her cards does not relieve the player of that obligation.

(l) If a player's first or second hole card is accidentally turned face-up in the dealing process, the third card shall be dealt face-down. If both hole cards are accidentally turned face-up, the dealer shall collect the two cards, call the player's hand dead and return the player's ante, if applicable.

(m) If a card is accidentally dealt off the table, it shall not be used in that round of play and shall be placed with the pile of discarded cards after a thorough examination by the dealer.

(n) If any of the face-down cards in the games of Hold 'em or omaha are accidentally turned face-up in the dealing process, the dealer shall exchange the exposed card with a card from the top of the deck and place the exposed card with the pile of discarded cards.

(o) Nothing herein shall preclude a casino licensee from clarifying and supplementing the above irregularities through its internal control procedures, as submitted to the Commission for review and approval.

19:47-14.16 Conduct of players

(a) Each player in a poker game shall play the game solely to improve his or her chance of winning and shall take no action to improve another player's chance of winning. No player may communicate any information to another player which could assist the other player in any manner respecting the outcome of a poker game.

(b) A casino licensee which has reasonable cause to believe that a player has acted or is acting in violation of (a) above shall require the player to leave the game and shall notify the Commission and Division as expeditiously as possible.

(c) Any casino licensee which takes action under (b) above in good faith shall not be liable civilly to such person.

19:47-14.17 Minimum and maximum wagers

Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each poker table, except that, if all patrons at a poker table agree to increase the minimum wager at the table, the provisions of N.J.A.C. 19:47-8.3(b) need not be followed. Such sign shall also include any restrictions with regard to the maximum number of raises that may be permitted for any round of betting.

19:47-14.18 Waiting list

A casino licensee may maintain a list of players who have requested to be seated at a particular type of poker table. All vacant seats shall be filled on a first come first served basis. The casino licensee shall be permitted to announce only those seating vacancies for which an individual has been placed on a waiting list.

19:47-14.19 Projected poker revenue

Each casino licensee offering the game of poker shall maintain a manual or computerized record of projected poker revenue for each table by gaming day. A copy of the daily projections shall be forwarded to the casino accounting department, on a daily basis, for comparison with the figures recorded on the Master Game Report. Any significant variances between the projection and the figures on the Master Game Report shall be immediately reported to a supervisor of the poker unit, the casino controller and the Commission.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Double Down Stud

Temporary Adoption of Amendments to N.J.A.C. 19:46-1.17 and 1.19; and New Rules N.J.A.C. 19:46-1.13F and 19:47-17.1 through 17.11

Authority: N.J.S.A. 5:12-5, 69(e), 70(f), 99(a) and 100.

Authorized By: Steven P. Perskie, Chairman, Casino Control Commission.

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether a game known as Double Down Stud is suitable for casino use.

The experiment will be conducted in accordance with temporary rules, which will be posted in each casino participating in this experiment, and will also be available from the Commission upon request.

This test would allow a casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Commission, to conduct the game of Double Down Stud in its casino.

This experiment could begin on or after March 28, 1994, and continue for a maximum of 270 days from that date, unless otherwise terminated by the Commission or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for final adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

(b)

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan, Water Code of the Delaware River Basin, Water Quality Regulations and Rules of Practice and Procedure Regarding Nonpoint Source Pollution Control for Special Protection Waters

Adopted: February 23, 1994 by the Delaware River Basin Commission, Caren E. Glotfelty, Chairman pro tem.

Filed: February 25, 1994 as R.1994 d.151.

Effective: June 1, 1994.

Full text of the adoption follows:

No. 94-2

A RESOLUTION to amend the Comprehensive Plan, Water Code of the Delaware River Basin, Water Quality Regulations and Rules of Practice and Procedure relating to the control of nonpoint sources of pollution in the drainage area to classified Special Protection Waters.

WHEREAS, on December 9, 1992 the Commission amended the Comprehensive Plan, Water Code, Water Quality Regulations and Rules of Practice and Procedure to allow for special water quality protection measures to be applied to waters that the Commission classifies as Special Protection Waters; and

WHEREAS, the Commission action also classified the Delaware River and those portions of tributaries within the Upper Delaware Scenic and Recreational River (UDSRR) corridor and the Delaware Water Gap National Recreation Area (DWGNRA) as Outstanding Basin Waters and the Delaware River from the southern boundary of the UDSRR to the northern boundary of the DWGNRA as a Significant Resource Waters, thus bringing them under the Special Protection Waters regulations; and

WHEREAS, Commission action on the Special Protection Waters regulations did not include the adoption of regulations for the control of nonpoint sources of pollution which were deferred for further consideration and development; and

WHEREAS, since that time, Commission staff has continued its work with the Commission's Water Quality Advisory Committee and various nonpoint source experts; and

WHEREAS, following a lengthy process, the Commission proposed revised Special Protection Waters nonpoint source control regulations in March 1993 and published them, along with public hearing notices in the Federal and state registers in April; and

WHEREAS, the revised nonpoint source control regulations were the subject of three public hearings in June 1993; and

WHEREAS, the Commission has examined the public hearing record and issues raised as published in *Public Hearing Response Document—Special Protection Waters Nonpoint Source Regulations;* now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. Article 3 of the Administrative Manual—Part III Water Quality Regulations, the Comprehensive Plan and Article 3 of the Water Code of the Delaware River Basin are hereby amended as follows:

a. Subsection 3.10.3A.2.a.18). is revised to read as follows:

18). "Watershed Non-Point Source Management Plan" is a plan prepared for a watershed that describes the basis for, and overall control strategy of, a plan for controlling, limiting, and abating all relevant non-point source loadings within the watershed. The plan will identify and assess important natural and anthropogenic features and influences on water quality; existing local, state and other non-point source control programs; potential non-point source loads on Special Protection Waters; watershed-specific protection requirements; and the institutional needs and arrangements required to implement the plan.

b. Subsections 3.10.3A.2.a.19). and 20). are added to read as follows:

19). "Non-Point Source Pollution Control Plan" is a plan describing the Best Management Practices to be used at the project site and in the project service area to control increases in non-point source pollutant loadings resulting from the project.

20). "Priority Watershed" is a watershed that has been evaluated in conjunction with other watersheds draining to Special Protection Waters and designated by the Commission as having a substantial potential pollution impact on the water quality of Special Protection Waters in comparison with other watersheds.

c. Subsection 3.10.3A.2.e. is revised to read as follows:

e. Policies concerning the Control of Non-Point sources

1). Projects subject to review under Section 3.8 of the Compact that are located in the drainage area of Special Protection Waters must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the project's service area which is also located within the drainage area of Special Protection Waters.

The plan will document which Best Management Practices described in handbooks, manuals and other documents prepared by the applicable state environmental agency that the project sponsor will use to control, to the extent possible, the non-point source loads from the project.

In approving the plan, the Commission may consider, but not require, tradoffs, that the project sponsor might propose, between the reduction of potential new non-point source loads and (a) equivalent reductions in existing non-point source loads; (b) equivalent point source loads; and (c) equivalent non-point source loads from outside the affected service area. Applicants desiring Commission approval of tradeoff strategies must provide information concerning the amount of non-point source loads to be reduced through an equivalent tradeoff process and, where necessary, the enforceable mechanisms and/or agreements required to implement the tradeoffs.

Where tradeoffs have been approved, control measures for existing non-point sources must be substantially in-place prior to project operation.

The Commission may, upon agreement with the state, delegate review and approval responsibilities under this section to the appropriate state environmental agency.

Exceptions to this policy are:

a. Public authorities, other special purpose districts, and private corporations that do not have the legal authority to implement non-point source controls in their new or expanded service areas.

b. The requirement for service area non-point source control plans is automatically satisfied if the project service area is part of a watershed non-point source management plan that has been adopted into the Commission's Comprehensive Plan and is being implemented.

c. Projects located above major surface water impoundments listed in Section 3.10.3.A.2.g.5. where time of travel and relevant hydraulic and limnological factors preclude a direct impact on Special Protection Waters.

d. Projects located in municipalities that have adopted and are actively implementing non-point source/stormwater control ordinances that have been reviewed and approved by the Commission.

e. Projects located in watersheds where the applicable state environmental agency, county government, and local municipalities are participating in the development of a watershed plan being prepared under the auspices of these regulations, the federal Clean Water Act, or state initiatives.

2). Approval of a new or expanded water withdrawal and/or wastewater discharge project will be subject to the condition that any new connection to the project system only serve an area(s) regulated by a non-point source pollution control plan which has been approved by the Commission.

3). Within two years after the adoption of Special Protection Waters non-point source control regulations, the Commission shall, after substantial consultation with local, county, state and federal agencies and the general public, publish a report presenting its methodology for prioritizing watersheds in the Special Protection Waters drainage area including alternatives, if any; a preliminary listing of priority watersheds in the drainage area; and a recommended plan of study for the development of watershed-specific management plans. For waters classified as Special Protection Waters after December 1992, the watershed prioritization process will be completed within two years after the Special Protection Waters are classified.

Watershed priorities will be determined from a comparative analysis of each watershed's location and potential, future impact on existing water quality at designated Boundary and Interstate Special Protection Waters Control Points. In determining priorities, the Commission will consider:

a) the physical characteristics of the watershed including slopes, soils, existing land use and land cover, drainage characteristics, and others;

b) the status of existing water quality and trends, if any, of the watershed as measured at its Boundary Control Point;

c) the anticipated mass loadings of new non-point sources;

d) the watershed management and planning priorities of applicable local, state and federal agencies;

e) the current status of local land use/non-point source controls in the watershed; and,

f) the stormwater permitting activity in the NPDES permitting program; and

g) other natural and anthropogenic factors.

4). Once the public has been given an opportunity to comment, the Commission will adopt a list of priority watersheds. This listing will be reviewed and modified as necessary on a two year basis after adoption.

5). Within five years after adopting a list of priority watersheds draining to Special Protection Waters, the Commission shall develop, or encourage the development of, watershed non-point source management plans for each priority watershed unless new circumstances result in deferring plan completion. Watershed non-point source management plans will focus on non-point source loadings, but will consider total loads including both point and non-point sources and their interrelationship where necessary.

During plan development, the Commission will seek technical assistance from the applicable state environmental agency and all other applicable federal, state, county, and local governmental units; and will consider direct delegation of plan development (with concurrence of the state environmental agency) to any county or other applicable governmental entity desiring to perform the watershed planning activities on behalf of, or instead of, the Commission. Where more than one political unit shares a watershed, joint plan development arrangements between the Commission and delegated agencies will be developed.

6). Watershed management plans developed by the Commission, or approved by the Commission will be incorporated into the Commission's Comprehensive Plan in accordance with the *Rules of Practice and Procedure.*

7). The Commission shall encourage the voluntary development of watershed management plans for tributary watersheds entering Special Protection Waters and local non-point source regulatory programs that conform to the goals and objectives of the Special Protection Waters regulations as promulgated in Sections 3.10.3A.2. Within the limits of its resources, the Commission will provide technical assistance, a clearinghouse for non-point sources information, regulatory authority, inter-agency coordination, and other services to local and other governmental units desiring to develop and implement stormwater and non-point source watershed plans and local regulatory programs.

8). The Commission shall encourage the submission of watershed management plans prepared voluntarily and independently from these regulations for consideration of inclusion into the Commission's Comprehensive Plan.

d. Subsection 3.10.3A.2.g.5). is added to read as follows:

5). Major surface water impoundments referenced in Section 3.10.3A.2.e.1.c. are the following:

(a) Cannonsville Reservoir (New York State)
(b) Pepacton Reservoir (New York State)
(c) Neversink Reservoir (New York State)
(d) Lake Wallenpaupack (Pennsylvania)
(e) Mongaup System (New York State).

2. Subsection 2.3.5(b)(18) of the Administrative Manual—Rules of Practice and Procedure is added to read as follows:

(18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

3.a. This resolution shall become effective June 1, 1994 except as otherwise provided in Subsection b. below.

b. The Commission may extend the time within which the provisions of the resolution are effective as to any applications now pending before the Commission or any signatory party or any existing docket conditions which require compliance with the resolution.

EMERGENCY ADOPTION

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Market Transition Facility of New Jersey Suspension of Payments

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 11:3-2B

Emergency New Rules Adopted and Concurrent Proposed New Rules Authorized: March 1, 1994 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 1, 1994.

Emergency New Rules Filed: March 1, 1994 as R.1994 d.164.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 17:33B-11.

Concurrent Proposal Number: PRN 1994-196.

Emergency New Rules Effective Date: March 1, 1994.

Emergency New Rules Expiration Date: April 30, 1994.

A **public hearing** on this proposal will be held on: Wednesday, April 6, 1994 at 9:30 A.M.

Department of Insurance
Mary Roebling Building
Room 219-220
20 West State Street
Trenton, New Jersey

Persons wishing to present oral comments or questions must contact the Department no later than April 5, 1994, either in writing to the address below or by telephoning (609) 984-3602.

Submit written comments by April 20, 1994 to:

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

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency new rules are being proposed for readoption in compliance with normal rulemaking requirements of the Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq. The readopted new rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The emergency adoption and concurrent proposal follows:

Summary

These proposed rules provide that the Market Transition Facility of New Jersey (MTF) shall suspend any and all payments, subject to limited exceptions in cases of demonstrated hardship, to any person resulting from any claim under a policy of private passenger automobile insurance issued by the MTF, effective 12:01 A.M., March 2, 1994. These emergency rules are intended as an interim measure, necessitated by the present unavailability of funds for the MTF to use to pay claims. The suspension of MTF claims payments shall remain in effect pending judicial or other relief; otherwise the unimpeded disbursement of claims payments would result in the total depletion of MTF assets jeopardizing its ability to pay any claims in the future. These rules, along with other actions seeking to delay payment of MTF obligations and to receive prepayment of obligations due to the MTF where possible, have as their primary goal the preservation of the MTF's infrastructure until funds to pay all MTF obligations are made available.

The MTF was established pursuant to N.J.S.A. 17:33B-11 to arrange for the issuance and renewal of private passenger automobile insurance policies for the period commencing October 1, 1990 and ending September 30, 1992, in accordance with a Plan of Operation approved by the Commissioner of Insurance (Commissioner). Pursuant to N.J.S.A. 17:33B-11a and 17:33B-11d, profits or losses of the MTF are apportioned by the Commissioner among member insurers (that is, every insurer authorized to transact private passenger automobile insurance in New Jersey) based upon each insurer's apportioned share as determined for purposes of depopulation pursuant to N.J.S.A. 17:30E-14, which is also set forth in the MTF Plan of Operation, Operating Principles, Part I, Depopulation of Residual Market, section 3.

In accordance with Article XIV of the MTF Plan of Operation, the MTF has adopted a modified "Lloyd's" accounting cycle which provides for a three year period for determination of operating results for each year of its operations, with annual reporting for each 12 month period from October 1 through September 30. Initial results for the reporting year are reported after the end of the year on an interim basis and are re-evaluated during the three year cycle at 12 months and 24 months after the end of the reporting year. After the end of the third year of the accounting cycle, profits or losses are apportioned among member insurers on an annual basis for three years.

The results of the MTF's "Statement of Operations, First Fiscal Year (10/1/90-9/30/91) Results, Lloyd's Method of Accounting as of 9/30/93" (issued December 30, 1993), demonstrated that for the fiscal year ending September 30, 1991 re-evaluated at 24 months, the MTF had incurred a net operating loss of $439,377,544. Of that amount, approximately $219 million had already been received by the MTF as payments on account from certain member insurers. Accordingly, pursuant to N.J.S.A. 17:33B-11d, on December 30, 1993, the Commissioner issued Order No. A93-235 (the "Cash Call Order"), which ordered each member insurer of the MTF to pay to the MTF its apportioned share of MTF losses for the first operating year, as set forth in the Exhibit appended to the Order, no later than February 3, 1994. In accordance with the MTF Plan of Operation, the Cash Call Order also set forth procedures by which an insurer could seek a review of the calculation of its apportioned share, request an extension of time in which to make payment, or request relief from payment of all or part of its apportioned share if payment of such obligation would place the insurer in an unsafe or unsound financial condition.

The Cash Call Order was appealed to the Superior Court of New Jersey, Appellate Division in *In the Matter of Order No. A93-235 Apportioning Losses Among Member Insurers of the Market Transition Facility of New Jersey for the Fiscal Year Ending September 30, 1991,* Docket No. A-2515-93T5, and *In the Matter of the Commissioner of Insurance's December 29, 1992 Certification of Amendments to the Plan of Operation of the Market Transition Facility of New Jersey,* Docket No. A-2896-92T1. The appellants requested on an emergent basis that the Cash Call Order be stayed. On January 25, 1994, the Appellate Division entered an Order staying the Cash Call Order, and directing that member insurers pay their apportioned share into a special escrow account established by the New Jersey State Treasurer pending the outcome of the appeal. On February 24, 1994, the Supreme Court of New Jersey entered an order denying the Department of Insurance's (Department) request to directly certify the appeals and to vacate the stay of the Cash Call Order. Accordingly, the MTF does not currently have access to the monies paid in escrow, pending the outcome of the appeals. The appeals are currently scheduled to be heard by the Appellate Division in June, 1994.

The MTF will very shortly be without sufficient funds to pay claims and meet its other administrative expenses. The MTF no longer receives premium dollars since, pursuant to N.J.S.A. 17:33B-11, it may no longer issue or renew any policies for private passenger automobile insurance after September 30, 1992. Accordingly, the monies received through the "cash call" are essentially the MTF's only substantial source of current or future income. The MTF does receive some limited income from subrogation recoveries (totalling approximately $1 million a month as of January 31, 1994) and from investments (estimated at approximately $400,000 for February, 1994). Income from both these sources is declining as the number of claims over which the MTF may subrogate continues to decline, and since no additional money is provided to the MTF to invest.

The MTF's estimated cash balance as of February 28, 1994 is approximately $90 million. The $90 million figure does not, however, reflect that the MTF has already disbursed indicated payments in the amount of approximately $40 million. This $40 million figure represents the estimated amount of issued checks which have yet to clear for payment through the MTF bank account, which takes approximately 22 to 25 calendar days. Accordingly, the estimated cash balance available for use by the MTF as of February 28, 1994 is actually about $50 million.

The MTF's current monthly expenses, including claims, indemnity payments, servicing carrier fees, payroll expenses, rent and other costs are approximately $45 million to $50 million, of which amount approximately $35 to $40 million goes to pay claims on or against MTF policies. Thus, if claim handling functions continued to proceed at the same pace (even without an acceleration created by publicization of the MTF's financial situation), the MTF would run out of funds by the end of March, 1994. Since the MTF will not have access to additional funds, and since there are currently no alternative methods of funding the MTF provided by law, the Department finds that it is necessary to issue these rules to provide for the suspension of all claims payments for both pending and future claims, effective 12:01 A.M., March 2, 1994.

The Department believes it necessary to take action at this time through these rules to ensure that the MTF's funds are not totally depleted, at least during the pendency of litigation involving member insurers' assessments. It is critical, in order to ensure the future payment of claimants, that the infrastructure of the MTF be maintained. Thus, the funds currently available to the MTF must be managed to support the MTF infrastructure. The expenses required to support the MTF's infrastructure may be divided into four general categories: (1) MTF central staff administrative and operational expenses; (2) MTF servicing carrier fees; (3) defense costs; and (4) additional fees and expenses for consultants and necessary services not included in the MTF servicing carrier contracts. Indeed, in the case of insolvent corporations under Federal bankruptcy law, administrative expenses are generally paid first out of the available assets. The same is true for insolvent insurers. See N.J.S.A. 17:30C-26 and 17B:32-71.

The MTF central staff performs managerial functions necessary for the MTF to operate, such as central recordkeeping, accounting, banking and investment functions, auditing and servicing carrier supervision. The administrative expenses related to MTF central staff functions include payroll costs (salaries, benefits, payroll taxes), rent, utilities, bank charges, investment charges, data processing, office and computer supplies, licensing fees for software, insurance coverages (such as workers' compensation), legal fees (which includes defense of claims against the MTF by servicing carriers in fee disputes), postage, telephone, and record storage/retrieval fees. Failure to maintain the MTF central staff will likely result in records being lost, possibly irretrievably, inadequate supervision of servicing carrier functions, loss of the capacity for compilation of records of the MTF as a whole, loss of auditing functions, etc. Finally, the MTF must maintain staff, an office and other supplies, so that the performance of MTF central staff administrative functions may continue.

The MTF servicing carriers are independent entities under contract to perform certain services for the MTF. These services, while they no longer involve underwriting policies and premium collection, currently involve verification of coverage, investigation, processing and settlement of claims, maintenance of records and files related to policyholders and claims submitted, and the reporting of the results of such claims, response to requests for data from the MTF central staff, review of hospital and doctor bills for overcharges, identification of overuse of medical services, and assistance in the detection of fraud. The servicing carriers must pay administrative expenses related to the performance of MTF services (such as payroll, rent, utilities, data processing, etc.). If servicing carrier fees were not maintained, under the terms of their contract, the servicing carrier would not be required to continue to perform these critical functions. If performance of these functions were to cease, it would render it virtually impossible for the MTF to quickly and efficiently resume paying claims when funds become available. In addition, fraudulent claim practices or overcharges may not be detected without the oversight of servicing carriers, thereby unnecessarily increasing costs to the MTF. In order to function properly, the MTF would be required to hire additional staff to perform these functions at great additional expense.

The third general expense category, defense costs, includes payments to defense counsel to protect the MTF's interests in litigation where an MTF policyholder has been sued. Failure to pay these costs could result in default judgments against the policyholder, posing the potentially substantial likelihood of increasing the MTF's liability on claims by or against its insureds (and possibly the personal liability of the policyholder).

It is also necessary to continue to pay consultants' fees in order to continue to perform necessary legal, accounting and actuarial tasks, including independent financial and performance audits of the servicing carriers, fee audits, MTF cash flow analyses, tax preparation and special projects such as servicing carrier consolidation. Additional expenses must also be paid to compensate servicing carriers for the performance of tasks in addition to those services called for under their contracts with the MTF, including the processing of referrals to the MTF for claims of $5,000 or more, Special Investigation Unit fees and other data processing tasks.

The MTF's current monthly expenses to maintain its infrastructure total approximately $10 million. There is some monthly variation in the amount of specific cost components which comprise the infrastructure expense, but the monthly average amounts include $2 million for MTF central staff operations (including salary, overhead, audits and actuarial fees), $1.5 million for contracted-for servicing carrier fees, $2.5 million for legal defense costs on MTF claims in suit (paid to servicing carriers), $1.5 million for directly reimbursable expenses other than legal fees (to reimburse servicing carriers for actual costs paid for independent medical examinations and rehabilitation treatments) and $2.5 million in additional expenses such as consultant's fees and functions performed by servicing carriers which are beyond the scope of their MTF contracts. It must be noted that over the past several years the MTF has been reducing its staff and has explored the possibility of consolidating servicing carrier functions, to enhance efficiency and reduce costs. The effectuation of the goals of this on-going process will not be changed by these rules. However, it is imperative to maintain the MTF's infrastructure so that the MTF may be in a position to promptly resume its obligations to policyholders and claimants when the pending litigation is resolved. If the MTF's infrastructure were not maintained, it could be virtually impossible and prohibitively expensive to "reconstruct" the MTF at a later date to complete the substantial obligations which are still remaining to and on behalf of MTF policyholders and claimants.

In addition, cessation of claims payments must begin before all funds are totally depleted to ensure that sufficient funds are available to cover checks which may have been issued prior to the time and date of claim payment suspension, but have not yet cleared through the MTF bank account, to avoid such checks being returned for insufficient funds or to avoid the MTF having to stop payment on the checks. Finally, the suspension of claims payments must begin at this time to provide sufficient time for necessary administrative processes to occur (for example, notification to MTF servicing carriers that no further checks shall be issued) before all funds are totally depleted.

The Department recognizes that the suspension of claims payments will have negative impacts. However, as described above, the Department believes that there is no alternative to this action since there is currently no other method provided by law for funding the MTF, and in the absence of the suspension of claim payments, the MTF would soon be completely out of funds. The regulations include a hardship exemption procedure in order to afford relief in the most extreme of circumstances.

Proposed N.J.A.C. 11:3-2B.1 sets forth the purpose and scope of these new rules.

Proposed N.J.A.C. 11:3-2B.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-2B.3 provides that all payments of any pending or future claims by the MTF to any person shall be suspended effective 12:01 A.M., March 2, 1994. The rule further provides that no MTF servicing carrier may issue any check or otherwise make payment on or after that date and time for any claims to any person regardless of date of receipt of the claim by the MTF, date of settlement or date of other disposition. In addition, the MTF must notify all servicing carriers of this requirement. The rule provides, however, that the Commissioner may order that payments of claims be resumed upon his or her determination that there are sufficient funds available for the payment of such claims pursuant to a program for the orderly disposition of claims payments. Finally, the rule provides that it shall not be construed to prohibit payments by the MTF necessary to maintain its infrastructure, preserve its rights in pending or future litigation, or otherwise protect its interests.

Proposed N.J.A.C. 11:3-2B.4 provides an administrative procedure by which claimants may request a hardship exemption to mitigate against the most extreme effects which would otherwise be imposed by the suspension of the payment of such claims.

Proposed N.J.A.C. 11:3-2B.5 provides a procedure by which claimants may appeal to the Commissioner a decision of the MTF to deny a request for a hardship exemption.

Proposed N.J.A.C. 11:3-2B.6 provides that information submitted by claimants in connection with an application for a hardship exemption is confidential.

In accordance with N.J.S.A. 52:14B-4, the Department will hold a **public hearing** regarding these rules. The hearing shall be held as set forth below:

Date: Wednesday, April 6, 1994
Time: 9:30 A.M.
Place: Department of Insurance
Mary Roebling Building
Room 219-220
20 West State Street
Trenton, NJ

The purpose of the hearing is to receive public comment from interested parties on these rules. The hearing shall be conducted pursuant to the provisions of N.J.S.A. 52:14B-4g. The hearing shall be conducted by a Hearing Officer designated by the Commissioner. The Hearing Officer shall make recommendations to the Commissioner in the form of a written report, which shall be issued as soon as possible after the record is closed and shall be made public. A verbatim transcript of the hearing shall be prepared by a certified stenographic reporter, copies of which may be obtained by ordering them directly from the reporter.

At the hearing, representatives of the MTF will present a summary of the factual information regarding the suspension of claim payments by the MTF. Thereafter, interested parties may present oral comments and may direct questions through the Hearing Officer. Persons who wish to present oral comments or questions must contact the Department no later than April 5, 1994, either in writing to the Department at the address set forth above or by telephoning 609-984-3602.

The Department reserves the right to limit oral comments and questions in either time or number in order to complete the hearing by 4:30 P.M. on the scheduled date. As established above, interested parties may submit written comments on these proposed rules until April 20, 1994. Written comments will not be accepted on the Hearing Officer's Report.

Social Impact

The suspension of claims payments by the MTF to all claimants will have an impact on certain MTF policyholders, claimants, doctors and other health care providers, hospitals, automobile repair shops, producers, attorneys involved in litigation or representing claimants seeking recovery under a policy of private passenger automobile insurance issued by the MTF and other private passenger automobile insurers (to the extent that this action eliminates their ability to obtain subrogation recoveries). However, the Department finds that there is no alternative at this time to this action since there is no alternative source of funds for the MTF to meet its present obligations and, under present conditions, in the absence of such action, the MTF will be totally out of funds by the end of March, 1994. This action preserves the MTF infrastructure and protects its interests in the event that there is a favorable outcome to pending litigation that requires member insurers to pay losses sustained by the MTF, as required by N.J.S.A. 17:33B-11d. Finally, the Department notes that these rules provide an administrative process by which individuals may request a hardship exemption.

Economic Impact

These rules will result in economic impacts on certain MTF policyholders, other claimants, doctors and health care providers, hospitals, automobile repair shops, producers, attorneys, and other private passenger automobile insurers in this State. MTF policyholders and other claimants may not immediately receive monies to cover medical expenses, pay for repairs to their automobile, replace lost wages or provide other benefits in accordance with obligations incurred under former MTF policies. This may increase the financial burden on MTF policyholders, and may also result in additional litigation among various parties seeking payment of claims and other expenses. In addition, suspension of payment of any existing or future claims may result in additional economic impacts on the court system, social service agencies, and other services of alternative benefits, as claimants, and health care providers and other interested parties resort to litiation in order to receive payments from specified parties directly or where persons seek alternative means of paying for or obtaining services or benefits otherwise provided pursuant to MTF policies of private passenger automobile insurance.

The Department finds that despite the effects which may occur, there is currently no alternative to this action since, in its absence, the MTF will totally run out of funds, thereby threatening the MTF's infrastructure, and the ability of the MTF to promptly resume paying its claim obligations when the pending litigation is resolved or sufficient funds otherwise become available. The Department notes, however, that the rules provide an administrative procedure by which individuals may request a hardship exemption to mitigate against the most extreme financial effects otherwise imposed by the suspension of payments of such claims.

Regulatory Flexibility Analysis

These rules do not directly impose reporting, recordkeeping, or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules provide that the MTF shall cease paying claims of any kind to any person under any policy of private passenger automobile insurance issued by the MTF, on or after 12:01 A.M., March 2, 1994 (except where a hardship exemption is granted). As noted in depth above, the MTF will have insufficient funds to pay these claims, and otherwise would be totally out of money sometime before or at the end of March, 1994. While these rules will indirectly impact on individuals and other entities, including small businesses, no differentiation based on business size is feasible or even possible under the present circumstances for the reasons discussed at length above.

Full text of the emergency adopted new rules and concurrent proposed new rules follows:

SUBCHAPTER 2B. MARKET TRANSITION FACILITY OF NEW JERSEY SUSPENSION OF CLAIMS

11:3-2B.1 Purpose and scope

(a) This subchapter provides for the suspension of the payment of any and all claims by the MTF to any person resulting from any coverage under a policy of private passenger automobile insurance issued by the MTF, until such time as sufficient funds are available to pay such claims pursuant to a program for the orderly disposition of claims payments.

(b) This subchapter shall apply to the MTF and the MTF's servicing carriers, former MTF policyholders and persons or entities having any unpaid claims against the MTF or former MTF policyholders.

11:3-2B.2 Definitions

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

"Assets" means any funds made available to the MTF through any payments received from a member insurer for its apportioned share of the MTF's operating losses pursuant to N.J.S.A. 17:33B-11d, monies, funds, accounts receivable, premium payments, payments collected on any and all private passenger automobile insurance policies, interest income, contracts, causes of action, books, records, and property of the MTF wherever located, including such property of the MTF that may be discovered hereafter.

"Claim" means a request for payment for a loss which arises out of and is within the coverage provided by the MTF to an insured pursuant to N.J.S.A. 17:33B-11.

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

"Infrastructure" means those items or components necessary for the MTF to operate and fulfill its obligations to policyholders and claimants, including MTF central staff, contracted servicing carriers, defense attorneys and certain independent consultants. Infrastructure costs include, but are not limited to, payroll expenses (including salaries, benefits and payroll taxes), rent, utilities, bank charges, investment charges, data processing, office and computer supplies, licensing fees for computer software, insurance coverages (such as workers' compensation coverages), legal fees (including defense of claims directly against the MTF), postage, telephone, consultant fees (including auditors and actuaries), MTF servicing carrier fees, and defense costs (that is, payments to defense counsel to protect the MTF's interests in litigation involving MTF policyholders for which the MTF is liable for payment under the MTF policy).

"Member insurer" means any insurer authorized to transact private passenger automobile insurance in this State.

"MTF" means the Market Transition Facility of New Jersey created pursuant to N.J.S.A. 17:33B-11.

"Person" means any individual, corporation, partnership, association or private or public entity which seeks payment of a claim.

"Private passenger automobile" is as defined at N.J.S.A. 39:6A-2.

"Private passenger automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance, or use of private passenger automobiles, including, but not limited to, personal injury protection coverage (including extended medical expense coverage), bodily injury liability coverage, property damage liability coverage, uninsured motorists coverage (including underinsured motorists coverage), towing and labor coverage, rental reimbursement coverage, and collision and comprehensive (other than collision) coverage.

"Servicing carrier" means a member insurer or other entity that had or presently has a contract with the MTF to underwrite, process, and settle claims for the MTF pursuant to the MTF Plan of Operation approved by the Commissioner pursuant to N.J.S.A. 17:33B-11c.

11:3-2B.3 Suspension of payment of claims by the MTF

(a) Payment to any person by the MTF of any pending or future claims resulting from any coverage under a policy of private passenger automobile insurance issued by the MTF, shall be suspended effective 12:01 A.M., March 2, 1994, regardless of the date of receipt by the MTF or servicing carrier of the claim or disposition by settlement, judgment or otherwise. No servicing carrier shall issue any check or make other payment to any person for any claim on or after that date and time.

(b) The MTF shall notify all servicing carriers of the suspension of payment of any and all pending and future claims to any person, effective 12:01 A.M., March 2, 1994 as set forth in (a) above. Such notification shall also provide that no servicing carrier may issue any check or make other payment to any person for any claim on or after that date and time. The MTF is authorized to take any necessary administrative actions to implement the provisions of this subchapter.

(c) Any checks or payments which have been actually mailed by an MTF servicing carrier as of the effective date of suspension set forth in (a) above shall be honored, provided that those checks or payments are otherwise proper and in compliance with relevant law and procedures.

(d) Notwithstanding the provisions of (a) above, upon determination by the Commissioner that there are sufficient assets available for the payment of such claims pursuant to a program for the orderly disposition of claims payments, the Commissioner may order the resumption of payment of claims either in whole or in part, and/or may also order modification of the hardship exemption standards set forth at N.J.A.C. 11:3-2B.4, resulting from coverage under a policy of private passenger automobile insurance issued by the MTF.

(e) The MTF is authorized to pay appropriate interest on any claim that has been submitted and approved but, is deferred pursuant to this subchapter. No interest shall be paid on any personal injury protection coverage benefits that is not overdue, pursuant N.J.S.A. 39:6A-5.

(f) This section shall not be construed to prohibit other payments by the MTF as may be necessary to meet in whole or in part administrative expenses to maintain its infrastructure, to preserve its rights in any pending or future litigation, or to otherwise protect its interests.

11:3-2B.4 Hardship exemption procedure

(a) Notwithstanding the provisions of N.J.A.C. 11:3-2B.3, and subject to the availability of funds, an exemption from the suspension of a claim payment may be permitted in limited circumstances upon the filing of a written application with the MTF which:

1. Demonstrates, through a written statement and sufficient supporting documentation, the existence of extreme immediate financial or medical emergency and necessity; and

2. Includes a statement in which the applicant attests that the emergency cannot be resolved through use of any other reasonably available financial resources. "Reasonably available financial resources" includes, but is not limited to, resources such as reimbursement or compensation through other coverages or benefit plans, reasonable liquidation of assets to the extent that liquidation would not cause further economic hardship, or borrowing from commercial sources on reasonable commercial terms.

(b) Applicants for a hardship exemption shall demonstrate one or more of the following circumstances in order to receive payment:

1. Unable to pay for essential shelter and is being evicted from principal residence (provide foreclosure or eviction notice);

2. Has incurred at least $15,000 of unpaid medical expenses not covered by other insurance for self, spouse or dependents, and it is necessary to pay these bills in order to obtain continuing medically necessary treatment (provide copies of all medical bills, other insurance coverages, declinations from other insurers, if any, and a statement from treating doctor covering the necessity of further treatment);

3. Unable to meet current financial obligations in order to sustain basic living requirements such as food and utilities due to total disability (provide an attending physician's statement, a description of amounts of other sources of household income including disability payments, a list of basic living expenses and any relevant utility service notices);

4. Faces imminent removal from a hospital, nursing home or other medical care facility because of inability to pay (provide a supporting statement from the institution);

5. Suffers from a terminal illness resulting in a severely limited life expectancy (provide physician's documentation certifying the illness);

6. Inability to pay funeral expenses of spouse or dependent (provide copy of unpaid funeral bill);

7. Inability to pay Federal or State tax such that the tax authority has issued a Notice of Intent to Levy (provide Notice of Intent to Levy from Federal or state taxing authority); or

8. Such other emergency or situation of an unusual nature which the Commissioner may deem appropriate (Applicant shall provide written application on a separate sheet of paper and attach all supporting documents).

(c) Applications for a hardship exemption shall be available from the servicing carrier handling the claim and shall be submitted to the Market Transition Facility of New Jersey, Attention: Hardship Exemption, 293 Eisenhower Parkway, Livingston, NJ 07039, and shall include:

1. The name, address, telephone number and date of birth of the claimant;

2. The claim number and policy number;

3. A complete description of the basis upon which the claimant seeks a hardship as set forth at (b) above.

4. The documents required to be appended to the application as set forth at (d) below;

5. The amount of exemption being sought and the grounds for the exemption; and

6. An appropriate certification executed by the applicant.

(d) Completed applications shall be submitted directly to the MTF at the address noted above and shall include copies of all unpaid medical bills, insurance or other coverages, and any other appropriate documentation that is necessary to support or prove the request for an exemption.

(e) If a hardship exemption is granted, the amount paid shall not exceed the minimum amount required to meet the financial and medical emergency, nor the net amount due the claimant.

(f) The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

(g) The burden of demonstrating that an exemption is warranted under this section shall be on the claimant requesting the exemption.

(h) The MTF's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the MTF's choice.

1. Where an exemption is granted in whole or in part, the MTF shall notify the involved servicing carrier in writing, with instructions to make the appropriate payment either directly to and in the name of the claimant or to the service provider as required under the hardship circumstances. The servicing carriers shall proceed in accordance with procedures developed by the MTF.

2. The granting of a hardship exemption shall not be construed as a guarantee of payment of any future claim by the claimant. The hardship exemption shall apply to the claim set forth in the appli-

cation submitted pursuant to this section in support of the hardship exemption request.

(i) Where an exemption is either denied or only partially granted, the MTF's decision shall include directions about how to appeal to the Commissioner.

11:3-2B.5 Appeal to the Commissioner

(a) An applicant may appeal the decision of the MTF denying a request for a hardship exemption within 20 days of receipt of the MTF's written decision by submitting to the Commissioner an appeal of the MTF's decision on the hardship request addressed to the Residual Markets Unit, Department of Insurance, 20 West State Street, CN 325, Trenton, NJ 08625.

(b) The Notice of Appeal shall include those items presented in the initial hardship exemption request, pursuant to N.J.A.C. 11:3-2B.4(b), a written statement explaining why the decision of the MTF denying the request was incorrect, and any additional documentation in support of the exemption request.

1. A copy of the appeal shall be simultaneously filed by the claimant with the MTF.

2. The MTF, upon receipt of notice of the appeal, shall forward the claimant's file to the Commissioner for his or her review.

3. Upon request of the Commissioner, the applicant shall provide additional information required during the course of review.

(c) The Commissioner's determination on appeal shall constitute a Final Decision, which shall be provided to the MTF and shall be mailed to the applicant or his or her legal representative by certified mail, return receipt requested and by regular mail.

11:3-2B.6 Confidentiality of documents

The information provided by a claimant pursuant to N.J.A.C. 11:3-2B.4 or 11:3-2B.5 as part of an application for a hardship exemption or appeal from a decision of the MTF shall be confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq.

PUBLIC NOTICES

HEALTH

(a)

CERTIFICATE OF NEED REVIEW SERVICES

Notice of Certificate of Need Call Schedule

Take notice, that in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Leonard Fishman, Acting Commissioner, New Jersey Department of Health, is providing notice of the certificate of need schedule for the period March 1994 through December 1994.

May 1, 1994	Trauma Designation for Hudson County
July 1, 1994	Home Health Services
September 1, 1994	Hospital Capital Batch

Please note that additional or special calls for Certificate of Need applications beyond those identified in this schedule may be announced and all items in this schedule may not result in official calls for applications.

(b)

CERTIFICATE OF NEED REVIEW SERVICES

Notice of Revised Schedule for Certificate of Need Application for a Vertically Integrated Delivery Network in the City of Camden January 3, 1994 Filing Date

Take notice that on November 5, 1993 a notice of the schedule for review of certificate of need applications for a vertically integrated delivery network in the City of Camden was issued (see 25 N.J.R. 5704(c)). It has come to the Acting Commissioner's attention that this schedule presents timing conflicts. Therefore, the Acting Commissioner is revising the schedule as follows:

Date Completeness Review Decision Issued:	April 12, 1994
Date Local Advisory Board Recommendations to State Health Planning Board and to the Commissioner of Health	On or before May 27, 1994
Date State Health Planning Board Recommendation Due	On or before July 12, 1994

If there are any questions concerning this matter, please contact Ms. Mary Lou Holl, Chief, Certificate of Need Program at (609) 292-6552.

HUMAN SERVICES

(c)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds

Facility Repairs and Renovations to Meet Child Care Center Physical Facility Requirements

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

Name of grant program: Facility Repairs and Renovations to Meet Child Care Center Physical Facility Requirements.

Purpose for which the grant program funds shall be used: This program is intended to complete one-time repairs or minor renovations to, or to purchase equipment for, new or existing child care facilities, so that these facilities may comply with licensing physical facility regulations and applicable state and local building, fire and health codes.

Amount of money in the grant program: Funding in the amount of $184,528 in Federal funds under the Child Care and Development Block Grant is available for this program. The minimum for each grant awarded to licensed or prospective licensed child care centers is $2,500, the maximum is $25,000. There is no match requirement.

Organizations which may be eligible to apply for funding under this program: In response to this announcement, prospective operators and operators of licensed child care centers within the State, as defined in N.J.A.C. 10:122, Manual of Requirements for Child Care Centers, (N.J.S.A. 30:5B1 through 15) may submit proposals, specifically for one-time facility repairs, minor renovations and purchasing equipment necessary to meet licensing physical facility regulations and applicable State and local building and/or fire and health codes.

Qualifications needed by an applicant to be considered for funding: Child care centers that are requesting funding for costs relative to meeting physical facility requirements for the licensing of a program site are expected to possess a temporary or regular certificate of occupancy for the building targeted for funding and must provide evidence that the requested repairs or renovations will permit the applicant to obtain a temporary or a regular license or to maintain a current license. In situations where the applicant does not possess a certificate of occupancy and requires the renovations or repairs to obtain one, the applicant must show evidence that the requested renovation or repair will result in the issuance of the same.

Applicants must comply with all Federal, Departmental and DYFS rules and regulations governing the purchase of services contract process, in addition to the terms and conditions set forth in this announcement. Additionally, selected grantees are required to comply with:

- Affirmative Action requirements of P.L. 1975 c.127 (N.J.A.C. 17:27); and
- Executive Order No. 189(1988) regarding conflict of interest as it pertains to N.J.A.C. 10:3.1, Debarment, Suspension and Disqualification of a Person(s). (See Attachment C: Executive Commission on Ethical Standards—Guidelines for Executive Order No. 189, pages C-3 and C-4.)

All proposals must include a statement of assurance, signed by the designated official of the applicant agency, agreeing to: not refuse to provide services to children who are under DYFS protective service supervision and who have been referred by a DYFS District Office for day care placement; and/or who are eligible for the *New Jersey Cares for Kids* child care certificate/voucher payment program, in accordance with the terms and conditions identified within the content of this document. This assurance shall indicate that the applicant agency shall not deny services to children should they be so referred, provided that there is space available at the time of the referral and that the applicant agency will accept payment on the basis of the maximum prevailing rates established by the New Jersey Department of Human Services and a co-payment from the parent for any remaining unpaid balance.

Application Selection Critera: Applications for funds will be selected on the basis of demonstrated need and shall be evaluated and scored on the basis of the criteria listed below.

The maximum score for all criteria is 100 points and shall be computed in accordance with the following:

- Extent and seriousness of the problem in relation to the requirements specified in the State licensing law and regulations (Manual of Standards for Child Care Centers, N.J.A.C. 10:122 (for example, impact of the problem on the center's licensing status, as indicated in supporting documentation from the DYFS Bureau of Licensing). (max. 40 points)
- Efficiency of the proposed budget in relation to the anticipated result (i.e., unit cost) and, if applicable, factors such as: the number of years remaining on the applicant's building lease and/or agency non-compliance with all terms and conditions of previous contracts held with the Division. (max. 20 points)
- The soundness of the project as indicated by the quality and completeness of the project description and justification, and availability and accuracy of all supporting documentation. (max. 15 points)
- The feasibility of the timetable for completing the project by the end of the liquidation period. (max. 5 points)
- Community characteristics of the geographic areas served (specifically, the demonstrated need for child care services and the applicant's ability to provide services to address the needs of bilingual/bicultural families) and as justification for maintaining or expanding center-based child care services. (max. 10 points)
- Compatibility of the applicant's goals and objectives in relation to the priorities identified by the Division (that is, services to school-aged

children and infants and children under two and a half years of age). (max. 10 points)

Lower priority consideration will be given to proposals requesting funding approval for a licensed child care center facility that had previously received funding within the last 12 months for life/safety equipment or remodeling/renovations from the DYFS Child Care Center Renovation and Equipment Fund, Child Care and Development Block Grant or through 1984 Capital Bond Funding Program. Such applications will not be considered for an award under this funding cycle unless there are insufficient qualifying applications from applicants that did not receive funding under this program within the last 12 months to encumber the funding allocated by region.

Procedures for eligible organizations to apply: Agencies or organizations interested in applying for these funds may obtain a copy of the Request For Proposals by contacting the appropriate DYFS Regional Office or by attending one of the regionally scheduled technical assistance (bidders) conferences, as indicated below. Additional requests for technical assistance or questions regarding the funding guidelines for child care facility improvement grants should be directed to the appropriate contact person in the DYFS Regional Office.

• For projects located in Hunterdon, Mercer, Monmouth, Ocean, and Somerset Counties (for example, DYFS Central Region), a **technical assistance conference** has been scheduled for:

Date: Thursday, March 24, 1994
Time: 1:30 P.M.
Location: DYFS Central Regional Office
50 East State Street, 5th Floor, Room 536
Trenton, NJ
Contact Person: Oksana Koziak, Regional Planner
Telephone: (609) 777-2000

• For projects located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties (for example, DYFS Southern Region), a **technical assistance conference** has been scheduled for:

Date: Friday, March 25, 1994
Time: 10:00 A.M.
Location: DYFS Southern Regional Office
392 North White Horse Pike
Hammonton, NJ
Contact Person: William Michener, Administrative Analyst
Telephone: (609) 567-0010

• For projects located in Essex, Middlesex, and Union Counties (for example, DYFS Metropolitan Region), a **technical assistance conference** has been scheduled for:

Date: Monday, March 28, 1994
Time: 2:00 P.M.
Location: DYFS Metropolitan Regional Office
153 Halsey Street
3rd Floor Community Room
Newark, NJ
Contact Person: Joe Makowski, Regional Planner
Telephone: (201) 648-4100

• For projects located in Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties (for example, DYFS Northern Region), a **technical assistance conference** has been scheduled for:

Date: Wednesday, March 30, 1994
Time: 10:00 A.M.
Location: County of Passaic Administration Building
317 Pennsylvania Avenue, Room 101
Paterson, NJ
Contact Person: John Michalski, Regional Planner
Telephone: (201) 977-4000

Address to which applications must be submitted: Operators of licensed child care facilities interested in applying for these funds should submit one signed original and five copies of the Request For Proposal and all attachments comprising the project proposal application package. These documents must be received by 4:00 P.M. on April 15, 1994, by the appropriate DYFS Regional Administrator listed below:

• For projects located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties (for example, DYFS Southern Region):

Richard O'Grady, Acting Regional Administrator
DYFS Southern Regional Office
392 North White Horse Pike
P.O. Box 594
Hammonton, NJ 08037

• For projects located in Essex, Middlesex, and Union Counties (for example, DYFS Metropolitan Region):

Charles Venti, Regional Administrator
DYFS Metropolitan Regional Office
153 Halsey Street, 2nd Floor
P.O. Box 47010
Newark, NJ 07101

• For projects located in Hunterdon, Mercer, Monmouth, Ocean, and Somerset Counties (for example, DYFS Central Region):

Janice Malec, Regional Administrator
DYFS Central Regional Office
50 East State Street, 5th Floor
CN 717
Trenton, NJ 08625-0717

• For projects located in Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties (for example, DYFS Northern Region):

Jean Mendres, Regional Administrator
DYFS Northern Regional Office
100 Hamilton Plaza, Room 710
Paterson, NJ 07505

An additional copy of the Request For Proposal and all attachments comprising the project proposal application package must also be submitted to:

Richard Crane, Chief
DYFS Bureau of Licensing
50 East State Street, 5th Floor
CN 717
Trenton, NJ 08625-0717

Deadline by which applications must be submitted: The completed application and all supporting materials and copies must be received by 4:00 P.M. on April 15, 1994, by the appropriate DYFS Regional Administrator and the Chief of the DYFS Bureau of Licensing, as indicated above. Applications may be mailed or hand delivered. No late applications will be considered for funding, regardless of postmark.

Date by which applicants will be notified of acceptance or rejection: The Division will notify the respondents of outcome of the proposal review process on or before May 27, 1994.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds
Intensive Family Preservation Services

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

Name of grant program: Intensive Family Preservation Services (IFPS).

Purpose for which the grant program funds shall be used: This program is intended to enhance New Jersey's IFPS program delivery through statewide expansion of this initiative.

Amount of available funding: Contingent upon the receipt of Federal Title IV-A Emergency Assistance funds, the Division of Youth and Family Services (DYFS) proposes to make available an annualized amount of $1.55 million for this program expansion. There is no match requirement. Funds awarded shall be continuous if providers are in compliance with DYFS contract requirements and demonstrate positive program outcomes. Total funding shall not exceed the annualized amount of $1.55 million and will be distributed as follows to the seven counties where there are currently no established IFPS Programs.

- Hunterdon County $200,000
- Middlesex County $307,000
- Morris County $200,000
- Ocean County $239,000
- Somerset County $200,000

- Sussex County $200,000
- Warren County $200,000

Organizations eligible to apply for funding: Private non-profit or for-profit agencies, organizations, individuals or public entities in the State that meet the following requirements will be eligible to apply for funding under this program:

1. The applicant must be willing to enter into a contract with DYFS and comply with the contracting rules of the Department of Human Services (that is, the Standard Contract Language, the Contract Reimbursement Manual and the Contract Policy and Information Manual, N.J.A.C. 10:3).
2. The applicant must be willing to adhere specifically to the program requirements contained in the Request for Proposals (RFP) and comply with DYFS monitoring and evaluation procedures.
3. The applicant must not discriminate in providing services to clients based on age, race, creed, national origin, sex, handicap or financial status.
4. The applicant must be willing to adhere to all reporting requirements specified in the RFP.

Proposal Evaluation: The following criteria and point system will be used to facilitate the selection process:

Points	Criteria
20	Demonstration by the applicant of a comprehensive understanding of the purpose and intent of the Homebuilders/Intensive Family Preservation Services philosophy and treatment mode;
15	Compatability of applicant's history, goals and objectives with the IFPS model, including a description and history of in-home family service programs of a similar nature to IFPS that are conducted by the applicant;
5	Outline of current staffing/organization plan and how IFPS would be incorporated into that plan;
25	Clarity, originality and attainability of the applicant's plan for IFPS program implementation and assurance of compliance with legislation, RFP, and contract requirements;
10	Description of the applicant's current and/or proposed relationship with the local DYFS District Office(s), community networking, and utilization of community resources;
10	Reasonableness of budget plan;
5	Description of the applicant's current system for monitoring and evaluating services and how IFPS would be incorporated into that system; and
10	Description of the management and supervision methods to ensure program accountability; supervision and training of staff; monitoring performance of service activities and ensuring attainment of objectives.

Procedures for eligible applicants to apply: Organizations and individuals interested in applying for these funds may obtain a copy of the Request for Proposals by contacting Alisha A. Griffin, Assistant Administrator, DYFS Office of Statewide Operations and Support, at (609) 292-0590 or by FAX, at (609) 292-4929.

A Bidders' Conference is scheduled for:

Date: Wednesday, March 30, 1994
Time: 10:00 A.M.—1:00 P.M.
Location: Human Resource Development Institute (HRDI)
Princeton Forrestal Center
600 College Rd.
Princeton, N.J. 08540

Attendance at the Bidders' Conference is mandatory. Proposals received from applicants who did not attend the Bidders' Conference will be disqualified.

Organizations and individuals interested in applying for these funds may also obtain a copy of the Request for Proposals at the Bidders' Conference.

Submission of proposals: Organizations and individuals interested in applying for these funds should submit one signed original and 10 copies of their proposal and all required attachments to the DYFS Regional Office listed below for the county or counties in which they are proposing to provide services:

DYFS Northern Regional Office
(for Morris, Sussex and Warren Counties)
Jean Mendres, Regional Administrator
100 Hamilton Plaza
7th Floor, Room 710
Paterson, New Jersey 07501

DYFS Metropolitan Regional Office (for Middlesex County)
Charles Venti, Regional Administrator
153 Halsey St., 2nd Floor
Newark, New Jersey 07101

DYFS Central Regional Office
(for Hunterdon, Ocean and Somerset Counties)
Janice Malec, Regional Administrator
50 East State St., 5th Floor
CN 717
Trenton, New Jersey 08625

The completed proposal including all copies and required attachments must be received by 5:00 p.m. on **Friday, April 22, 1994** at the DYFS Regional Office. Proposals may be mailed or hand-delivered. No late proposals will be considered for funding, regardless of postmark.

Date by which applicants shall be notified of acceptance: June 10, 1994.

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking N.J.A.C. 10A:6-2.2(a)4 and 2.7(c)

Petitioner: Robert Sogluizzo, East Jersey State Prison

Take notice that on December 9, 1993, the Department of Corrections received a petition for rulemaking at N.J.A.C. 10A:6-2.2(a)4 and 2.7(c) Inmate Legal Services (see 26 N.J.R. 505(a)).

The petitioner requested that the Department amend N.J.A.C. 10A:6-2.2(a)4 and 2.7(c) by adding a rule allowing the retention of typewriters for inmates in Disciplinary Detention and Prehearing Detention.

N.J.A.C. 10A:6-2.7 clearly states, "Typewriters to the extent that they are available and operable shall be provided for inmate use in the inmate law library area and in Close Custody Units." Close Custody Units such as the Disciplinary Detention Unit and Prehearing Detention Unit are highly secure areas with security related restrictions. In order to maintain the safe, secure and orderly operation of these Units, the Department of Corrections is required to limit those items inmates may have in their possession. The provision of typewriters is a privilege that depends upon security considerations, availability, operability and the State budgetary financial resources associated with providing and maintaining typewriters for inmate use. Furthermore, handwritten documents are accepted forms of access to, and communication with the courts. Although the provision of typewriters at N.J.A.C. 10A:6-2.2 exists, this specific provision is not required by law and it has never been the intent of the Department of Corrections to mandate the availability of typewriters. Hence, the rules cited by the petitioner will be amended and published in a future issue of the New Jersey Register to avoid any perceived inconsistency.

The Department of Corrections finds it inappropriate to develop the proposed rule and the petition for formal rulemaking is accordingly being denied.

INSURANCE

(a)

DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS

Notice of Receipt of and Action on Petition for Rulemaking

Optometry as Specialist Doctor Benefit in HMO Plan Covered Services at N.J.A.C. 11:20-1.1

Petitioner: New Jersey Optometric Association

Take notice that on December 10, 1993, the New Jersey Optometric Association ("petitioner") filed a petition with the Department of Insurance ("Department") requesting an amendment to N.J.AC. 11:20-1.1 to include optometry as a covered service.

Specifically, petitioner is requesting an amendment to Exhibit "F" at N.J.A.C. 11:20, the New Jersey Individual Health Coverage Program ("Program") rules adopted by the Program's Board of Directors ("Board") on August 12, 1993 establishing standard individual health benefits plans and policy forms pursuant to P.L. 1992, c.161 (N.J.S.A. 17B:27A-2 et seq.), and specifically setting forth the benefits, limitations and exclusions of each plan. Exhibit "F" in the Appendix to N.J.A.C. 11:20 sets forth the Health Maintenance Organization ("HMO") Benefits Plan. Petitioner seeks to amend Exhibit "F" at Section V(b) to include optometry as a covered specialist benefit for reimbursement under the Program's HMO Plan.

In accordance with N.J.A.C. 11:1-15.2(a)4, the Department's rules applicable to petitions for rulemaking pursuant to N.J.S.A. 52:14B-4(f), a petitioner seeking to petition the Department to promulgate, amend or repeal a rule is required to submit to the Commissioner, inter alia, references to the authority of the Department to take the requested action. Petitioner in its petition for rulemaking identifies both the Department and the Board as respondents, and states that "the respondent is the administrative agency charged with the proposal and adoption of rules regarding the New Jersey Individual Health Coverage Program pursuant to the authority of N.J.S.A. 17B:27A-2 et seq." N.J.S.A. 17B:27A-7 specifically authorizes the Board, rather than the Department, to "... establish the policy and contract forms and benefit levels to be made available by all carriers" under the standard individual health benefits plans. The rules and exhibits at N.J.A.C. 11:20 were proposed and adopted by the Board under signature of the Board's Chair, and were neither proposed nor adopted by the Department.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15, and after thorough review of the petition, the Department is denying petitioner's request. N.J.A.C. 11:20 and Exhibit F of the Appendix thereto were adopted by the Board under its specific authority granted by N.J.S.A. 17B:27A-7. Therefore, the Department has determined that jurisdiction for action on the petition properly rests with the Board.

TRANSPORTATION

(b)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD ENGINEERING

Notice of Public Hearing

Designation of At-grade Crossing as an "Exempt Crossing"

N.J. Route 169 in the City of Bayonne in Hudson County

Take notice that the State of New Jersey, Department of Transportation is scheduling a public hearing on a recommendation it has received to designate two at-grade railroad crossings on N.J. Route 169 in the City of Bayonne in Hudson County as an "exempt crossing." The railroad at-grade crossings are located in the City of Bayonne at the intersection of N.J. Route 169 and Pulaski Street and on N.J. Route 169, Milepost 3.4 near the entrance to the Military Ocean Terminal.

In accordance with New Jersey Motor Vehicles and Traffic Regulations, N.J.S.A. 39:4-128, the Commissioner of Transportation can designate an at-grade railroad crossing as an "exempt crossing."

The "exempt crossing" designation exempts the drive of any omnibus, designed for carrying more than six passengers, or of any school bus carrying any school child or children, or of any vehicle carrying explosive substance or flammable liquids as a cargo or part of a cargo from stopping before crossing the tracks of a railroad. Normally the above such vehicles must come to a complete stop before proceeding across the crossing.

A Diagnostic Team has determined that at the proposed at-grade crossing the potential for damage and injury from accidents between motor vehicles required to stop at grade crossings and other vehicles traveling in the same direction exceeds that between a train and the vehicles required to stop by law.

The **public hearing** will be held on:

Tuesday, April 12, 1994
Municipal Building, City of Bayonne
630 Avenue C
Bayonne, New Jersey
Time: 4:00 to 6:00 P.M.
7:00 to 9:00 P.M.

Persons wishing to make oral presentation are asked to limit their comments to a three to five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. A record of the hearing will be made. The hearing record will be kept open for a period of seven days following the date of the public hearing.

Interested persons may submit written comments until April 27, 1994 to:

Donna Troiano, P.E.
Manager, Bureau of Utility & Railroad Engineering
N.J. Department of Transportation
CN 600
Trenton, New Jersey 08625

OTHER AGENCIES

(c)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1993, ending December 31, 1993

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the fourth quarter of 1993, accompanied by a Summary of the Quarterly Report.

At the conclusion of the fourth quarter of 1993, the Notices of Representation filed with this office reflect that 572 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the fourth calendar quarter of 1993, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, their business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the fourth calendar quarter of 1993:

No. 894-1	Vincent Bennett representing Schering Corporation
No. 895-1	Hank Van Handle representing Bayway Refining Company
No. 895-2	Hope Menard representing Bayway Refining Company
No. 895-3	Bruce Jones representing Bayway Refining Company
No. 895-4	Sherman Brown representing Bayway Refining Company
No. 90-2	Linda Mayo representing Easter Seal Society of NJ
No. 551-13	James Schulz representing MWW/Strategic Communications, Inc.
No. 840-2	Peter Snyder representing Three Greenwood Square
No. 896-1	William Glover representing American Ref-Fuel Company of Essex County
No. 897-1	John Waffenschmidt representing American Ref-Fuel Company
No. 798-3	Kevin Murphy representing NJ Center for Outreach and Services
No. 898-1	Richard Alt representing South Jersey Mechanical Contractors Assoc.
No. 268-3	Alan Kaufman representing Communications Workers of America
No. 899-1	Eileen Kean, Independent Agent
No. 576-2	Gail Driscoll representing Merck & Co., Inc.
No. 900-1	Anthony Villane, Independent Agent
No. 10-4	Charles Archer Mowll representing New Jersey Hospital Association
No. 289-3	Kelly Ann Stewart, Independent Agent
No. 901-1	Leonard Altamura representing NJ Assn. of Mental Health Agencies, Inc.
No. 665-2	Gabrielle Charette representing Building Contractors Association
No. 902-1	William Palatucci, Independent Agent
No. 551-14	Michael Turner representing MWW/Strategic Communications, Inc.
No. 45-10	Christopher Cooney, Independent Agent

Following is a listing of all Legislative Agents who have filed Notices of Termination during the fourth calendar quarter of 1993.

Legislative Agent	**Registration Number**
Scott Arnette	676-1
Barry Bornstein	90-1
Michael Cooper	826-1
Rinaldo D'Argenio	824-1
Richard Duprey	552-1
Edward Eveland	159-1
William Flynn	729-1
Eileen Kean	35-2
Terese Kelley	551-12
Christopher Kniesler	652-1
Ernest Landante	45-6
Leon Langley	111-1
John Ross	772-1
Judith Shaw	583-5
Jeffrey Siegell	261-2
Beth Sopko	551-11
Lisa Gaede Verniero	665-1
Janet Marie Wengler	872-1
Kyle Zimmer	874-1

For further information, contact the staff of the Commission at (609) 292-8700.

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 February 7, 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.1993 d.1 means the first rule filed for 1993.

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 JANUARY 18, 1994

NEXT UPDATE: SUPPLEMENT FEBRUARY 22, 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. 1031 and 1308	March 15, 1993	25 N.J.R. 4541 and 4694	October 4, 1993
25 N.J.R. 1309 and 1620	April 5, 1993	25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 1621 and 1796	April 19, 1993	25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 1797 and 1912	May 3, 1993	25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 1913 and 2150	May 17, 1993	25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
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		

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2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)		
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3:32-3	Mutual holding companies	26 N.J.R. 1213(a)		
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3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
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4A:3-4.10	State service: demotional pay adjustments	25 N.J.R. 4821(a)	R.1994 d.71	26 N.J.R. 794(a)
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4A:6-1.3	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
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Most recent update to Title 6: TRANSMITTAL 1994-1 (supplement January 18, 1994)

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7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
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7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:1G-1.2	Community Right to Know Survey: administrative correction	________	________	26 N.J.R. 1337(a)
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7:1I	Sanitary Landfill Facility Closure and Contingency Fund: processing of damage claims	25 N.J.R. 5116(a)	R.1994 d.83	26 N.J.R. 1114(a)
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7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
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7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9B-1.5, 1.15	Surface water quality standards: Wallkill River	25 N.J.R. 3755(a)	R.1994 d.84	26 N.J.R. 1124(a)
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7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
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7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)		
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
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8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)

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8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b), 6060(b))	25 N.J.R. 875(a)	R.1993 d.155	26 N.J.R. 1347(a)
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8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a))	25 N.J.R. 2802(b)	R.1994 d.40	26 N.J.R. 364(b)
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))	25 N.J.R. 4844(a)	R.1994 d.156	26 N.J.R. 1347(b)
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Most recent update to Title 14: TRANSMITTAL 1993-7 (supplement October 18, 1993)

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Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)

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Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

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	Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
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16:28A-1.19	Time limit parking zone along Route 28 in Somerville	25 N.J.R. 5111(b)	R.1994 d.61	26 N.J.R. 823(a)
16:28A-1.34, 1.71	Restricted parking along Route 49 in Millville and Route 67 in Fort Lee	25 N.J.R. 5760(a)	R.1994 d.149	26 N.J.R. 1358(a)
16:28A-1.38	No stopping or standing zones along Route 71 in Spring Lake Heights	25 N.J.R. 5112(a)	R.1994 d.62	26 N.J.R. 823(b)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:30-3.9	HOV lane on Route I-80 in Morris County	25 N.J.R. 5761(a)	R.1994 d.95	26 N.J.R. 1109(b)
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16:30-10.16	Midblock crosswalks along Route 71 in West Long Branch and Eatontown	25 N.J.R. 5762(a)	R.1994 d.150	26 N.J.R. 1358(b)
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