

EXECUTIVE ORDER
 DEPARTMENT OF
 TREASURY, ARCHIVES & RECORDS
 DIVISION
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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMBER 19, 1994

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT OCTOBER 17, 1994

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDER

OFFICE OF THE GOVERNOR

Executive Order No. 27(1994): Requirement in State agency rulemaking for statement concerning Federal standards 4723(a)

RULE PROPOSALS

Interested persons comment deadline 4722

COMMUNITY AFFAIRS

Local government finance: renewal of registration of Cooperative Purchasing System 4724(a)

ENVIRONMENTAL PROTECTION

Affirmative defenses to liability for air pollution violations: public workshop and request for comment 4725(a)

HUMAN SERVICES

Home Energy Assistance Handbook 4726(a)

INSURANCE

Funeral insurance policies 4727(a)
Small Employer Health Benefits Program: optional benefit riders 4729(a)

LABOR

Services excluded from coverage by the Unemployment Compensation Law 4730(a)

LAW AND PUBLIC SAFETY

Board of Nursing rules 4731(a)
Board of Psychological Examiners: unlicensed practitioners 4738(a)
Thoroughbred racing rules 4742(a)
Harness racing rules 4744(a)

TRANSPORTATION

Speed limit zones along Route 47 in Dennis Township, Cape May 4745(a)
Left turns along U.S. 9 in Middle Township, Cape May 4746(a)

TREASURY-GENERAL

Public Employees' Retirement System 4747(a)
Division of Building and Construction: classification and qualification of bidders 4747(b)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Standards for State officials and employees regarding attendance at events, acceptance of honoraria, and acceptance of compensation for published works 4757(a)

RULE ADOPTIONS

COMMUNITY AFFAIRS

Uniform Construction Code: administrative correction regarding asbestos safety control monitor 4760(a)

ENVIRONMENTAL PROTECTION

Control and prohibition of air pollution by volatile organic compounds: administrative corrections 4793(a)
Pinelands Comprehensive Management Plan 4795(a)

HIGHER EDUCATION

Educational Opportunity Fund Program 4760(b)

HUMAN SERVICES

Medicaid reimbursement for infertility-related services 4762(a)
Assistance Standards Handbook: administrative correction regarding guardians of adolescent parents 4765(a)
General Assistance Manual 4765(b)

CORRECTIONS

State Parole Board: administrative correction regarding board panel action 4771(a)

(Continued on next page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **January 4, 1995**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

INSURANCE

- Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures 4772(a)
Automobile insurance: provision of coverage to all eligible persons 4777(a)

LABOR

- Division of Workplace Standards: boilers, pressure vessels, refrigeration 4828(a)

LAW AND PUBLIC SAFETY

- Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined 4780(a)
Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices 4780(b)
State Police: criminal history background checks for non-criminal justice purposes 4782(a)

PUBLIC UTILITIES

- Demand Side Management Resource Plan: administrative correction regarding public notice and hearing 4786(a)

TRANSPORTATION

- Speed limits along Route 29 in Mercer and Hunterdon counties 4786(b)
Speed limits along Route 179 in Lambertville 4787(a)
Bus stop on U.S. 206 in Princeton Township 4787(b)
Left turn prohibitions along Route 47 in Vineland 4787(c)

CASINO CONTROL COMMISSION

- General provisions; accounting and internal controls; gaming equipment; rules of the games; administrative corrections 4788(a)
Key Standard Qualifier Renewal Form 4789(a)
Double Down Stud 4790(a)

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

- Implementation of Solid Waste Collection Regulatory Reform Act: opportunity for comment on Preliminary Report to Governor and Legislature 4834(a)
Low-Level Radioactive Waste Disposal Facility Siting Board: public meeting on Annual Budget, FY 1996 4834(b)

- Pinelands Comprehensive Management Plan: agency response to rulemaking petition regarding certain sites in Middle Township, Cape May 4834(c)
Ocean County Water Quality Management Plan: Jackson Township WMP 4834(d)
Tri-County Water Quality Management Plan: Evesham MUA WMP 4835(a)
INSURANCE
List of accredited reinsurers 4836(a)
LAW AND PUBLIC SAFETY
Grant availability to Local Emergency Planning Committees for projects implementing USDOT Hazardous Transportation Uniform Safety Act 4836(b)
TREASURY-TAXATION
Sanitary landfill taxes: 1995 rates 4837(a)

EXECUTIVE ORDER NO. 66(1978)

- EXPIRATION DATES 4838(a)

INDEX OF RULE PROPOSALS

- AND ADOPTIONS 4844

Filing Deadlines

January 3, 1995 issue:

- Adoptions December 9

January 17 issue:

- Proposals December 15

- Adoptions December 22

February 6 issue:

- Proposals January 6

- Adoptions January 13

February 21 issue:

- Proposals January 20

- Adoptions January 27

NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 27(1994)
Requirement for Statement Concerning Federal
Standards in State Agency Rulemaking

Issued: November 2, 1994.

Effective: January 1, 1995.

Expiration: Indefinite.

WHEREAS, the federal government frequently regulates areas that are also subject to State regulation; and

WHEREAS, differing State and federal policy goals and unique State prerogatives frequently result in different levels of regulation, different standards and different requirements being imposed by federal and State programs covering the same subject matter; and

WHEREAS, New Jersey must simultaneously move toward reducing redundant and unnecessary regulation that dulls the State's competitive advantage while being ever vigilant in the protection of the public's health, safety and welfare; and

WHEREAS, New Jersey's administrative agencies should consider applicable federal standards when adopting, readopting or amending regulations with analogous federal counterparts; and

WHEREAS, New Jersey's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety and welfare of New Jersey citizens; and

WHEREAS, as part of the formal rule-making process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety and welfare of New Jersey citizens.

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. On or after the effective date of this Order, each administrative agency that adopts, readopts or amends any rule or regulation described in section 2 of this Order shall, in addition to all requirements imposed by existing law and regulation, include as part of the initial publication and all subsequent publications of such rule or regulation, a statement as to whether the rule or regulation in question contains any standards or requirements which exceed the standards or requirements imposed by federal law. Such statement shall include a discussion of the policy reasons and a cost-benefit analysis that supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate.

2. This Order shall apply to any rule or regulation that is adopted, readopted or amended under the authority of or in order to implement, comply with or participate in any program established under federal law or under a State statute that incorporates or refers to federal law, federal standards or federal requirements.

3. The head of a State agency, upon submission by the agency of the required explanation or analysis of the rule or regulation subject to the provisions of this Order, shall certify in writing that the submission of the State agency permits the public to understand accurately and plainly the purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

4. This Order shall take effect sixty (60) days from the date hereof.

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulation

Cooperative Pricing and Joint Purchasing Systems

Reproposed Amendments: N.J.A.C. 5:34-7.6 and 7.8

Reproposed Repeal: N.J.A.C. 5:34-7.9

Authorized By: Beth Gates, Director, Division of Local Government Services.

Authority: N.J.S.A. 40A:11-11.

Proposal Number: PRN 1994-619.

Submit comments by January 4, 1995 to:

Nelson S. Silver, P.P.

Bureau of Local Management Services

Division of Local Government Services

CN 803

Trenton, NJ 08625-0803

The agency proposal follows:

Summary

Under the authority of the Local Public Contracts Law, N.J.A.C. 5:34-7 regulates Cooperative Purchasing Systems, whether they are Cooperative Pricing or Joint Purchasing Systems. Cooperative Purchasing means a purchasing system through which municipal and county governments, boards of education, and local public authorities join together to take advantage of economies of scale in the purchasing of work, materials or supplies.

Modifications to the rules were originally proposed at 26 N.J.R. 2707(a) (July 5, 1994). In that proposal the Division proposed to delete the definition of "Form CP-2001" at N.J.A.C. 5:34-7.2, as well as any reference to it at N.J.A.C. 5:34-7.5, 7.6 and 7.8, since it had been determined that this form was duplicative in nature and no longer to be used.

However, based on informal discussions by the Division with the Somerset County Cooperative Pricing System, the Educational Cooperative Pricing System, the Monmouth-Ocean Educational Cooperative Pricing System, and the Gloucester County Cooperating Pricing System, regarding the use of Form CP-2001, it was determined that since the Form contained basic information relating to the registration of a system or any modification thereto in combination with the fact that the Division received no written comments on the proposal and the Division's further review of the proposed amendments, it was concluded that the amendments to delete Form CP-2001 were confusing and failed to achieve the Division's objective of truly simplifying the process for the renewal of the registration for a Cooperative Purchasing System. Therefore, the Division has determined that no action will be taken to implement those changes. As an alternative, the renewal requirements were reanalyzed and redrafted and are being reproposed at this time.

The reproposed amendments seek to simplify and expedite the process for the renewal of the registration of a Cooperative Purchasing System. The difference between the original proposal and the proposed amendments described below is the retention of Form CP-2001.

N.J.A.C. 5:34-7.6 provides for the registration of members of a Cooperative Purchasing System. As presently structured, a Cooperative Purchasing System is approved for a period of up to five years. A local government, which becomes a member of a System, remains a member for the duration of the registration period and then must go through the renewal process. As noted below this is a time consuming and paper intensive process. Therefore, the proposed amendment at N.J.A.C. 5:34-7.6(g) will make the participating local governments members of the system for as long as the system exists or until the local government voluntarily withdraws. This will result in less work for the lead agency and the individual members of the system and the overall reduction in the amount of paper generated. If a member should decide to no longer participate in a system, the lead agency is obligated to inform the Director. The time line for notification is proposed to be reduced from

30 to five days at N.J.A.C. 5:34-7.6(e). This will not represent a hardship on the lead agency, since all it requires is the filing of a Cooperative Purchasing Form CP-2001 with the Director.

N.J.A.C. 5:34-7.8 provides for the re-registration (renewal) of the individual members of the system to be accomplished through the passage of a new ordinance or resolution, as appropriate, and the execution of a new Cooperative Purchasing Agreement with the lead agency. The lead agency forwards a copy of the resolution and the new agreement to the Director. This process is time consuming and extremely paper intensive. The proposed amendment at N.J.A.C. 5:34-7.8(d) simplifies the procedures for renewal of a system's registration. Under the proposed amendment, the renewal application package submitted to the Director by the lead agency shall contain a list of existing members, a resolution or ordinance adopted by the governing body of the lead agency authorizing continuation of the cooperative purchasing system, and a copy of the Cooperative Purchasing Form CP-2001.

N.J.A.C. 5:34-7.9 currently provides for individual members to renew their participation through the passage of a renewal resolution or ordinance, as appropriate. The proposed amendment would delete this provision and allow an existing member to continue its membership until such time as it formally notifies the lead agency of its withdrawal from participation as provided for in N.J.A.C. 5:34-7.6(e).

Social Impact

The proposed amendments will have a negligible social impact as they essentially clarify one portion of the existing rules. The proposed amendments modify and simplify the process and procedures for renewing the registration of a Cooperative Purchasing System.

The affected parties are currently registered Cooperative Purchasing Systems and local contracting units seeking to renew the registration of a System. The impact of a Cooperative Purchasing System is more economic than social.

There is expected to be minimum reaction to the rules.

Economic Impact

Since Cooperative Purchasing permits local contracting units to join together to purchase work, material, and supplies cooperatively, the greater the volume of work, material, and supplies, the lower the per unit cost. Hence, there should be a cost saving to the municipality and the taxpayer. Of course, the amount of the savings varies with the type and character of the work, material, and supplies.

There will be no negative economic changes as a result of the proposed amendments since no fees are being established or amended. The proposed amendments clarify and simplify one element of the existing rules.

Regulatory Flexibility Statement

These rules are necessitated by N.J.S.A. 40A:11-11(5) and other statutes. Because the adoption of these rules would apply only to local governmental units, these rules do not apply to, or affect, small business as defined 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]):

5:34-7.6 Membership registration

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

(e) The lead agency shall notify the Director in writing within [30] **five** days of the withdrawal of any registered member from an approved cooperative purchasing system.

(f) (No change.)

(g) A registered member of a cooperative purchasing system shall retain membership in a system until the member formally withdraws from participation or the system is dissolved.

5:34-7.8 System renewal

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

(d) The renewal application package shall [at a minimum] include the following:

1. Form CP-2001[.];

2. Lead agency resolution or ordinance, as appropriate, reauthorizing the system; **and**

[3. Copies of new formal agreements with the registered members including, at a minimum:

- i. The new expiration date of the system; and
- ii. The date of execution of the agreement; and

4. Copies of each registered member's resolution or ordinance, pursuant to N.J.A.C. 5:34-7.9.]

3. A list of the current membership of the System.

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

5:34-7.9 [Registered member renewal] (Reserved)

[(a) A registered member may apply for renewal of its membership in an approved cooperative purchasing system by passage of an ordinance or resolution, as appropriate, and executing a new formal agreement with the lead agency.

1. If an ordinance adopted by a municipality or county needs to be revised for reasons such as, but not limited to, a specified expiration date for the system, change(s) in the form of government, and change(s) in title of the local official(s) authorized to execute the agreement, then said ordinance shall only be amended by adoption of another ordinance.

2. If a resolution needs to be revised for reasons described in (a)1 above, then said resolution shall only be amended by adoption of another resolution by the registered member.

3. If no provisions in an ordinance or resolution of a registered member seeking to renew membership needs to be revised for reasons described in (a)1 and 2 above, then an agreement between the lead agency and the registered member shall be executed. The agreement shall be affirmed by resolution of the governing body of a municipality or county, or by motions made and carried in minutes of a meeting of a board of education.

(b) A registered member of a cooperative purchasing system who has not renewed its membership prior to the expiration of the system's registration shall not be a registered member and shall not participate in any new contract until such time as its membership has been formally approved pursuant to N.J.A.C. 5:34-7.6.]

ENVIRONMENTAL PROTECTION

(a)

ENFORCEMENT

Notice of Public Workshop and Request for Public Comment Affirmative Defenses to Liability for Air Pollution Violations

DEP Docket Number: 48-94-11.

Take notice that the Department of Environmental Protection (Department) is requesting that interested persons participate in the development of regulations to implement N.J.S.A. 26:2C-19.1 through 19.5 (the "Affirmative Defense Law"). A draft of these regulations is available for review by interested persons.

Background

The Affirmative Defense Law establishes an affirmative defense to liability for violations of the Air Pollution Control Act, N.J.S.A. 26:2C-1 through 19.5 (the "Act"), and for violations of permits issued and regulations adopted under the authority of the Act. The affirmative defense is available when a violation occurs as a result of an equipment malfunction, an equipment start-up, or an equipment shut-down, or during the performance of necessary equipment maintenance.

To qualify for the affirmative defense, the person asserting the defense must comply with notification requirements in the Affirmative Defense Law, and demonstrate the following:

- 1. That the violation occurred, and was caused by an equipment malfunction, an equipment start-up, or an equipment shut-down, or during the performance of necessary equipment maintenance;
- 2. That the facility where the violation occurred was being operated with due care;
- 3. That the violation did not result from operator error or failure to maintain the equipment with due care;

4. That the person asserting the defense took all reasonable steps to minimize levels of emissions caused by the violation; and

5. With respect to violations caused by a malfunction, that the malfunction is not part of a recurrent pattern.

The affirmative defense is not available for any violation that causes one or more air contaminants to be present in the outdoor atmosphere in a quantity or concentration that poses a threat to public health, welfare or the environment.

Issues

Several issues raised by the Affirmative Defense Law are summarized below. The Department seeks public input regarding these issues, but does not intend to limit discussion with interested persons to these issues. The Department also welcomes input regarding any other aspect of the law or of regulations implementing the law.

Due care. The affirmative defense is available only if the facility at which the violation occurred was being operated with due care, and the equipment in question was maintained with due care. "Due care" is generally understood to mean the care that an ordinarily prudent person would have exercised under a given set of circumstances. The Department is seeking public input regarding the meaning of the "due care" standard in the context of facility operations and equipment maintenance.

Recurrent pattern of malfunctions. The affirmative defense is not available for a violation caused by a malfunction that was part of a recurrent pattern of malfunctions. The Department is seeking public input regarding: (i) the number and frequency of malfunctions necessary to establish a "recurrent pattern"; and (ii) when malfunctions at a facility are different enough that they should not be considered part of the same pattern.

Equipment start-up. In some cases, it may be difficult to define exactly when an "equipment start-up" ends and normal operation begins. The Department seeks public input to assist in defining this aspect of equipment start-ups. The Department also seeks public input to assist in determining when a pilot facility should be considered to have begun normal operations and ended its start-up phase.

Effect of start-up and shut-down provisions in permits. Many permits issued by the Department have incorporated emission limits that would apply only during a start-up or shut-down. These limits are more liberal than the limits that would apply during normal operations. The purpose of these start-up and shut-down limits is the same as the purpose of the Affirmative Defense Law; they recognize that emissions may exceed the normal limits during start-ups and shut-downs despite careful maintenance and operation.

The Department seeks public input regarding how the Affirmative Defense Law should be applied when a permit establishes a more liberal emission limit for a start-up or shut-down, and that limit is violated during a start-up or shut-down.

Maximum frequency and duration of violations. The Affirmative Defense Law directs the Department to establish limits on the maximum frequency and duration of violations resulting from equipment malfunctions, equipment start-ups, equipment shut-downs, and the performance of necessary equipment maintenance. Violations that occurred more frequently, and violations that persisted for a longer duration, would be ineligible for an affirmative defense. The statute requires that duration and frequency limits be established industry-by-industry for each type of source used in the industry. The Department seeks public input regarding the proper limits on duration and frequency.

Documentation requirements. The Affirmative Defense Law requires a person asserting an affirmative defense to submit written documentation to the Department, demonstrating the basis for the affirmative defense. In developing the specific documentation requirements for the regulation, the Department seeks to prevent them from becoming too burdensome. However, the documentation requirements must be sufficient to enable the Department to evaluate the affirmative defense; otherwise, a series of requests for additional information could be necessary, and a greater burden could result. The Department therefore seeks public input regarding the documentation to be required.

Opportunities for public input

Interested persons may obtain a copy of the draft regulations from:

Ms. Cara Applegate
Bureau of Enforcement Services
Department of Environmental Protection
CN 422
Trenton, New Jersey 08625-0422

The Department will hold a **public workshop** to discuss the draft regulations on Thursday, January 5, 1995 at 10:00 A.M., at:

Department of Environmental Protection
Public Hearing Room
401 East State Street, First Floor
Trenton, New Jersey

Interested persons may submit written comments by January 19, 1995 to:

Janis E. Hoagland, Esq.
Attention: DEP Docket No. 48-94-11
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Home Energy Assistance Handbook

Proposed Readoption with Amendments: N.J.A.C. 10:89

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

Authority: N.J.S.A. 30:4B-2.

Proposal Number: PRN 1994-620.

Submit comments by January 4, 1995 to:

Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:89, which will otherwise expire on May 24, 1995.

The Home Energy Assistance (HEA) program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low-income households to meet continuing costs of home heating and cooling.

Emergency energy assistance is available to eligible individuals and families who are without heat or in danger of being without heat and lack sufficient income to purchase the necessary heating fuel or service.

N.J.A.C. 10:89-1 provides information regarding the purpose of the HEA program. The subchapter also provides rules pertaining to requests for fair hearings and explains the principles of the "prudent person concept" under which individuals who administer the program are expected to act when situations arise which are not specifically covered by the provisions of N.J.A.C. 10:89.

N.J.A.C. 10:89-2 sets forth the eligibility requirements of the HEA program. These requirements are financial and non-financial. The non-financial requirements are concerned with State residency, household definitions, alien status and whether or not an applicant is a striker. Financial requirements include income eligibility limits and rules for the determination of countable income.

N.J.A.C. 10:89-3 provides a description of the types of benefits available under the HEA program. "Automatic Payment" benefits are available to certain public assistance households based on information provided by the household at the time of application for public assistance. "Special Energy Assistance" benefits are explained as home energy paid to a financially eligible household which does not qualify for automatic payments and must apply for such benefits. Subchapter 3 also provides payment schedules under which benefits for different household and heating situations are determined, and information with respect to eligibility for cooling assistance and for emergency assistance under the HEA program.

N.J.A.C. 10:89-4 contains provisions which pertain to the application process for the HEA program. Verification and documentation

procedures are detailed. The principle of providing prospective recipients the opportunity to apply is established in this subchapter.

N.J.A.C. 10:89-5 provides a compendium of program requirements and procedures pertaining to the administration of the program which have not previously been addressed. Requirements include the establishment of Home Energy Assistance Units within county welfare agencies, adequate notice of agency action and appeal rights, overpayment recovery procedures and out-reach activities.

The following are significant changes to N.J.A.C. 10:89 since the last readoption:

N.J.A.C. 10:89-2.2(a)3 provided that strikers and households that include striking members are ineligible for Home Energy Assistance benefits in accordance with N.J.A.C. 10:81-3.47(a) and 10:87-10.16(a).

N.J.A.C. 10:89-2.2(a)4 raised the amount of the monthly income exemption used in the determination of the amount an illegal alien must add to the household's income. The revision was in response to an increase in the poverty income guidelines. The monthly amount was raised from \$255.00 to \$268.00.

N.J.A.C. 10:89-2.3(b) clarified that energy costs included in rent which is subsidized, do not qualify as out-of-pocket payments for heating costs.

N.J.A.C. 10:89-2.3(e) supplemented the definition of a loan to include loans from financial institutions.

N.J.A.C. 10:89-2.3(g) adjusted the monthly allowable gross income limits to continue to be based on 150 percent of the current poverty level. This has been amended annually to reflect increases in the Federal Poverty Level Guidelines.

N.J.A.C. 10:89-3.1(a) provided for the inclusion of households which heat with oil to receive a two-party check payable to the head of household and the generic copayee "Your Heating Supplier." Previously, these households received a one-party check.

N.J.A.C. 10:89-3.1(a)1iii(1) clarified that energy costs included in rent which is subsidized, do not qualify as out-of-pocket payments for heating costs in determining potential eligibility for automatic payment clients.

N.J.A.C. 10:89-3.1(a)2 expanded the two-party generic check system to include those households which heat with oil, propane, kerosene and wood. The checks were made payable to the head of household and the generic co-payee "Your Heating Supplier." Previously, households which heated with propane, kerosene, coal and wood received a one-party check.

N.J.A.C. 10:89-3.2(f)5 included households in the two-party system that use a non-participating fuel dealer to receive a check in the name of the head of household and "Your Heating Supplier." Previously, these households received a one-party check.

N.J.A.C. 10:89-3.3(a)3i clarified that energy costs included in rent which is subsidized, do not qualify as out-of-pocket payments for cooling costs in determining eligibility for cooling clients.

N.J.A.C. 10:89-3.5(a) adjusted the maximum amount a household may receive in benefits. Previously, a household was allowed a maximum of \$900.00. Currently, a household is allowed a maximum of \$750.00.

N.J.A.C. 10:89-3.6 provided for a reduction in benefits. In Fiscal Year (FY) 92 and FY 93 it was necessary to reduce benefits in order to serve the maximum number of households. In FY 92, benefits were reduced by approximately 13 percent, and in FY 93, approximately 17 percent. The benefit tables were adjusted accordingly.

N.J.A.C. 10:89-4.1(a) adjusted the intake period to the end of February for both heating and cooling assistance.

N.J.A.C. 10:89-4.1(d)1i expanded, for verification purposes, the definition of the types of income that need to be documented (that is, UIB, disability, and support payments).

The proposed amendments at N.J.A.C. 10:89-1.1(a)2, 5.6(b)1 and 5.6(c)2 change the term "handicapped" to "disabled" in accordance with the Americans with Disabilities Act (ADA). (P.L. 101-336).

Social Impact

The social impact of the Home Energy Assistance Program in New Jersey is substantial, inasmuch as the benefits received by households help to preclude or mitigate hardship due to inadequate heating or cooling. The average number of households per year which received program benefits since 1990 was approximately 163,000. Failure to re-adopt N.J.A.C. 10:89 would cause the State's low income population unacceptable and unnecessary suffering. The amendments proposed with this readoption will, in and of themselves, not have a social impact as they bring language in line with A.D.A.

Economic Impact

Inasmuch as the Home Energy Assistance program is funded entirely by the Federal Government and Oil Overcharge Funds, there is no direct impact upon New Jersey taxpayers. There will be an indirect benefit to the public as a whole, since there will be an influx of Federal dollars into the State's economy. Since expenditures for the Home Energy Assistance program beginning in 1990 averaged approximately \$57 million dollars per year, the program has a great economic impact on the lives of the poor. Amendments proposed with this re adoption will not have an economic impact as they bring language in line with A.D.A.

Regulatory Flexibility Statement

This chapter has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules and proposed amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Home Energy Assistance Program to a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposed re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:89.

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

10:89-1.1 Fair hearings

(a) Any household is entitled to, and upon request will receive an administrative review or a fair hearing if any of the following occurs:

1. (No change.)

2. The household's application is neither approved nor denied within 30 days after application (or 20 days after application for elderly or [handicapped] **disabled** individuals), unless the delay was caused by the household's lack of cooperation in providing necessary and reasonable evidence;

3.-4. (No change.)

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

10:89-5.6 Outreach requirements

(a) (No change.)

(b) Outreach activities must be implemented to ensure the identification and provision of services to the following:

i. The elderly, ill, bedridden, [handicapped] **disabled** and young children;

2.-3. (No change.)

(c) CWA outreach responsibilities shall include, at a minimum, the following:

1. (No change.)

2. Distribution of blank application forms and instructions to cooperating outreach groups, agencies, and organizations so that they may be made available to the elderly and the [handicapped] **disabled**;

3.-5. (No change.)

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

INSURANCE**(a)****DIVISION OF ACTUARIAL SERVICES****Funeral Insurance Policies****Proposed New Rules: N.J.A.C. 11:4-25**

Authorized By: Andrew J. Karpinski, Commissioner,

Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:17-5.1d.

Proposal Number: PRN 1994-630.

Submit comments by January 4, 1995 to:

Donald Bryan, Acting Assistant Commissioner

Legislative and Regulatory Affairs

Department of Insurance

CN 325

Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 17B:17-5.1, which became effective December 21, 1993, requires the Department of Insurance to regulate funeral insurance policies. "Funeral insurance policy" is defined at N.J.S.A. 17B:17-5.1a to mean "any insurance policy or annuity contract that, at the time of issue, was intended to provide, or which was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement." "Provider" is defined in part to mean "a person, firm or corporation duly licensed and registered pursuant to the 'Mortuary Science Act' [N.J.S.A. 45:7-32 et seq.] to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed . . ." "Prepaid funeral agreement" is defined to mean "a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient." Several other terms are also defined in subsection a.

N.J.S.A. 17B:17-5.1b provides that the "issuance and marketing of any funeral insurance policy shall meet all of the terms and conditions specified by the Department of Insurance as would apply to any life insurance or annuity contract, and shall in addition meet the standards and requirements specified" at N.J.S.A. 45:7-82 to 45:7-94. These standards and requirements are subject to the regulatory jurisdiction of the State Board of Mortuary Science of New Jersey.

N.J.S.A. 17B:17-5.1c provides that "[a]ny insurance policy or annuity contract used as a funeral insurance policy on or after [December 21, 1993], whether issued within the State or outside of the State, whether on a group or individual basis, and any certificates, policies, contracts, applications, forms and related material, shall be subject to all of the laws and regulations of this State and the terms and conditions of the Department of Insurance, as though issued in this State, and shall at the time of filing be designated as being intended for use as a funeral insurance policy."

Finally, N.J.S.A. 17B:17-5.1d requires that the Commissioner of Insurance "adopt rules and regulations to implement the provisions of this section, including a regulation establishing the loss ratio for funeral insurance policies."

These proposed new rules are intended to fulfill the statutory mandate set forth above.

N.J.A.C. 11:4-25.1 sets forth the purpose and scope of the proposed new rules. As stated briefly at subsection (a), the purpose of the subchapter is "to establish rules for the filing and review of funeral insurance policies pursuant to N.J.S.A. 17B:17-5.1."

N.J.A.C. 11:4-25.2 sets forth definitions of words and terms pertinent to the proposed new rules.

N.J.A.C. 11:4-25.3 sets forth the submission requirements for forms stating at subsection (a) that "[n]o insurer shall issue or issue for delivery

any funeral insurance policy in this State that has not been filed pursuant to law on or after December 21, 1993, or as otherwise permitted under this subchapter." Subsection (b) applies the requirements of the subchapter "to all previously filed forms as well as any forms submitted in the future." Subsection (b) also provides that "[p]reviously filed forms which do not comply with these requirements shall be deemed withdrawn as of the operative date of this subchapter." Subsection (c) requires each insurer, within 120 days after the operative date of the subchapter, to submit a list of all funeral insurance policy forms currently filed which meet the requirements of these rules. Previously filed forms not listed are to be deemed withdrawn.

N.J.A.C. 11:4-25.4 sets forth at subsection (a) certain disclosure requirements that are also found in the Mortuary Science Act at N.J.S.A. 45:7-86. Subsection (b) requires issuers to submit to the Department of Insurance for prior review "[s]ubsequent amendments to or any replacement of the prepaid funeral agreement, or any new or additional prepaid funeral agreement or agreements to be used with a filed funeral insurance policy . . ."

N.J.A.C. 11:4-25.5 sets forth the loss ratio standard for funeral insurance policies as specifically required by N.J.S.A. 17B:17-5.1d.

N.J.A.C. 11:4-25.6 provides for severability.

N.J.A.C. 11:4-25.7 allows the Commissioner of Insurance to assess penalties, not exceeding \$2,000 for each violation, against persons found to be in violation of the regulation.

Taken together, the statutory provisions at N.J.S.A. 45:7-82 to 45:7-94, N.J.S.A. 17B:17-5.1, and these proposed new rules will provide consumers with a degree of disclosure and protection not previously available with regard to funeral insurance policies and prepaid funeral agreements.

Social Impact

The proposed new rules will better facilitate regulatory oversight of life insurance and annuities used to fund prepaid funeral agreements in New Jersey by providing specific rules for the filing of funeral insurance policies and the review of prepaid funeral agreements.

Consumers who choose to prearrange their final expenses by purchasing life insurance or annuities to fund prepaid funeral agreements will benefit from these rules. Senior citizens, in particular, will benefit from a greater degree of protection against failure to disclose, misleading information and excessive pricing.

Economic Impact

Consumers of prepaid funeral agreements and associated funeral insurance policies will derive an economic benefit from these proposed new rules since they will be better informed about these products and thus better able to make reasoned, appropriate and beneficial decisions that will more likely result in their purchasing a product which fits their actual needs.

Insurers and providers alike will be required to adhere to stricter standards when dealing with funeral insurance policies and the prepaid funeral agreements that accompany them. Adherence to new loss ratio standards pursuant to proposed N.J.A.C. 11:4-25.5 may result in a reduced profit margin for insurers, but this provision is required by the Legislature for the protection of consumers and is believed by the Department of Insurance to be a fair and reasonable standard.

The Department of Insurance anticipates that there will be additional costs in monitoring compliance with the proposed new rules. However, it is expected that these costs will be contained within current budget limitations.

Regulatory Flexibility Analysis

The Department of Insurance believes that few, if any, insurers subject to the proposed new rules are "small businesses" as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, compliance with the new rules imposes no undue burden or adverse economic impact upon insurers which may qualify as "small businesses."

As evidenced by proposed N.J.A.C. 11:4-25.3(c), insurers are already required to file funeral insurance policy forms with the Department of Insurance. Proposed N.J.A.C. 11:4-25.4(a) will now require that such filings be accompanied by a copy of the prepaid funeral agreement to which the policy is related. Small companies may incur additional administrative expenses in complying with this new requirement, but the cost of compliance is not expected to be great and little change to the companies' present operations is anticipated.

Insurers presently maintain, or otherwise provide for, the type of services which may be required in order to comply with the new rules.

All insurers should be able to easily absorb whatever additional costs may be incurred.

Because the cost of compliance with these proposed new rules is expected to be minimal and represents no undue adverse economic impact upon small businesses, no exceptions for compliance by small businesses have been incorporated into the rules.

Full text of the proposed new rules follows:

SUBCHAPTER 25. FUNERAL INSURANCE POLICIES

11:4-25.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules for the filing and review of funeral insurance policies pursuant to N.J.S.A. 17B:17-5.1.

(b) This subchapter shall apply to all life insurance policy or annuity contract forms delivered or issued for delivery, marketed, used or designated as intended for use, as funeral insurance policies after the operative date hereof.

(c) Any insurance policy or annuity contract used as a funeral insurance policy on or after December 21, 1993, whether issued within the State or outside of the State, whether on a group or individual basis, and any certificates, policies, contracts, applications, forms and related material, shall be subject to all the laws and regulations of this State and the terms and conditions of the Department of Insurance, as though issued in this State, and shall at the time of submission and filing be designated as being intended for use as a funeral insurance policy.

11:4-25.2 Definitions

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

"Funeral insurance policy" means any insurance policy or annuity contract (other than "credit life insurance" as defined at N.J.S.A. 45:7-82) that at the time of issue, was intended to provide or which was explicitly marketed for the purpose of providing funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or "P.O.D." account, established in accordance with N.J.S.A. 2A:102-13 et seq. or N.J.S.A. 3B:11-16 et seq., which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his or her guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Provider" means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," N.J.S.A. 45:7-32 et seq., to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

1. Operating a duly registered mortuary in accordance with N.J.S.A. 45:7-32 et seq. and the regulations promulgated thereunder;
2. Having his, her or its business and practice based within the physical confines of the registered mortuary; and
3. Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

11:4-25.3 Forms submission requirements

(a) No insurer shall issue or issue for delivery any funeral insurance policy in this State that has not been filed pursuant to law

on or after December 21, 1993, or as otherwise permitted under this subchapter.

(b) The requirements of this subchapter apply to all previously filed forms as well as any forms submitted in the future. Previously filed forms which do not comply with these requirements shall be deemed withdrawn as of the operative date of this subchapter.

(c) Within 120 days after the operative date of this subchapter, each issuer shall submit a list of all funeral insurance policy forms currently filed which meet the requirements contained herein. An executive officer of the company shall certify that the forms listed comply with these rules. Any previously filed form not listed shall be deemed withdrawn.

11:4-25.4 Disclosure requirements

(a) The submission for the filing of any funeral insurance policy shall be accompanied by a copy of the prepaid funeral agreement to which the policy is related. The prepaid funeral agreement shall provide that:

1. Cancellation of the funeral arrangements will not cancel or otherwise invalidate the funeral insurance policy;

2. Cancellation, withdrawal of, or loans made against, the proceeds or cash value of the policy shall void any price guarantees and indicate, therefore, the likelihood that inadequate funds will exist to pay for the original arrangements as intended; and

3. Cancellation of the prepaid funeral agreement will not result in the refund of premiums paid.

(b) Subsequent amendments to or any replacement of the prepaid funeral agreement, or any new or additional prepaid funeral agreement or agreements to be used with a filed funeral insurance policy, shall be submitted to the Department of Insurance for prior review to assure compliance with the requirements of (a) above.

11:4-25.5 Loss ratio standard

(a) If the funeral insurance policy is a life insurance contract, the death benefit payable thereon shall not be less than the amount of premiums paid with interest at the rate used to determine non-forfeiture values under the contract.

(b) If the funeral insurance policy is an annuity contract, the benefit payable thereon shall not be less than the applicable amount required by the standard nonforfeiture law for individual deferred annuities at N.J.S.A. 17B:25-20.

11:4-25.6 Severability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

11:4-25.7 Penalties

If, after notice and an opportunity for hearing, the Commissioner of Insurance finds that a person has violated this regulation or the enabling legislation, a penalty, in addition to any other penalty, not exceeding \$2,000 for each violation, may be imposed and shall be collected and enforced pursuant to law including, but not limited to, N.J.S.A. 2A:58-1 et seq.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Optional Benefit Riders

Proposed Amendment: N.J.A.C. 11:21-3.2

Authorized By: New Jersey Small Employer Health Benefits

Program Board, Maureen E. Lopes, Chair.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A.

17B:27A-51, P.L. 1994, c.11 and P.L. 1994, c.97.

Proposal Number: PRN 1994-624.

Submit written comments by January 4, 1995 to:

Kevin O'Leary, Executive Director

New Jersey Small Employer Health Benefits Program

20 West State Street, 10th Floor

CN 325

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Small Employer Health Benefits ("SEH") Board proposes amending N.J.A.C. 11:21-3.2, which rule requires a carrier to submit a filing with the Board and, under certain circumstances, with the Commissioner of Insurance, before it may market optional benefit riders. The rule also sets forth procedures governing the Board's review of these filings.

The SEH Board proposes increasing the number of copies of the filing submitted to the Board from three to eight and decreasing the number of copies filed with the Commissioner from three to one. These changes are necessary as they more closely conform with the needs of the Department of Insurance and the Board in reviewing these filings. The SEH Board is requiring additional copies to expedite its review process.

The proposed amendments also attempt to clarify the materials required for submission, which materials shall include copies of the rider amending the standard group policy and certificate forms, copies of the standard group policy and certificate page or pages affected by the rider, and copies of a certification as set forth in the rule. A copy of the entire policy form is no longer required by this rule. The SEH Board believes that these clarifications are necessary based on its review of optional benefit riders received to date, a large proportion of which have not included information needed by the SEH Board.

The proposed amendment also extends the time in which the Board has to review the filings to 45 days. Additionally, the proposed amendment clarifies that the review period commences upon the Board's receipt of the filing. These changes are necessary because the Board has found that the current 30 day review period is insufficient to thoroughly review the filings.

Lastly, the amendment adds a subsection on administrative services which provides that a carrier may provide for alternative means of administering aspects of the standard plans. This section does not permit carriers to change the benefits provided in the standard policy forms and riders. The SEH Board proposes this addition to clarify that such arrangements are permitted and to clarify that the benefits contained in the standard policies and riders must not be altered to accommodate such arrangements.

Social Impact

The proposed amendments to N.J.A.C. 11:21-3.2 primarily will affect carriers filing to market optional benefit riders. These proposed amendments are intended to make a carrier's filing requirements more clear.

Additionally, consumers may be affected since the extension of the Board's review period to a more realistic deadline will ensure that the Board is able to more thoroughly review a carrier's filing for completeness and compliance with the law. The extended review period will better enable the SEH Board to work with the carrier to ensure that its filing is complete and in substantial compliance with the law.

The proposed amendment which provides that a carrier may enter into contracts for certain administrative services is not expected to have a large social impact as carriers have always been permitted to arrange for these services.

Economic Impact

It is not anticipated that the amendments to N.J.A.C. 11:21-3.2 will have any direct economic impact on carriers or consumers. To the extent that the requirements for filing optional benefit riders is made more clear by these proposed amendments, however, carriers may experience some savings with respect to compliance costs.

Regulatory Flexibility Analysis

The SEH Board believes that all carriers subject to these rules have in excess of 100 employees or are located outside of the State of New Jersey. Therefore, a regulatory flexibility analysis is not required. However, to the extent that any carrier might be considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, the following analysis would apply.

The proposed amendments to N.J.A.C. 11:21-3.2(d) would alter existing filing requirements. On balance, these changes would neither expand nor reduce, the existing requirements. Through these amendments, the Board seeks the minimum amount of information it deems essential to evaluate whether a carrier is offering optional benefit riders in conformance with the law.

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

11:21-3.2 Optional benefit riders to standard plans and administrative functions

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

(d) In addition to the optional benefit riders listed in (c) above, members may offer riders that revise in any way the coverage offered by **standard health benefit** Plans A, B, C, D, E and HMO, subject to the provisions set forth in (d)1 through 5 below.

1. Before a member may sell a rider or amendment thereof that decreases any benefits or decreases the actuarial value of **standard health benefit** Plans A, B, C, D, E or HMO, the member shall file the rider or amendment thereof for informational purposes with the Board, and for approval by the Commissioner. No rider filed with the Commissioner may be sold until approved by the Commissioner [and the carrier has either received appropriate notice from the Board or the filing is deemed to be in substantial compliance under (d)5 below].

2. Before a member may sell a rider or amendment thereof that increases any benefits or increases the actuarial value of **standard health benefit** Plans A, B, C, D, E or HMO, the member shall file the rider or amendment thereof with the Board for informational purposes.

3. In addition to (d)1 and 2 above, any benefit rider or amendments thereof shall be subject to the provisions of Sections 2, 3(b), 6, 7, 8, 9 and 11 of P.L. 1992, c.162.

4. A member making an informational filing to the Board pursuant to [(d)1 or] (d) above shall:

i. Submit **an original and seven copies** of the filing and any related materials to the Board [in triplicate] at the address specified at N.J.A.C. 11:21-1.3, and one copy to the Commissioner, if required by (d)1 above, at the New Jersey Department of Insurance, Office of the Life and Health Actuary, 20 West State Street, CN-325, Trenton, New Jersey, 08625, Attn: SEH Optional Benefit Rider Filing;

ii. Submit **copies of the rider or riders which amend the standard group policy and certificate forms, which rider or riders shall include cross-references to the standard group policy and certificate provisions or sections and/or pages which are being modified;**

[ii.iii. Specify whether the rider or amendment thereof is to be used in connection with **standard health benefit** Plans A, B, C, D, E or HMO and provide clear and conspicuous notice of such on the forms submitted for each rider;

[iii. Submit, in triplicate, a copy of each health benefits plan to be used in connection with a rider or amendment thereof clearly marked to show how the rider or amendment thereof changes the language of Plan A, B, C, D, E, or HMO.]

iv. **The standard group policy and employee certificate language shall not be altered, and the benefit modifications shall appear only on the rider or riders;**

v. **Submit copies of the standard group policy and certificate page or pages which are affected by the rider or riders marked to identify which provisions are affected by the rider or riders; and**

[iv.vi. Submit **copies** of a certification signed by a duly authorized officer of the member that states clearly:

(1) Whether the rider or amendment thereof increases or decreases the benefits or actuarial value of **standard health benefits** Plan A, B, C, D, E, or HMO [and include a detailed actuarial memorandum that supports the statement of actuarial value];

(2) That the filing is complete and in accordance with all the requirements of this subsection;

(3) That the member will offer the rider or amendment thereof to any small employer seeking to purchase the health benefits plan it modifies; and

(4) That a rate filing has been made with the Commissioner pursuant to N.J.A.C. 11:21-[10]9.

5. The Board shall notify a member in writing of its determination of whether an informational filing is complete and in substantial compliance with this subsection, within [30] **45** days of the **Board's receipt** of the member's submission of a rider or amendment thereof. If the Board does not notify a member of its determination with respect to an informational filing within [30] **45** days of [the date] **the Board's receipt of the submission [thereof]**, the informational filing shall be deemed complete.

i.-ii. (No change.)

iii. If the Board takes no action within [30] **45** days of **receipt by the Board** of a member's submission of information requested by the Board to complete an informational filing, the filing shall be deemed to be in substantial compliance.

(e) **A carrier may provide for alternative means of administering aspects of the standard forms which administration does not affect the benefits provided in the standard policy forms and riders. Administration includes, but is not limited to, administration of claims, COBRA, premium collection, and issue functions. The delegation of administrative functions shall be achieved by a separate contract between the carrier and/or the small employer, and a third party. Such arrangements shall not alter the standard group policy and certificate language.**

LABOR**(a)**

**DIVISION OF UNEMPLOYMENT INSURANCE AND
DISABILITY INSURANCE FINANCING**

**Contributions, Records and Reports
Services Excluded from Coverage by the
Unemployment Compensation Law**

Proposed New Rules: N.J.A.C. 12:16-23

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 43:21-1 et seq.

Proposal Number: PRN 1994-626.

A **public hearing** on the proposed new rules will be held on the following date at the following location:

Wednesday, December 28, 1994

10:00 A.M. to 12:00 P.M.

New Jersey Department of Labor

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey 08625-0110

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by January 4, 1995 to:

Deirdre L. Webster, Regulatory Officer

Office of Regulatory Services

Department of Labor

CN 110

Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed new rules at N.J.A.C. 12:16-23 set procedures for employers in applying the exclusions listed in the New Jersey Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(1)(D) and 19(i)(7) through 19(i)(9). Section 19(i)(7) clearly provides that a corresponding exemption under the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301 et seq., must exist before the exemptions in N.J.S.A. 43:21-19 are applicable.

N.J.A.C. 12:16-23.1 clarifies that, for an exclusion to be applicable under the New Jersey Unemployment Compensation Law, there must be a corresponding exclusion under FUTA. Section 3304 of FUTA requires that a State law, as a condition of approval for Federal Unemployment tax credit, provide that benefits be payable based on services performed for certain classes of individuals. Failure to provide these benefits, paid as a result of taxes collected, creates a conformity issue which may result in noncertification of FUTA credit for employers. N.J.A.C. 12:16-23.1(b)1 places the burden of proof on the employer to show that it is either exempt under FUTA or otherwise not subject to tax imposed by FUTA.

N.J.A.C. 12:16-23.2 enumerates certain documentation that can be submitted as proof of exemption.

Social Impact

These proposed new rules will enable the Department to accomplish more effectively its functions under the New Jersey Unemployment Compensation Law. In addition, by clarifying the issue of exemptions permitted by both the State and FUTA, an employer will more easily be able to conform to the appropriate laws and regulations of the Department, thereby avoiding any unnecessary penalties for the failure to properly report covered workers.

Economic Impact

The proposed new rule will have no economic impact since the tax exemptions are set by Federal and State statutes and not regulation.

Regulatory Flexibility Analysis

The proposed new rules will have minimal impact in terms of imposing additional reporting, recordkeeping or compliance requirements on small businesses, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Only employers who incorrectly have treated certain individuals as non-covered employees will now have to report them and keep records relative to their employment. Costs incurred will be administrative in nature, and no professional services needed to comply. As the rules seek to clarify the matter of exemptions, and thus facilitate compliance with appropriate law, no lesser requirements or exemptions based on business size are provided.

Full text of the proposed new rules follows:

SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

12:16-23.1 Exempt services

(a) Persons who perform services and receive remuneration are employees under the Unemployment Compensation Law unless the services meet the Unemployment Compensation Law definition of independence set forth in N.J.S.A. 43:21-19(i)(6).

(b) The Unemployment Compensation Law lists certain categories of services as being exempt from Unemployment Compensation coverage. However, these services are only exempt if there is a corresponding exemption under the Federal Unemployment Tax Act ("FUTA") or the services are otherwise not subject to tax or coverage under FUTA.

1. If an employing unit pays remuneration for services not specifically listed as exempt under the provisions of FUTA and seeks an exemption under this section, the employing unit has the burden of proof to show that the services are either exempt under FUTA or otherwise not subject to the tax imposed by FUTA.

2. The Division of Unemployment Insurance/Disability Insurance Financing will hold such class of individuals or type of service in

covered employment pending receipt of proof of exemption under N.J.A.C. 12:16-23.2 below and determination of exemption.

12:16-23.2 Evidence of FUTA Exemption

(a) Evidence that services are not covered under FUTA may include among other things:

1. Private letter ruling(s) from the Internal Revenue Service;
2. A recent employment tax audit conducted by the Internal Revenue Service which determined that there was to be no assessment of employment taxes for the services in question; however, the determination must not have been the result of the application of Section 530 of the Revenue Act of 1978;
3. Determination letter(s) from the Internal Revenue Service; and/or
4. Documentation of responses to the 20 tests required by the Internal Revenue Service to meet its criteria for independence. These tests are enumerated in IRS Revenue Rule 87-41.

(b) The Division reserves the right to examine the circumstances surrounding the relationship between the parties to determine if the conditions of the relationship with the employer have changed.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF NURSING

Board of Nursing Rules

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

13:37

Proposed Repeals and New Rules: N.J.A.C. 13:37-2, 3, 4 and 5

Proposed Repeal: N.J.A.C. 13:37-12

Authorized By: State Board of Nursing, Sister Teresa L. Harris, Executive Director.

Authority: N.J.S.A. 45:11-23.

Proposal Number: PRN 1994-628.

Submit written comments by January 4, 1995 to:

Sister Teresa Harris, Executive Director
State Board of Nursing
Post Office Box 45010
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Nursing is proposing to readopt N.J.A.C. 13:37, with amendments. These rules are scheduled to expire on January 23, 1995 pursuant to Executive Order No. 66(1978).

In compliance with the Executive Order, a Board subcommittee undertook a thorough review of the existing provisions of N.J.A.C. 13:37 in order to delete unnecessary or unreasonable rules and to update existing rules when appropriate. The Board believes the rules proposed for readoption, as amended, are necessary, reasonable, understandable and responsive to the purposes for which they were promulgated. These rules have had an advantageous impact on the regulation and conduct of the nursing profession by enabling the Board to have in place procedures which serve and protect the public's best interests.

Following is a summary of each subchapter of N.J.A.C. 13:37 together with a summary of amendments, if applicable, and the rationale therefor.

Much of subchapter 1, which sets forth requirements for programs in nursing education, has been recodified to provide section titles, and existing N.J.A.C. 13:37-1.3 and 1.4 have been more appropriately codified in new subchapter 5. In addition, amendments are proposed to clarify existing language and to update professional standards to reflect current nursing practice. The following summary of amendments to subchapter 1 addresses the proposed new requirements and clarifying amendments that are not self-explanatory.

1. Under existing regulations, a nursing program is placed on conditional accreditation if less than 75 percent of its graduates achieve passing grades on the licensing examination. A program placed on

conditional accreditation receives assistance from the Board and additional Board oversight. Based in part upon a survey conducted in the late 1980's, the Board is proposing to raise the passing rate to 80 percent. The study concluded that programs with low passing rates had many problems that impacted on the success of their graduates on the examination, including problems with admission and promotion policies, remediation and curriculum. The Board believes that a higher passing rate will help to ensure that nursing programs maintain their overall effectiveness and will have a positive impact on the success of their graduates. To date, 31 states have promulgated the 80 percent pass rule, and support for a minimum passing score of 80 percent has been offered by the Council of Associate Degree Nursing Programs.

2. In N.J.A.C. 13:37-1.6, reference to scores on "two consecutive licensing examinations" has been deleted as obsolete. Beginning in April 1994, the national nursing licensure examinations (NCLEX-RN and NCLEX-PN) have been given by appointment at various test sites throughout the State and will continue to be given on an on-going year-round basis, six days a week. Educational Testing Service (ETS), the examination administrator, will report scores to the Board on an annual basis, and decisions on placing a program on probation will be based upon the scores reported by ETS for two consecutive years.

3. The proposed amendment to N.J.A.C. 13:37-1.8(a) would require a nursing program's philosophy and objectives to be consistent only with the Act, and not with the philosophy and objectives of the controlling institution. The Board has no authority over standards set by the controlling institution, and it wishes to maintain its independent decision making authority with regard to changes in national standards adopted by a controlling institution contrary to the Act or the Board's wishes. N.J.A.C. 13:37-1.12 has been similarly amended to give the nursing program the authority to develop and enforce criteria consistent with Board requirements. The Board has deleted as overprescriptive the requirement in N.J.A.C. 13:37-1.8(b) that the nursing program "give consideration to the development of the student as a person, practitioner, and citizen."

Amendments to N.J.A.C. 13:37-1.10(b)4 are proposed to clarify the distinction between continuing clinical competency and continuing education and to underscore the necessity for faculty to both engage in clinical practice and participate in advanced academic courses on an on-going basis.

A new subsection (g) is proposed to be added to N.J.A.C. 13:37-1.13 to clarify that all professional nursing programs should prepare the practitioner to provide care in a variety of areas. The Board has noted that some associate degree and diploma programs do not teach community nursing. Since nursing practice continues to shift from the hospital to the community and home, this requirement will ensure that nurses are prepared to offer necessary services in those settings. It should also be noted that in April 1994 the National League for Nursing, the national accrediting body for schools of nursing, included this requirement in its criteria.

Existing regulations concerning the different categories of licensure are codified separately in subchapters 2 through 5. In compliance with Executive Order 66(1978), these four subchapters have been condensed into proposed new subchapter 2 in order to avoid repetition of several identical regulations; for example, passing score on the examination; practice as a graduate nurse; approved settings for graduate nurse practice. Following is a summary of proposed substantive changes to existing subchapters 2 through 5 (all of which are now codified in new subchapter 2).

1. The Board is proposing to prohibit, in N.J.A.C. 13:37-2.1(b), a graduate professional nurse from taking the LPN examination unless he or she has completed an LPN program. The intent here is to avoid situations in which an RN-educated LPN may be practicing at a level outside of the LPN scope of practice. The Board believes that the philosophy, objectives and conceptual framework of RN and LPN educational programs are far different, thus making RN educational preparation an inappropriate substitution for the practical nursing educational requirement. The Board also points out that Federal law permits a nurse holding a professional visa to take only the professional examination.

2. Revisions have been made to codify the long-standing practice that the Commission on Graduates of Foreign Nursing Schools (CGFNS) reviews credentials of graduates of foreign professional nursing programs. The proposed new rules require CGFNS certification rather than submission to the Board of student records. Since CGFNS does not currently certify foreign educated LPNs, these individuals will continue to submit documentation to the Board.

3. Because high school transcripts generally do not provide the Board with useful information in evaluating candidates for LPN licensure, the Board will no longer require LPN applicants to submit a high school transcript.

4. The new testing procedure provides examination results immediately, thus eliminating the need for a permit to work pending completion of the examination process.

Proposed new rules in subchapter 3 permit graduate nurses to work under direct supervision in licensed acute, long-term, rehabilitation and/or psychiatric hospital facilities, provided they apply to the Board and the testing service and pass the examination within 60 days of graduation (or, for foreign nurse graduates, within 60 days of first arrival in the United States). The 60-day period for passing the examination takes into consideration that the examination process now includes a guarantee of seating within 30 days of calling for an appointment. Sixty days will allow the candidate to take a review course while still providing protection for the public.

Subchapter 4 sets forth requirements for licensure by endorsement. A new requirement, intended to provide the Board with additional essential consumer protection information, would require written verification of licensure in good standing not only from the state of original licensure, but also from any state of current licensure. The requirement that the endorsement applicant be licensed by examination in a jurisdiction which is a member of the National Council of State Boards of Nursing will not have any impact upon applicants because all states currently are members of this organization.

Several existing provisions have been recodified in new subchapter 5: N.J.A.C. 13:37-5.3, Notification of change of address, and 5.4, Reporting of unlawful conduct, formerly were codified at N.J.A.C. 13:37-1.3 and 1.4. Self-reporting regulations set forth in N.J.A.C. 13:37-5.5 previously applied only to nurse practitioners and nurse anesthetists. These regulations have been recodified in subchapter 5 because they are applicable to every nurse and homemaker-home health aid licensed and/or certified under the Act. The Board's fee schedule has been amended and recodified at N.J.A.C. 13:37-5.8. Reference to a pro rated fee has been deleted as unnecessary: renewal applications are sent to one-half of Board licensees in one year and one-half in the next, and new licensees are always included in the first licensing cycle after application. A fee for the proposed new inactive license category has been established, and paragraph (a)7 has been renamed "lapsed license fee" to clarify that this fee is payable upon reinstatement of a lapsed license only and not upon reinstatement following a disciplinary proceeding.

New provisions include the following: N.J.A.C. 13:37-5.1 states that licensure in good standing is a prerequisite to engaging in nursing practice. It is well-established that a dually licensed nurse (RN and LPN) who is employed as an LPN will be held to the level of responsibility of an RN regardless of employment status. In order to ensure that a nurse will work only within the scope of practice for which he or she was employed, N.J.A.C. 13:37-5.2 requires a dually licensed nurse who wishes to limit his or her responsibility to that of an LPN, to terminate RN licensure or maintain RN licensure in inactive status.

N.J.A.C. 13:37-5.6 and 5.7 address procedures for biennial license renewal and reinstatement. An inactive license classification is proposed in order to increase efficiency in licensing and enforcement procedures. An individual whose license has been inactive, suspended or revoked for more than two years will be required to complete a refresher course as a condition of reinstatement.

Subchapter 6 includes regulations regarding nursing procedures and delegation of selected nursing tasks. This subchapter is proposed for readoption without change.

Subchapter 7, Certification of nurse practitioners/clinical nurse specialists, was promulgated on May 2, 1994. See 26 N.J.R. 1876(a). This subchapter is proposed for readoption without change, except that N.J.A.C. 13:37-7.12 has been recodified at N.J.A.C. 13:37-5.5 for the reasons set forth above.

Subchapters 8 through 12 are reserved.

Subchapter 13, Nurse anesthetist practice, is proposed for readoption without change, except that N.J.A.C. 13:37-13.1(c) on self-reporting has been recodified at N.J.A.C. 13:37-5.5.

Subchapter 14, Certification of homemaker-home health aides, was promulgated on June 6, 1994 and is proposed for readoption without change.

Social Impact

The rules proposed for readoption establish professional practice standards and ensure that nurses and homemaker-home health aides remain

accountable to the public and to the Board. The proposed amendments will continue the protection afforded by these regulations by providing up-to-date practice standards that help maintain the quality of nursing and home care. The new graduate nurse practice rules will ensure that graduate nurses provide responsible care pending successful completion of the examination.

As amended, the rules proposed for readoption also benefit the Board and licensees by providing various procedures for the orderly administration of the Board and by establishing clear practice guidelines.

Economic Impact

The rules proposed for readoption will have an economic impact upon licensees and certificate holders, who must pay biennial licensing and/or certification fees and who are expected to spend what is necessary to maintain their proficiency in the manner prescribed by the Board. The Board believes that the economic impact upon the licensee is outweighed by the benefits these rules provide in maintaining professional practice standards that serve to ensure responsible nursing and home care. The Board points out that the fee schedule is proposed for readoption without increase.

The following analysis applies to the proposed amendments.

1. An associate degree or diploma program that does not include a course on community nursing will be required to offer one. Funding costs would depend upon each program's existing staff and facilities. The Board believes that in most instances this requirement may be met by a restructuring of the courses offered in order to meet current needs and not by increasing the number of courses offered.

2. Graduates of professional nursing programs will no longer have the option of taking the LPN examination unless they have completed the LPN educational requirement, and therefore may have fewer employment opportunities. As stated, however, the Board finds the RN program to be an inappropriate substitute for an LPN program. In any event, frequent testing is expected to be economically beneficial to graduate nurses to the extent that they engage in licensed practice earlier than was previously possible. A dually licensed RN who wishes to be held to the professional responsibility level of an LPN will pay only one-half of the biennial license fee to maintain inactive status.

3. LPNs will save the costs involved in obtaining and submitting proof of high school education.

4. Graduate nurses will no longer be required to pay temporary licensing fees in order to work pending examination results. The new examination procedure enables graduate nurses to practice for a limited time pending successful completion of the examination.

5. Applicants for licensure by endorsement will now be required to obtain written verifications of licensure from any state of current licensure as well as the state of original licensure. The Board estimates that the additional cost to an applicant licensed in one state will not be more than \$30.00.

6. An individual whose license has been inactive, suspended or revoked for more than two years must complete a refresher course as a condition of reinstatement. The cost of a refresher course is comparable to the cost of a college level continuing education course.

7. Use of CGFNS as an accrediting agency is a cost savings for the Board and therefore keeps licensing costs down.

Because funding of the Board's operation is attained by the fee structure now in place, failure to readopt would place the Board's operations in jeopardy.

Regulatory Flexibility Statement

The rules proposed for readoption do not impose reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This chapter applies to individual universities and colleges offering nursing programs, all of which employ more than 100 people, and to individual applicants/licensees. 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. 13:37.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:37-2, 3, 4, 5 and 12.

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

SUBCHAPTER 1. PROGRAMS IN NURSING EDUCATION

13:37-1.2 [Criteria] Eligibility for accreditation

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

13:37-1.3 Criteria for granting and withdrawing accreditation

[(c) Accreditation shall be granted as follows:]

[1.](a) **Except as set forth in (b) below, full [Full] accreditation** shall be granted to any eligible program meeting all the standards and requirements of this subchapter. A certificate of full accreditation shall be issued in accordance with N.J.S.A. 45:11-34.

(b) **Provisional accreditation shall be granted to a new program that meets the standards and requirements for accreditation set forth in this subchapter. Upon Board receipt and evaluation of the results of the licensing examination of the first graduating class, the program shall be eligible for full accreditation.**

(c) A Board staff field representative shall visit all nursing programs and clinical affiliates at regular intervals as determined by the Board. The field representative shall examine the program for compliance with this subchapter and shall prepare a written report for the review of the Board.

(d) **The Board may withdraw program accreditation in the event the program does not comply with the rules of this subchapter. The institution shall be given the opportunity for a hearing to appeal this decision.**

(e) **The eligibility of students currently enrolled in a program to sit for the licensing examination shall not be affected in the event a program has its accreditation withdrawn or in the event of a change in accreditation status from full to conditional.**

13:37-1.4 Conditional accreditation

[2.](a) [Conditional accreditation shall be given to any accredited] **The Board shall place an accredited program on conditional accreditation if:**

1. **The program [which subsequently] fails to meet or maintain the standards and requirements for accreditation contained in this subchapter; or**

2. **Less than 80 percent of its graduates achieve passing grades in the licensing examination.**

(b) The Board may limit the number of students enrolled in [such] a program **placed on conditional accreditation.** The institution shall be given the opportunity for a hearing to appeal this decision.

[i. A program shall be placed on conditional accreditation if less than 75 percent of its graduates achieve passing grades in the licensing examination. The program shall be sent written notification of conditional accreditation by the Board.]

(c)[ii. The Board may place a program on conditional accreditation if it fails to comply with any of the rules of the Board contained in this subchapter.] The program shall be notified by letter of conditional accreditation by the Board including [the] **any conditions** which must be corrected within a specific time period established by the Board.

(d) **The Board may, upon request, remove a program [Removal] from conditional accreditation [may be granted] if it can be demonstrated that the standards and requirements contained in this subchapter have been met.**

[iii. A program placed on conditional accreditation shall request Board action to remove the conditional accreditation status.

3. **Provisional accreditation shall be granted to a new program that meets the standards and requirements for accreditation until the licensing examination results of the first graduating class are received and evaluated by the Board.]**

13:37-1.6 Probation

[4.] A program may be placed on probation when its graduates fail to achieve [75] **80 percent passing on [two consecutive] the licensing examinations for two consecutive years. [The] A program placed on probation shall not admit new or transfer students into the program. The institution shall be given the opportunity for a hearing to appeal this decision.**

13:37-1.7 Plans of organization and administration

[(d) Plans of organization and administration shall be subject to the following:]

Recodify existing (d)1 through 3 as (a) through (c) (No change in text.)

13:37-1.8 Program philosophy and objectives

[(e) The requirements for the philosophy and objectives of the program follow:]

[1.](a) The nursing program shall have in writing a defined statement of philosophy and program objectives which are consistent with [those of the controlling institution and with the law regulating the practice of nursing (N.J.S.A. 45:11-23 et seq.)] **the definition of nursing as set forth in N.J.S.A. 45:11-23(b);**

[2.](b) The philosophy and program objectives shall be developed by the faculty [and give consideration to the development of the student as a person, practitioner, and citizen];

Recodify existing (e)3 through 7 as (c) through (g) (No change in text.)

13:37-1.9 Qualifications of program administrator

[(f) Administrator qualifications follow:]

1.](a) [Administrator of] **In Registered Nursing Programs (Baccalaureate):** In, in addition to the qualifications contained in [(g)1 below] N.J.A.C. 13:37-1.10, the administrator shall hold a masters degree with a major in nursing and an earned doctoral degree.

[2.](b) [Administrator of] **In Registered Nursing Programs (Associate Degree and Diploma):** In, in addition to the qualifications contained in [(g)1 below] N.J.A.C. 13:37-1.10, the administrator shall hold a minimum of a masters degree with a major in nursing.

[3.](c) [Administrator of] **In Licensed Practical Nursing Programs:** In, in addition to the qualifications contained in [(g)1.i, iii, iv and v below] N.J.A.C. 13:37-1.10(a)1, 3, 4 and 5, the administrator shall hold a minimum of a bachelors degree in nursing with additional courses in education.

(d) **All degrees shall be earned at accredited schools of nursing.**

13:37-1.10 Faculty qualifications

[(g) Faculty qualifications follow:]

[1.](a) [The program shall provide and maintain a qualified faculty.] For purposes of this [subsection] section, faculty shall include persons from out-of-state nursing programs who are responsible for teaching students in a clinical affiliate located in New Jersey.

(b) [The qualifications for all faculty members shall include:] **All individuals with faculty responsibilities shall have the following qualifications:**

[i.1. Current registration in New Jersey as a professional nurse;

[ii.2. Graduation from accredited Masters Degree Program with a major in nursing, **except that**

i. **Faculty in Licensed Practical Nursing Programs shall hold a minimum of a bachelors degree with a major in nursing; and**

ii. **Instructors in any school operated by a public board of education in any local or county school district shall meet the professional qualification requirements of the school district;**

NOTE: Only those faculty members who began their employment on or before September 1, 1981 may qualify for an exemption from this requirement in accordance with previous Board policy.

[iii.3. Academic, professional/clinical experience qualifications appropriate to the specific area of responsibility of the appointed position. [For purposes of this subchapter, all degrees shall be earned at accredited schools of nursing];

[iv.4. Maintenance of up-to-date professional competence (that is, participation in on-going clinical practice[.]);

5. **Maintenance of up-to-date continuing education[,] (that is, participation in) professional conferences, workshops, seminars, advanced academic courses, research projects and writing);**

[v.6. Compliance with all academic and professional qualifications for appointment required by the sponsoring institution.

(c) **All degrees shall be earned at accredited schools of nursing.**

[NOTE: Only those faculty members who began their employment on or before September 1, 1981 may qualify for an exemption from this requirement in accordance with previous Board policy.]

[2.](d) Each newly appointed faculty member shall file a record of professional preparation and experience with the Board.

[3. Faculty in Licensed Practical Nursing Programs: In addition to the qualifications contained in (g)1i, iii, iv and v above, all instructors shall hold a bachelors degree with a major in nursing. Instructors in any school operated by a public board of education in any local or county school district shall meet the same professional qualifications.]

13:37-1.11 Required number of faculty

[(h)](a) The number of faculty members in the program shall be sufficient to achieve [the goals as stated in its philosophy and objectives] **program goals.** The required number of faculty shall be determined by the following factors:

1.-4. (No change.)

13:37-1.12 Development and implementation of nursing program

[(i)](a) Responsibility for developing and implementing the program shall be placed in the nursing faculty. Faculty responsibilities shall include, but not be limited to:

1. Development and [implementation] **maintenance of a written statement of the purposes, philosophy and objectives of the program, consistent with the requirements of N.J.S.A. 45:11-23 et seq.;**

2. Active participation in the construction, implementation, teaching and evaluation of the curriculum **consistent with the requirements of N.J.A.C. 13:37-1.13;**

3. Participation in the establishment and implementation of criteria for faculty promotion and retention;

4. Establishment and implementation of criteria for student admission, promotion, retention and completion of the program consistent with the [overall policies of the sponsoring institution] **requirements of N.J.A.C. 13:37-1.17;**

5.-7. (No change.)

13:37-1.13 Curriculum organization and content

[(j)](a) (No change in text.)

[(k) Curriculum content shall include the following:]

Recodify existing (k)1-6 as (b) through (g) (No change in text.)

(h) **All professional nursing programs shall be designed to prepare the practitioner to provide care in a variety of delivery systems and arenas, including community nursing/home care.**

13:37-1.14 Changes in nursing programs

[(l)](a) No major change in a nursing program shall be implemented without the prior approval of the Board. Major program changes include:

1.-5. (No change.)

13:37-1.15 Required educational and administrative resources

[(m) The following educational and administrative resources shall be made available:]

[1.](a) Classrooms, laboratories, conference rooms, offices and other space as needed shall be provided to meet the needs of the students and faculty;

[2.](b) Adequate office space and equipment **consistent with current technology** shall be provided for the administrator, faculty and clerical staff;

[3.](c) Furnishings, supplies and equipment **consistent with current technology** shall be provided to achieve the educational purposes of the program;

[4.](d) The library shall be adequate in size and holdings to meet the educational needs of the students and faculty. Provision shall be made in the budget for regular and adequate acquisitions to the library collection. Library facilities **consistent with current technology**, including audio-visual equipment, shall be adequate and available to students and faculty.

13:37-1.16 Clinical affiliates

[(n)](a) Every clinical affiliate shall be approved or disapproved on the basis of the following:

1.-5. (No change.)

[(o) All programs in nursing and clinical affiliates shall be visited at regular intervals as determined by the Board by a field representative of the Board staff. The field representative shall examine all

"Criteria of Accreditation" in accordance with this subchapter and prepare a written report for the review of the Board.]

13:37-1.17 Criteria for student admission, promotion, retention and completion of the program

[(p) Students shall be subject to the following:

1. Admission requirements shall meet]

(a) The program's nursing facility shall ensure that the program meets all the requirements of N.J.S.A. 45:11-26 or 45:11-27.

Recodify existing (p)2 through 8. as (b) through (h) (No change in text.)

[(q)](i) Written policies regarding health, counseling and guidance services, financial aid, and living accommodations shall be established.

[(r)](j) All written policies affecting students shall be distributed to students.

(k) Current information about the school shall be distributed to students, applicants for admission and the Board of Nursing. The bulletin shall include the following items:

1. General description of the program;
2. Accreditation;
3. Admission, retention, promotion and graduation requirements;
4. Curriculum plan and course descriptions; and
5. Statement of tuition fees and refund policies.

13:37-1.18 Program recordkeeping and reporting requirements

Recodify existing (s), (t) as (a) and (b) (No change in text.)

[(u) Current information about the school shall be distributed to students, applicants for admission and the Board of Nursing. The bulletin shall include the following items:

1. General description of the program.
2. Accreditation.
3. Admission, retention, promotion and graduation requirements.
4. Curriculum plan and course descriptions.
5. Statement of tuition fees and refund policies.]

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

[(w) The administrative officer responsible for an educational institution or hospital which plans to discontinue the educational program in nursing, or to suspend any essential part of its program, shall forward a written notification to the Board which shall:

1. Be received by the Board at least six months prior to the admission of the last class;
2. Include the reasons for terminating the program;
3. Define the specific plans for the students enrolled.

(x) Procedures for termination of the program include:

1. "Phasing out", in which students enrolled continue until they complete the program, and no students are admitted or accepted by transfer, qualified faculty remain and Board requirements continue to be met, according to conditions under which the program was originally approved;
2. Transfer of students to other schools in a manner providing a minimum loss to the students.

(y) Within 10 days of the official date of closure, the date on which the last student is properly transferred or completes the program, the administrative officer shall notify the Board of the same in writing. The institution shall be responsible for the safekeeping of the records and, at termination, shall notify the Board of the future custody of such records.]

13:37-1.19 Program termination or suspension

(a) Procedures for termination of the program include:

1. "Phasing out," in which students enrolled continue until they complete the program; no students are admitted or accepted by transfer; qualified faculty remain; and Board requirements continue to be met;
2. Transfer of students to other schools in a manner providing a minimum loss to the students.

(b) The administrative officer responsible for an educational institution or hospital which plans to discontinue the educational program in nursing, or to suspend any essential part of its program, shall so advise the Board, in writing, at least six months prior to

the admission of the last class. The written notification shall include the reasons for terminating the program and the specific plans for students enrolled.

(c) The administrative officer shall be responsible for the safekeeping of records and shall notify the Board of the future custody of records at least 10 days prior to the official date of closure. The official date of closure shall be the date on which the last student is properly transferred or completes the program.

[13:37-1.3 Change of address

A licensee of the Board of Nursing shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address.

13:37-1.4 Report unlawful conduct

Every nurse licensee shall report in a timely manner to the Board of Nursing or its designated representative any and all incidents or series of incidents which upon objective evaluation leads to the good faith belief that the conduct is in violation of the Nurse Practice Act (N.J.S.A. 45:1-14, 45:11-23 et seq.) or any regulation adopted by the Board. (see the "Guidelines on Reporting Unlawful Conduct" available on request from the Board of Nursing office.)]

SUBCHAPTER 2. LICENSURE BY EXAMINATION; PROFESSIONAL AND PRACTICAL NURSES

13:37-2.1 Eligibility requirements

(a) Each applicant for licensure as a professional nurse or a practical nurse shall meet all of the qualifications for the type of licensure sought, as set forth in N.J.S.A. 45:1-14 et seq., 45:11-23 et seq. and this chapter and shall pass the Board approved examination identified in N.J.A.C. 13:37-2.2. The course of practical nursing study must be at least 44 weeks in length, excluding vacations and holidays.

(b) Attendance in or successful completion of a professional nursing program shall not serve as an equivalent or substituted qualification for the practical nursing educational requirement.

13:37-2.2 Board approved licensing examination

(a) The Board-approved licensing examination for professional nurses is the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

(b) The Board-approved licensing examination for practical nurses is the National Council Licensure Examination for Practical Nurses (NCLEX-PN).

(c) The passing score on the examination shall be determined by the Board and will be reported to the applicant as pass or fail.

(d) An applicant who fails to pass three consecutive licensing examinations shall submit to the Board, prior to the fourth licensing examination, proof of successful completion of a remediation course conducted by a qualified instructor within the meaning of N.J.A.C. 13:37-1.10 in the area(s) of need.

13:37-2.3 Application requirements; professional and practical nurses

(a) Each applicant for licensure shall file the following with the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;
2. The non-refundable application fee set forth in N.J.A.C. 13:37-12.1(a)1; and
3. A written certification from the program administrator or registrar attesting that the applicant has successfully completed all requirements for graduation from a Board accredited professional/practical nursing program. The certification shall indicate the date of actual graduation or the date the degree/diploma was actually conferred.

13:37-2.4 Application requirements; graduates of foreign nursing programs

(a) An applicant for licensure who graduated from a foreign nursing program shall submit the following:

1. All of the documents required in N.J.A.C. 13:37-2.3;
2. For professional nurse applicants, a valid certification by the Commission on Graduates of Foreign Nursing Schools (CGFNS);
3. For practical nurse applicants, a valid certificate of successful completion of TOEFL, with a minimum score acceptable to the Board;
3. Written verification of licensure in good standing from each country and/or state in which the applicant is or has been licensed. For purposes of this section, licensure in good standing means a license which is not expired, suspended, revoked, surrendered or restricted; and
4. Evidence of possession of a properly issued and held visa or immigration card.

(b) Graduates of foreign practical nursing programs shall also submit an official transcript indicating that the applicant successfully completed the equivalent of graduation from an approved nursing program. The transcript shall indicate the date of graduation or the date the degree/diploma was conferred. The Board or its agent shall review the transcript to determine equivalency. An applicant who is deficient in medical, surgical, pediatric, obstetric or psychiatric nursing shall be required to complete a course in a Board approved practical nursing program in the area(s) of deficiency.

(c) Any applicant who obtained his or her credentials (for example, transcripts, licenses or certificates) through fraud, deception, misrepresentation, false promise or false pretense shall not be eligible to take the examination nor to be licensed.

SUBCHAPTER 3. PRACTICE AS A GRADUATE NURSE

13:37-3.1 Qualifications to practice as a graduate professional or practical nurse

(a) An individual may be employed as a graduate professional or practical nurse pending notification of examination results provided that, within 60 days of successfully completing a Board-approved course of study or, for graduates of foreign nursing programs, within 60 days of the date of first arrival in the United States of America, the individual:

1. Applies to the testing service and takes the appropriate licensing examination; and
2. Applies to the Board for licensure and submits all of the documents required pursuant to N.J.A.C. 13:37-2.1.

(b) A graduate nurse shall practice only in approved settings, as set forth in N.J.A.C. 13:37-3.2, and only under the direct supervision of a registered professional nurse. For purposes of this subchapter, direct supervision shall require the physical presence of a registered professional nurse within the patient care unit or home.

(c) Individuals who have completed a nursing program or who have arrived in the United States more than 60 days prior to application for licensure shall not be permitted to work as graduate nurses.

13:37-3.2 Approved settings for graduate nurse practice

(a) A graduate nurse shall be permitted to practice only in settings approved by the Board. Board approval shall be limited to licensed acute, long-term, rehabilitation and/or psychiatric hospital facilities and/or home health agencies.

(b) A graduate nurse shall not assume charge responsibilities.

(c) A graduate nurse shall not render nursing services in a physician's or dentist's office, nor for a private employment agency, temporary help agency, visiting nurses' agency, residential or ambulatory care facility, and shall not perform private duty nursing.

SUBCHAPTER 4. LICENSURE BY ENDORSEMENT; PROFESSIONAL AND PRACTICAL NURSES

13:37-4.1 Eligibility requirements

(a) Each applicant for licensure by endorsement shall:

1. Meet all of the qualifications for the type of licensure sought, as set forth in N.J.S.A. 45:1-14 et seq., 45:11-23 et seq. and this chapter;
2. Be licensed by examination in a jurisdiction which is a member of the National Council of State Boards of Nursing; and

3. Have attained a passing score on the licensing examination consistent with the provisions of N.J.A.C. 13:37-4.2 and 4.3.

(b) Attendance in or successful completion of a professional nursing program shall not serve as an equivalent or substituted qualification for the practical nursing educational requirement.

(c) An applicant who is deficient in the required curriculum content set forth in N.J.A.C. 13:37-1.13 or who fails to provide written verification of licensure in good standing from the state of original licensure and from the state in which the applicant is currently licensed shall not be eligible for licensure by endorsement.

(d) Any applicant who obtains his or her credentials (for example, transcripts, licensure) through fraud, deception, misrepresentation, false promise or false pretense shall not be eligible to be licensed.

13:37-4.2 Examination scores; professional nurses

(a) Applicants for professional nurse licensure by endorsement shall be required to have attained a passing score on the licensing examination as follows:

1. If licensed prior to March 1954, the passing score required in the state of original licensure.

2. If licensed between March 1954 and July 1982, the passing score required in New Jersey in all subjects of State Board Test Pool Examination.

3. If licensed after July 1982, the score required for all applicants for licensure by NCLEX-RN.

(b) Applicants for practical nurse licensure by endorsement shall be required to have attained a passing score on the licensure examination as follows:

1. If licensed prior to January 1, 1949, the passing score required in the state of original licensure.

2. If licensed between January 1, 1949 and December 31, 1960, a score of 350.

3. If licensed after January 1, 1961, a score of 375 on the State Board Test Pool Examination.

4. If licensed after October 1982 a score of 350 on the NCLEX-PN.

5. If licensed after October 1989, a "pass" score on the NCLEX-PN.

13:37-4.3 Application requirements; licensure by endorsement

(a) Each applicant for licensure by endorsement shall submit or arrange to submit the following to the Board:

1. All of the documents required in N.J.A.C. 13:37-2.3; and

2. Written verification of licensure in good standing from the state in which the applicant was originally licensed and from the state in which the applicant is currently licensed. The verification shall be forwarded directly to the Board from the applicable state board. The verification from the state of original licensure shall indicate that the applicant attained a passing score on the national licensing examination equal to that required of candidates in New Jersey at the time of the applicant's initial licensure in the original state of licensure.

(b) Where the state of original licensure did not utilize the examinations referred to in this subsection or the applicant otherwise fails to attain a passing score, the applicant shall be required to apply for licensure by examination pursuant to N.J.A.C. 13:37-2.

SUBCHAPTER 5. GENERAL REQUIREMENTS OF LICENSURE; LICENSE RENEWAL; FEE SCHEDULE

13:37-5.1 License requirement

No licensee shall engage in nursing practice without being in possession of a current license which is active and not suspended, revoked or surrendered.

13:37-5.2 Responsibilities of dual licensure

(a) A licensed registered professional nurse who is also licensed as a practical nurse shall be held to the level of responsibility of a registered professional nurse, regardless of his or her employment or work status.

(b) A dually licensed individual who wishes to limit his or her nursing responsibilities to those required of a licensed practical nurse shall either:

1. Terminate his or her registered professional nurse license by submitting written notification to the Board of said intent; or
2. Maintain registered professional nurse licensure in inactive status.

13:37-5.3 Notification of change of address

A licensee or certificate holder of the Board of Nursing shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license or certificate. Such notice shall be given not later than 30 days following the change of address.

13:37-5.4 Reporting of unlawful conduct

Every nurse licensee shall report in a timely manner to the Board of Nursing or its designated representative any and all incidents or series of incidents which upon objective evaluation leads to the good faith belief that the conduct is in violation of the Nurse Practice Act (N.J.S.A. 45:1-14, 45:11-23 et seq.) or any regulation adopted by the Board.

13:37-5.5 Self-reporting

(a) Every nurse and homemaker-home health aid licensed and/or certified under the Nurse Practice Act, N.J.S.A. 45:1-14 et seq., shall immediately notify the Board, in writing, upon the following:

1. Acquiring a physical or mental impairment or disability that adversely affects his or her current ability to practice nursing with reasonable skill and safety;
2. Being the accused in an indictment or conviction of a crime involving moral turpitude or a crime adversely relating to his or her practice when such indictment or conviction is rendered after the effective date of this regulation;
3. Being a named defendant or respondent in a civil, criminal or administrative investigation, complaint or judgment involving alleged malpractice, negligence or misconduct relating to his or her practice when such investigation, complaint or judgment occurred after the effective date of this regulation;
4. Being the subject of any voluntary license or certification surrender or any disciplinary action or order by any state or federal agency, board or commission, including any order of limitation or preclusion; or
5. Failing to maintain or renew any certification which is required by law as a condition of practice and/or as a condition of license or certification renewal.

(b) Any nurse or homemaker-home health aid licensed and/or certified under the Nurse Practice Act, N.J.S.A. 45:11-23 et seq., who violates any provision of the Act or N.J.S.A. 45:1-14 et seq. may, upon notice to the licensee and the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., be subject to disciplinary action by the Board including practice restriction.

13:37-5.6 Biennial license renewal

(a) All licenses shall be valid for two calendar years, except that initial licenses shall be valid from the date the applicant passed the examination to the end of the current biennial period.

(b) The Board shall send a biennial renewal notice by regular mail to each current licensee at the last known address on or about October 1 of the year of expiration. The renewal form requests information on current employment status as well as on any criminal proceedings pending against the licensee.

(c) Licenses shall be divided into two categories known as "active" and "inactive" licenses. "Active" licenses are required of all persons engaged in any type of nursing practice. An "inactive" license may be requested by an individual who is eligible for an active license but who is not engaged in any type of nursing practice.

(d) Each licensee in either class shall truthfully complete and file the biennial renewal form with the Division of Consumer Affairs, State of New Jersey, CN 152, Trenton, New Jersey 08625-0152 on

or before December 31 of the year of expiration. The biennial renewal form shall be accompanied by a check or money order for the renewal fee set forth in N.J.A.C. 13:37-12.1.

13:37-5.7 Reinstatement

An individual whose license has been inactive, suspended or revoked for more than two years shall be required to complete, as a condition of reinstatement, a nurse refresher course approved by the Board.

13:37-5.8 Fee schedule

(a) The following fees shall be charged by the Board in connection with licensure of professional and practical nurses:

1. Application fee	\$50.00
2. Initial license fee	50.00
3. Licensure by endorsement	60.00
4. Verification for endorsement	30.00
5. Renewal of license (Biennial)	
i. Active	50.00
ii. Inactive	25.00
6. Late license renewal (after 30 days)	50.00
7. Lapsed license fee	100.00
8. Duplicate license	25.00
9. Change of name or address	15.00
10. Written verification of licensure	15.00
11. Notary fee	5.00
12. Record duplication	5.00
13. Copy of Nurse Practice Act	5.00
14. Copy of L.P.N. Standards of Practice	3.00

(b) The following fees shall be charged by the Board in connection with certification of homemaker-home health aides.

1. Application fee	20.00
2. Program approval fee for each location at which course is offered (annual)	100.00
3. Instructor's Manual	20.00
4. Student Manual	10.00
5. Initial certification fee	
i. If paid during the first year of a biennial renewal period	10.00
ii. If paid during the second year of a biennial renewal period	5.00
6. Renewal of certificate (Biennial)	10.00
7. Late renewal of certificate	10.00
8. Duplicate certificate	5.00
9. Certification by endorsement	10.00

(c) The following fees shall be charged by the Board in connection with certification of nurse practitioners:

1. Application fee	100.00
2. Initial certification fee	
i. If paid during the first year of a biennial renewal period	75.00
ii. If paid during the second year of a biennial renewal period	37.50
3. Renewal of certification (biennial)	75.00
4. Certification by endorsement	75.00
5. Late renewal of certificate (one to 30 days)	50.00
6. Reinstatement fee (after 30 days)	100.00
7. Duplicate certificate	25.00

SUBCHAPTER 7. CERTIFICATION OF NURSE PRACTITIONERS/CLINICAL NURSE SPECIALISTS

[13:37-7.12 Reporting

(a) Each nurse practitioner/clinical nurse specialist shall immediately notify the Board in writing upon the following:

1. Failure to renew or maintain, on a biennial basis, certification as a nurse practitioner/clinical nurse specialist;
2. Use of alcohol or drugs which has adversely impaired or adversely impairs nursing practice;
3. Current indictment and/or conviction of a crime involving moral turpitude and/or a crime relating adversely to nursing practice;

4. Being a named defendant or respondent in a civil, criminal, or administrative investigation, complaint and/or judgment involving alleged malpractice, negligence, or misconduct relating to practice as a nurse practitioner/clinical nurse specialist; or

5. Voluntary license surrender or any disciplinary action against the nurse practitioner/clinical nurse specialist by any state or Federal agency, board or commission, including any order of limitation or preclusion.

(b) A nurse practitioner/clinical nurse specialist who violates any provision of the Nurse Practice Act, N.J.S.A. 45:11-23 et seq. or N.J.S.A. 45:1-14 et seq. may, upon notice to the licensee and the opportunity for 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, be subject to disciplinary action by the Board including a restriction on practice.]

SUBCHAPTER 13. NURSE ANESTHETISTS

13:37-13.1 Nurse anesthetist practice

(a) The conditions for practice as a nurse anesthetist in this State shall be as follows:

1.-4. (No change.)

5. Compliance with (b) [and (c)] below and with the reporting requirements of N.J.A.C. 13:37-8.3.

(b) (No change.)

[(c) Each nurse anesthetist shall immediately notify the Board, in writing, upon the nurse anesthetist's:

1. Failure to renew or to maintain, on a biennial basis, full recertification as a nurse anesthetist;

2. Use of alcohol or drugs which adversely impair or has adversely impaired his or her practice;

3. Current indictment and/or conviction of a crime involving moral turpitude and/or a crime relating adversely to his or her practice; or

4. Being a named defendant or respondent in a civil, criminal or administrative investigation, complaint and/or judgment involving alleged malpractice, negligence or misconduct relating to his or her practice as a nurse or nurse anesthetist; or

5. Voluntary license surrender or any disciplinary action against the nurse anesthetist by any state or Federal board or agency, including any order of limitation or preclusion.

(d) A nurse anesthetist who violates any of the provisions of this subchapter or any provision of the Nurse Practice Act, N.J.S.A. 45:11-23 et seq., or N.J.S.A. 45:1-14 et seq. may be subject to disciplinary action by the Board, including a restriction on his or her practice as a nurse anesthetist.]

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PSYCHOLOGICAL EXAMINERS

Persons Requiring Licensure; Member of Other Professional Group Doing Work of a Psychological Nature; Exemption from Licensure; Application; Qualifications to Sit for Examination; Independent Practice; Biofeedback; Employer of Biofeedback Technician; Managed Health Care Plans; Misleading Implications of Licensure; Employment by a Non-Profit Bona Fide Community Organization; Exemption from Licensure; Supervision of Individuals Exempt from Licensure; Affiliated Practitioner; Restrictive Covenants

Proposed Amendments: N.J.A.C. 13:42-1.2, 1.5, 2.1, 7.1, 7.3, 7.5, 7.6 and 9.9

Reproposed New Rules: N.J.A.C. 13:42-1.3 and 4.5

Proposed New Rules: N.J.A.C. 13:42-7.2A and 10.16

Authorized By: State Board of Psychological Examiners,
Paul Brush, Executive Director.

Authority: N.J.S.A. 45:14B-13, 44 and 45.

Proposal Number: PRN 1994-629.

Submit written comments by January 4, 1995 to:

Paul Brush, Executive Director
State Board of Psychological Examiners
Post Office Box 45007
Newark, New Jersey 07101

The agency proposal follows:

Summary

On July 19, 1993, the State Board of Psychological Examiners proposed revised criteria for exempting from licensure a psychologist employee of a non-profit, bona fide community agency. The revised criteria, codified at N.J.A.C. 13:42-1.3, was intended to enlarge the opportunities for well-trained individuals to provide care under supervision in previously ineligible settings. These settings include hospital mental health clinics, clinics sponsored by religious organizations, and mental health groups contracting with the State Department of Health and Human Services. The Board also proposed, at N.J.A.C. 13:42-4.5, supervision standards applicable to exempt settings. See 25 N.J.R. 3062(a).

During the 30-day comment period ending on August 18, 1993, the Board received two requests for a public hearing regarding the revised criteria. Two individuals presented their concerns regarding the criteria at the October 18, 1993 public hearing, where it became apparent that the issues raised were based on a misunderstanding of the proposed new rule. A hearing officer's report and recommendations were, therefore, unnecessary with regard to the issue; rather, the Board has clarified and is now repropounding N.J.A.C. 13:42-1.3 and 4.5. Therefore, the Board is now repropounding N.J.A.C. 13:42-1.3 and 4.5 with clarifying amendments.

More specifically, the reproposal clarifies that the "employees" referred to are persons whom the public would reasonably believe are functioning in the capacity of unlicensed psychologists." In addition, the reproposal of subsection (a) recognizes the new licensure status of social workers and professional counselors. This subsection allows an unlicensed psychologist to be employed in a non-profit bona fide community organization provided the employee is under the supervision of an individual (who may be a social worker or a counselor) authorized by law to render psychological services.

The reproposal also addresses Board concerns over the possible consequences of previously proposed—and now omitted—wording which defined, at N.J.A.C. 13:42-1.3(c)2ii(2), a "non-profit community organization" to include an organization reimbursed by contract with departments of State, county or municipal governments. The Board has become aware of an increasingly casual incidence of contracts between certain State agencies and unlicensed, masters' degree level "psychologists" who are hired as independent contractors, in violation of the wording and intent of N.J.S.A. 45:14B-6 which exempts "employees" of government agencies and schools. The Board interprets the term "employees" as meaning regular employees and not merely "independent contractors," and is concerned about whether the conduct of an independent contractor can realistically be monitored to assure client safety. However, the Board has determined to seek more information with regard to the need of State, county and municipal agencies to subcontract services of a psychological nature which the agency is not able to offer through full-time salaried professionals. A pre-proposal regarding this matter will be published in the New Jersey Register in the near future.

In addition to repropounding N.J.A.C. 13:42-1.3 and 4.5, this proposal is in response to the following:

1. A Petition for Rulemaking filed by the New Jersey Psychological Association (NJPA) requesting the Board to permit licensees to use the term "independent contractor" (see 26 N.J.R. 263(a)).

2. Objections that the Board's definition of exempt drug and alcoholism counselors is too restrictive.

3. A request that the Board impose a ban on restrictive covenants similar to that imposed on attorneys by the Supreme Court of New Jersey.

These three issues and the amendments or new rules proposed in response are more specifically summarized below. Additional amendments proposed for clarification purposes only are also detailed in this Summary.

1. **NJPA Petition for Rulemaking.** NJPA petitioned the Board (see 26 N.J.R. 263(a)) to permit use of the term "associates" for those who are not regular employees and to allow use of them as "independent contractors" as long as clients are informed. The Board does not intend to prohibit a licensee's association with another health care practitioner

where the licensee maintains responsibility, the consumer is made aware of the relationship between the individuals and there is no fee-splitting of the charge to the patient. In the Board's opinion, however, the petitioner's claim that many psychology groups utilizing independent contractors or sharing space do maintain an integrated quality control is insufficient to protect the public without a specific rule.

Proposed new rule N.J.A.C. 13:42-7.2A permits use of the term "affiliated practitioner" provided the employer maintains responsibility for the quality of the services offered by the affiliated practitioner. The Board believes the proposed term more accurately denotes a supervised practice than does the term "associate" for a person who is not a regular employee of the psychology practice. The Board has determined that the employee's designation for tax purposes need not be addressed here. Rather, the Board will focus its concerns on the nature of the responsibilities owed to the public.

2. Drug and alcoholism counselors. Existing N.J.A.C. 13:42-1.5 exempts from licensure under the Act certified alcoholism counselors (CACs) employed in an exempt (publicly funded) setting and CACs under supervision in a private setting. Public comment received subsequent to the recent adoption of this section asserted that this definition of CACs was too restrictive. In addition, the recently enacted Professional Counselors Licensing Act (P.L. 1992, c.340) defines and recognizes the need for licensure and public accountability for persons who previously engaged in a grey area of "counseling," but it does not require licensure of substance abuse or hotline counselors at this time. Therefore, the Board is proposing to replace reference to CACs with reference to professional counselors. A "catch-all" exemption has also been added at N.J.A.C. 13:42-1.5(a)17 and in N.J.A.C. 13:42-9.9(a) in order to avoid amending these rules in the event of future statutory exemptions.

3. Ban on restrictive covenants. In response to a commenter's suggestion, the Board is proposing at N.J.A.C. 13:42-10.16 a ban on restrictive covenants which is modeled generally on Rules of the New Jersey Supreme Court, RPC 5.6.

4. Dissertation abstracts. N.J.A.C. 13:42-2.1 has been clarified to indicate that the required abstract must be as published in Dissertation Abstracts International.

5. Independent Practice. N.J.A.C. 13:42-7.1 now allows certain useful privileges to a "solo" practitioner which might be equally useful to a psychologist who practices in a multi-practitioner setting. The change in caption and text to "independent" simply assures that the psychologist is fully licensed to practice independently.

The Board is also proposing to amend N.J.A.C. 13:42-7.1 to specifically permit a licensed psychologist to employ a certified drug, alcoholism or gambling addictions counselor to provide services, under supervision, to the psychologist's clients in the psychologist's private office. The proposed amendment is necessary because the current version of N.J.A.C. 13:42-7.1, which lists the only ancillary personnel who may be employed to provide professional services, does not include these counselors. Although current subsection (d) allows a psychologist to request Board permission to employ an additional type of personnel, the Board has concluded that individualized review is not necessary for employment of these counselors.

6. Biofeedback. The amendment to N.J.A.C. 13:42-7.3 seeks to clarify the circumstances when biofeedback may reasonably be deemed a component of psychological services not requiring medical referral and supervision, in contrast to biofeedback treatment for a diagnosed medical condition having psychological effects where there must be an integrated professional plan of care.

7. Employment by general business corporation accredited by JCAHO. The proposed amendment to N.J.A.C. 13:42-7.5 would allow a psychologist to be employed by a general business corporation if it is accredited by the nationally recognized health care evaluator, the Joint Commission on Accreditation of Health Care Organizations (JCAHO). Ordinarily, a licensee would not be permitted to be employed by a general business corporation because it is not accountable to any government regulatory agency for the protection of the public. However, some facilities such as drug or alcohol treatment facilities, are not licensed by the State Department of Health but are, reportedly, accredited by JCAHO. Because JCAHO has extensive requirements for the protection of patients, the Board finds that a JCAHO-accredited health care provider should be added as a permissible employer of licensed psychologists, thus enabling these facilities to have the benefit of a well-trained psychologist to further the treatment offered at the facility.

8. Managed health care plans. New subsections (d) and (e) at N.J.A.C. 13:42-7.6 seek to address the possibility that a managed health care plan may not include a psychologist among its regular pool of providers but, rather, may make individual referrals to a psychologist as an outside specialist. Billing alternatives are proposed which will allow for services to be contracted, and yet avoid the concept of fee-splitting. Account is taken of ERISA-related insurance formats which might take the form of a business corporation hiring the psychologist to care for particular patients not otherwise able to receive care from its usual pool of providers.

Social Impact

The redefinition of bona fide community organization will exempt from the requirements of the Act certain community service providers previously deemed ineligible for exemption, which in turn will enlarge the opportunities for licensure candidates to provide care under supervision to larger populations of needy persons. The supervision standards at N.J.A.C. 13:42-4.5 will protect the public by ensuring that these unlicensed individuals receive appropriate supervision. Proposed amendments to N.J.A.C. 13:42-1.5 clarify that drug and alcoholism counselors and professional or associate counselors are exempt from licensure under the Act.

Proposed new rule N.J.A.C. 13:42-7.2A will be beneficial to consumers in that it clarifies the responsibilities owed to the public by both a licensee/employer and an affiliated practitioner. In the past, consumers may have been misled by professional office trade names referring to "and associates," or listing the names of many persons on professional letterhead of a seemingly large practice, when in fact those persons bore no integral relationship to the professional entity and may have been paid by a fee-splitting arrangement with an employer who, despite use of a multi-practitioner appearance, did not take measures to assure quality control and protection of client welfare.

The proposed amendments to N.J.A.C. 13:42-7.3 will be beneficial to consumers and licensees alike to the extent that it clarifies the circumstances when biofeedback may reasonably be deemed a component of psychological services not requiring medical referral and supervision.

The proposed amendment to N.J.A.C. 13:42-7.5 will be beneficial to facilities such as drug or alcohol treatment facilities in that they will have the benefit of a well-trained professional psychologist to further the treatment offered at the facility.

The current wording of N.J.A.C. 13:42-7.6 contemplates that the psychologist will be a regular member of the managed health care plan. As this arrangement may not yet be widespread, the amendment provides for flexibility in terms of the mechanism for individual referrals and the employment relationship between the psychologist and the managed health care entity, and also reminds the parties to a managed health care plan that only in limited circumstances may a licensee be retained by a corporate enterprise.

By prohibiting entry into an agreement containing restrictive covenants, proposed new rule N.J.A.C. 13:42-10.16 will enable licensees to continue to provide services to the general public, unaffected by a change in the employment relationship of the therapist. The new rule will, in particular, have the beneficial social impact of allowing for the continuity of an established therapy relationship between a psychologist and a client who desire to maintain that relationship. It should also be noted that this general prohibition contains the same exception as the Supreme Court rule upon which this rule is modeled, to assure that private parties can still make financially reasonable plans within a professional practice for benefits upon retirement and can settle a controversy between private parties which has no effect upon a given psychologist-patient relationship.

Economic Impact

Some non-profit organizations not previously considered exempt may now qualify for exempt status under the proposed amendments to N.J.A.C. 13:42-1.3. These organizations may realize costs savings to the extent that they are able to utilize qualified unlicensed individuals to render supervised services to their clients. These cost savings may be passed on to the public. The supervision standards outlined in N.J.A.C. 13:42-4.5 are not expected to increase costs to the agencies since they reflect existing supervision standards in responsible agency settings.

Proposed new rule N.J.A.C. 13:42-7.2A, which regulates the professional relationship between an employer and an affiliated practitioner, is expected to have a beneficial economic impact in regard to billing practices by providing clarity as follows: the client must be clearly informed that the affiliated practitioner is not a regular employee of the office but, rather, is supervised under the employer's responsibility;

the bill issued by the employer must clearly identify the practitioner's name while clarifying that all fees are payable to the employer; and the fee charged by the employer must comply with the rule prohibiting excessive fees.

For licensees, the proposed rule is expected to have an economic impact since employers of affiliated practitioners will be required to regularly supervise the quality of care provided and the adequacy of records prepared by affiliated practitioners. The extent of that economic impact or burden will vary depending on the number of affiliated practitioners and the caseload carried by each one, and is deemed to be reasonable since it is the employer who shall bill for and receive the client fee for the services rendered by the affiliated practitioner.

The proposed rule may also have an economic impact on employers whose current fee arrangement with an affiliated practitioner would violate the ban on dividing the fee for services to the client because the proposed rule provides that the employer shall pay the affiliated practitioner on a time-unit basis or by task. No longer will the employer be able to acquire fees without having rendered any professional service. Instead, the employer will have to perform, albeit in a supervisory role, when billing the patient for the services directly provided by the affiliated practitioner.

Furthermore, the employer must incur the minimal copying cost involved for assuring that the affiliated practitioner receives a copy of the pertinent client record or the portion prepared by that practitioner; there is no new economic burden in this instance, however, because a record preparation and preservation obligation has already been imposed by Board rule on all psychologists.

The economic impact of the proposed amendment to allow a psychologist to be employed by a JCAHO-accredited health care facility is expected to have a beneficial economic impact, as professional treatment by a licensed psychologist in an institutional or clinic setting would be expected to aid the patient population to return sooner to an independent and healthy life circumstance.

The proposed amendment to N.J.A.C. 13:42-7.6 will be economically beneficial to licensees by creating a professionally ethical mechanism for the provision of services and the handling of billing for services rendered in conjunction with managed health care plans.

Proposed new rule N.J.A.C. 13:42-10.16 will be economically beneficial to licensees by ensuring that, notwithstanding a dissolution of an employment relationship with other practitioners, the departing therapist will not be compelled to forfeit or abandon clients who desire to retain a therapeutic relationship. There may be a negative impact on certain employers who might seek to discourage a departing therapist's therapist-client relationship by threatening a financial penalty if the departing therapist agrees to continue service to a client. However, the rule contains the same exceptions as does the Court rule for attorneys so as to allow resolution of private issues not affecting the public interest.

Regulatory Flexibility Analysis

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., psychologists are deemed to be "small businesses" within the meaning of the act, the following analysis is applicable regarding the approximately 2,800 psychologists licensed in this State. This analysis is also applicable to non-profit community organizations as defined in the proposal.

Reproposed N.J.A.C. 13:42-1.3 clarifies and broadens the definition of exempt community agency. As a result, additional agencies are expected to qualify for exemption from the licensure requirements of the act. These agencies will be required to advise the Board of the basis for exemption and to provide the name of the New Jersey licensed psychologist or other supervisor authorized by law to supervise the offering of psychological services at the agency's facility. The exempt agency must also advise the Board of the name of each unlicensed psychologist employee who performs psychological services and update the information as necessary.

A licensed psychologist providing supervision in an exempt agency setting or in a private practice setting must provide the level of supervision required pursuant to N.J.A.C. 13:42-4.5.

A licensed psychologist who employs an affiliated practitioner must regularly supervise the quality of care provided and the adequacy of client records prepared by the affiliated practitioner.

Proposed rule N.J.A.C. 13:42-7.2A has the reporting requirement that the plan of supervision for services to be performed by an affiliated practitioner who does not practice on the employer's premises must be approved in advance by the Board. Board rules already require the preparation and preservation of client records, but the proposed rule

also requires the employer of an affiliated practitioner to provide, in printed form on an information sheet and on each billing statement for services provided by an affiliated practitioner, information concerning the affiliated practitioner's identity as well as various other informational statements to assure that the client is aware of the actual relationship and responsibilities among the primary participants in the professional service relationship.

N.J.A.C. 13:42-7.6 requires licensees to comply with minimal billing format requirements when billing for services rendered in conjunction with managed health care plans. Under N.J.A.C. 13:42-10.16, licensees may not enter into employment relationships that include restrictive covenants.

The proposed amendments and new rules do not involve any recordkeeping, initial capital costs, costs for professional services, or other costs of compliance.

Because these proposed new rules and amendments have been deemed by the Board to be the minimum necessary to protect the public and provide consistent standards, all the requirements included in this proposal must be uniformly applied without differentiation as to size of practice.

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

13:42-1.2 Persons requiring licensure

(a) Persons requiring licensure include all those whose conduct is within the scope of practice set forth in N.J.A.C. 13:42-1.1 and whose practice is not otherwise exempt pursuant to N.J.S.A. 45:14B-6, N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-[1.4 and] 1.3 through 1.5, including the following:

1.-3. (No change.)

13:42-1.3 [(Reserved)] Employment by a non-profit bona fide community organization; exemption from licensure

(a) Pursuant to N.J.S.A. 45:14B-6(a)3, a psychologist employee of a non-profit organization which is a bona fide community agency supported wholly or in major part by public funds is exempted from licensure provided the employee is under the supervision of a supervisor authorized by law.

(b) For purposes of this section, the term "public funds" shall not mean payments by Medicare or Medicaid or other public or private insurance fund on behalf of an individual client to an individual provider (directly or through a professional service corporation) licensed by the Board.

(c) For purposes of this section, the term "non-profit bona fide community organization" shall mean:

1. An entity which is exempt from taxation pursuant to section 501 of the United States Internal Revenue Code and which meets one of the following definitions. The organization shall be:

i. A corporate entity or any community chest, fund or foundation organized and operated exclusively for religious or charitable purposes;

ii. A civic league or organization not organized for profit but operated exclusively for the promotion of social welfare; or

iii. A religious society devoted exclusively to charitable or religious purposes; or

2. An entity which has as its commitment the delivery of mental health services to clients who are amenable to those forms of psychological services customarily provided by the organization and which meets one of the following definitions:

i. The organization receives 50 percent or more of its funding in the form of public monies from a budget line or grant appropriated on a quarterly, twice-yearly, annual or other regular basis; or

ii. The organization has publicly and permanently committed itself to accepting, without numerical restriction, clients whose treatment shall be reimbursed either by Medicaid or Medicare or other public insurance program funding.

(d) Examples of organizations which may be considered bona fide non-profit community organizations under the definition set forth in (c)2 above include:

1. A private or public non-psychiatric hospital which is licensed by the New Jersey State Department of Health to provide health and medical care to the general public and which has a designated psychiatric unit; and

2. A mental health entity (other than a private office) which may be privately owned and operated and which offers outpatient mental health services to the general public.

(e) Within 30 days of the effective date of this rule or at the time employment of the unlicensed psychologist employee commences, whichever is later, the exempt entity or exempt practitioner shall submit to the Board a notice specifying the following information:

1. The public commitment of the organization and the basis for exemption under this section;

2. The name of the New Jersey licensed psychologist(s) or psychiatrist(s) or other licensed mental health care practitioner authorized by law to supervise the offering of psychological services at the organization's facility; and

3. The name of each unlicensed psychologist employee who does or shall perform psychological services. The unlicensed psychologist employee shall not be an independent contractor.

(f) The exempt entity may submit notice on behalf of the employee(s), and a single annual notice in January of each year shall suffice to retain the exemption for that year. The exempt entity shall update the notice as necessary, and the Board will acknowledge receipt of each notice.

(g) Exemption shall be conditioned upon the employing organization continuing to meet the criteria of this section and N.J.S.A. 45:14B-6 as it may be affected by other applicable law.

13:42-1.5 Member of other professional group doing work of psychological nature; exemption from licensure

(a) The following individuals, [whose recognized scope and accepted standards of practice include performance of work of a psychological nature] who do work of a psychological nature consistent with the accepted standards of their respective professions, are exempt from licensure under the Practicing Psychology Licensing Act provided they do not hold themselves out to the public by any title or description stating or implying that such person is a psychologist or is licensed to practice psychology:

1.-10. (No change.)

11. A school psychologist or guidance counselor who is certified by the New Jersey State Department of Education and who is employed by, and whose services are rendered in or for, a public or private school. No exemption shall be permitted to any school psychologist/counselor not certified by a governmental department of the State of New Jersey and not employed in an exempt setting as set forth in N.J.A.C. 13:42-1.3 and N.J.S.A. 45:14B-6(a)1 and (b) unless otherwise authorized by law;

12. [A person engaged in the practice of alcohol, drug abuse or gambling intervention, prevention or treatment who is certified and employed in an exempt setting as set forth in N.J.S.A. 45:14B-6(a)1, 2 and 3 and (b) or who is certified and employed in a private setting supervised by a duly licensed mental health professional] A professional counselor or associate counselor licensed pursuant to N.J.S.A. 45:8B-1 et seq., as amended by P.L. 1993, c.340;

13.-14. (No change.)

15. A licensed physical therapist; [and]

16. A career counselor registered pursuant to N.J.S.A. 34:8-65 et seq.; and

17. Any other category of practitioners specifically authorized by law to perform work of a psychological nature consistent with the accepted standards of their respective professions/occupations.

13:42-2.1 Application; qualifications to sit for examination

(a) An applicant for licensure shall file with the Board an application together with all supporting material. The application form requests a brief summary of educational and employment experience. Supporting material required to be submitted with the application includes official transcripts; an abstract of the applicant's doctoral dissertation as published in Dissertation Abstracts International; and two certificates of good moral character. Documentation of two years of full time or full time equivalent supervised experience in the practice of psychology is required upon the applicant's completion of such experience.

(b)-(i) (No change.)

13:42-4.5 Supervision of individuals exempt from licensure

(a) A psychologist may supervise services of a psychological nature rendered in:

1. A private practice setting by a health care professional exempt from licensure pursuant to N.J.S.A. 45:14B-8; and

2. An exempt non-profit bona fide community organization as defined in N.J.A.C. 13:42-1.3.

(b) The supervisor shall ensure that the exempt supervisee complies with all Board regulatory requirements (including preparation of client records) and with accepted standards of professional and ethical practice of the exempt agency or exempt health care professional.

13:42-[4.5]4.6 (No change in text.)

13:42-7.1 [Solo] Independent practice

(a) A licensee practicing [solo] independently may employ or otherwise remunerate the following individuals to render professional services only in circumstances where quality control of the employed practitioner's professional practice can be and is lawfully supervised and evaluated by the licensee:

1.-2. (No change.)

(b) (No change.)

(c) A licensee may employ ancillary non-licensed staff, limited to:

1.-2. (No change.)

3. Biofeedback technicians, as defined in N.J.A.C. 13:42-7.3; [and]

4. Neuropsychometric technicians, as defined in N.J.A.C.

13:42-7.4[-]; and

5. A person engaged in the practice of alcohol, drug abuse or gambling intervention, prevention or treatment who is certified and providing such services in a private setting supervised by the licensee.

(d) (No change.)

13:42-7.2A Affiliated practitioner

(a) For purposes of this section, the following definitions apply:

1. "Employer" means a licensed psychologist or a health care provider entity that includes a licensed psychologist as principal, partner or shareholder.

2. "Affiliated practitioner" means a licensed psychologist or other licensed mental health care practitioner exempted by law from the requirement of licensure as a psychologist, who need not be a principal, partner, shareholder or regular employee of the employer and who is retained to perform certain services for the employer.

(b) An employer as defined in this section may employ an affiliated practitioner provided that:

1. The employer has the training and skill sufficient to identify appropriate credentials, licensure and quality of service offered by the affiliated practitioner;

2. The employer complies with the provisions of this section; and

3. The affiliated practitioner performs services for the employer solely on the employer's office premises or in accordance with a plan of supervision for services to institutionalized or housebound clients, approved in advance by the Board.

(c) The employer and an affiliated practitioner who is a licensed psychologist shall be jointly and individually responsible and accountable to the Board for compliance with statutes and rules pertinent to the practice of professional psychology and, where not otherwise specified, with accepted standards of practice in the profession.

(d) An employer who elects to employ an affiliated practitioner shall be required to:

1. Select an affiliated practitioner who is competent to perform the assigned task and to retain the affiliated practitioner to provide only such services as are within that person's lawful scope of practice;

2. Regularly supervise the quality of care provided and the adequacy of client records prepared by the affiliated practitioner;

3. Provide, verbally and in printed form on an information sheet and on each billing statement for services provided by an affiliated practitioner, the following information to the client and third party payor:

i. The full name, professional identification and license number of the affiliated practitioner;

ii. A statement that the affiliated practitioner has been retained to provide services on behalf of the employer and that the affiliated practitioner is not a member or associate of the employer;

iii. A statement that the employer is the primary person/entity responsible for the extent, nature and quality of services rendered; and

iv. A statement that all fees are payable to the employer;

4. Recognize and, to the extent the employer deems the professional services rendered by the affiliated practitioner to be of appropriate quality, encourage an ongoing therapist-client relationship between the client and the affiliated practitioner;

5. Ensure that the bill is issued by the employer and in the employer's name but identifies the affiliated practitioner as the service provider, as required by N.J.A.C. 13:42-10.12;

6. Ensure that the fee the employer charges to the client complies with the rule prohibiting excessive fees (N.J.A.C. 13:42-10.11); and

7. Maintain custody of the original client records and provide the affiliated practitioner with a copy of the records or the portion of the records prepared by the affiliated practitioner.

(e) The employer shall not divide with the affiliated practitioner the fee for services to the client. The employer shall pay the affiliated practitioner on a time-unit basis (for example, per hour or day or other specific unit of time) or by task (for example, testing or evaluation or, if within that practitioner's licensed scope of practice, psychotherapy).

13:42-7.3 Biofeedback; [Employer] employer of biofeedback technician

(a) A licensed psychologist may perform or directly supervise the performance of appropriate biofeedback services in a clinical setting as a component of psychological services. Prior medical evaluation and supervision are not required for this psychological service.

(b) A licensed psychologist shall not diagnose, or offer to provide independent biofeedback treatment for a medical condition, a complaint of pain, or other significant physical symptom or condition that has not been medically evaluated. Following such evaluation, psychological biofeedback treatment may be offered in accordance with (a) above or (c) below.

(c) A licensed psychologist may, in a clinical setting, offer therapeutic or palliative biofeedback services in consultation with a licensed physician, as a component of an integrated psychological treatment program for a medically diagnosed condition reasonably believed to be amenable to such treatment.

Recodify existing (a) and (b) as (d) and (e) (No change in text.)

[(c)](f) A licensee with specialized training in biofeedback may employ a biofeedback technician on the office premises, as appropriate to the primary practice of the employer, only under the following circumstances:

1. (No change.)

2. The licensee shall provide direct supervision to the technician, as defined in [(b)](e) above; and

3. (No change.)

13:42-7.5 Shareholder or employee of a general business corporation

(a) A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated director of psychological services or a medical director licensed in this State who is regularly on the premises and who (along or with other persons authorized by the Department of Health, if applicable) is responsible for licensure verification, credentialing and quality control of the provision of psychological services.

1. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short term care facility, or ambulatory care facility. Alternatively, the corporation may be another type of [licensed] health care facility or corporate health care provider accredited by the Joint Commission on Accreditation of Health Care Organizations. The above accredited corporate employers may include a [licensed] facility

which is a component part of a for-profit corporation employing or otherwise remunerating licensed psychologists, provided that the health care facility/provider has a formal credentialing process and quality control procedures, and service providers are supervised by a psychologist or physician licensed in this State and regularly on the premises.

2.-4. (No change.)

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

13:42-7.6 Managed health care plans

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

(d) A licensee who is not a full or regular member of a managed health care plan may contract with a plan to render services to an insured person referred by the plan, provided that the licensee retains the authorities listed in (c)1 through 4 above.

(e) The licensee shall submit the bill for services rendered in one of the following ways:

1. To the client-insured;

2. To the managed health care plan, but only if billing is on a per-task or time unit basis and the plan is a professional organization established consistent with N.J.A.C. 13:42-7.1 or 7.2 or a licensed health care corporation as defined in N.J.A.C. 13:42-7.5(a)1.

3. To the employer/administrative entity of the client-insured if the employer is a wholly or partially self-insured health insurance plan or a multiple employer welfare arrangement (MEWA).

13:42-9.9 Misleading implications of licensure

(a) A person not licensed under the Practicing Psychology Licensing Act is prohibited from implying licensure under the Act by using a title or description which, when used in combination with other circumstances, would lead a reasonable person to think that the individual is a licensed psychologist or is authorized to perform professional services which only a licensed psychologist can offer. Examples of such conduct, whether for recompense or not, include:

1. (No change.)

2. Using names or professional or occupational titles including "counselor," "psychotherapist," "therapist," [or] "analyst," and related terms or forms unless clearly qualified by reference to another profession or group exempt from licensure under the Act pursuant to N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.5 or other applicable law.

13:42-10.16 Restrictive covenants

(a) A licensee shall not participate in offering or making a partnership or employment agreement that restricts the right of a licensed health care professional to practice the licensed profession after termination of the relationship, except:

1. An agreement concerning benefits upon retirement; or

2. An agreement in which a restriction on the right of the licensed health care professional to practice is part of the settlement of a controversy between private parties.

(a)

NEW JERSEY RACING COMMISSION Horse Racing Rules

Proposed Readoption: N.J.A.C. 13:70

Authorized By: New Jersey Racing Commission,

Frank Zanzuccki, Executive Director.

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

Proposal Number: PRN 1994-617.

Submit written comments by January 4, 1995 to:

Michael Vukcevic, Deputy Director
New Jersey Racing Commission
140 E. Front Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:70 is scheduled to expire on January 25, 1995. The current rules have been reviewed

pursuant to the Executive Order and the Commission has found them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated, that is, to regulate the running (hereinafter "thoroughbred") racing industry. The Commission, in past years, has acted to keep its regulations governing thoroughbred racing current. It has proposed various amendments to those rules on an ongoing basis, in response to industry concerns, concerns of the public and as a result of evolving circumstances. The Commission will continue to review its regulations on a continuing basis, proposing and adopting amendments as necessary, desirable and as appropriate.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of racing, industry participants and racetrack permit holders. The chapter proposed for readoption contains 31 subchapters, described as follows:

Subchapter 1, General Rules, contains the chapter's rules of general applicability, including applicability of the regulations, standards of behavior, racetrack policing requirements, etc.

Subchapter 2, Definitions, defines various of the terms used in Chapter 70, including the definition of racing terminology as relevant to the thoroughbred industry.

Subchapter 3, Racing Associations, sets forth various of the requirements placed upon permitted racing associations, including conditions and procedures for licensure, equipment and facility maintenance, prohibited activities on the grounds of a racetrack, insurance maintenance requirements, and admission age criteria.

Subchapter 4, Licensing, contains the procedures and fees for licensure.

Subchapter 5, Stable Names, Corporations and Multiple Ownerships, establishes requirements and licensure procedures with respect to stable names, corporations and multiple ownerships.

Subchapter 6, Entries and Subscriptions, sets forth the requirements for entries and subscriptions. This subchapter includes provisions with respect to the coupling of horses, tattooing requirements, workout program requirements, etc.

Subchapter 7, Declarations and Scratches, establishes the methods of declaring horses to start and scratching of horses.

Subchapter 8, Weights, establishes the method of assigning weights to horses and equipment requirements.

Subchapter 9, Jockeys, Jockey Apprentices and Jockey Agents, sets forth requirements and restrictions with respect to jockeys, jockey equipment and fees, jockey agents and jockey apprentices.

Subchapter 10, Paddock To Post, sets forth the requirements for horses from paddock to post, which includes the post parade.

Subchapter 11, Post To Finish, contains the requirements from post to finish, including jockey requirements related thereto.

Subchapter 12, Claiming, sets forth the rules and procedures with respect to the claiming of horses.

Subchapter 13, Objections and Protests, sets forth the procedures to lodge objections and protests.

Subchapter 14, Illegal Practices, sets forth illegal and improper practices, imposes requirements on individuals to cooperate in investigations or prosecutions, and to report violations to the stewards, sets forth various responsibilities of the New Jersey State Police, and requires filing of equine fatality reports as appropriate.

Subchapter 14A, Medication and Testing Procedures, sets forth the procedures for implementation and penalties for detection, concerning testing of horses for foreign substances, and the testing of individuals subject to the Commission's jurisdiction for alcohol, controlled dangerous substances or contraband.

Subchapter 15, Racing Officials, defines race officials and sets forth various restrictions and duties with respect thereto.

Subchapter 16, Stewards, establishes the qualifications, authority and various duties of the thoroughbred stewards.

Subchapter 17, Starter, establishes the qualifications for starters and the responsibilities placed upon the starter.

Subchapter 18, Racing Secretary, sets forth the duties of the race secretary.

Subchapter 19, Other Officials, establishes the qualifications and duties of other officials, including the clerk of the scales, the jockey room custodian, paddock judge, patrol judges, placing judges and state veterinarians.

Subchapter 20, Trainers, establishes the qualifications and responsibilities placed upon the trainers.

Subchapter 21, Owners, sets forth the qualifications and responsibilities placed upon owners.

Subchapter 22, Authorized Grants, establishes the qualification and responsibilities of those granted authority to act on behalf of another, that is, authorized agents and sub-agents.

Subchapter 23, Disciplinary Action, sets forth penalties and certain disciplinary-related items.

Subchapter 24, Steeplechasing, establishes procedures in connection with steeplechase or hurdle race events.

Subchapter 25, Dead Heats, sets forth the procedures in the event a race competition results in a dead heat.

Subchapter 26, Produce Races, sets forth the qualifications and procedures for produce races.

Subchapter 27, Vendors, establishes the licensing procedure for vendors and imposes labeling requirements with respect to drugs, etc., on race association grounds.

Subchapter 28, Winnings, establishes the procedures utilized for computing the winnings of horses.

Subchapter 29, Mutuels, sets forth the procedures and methods for computing prices to be paid to the patrons in the various types of wagering, as well as the duties of the Supervisor of Mutuels.

Subchapter 30, Initial Track Application, sets forth the qualifications for an initial application for a permit to conduct a horse race meeting.

Subchapter 31, Violations, sets forth violations of the rules and regulations of the Commission and provides for penalties to be imposed.

Social Impact

The rules proposed for readoption provide various procedures, requirements and conditions necessary for the orderly administration and conduct of the thoroughbred industry and participants therein. The racing industry, with its allowance for wagering, is an industry which affects the public interest and thus requires strong regulation. By its rules, the Racing Commission attempts to keep undesirable and individuals convicted of serious crimes from participation in the sport. The readoption of these rules will assist the Commission in achieving its statutory mandate to provide revenue to the State of New Jersey, to insure the orderly continuation of a racing circuit to maintain and enhance the employment it provides, to provide the public with a recreational opportunity, and to improve the state's competitive position with neighboring jurisdictions where horse racing is permitted. The proposed rules for readoption, in that they enhance these purposes, are considered by the Commission as having a positive social impact.

Economic Impact

The readoption of the rules will have no anticipated economic impact upon the participants in racing, since the provisions subject of the readoption are currently in effect. However, various economic impacts emanate as a result of the present regulatory schematic subject of this readoption proposal. These include: licensing and registration fees (maximum of \$50.00) set forth in subchapter 4, which are received and transmitted to the General Treasury as revenue to the State; costs to licensees attendant to participation as, for example, costs related to the equipment that riders of horses must wear (subchapters 8 and 9); costs to licensees as concerns hearing fees (subchapter 13A); costs borne by racetrack permit holders as maintenance of various race-related equipment and an odds board, maintenance of a starting gate and photo-finish equipment (subchapter 3), the imposed duties of employees of the racing associations (for example, the Race Secretary, subchapter 18), payment of the salary of various individuals who report to the Racing Commission as, for example, the State Veterinarian (subchapter 15) and, among other things, costs related to chemical testing (subchapter 14A). Additionally, an economic impact may result from suspensions or fines being issued to racetrack permit holders or licensees, which impact may arise as a result of monetary fines or the resulting inability to participate in race-related activities.

Additionally, horse racing is an important industry which provides substantial direct and indirect benefits to the State, provides employment and recreational opportunities to thousands of individuals and, at the same time, helps to preserve agricultural farmland. In excess of 3,880,497 million people attended permitted racetracks in 1993 alone and wagered in excess of \$1,083,392,565, of which approximately \$862,183,303 was returned to the patrons. The State of New Jersey received more than \$7,772,646 in revenue from the general treasury. The track associations, the horsemen and horsemen's organizations received \$215,800,118 in 1993. Each track association conducts a limited number of charity days each year, which in 1993 resulted in the state's normal revenue share for such days (\$362,368) being forwarded to the Developmental Disabilities Council to be distributed to organizations designated by the

council, to the Vietnam Veteran's Memorial Fund, or to the Backstretch Benevolence Fund. The Commission also distributed in 1993 approximately \$42,475 to qualifying municipalities to offset increases in expenses from the operation of private tracks situated in their areas.

Regulatory Flexibility Analysis

A significant portion of the rules of the Racing Commission are directed to individual licensees and racetrack permit holders. In that individuals and racetrack permit holders are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The rules of the Racing Commission, subject of this readoption proposal, do to a limited extent impact upon certain small businesses, principally veterinarians and owners.

The impact on small businesses was considered in connection with prior adoptions or amendments to the Commission's rules. The requirements of the Regulatory Flexibility Act, to the extent consistent with factors including the Commission's intent in promulgating rules, the public interest, overall safety and animal health, were then applied and incorporated to minimize impact on small businesses.

With regard to practicing veterinarians, they are required to make daily reports to the Commission with respect to all horses under treatment by them. The cost of imposing this reporting and/or recordkeeping requirement on the practicing veterinarians is minimal and necessary to enhance regulatory enforcement. A requirement imposed upon owners who may be involved in a stable name, and thus perhaps a small business, is the completion of an application for a license as an owner and in connection with the stable name. Such a filing requirement is necessary toward ascertaining the ownership interests of the horse or horses and, consequently, to insure proper enforcement of the underlying rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:70.

(a)

NEW JERSEY RACING COMMISSION

Harness Racing Rules

Proposed Readoption: N.J.A.C. 13:71

Authorized By: New Jersey Racing Commission,

Frank Zanzuccki, Executive Director.

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

Proposal Number: PRN 1994-618.

Submit written comments by January 4, 1995 to:

Michael Vukcevic, Deputy Director
New Jersey Racing Commission
140 E. Front Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:71 is scheduled to expire on January 25, 1995. The current rules have been reviewed pursuant to the Executive Order and the Commission has found them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated, that is, to regulate the harness racing industry. The Commission, in past years, has acted to keep its regulations governing harness racing current. It has proposed various amendments to those rules on an ongoing basis, in response to industry concerns, concerns of the public and as a result of evolving circumstances. The Commission will continue to review its regulations on a continuing basis, proposing and adopting amendments as necessary, desirable and as appropriate.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of racing, industry participants and racetrack permit holders. The chapter proposed for readoption contains 28 subchapters, described as follows:

Subchapter 1, General Rules, contains the chapter's rules of general applicability, including applicability of the regulations, standards of behavior, etc.

Subchapter 2, Violations, sets forth various penalties for violations of the law, or of the rules of the Racing Commission.

Subchapter 3, Appeals, sets forth the right of appeal with respect to determinations of violations of the rules, including the procedures and requirements for requesting an appeal.

Subchapter 4, Definitions, defines various terms used in Chapter 71, including definitions of racing terminology as relevant to the harness industry.

Subchapter 5, Tracks, contains various requirements placed upon permitted racetracks, including policing requirements, access to grounds and prohibited forms of wagering activities thereupon.

Subchapter 6, Associations, sets forth additional requirements placed upon associations, such as compensation insurance carriage, paddock related rules, ambulance maintenance on racetrack grounds requirements, the application review process, etc.

Subchapter 7, Licensing, contains the procedures and fees for licensure.

Subchapter 8, Officials, sets forth the qualifications, duties and authority of the racing officials, as well as the Racing Commission's Executive Director.

Subchapter 9, Veterinarians and Veterinarian Certificates, establishes the qualifications and responsibilities of State Veterinarians and practicing veterinarians, pertaining to harness racing.

Subchapter 10, Program, contains race program requirements and requires that such information be reliable.

Subchapter 11, Identification of Horses and Eligibility to Run, sets forth the procedures and qualifications for identification of horses and their eligibility to race.

Subchapter 12, Stable Name, Leases, establishes registration requirements for use of a racing farm, corporate or stable name, and horse lease filing requirements.

Subchapter 13, Eligibility and Classification Conditions, sets forth ownership registration requirements, as well as the qualifications for the eligibility and classification of horses.

Subchapter 14, Claiming, sets forth qualifications, restrictions and procedures concerning the claiming of horses.

Subchapter 15, Stakes and Futurities, establishes the qualifications and standards for stakes and futurities.

Subchapter 16, Declarations to Start and Drawing Horses, sets forth the method of declaring horses to start and the drawing of horses into races.

Subchapter 17, Starting Gate, contains the procedures used in starting of races, defines the duties and responsibilities of the starter, and requires each racetrack to utilize a mobile starting gate.

Subchapter 18, Breathalyzer Test, sets forth the procedures for implementation and penalties for detection concerning the testing of individuals subject to the Commission's jurisdiction for alcohol, controlled dangerous substances or contraband.

Subchapter 19, Colors and Drivers Attire, establishes qualifications regarding driver attire, including the wearing of distinguishing clothing and safety helmets.

Subchapter 20, Rules of Racing, sets forth the general rules of racing, and imposes requirements on the drivers and trainers in connection therewith. It also requires the registration of nerved horses and the filing of equine fatality reports as appropriate.

Subchapter 21, Placing Conditions and Purses, contains the general rules of placing conditions and purses.

Subchapter 22, Radios, Receivers and Transmitters, requires the approval of the Racing Commission for public telephones to remain open during the race day.

Subchapter 23, Medication and Testing Procedures, establishes medication and testing procedures, licensee responsibilities in this area, and related penalties and restrictions with respect to the possession of drugs or drug instruments. This subchapter also sets forth the responsibility of the New Jersey State Police, as well as the responsibilities of each racetrack, official and all licensees to cooperate in investigations involving a violation of law, or of the Commission's regulations.

Subchapter 24, Authorized Agents, contains the procedures with respect to the licensure of authorized agents for owners.

Subchapter 25, Vendors, establishes the licensing procedure for track vendors.

Subchapter 26, Illegal Practices, sets forth various illegal practices, such as bribes, false statements and conspiracies; imposes reporting requirements with respect to knowledge of violations; requires cooperation in investigations; and provides for license suspension pending the outcome of indictment.

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

Subchapter 27, Mutuels, contains the procedures and methods for computing prices to be paid to the patrons in the various types of wagering, as well as the duties of the Supervisor of Mutuels.

Subchapter 28, Initial Track Association, establishes the qualifications for an initial application for a permit to conduct a horse race meeting.

Subchapter 29, Sulky, sets forth standards for sulkys to compete in New Jersey and imposes requirements with respect thereto.

Social Impact

The rules proposed for readoption provide various procedures, requirements and conditions necessary for the orderly administration and conduct of the harness racing industry and participants therein. The racing industry, with its allowance for wagering, is an industry which affects the public interest and thus requires strong regulation. By its rules, the Racing Commission attempts to keep undesirables and individuals convicted of serious crimes from participation in the sport. The readoption of these rules will assist the Commission in achieving its statutory mandate to provide revenue to the State of New Jersey, to insure the orderly continuation of a racing circuit to maintain and enhance the employment it provides, to provide the public with a recreational opportunity, and to improve the states competitive position with neighboring jurisdictions where horse racing is permitted. The proposed rules for readoption, in that they enhance these purposes, are considered by the Commission as having a positive social impact.

Economic Impact

The readoption of the rules will have no unanticipated economic impact upon the participants in racing, since the provisions subject of the readoption are currently in effect. However, various economic impacts emanate as a result of the present regulatory schematic subject of this readoption proposal. These include: licensing and registration fees (maximum of \$50.00) set forth in subchapter 7, which are received and transmitted to the General Treasury as revenue to the State; costs to licensees attendant to participation as, for example, the requirement that drivers wear safety helmets (subchapter 19); costs to licensees as concerns hearing fees (subchapter 3); costs borne by racetrack permit holders as maintenance of various race-related equipment and an odds board, maintenance of a starting vehicle and photo-finish equipment, the imposed duties of employees of the racing associations (for example, the racing secretary, subchapter 8); payment of the salaries of various individuals who report to the Racing Commission as, for example, the State and Associate State Veterinarians (subchapter 9) and, among other things, costs related to chemical testing (subchapter 23). Additionally, an economic impact may result from suspensions or fines being issued to racetrack permit holders or licensees, which impact may arise as a result of monetary fines or the resulting inability to participate in race-related activities. The rules also have economic impacts on certain vendors, who must comply with criteria set forth in the regulations. For example, as part of its continuing review and revision to its regulations, the Commission in 1994 adopted subchapter 29 which, as noted, sets forth sulky standards. This subchapter imposes requirements relating to sulky manufacture, testing and insurance which results in costs to said manufacturers.

Additionally, horse racing is an important industry which provides substantial direct and indirect benefits to the State, provides employment and recreational opportunities to thousands of individuals and, at the same time, helps to preserve agricultural farmland. In excess of 3,880,497 people attended permitted racetracks in 1993 alone and wagered in excess of \$1,083,392,565, of which approximately \$862,183,303 was returned to the patrons. The State of New Jersey received more than \$7,772,646 in revenue for the general treasury. The track associations, the horsemen and horsemen's organizations received \$215,800,118 in 1993. Each track association conducts a limited number of charity days each year, which in 1993 resulted in the state's normal revenue share for such days (\$362,368) being forwarded to the Developmental Disabilities Council to be distributed to organizations designated by the council, to the Vietnam Veteran's Memorial Fund, or to the Backstretch Benevolence Fund. The Commission also distributed in 1993 approximately \$42,475 to qualifying municipalities to offset increases in expenses from the operation of the private tracks situated in their areas.

Regulatory Flexibility Analysis

A significant portion of the rule of the Racing Commission are directed to individual licensees and racetrack permit holders. In that individuals and racetrack permit holders are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory

flexibility analysis is not required. The rules of the Racing Commission, subject of this readoption proposal, do to a limited extent impact upon certain small businesses, principally veterinarians, owners and sulky manufacturers.

The impact on small businesses was considered in connection with prior adoptions or amendments to the Commission's rules. The requirements of the Regulatory Flexibility Act, to the extent consistent with factors including the Commission's intent in promulgating rules, the public interest, overall safety and animal health, were then applied and incorporated to minimize impact on small businesses.

With regard to practicing veterinarians, they are required to make daily reports to the Commission with respect to all horses under treatment by them. The cost of imposing this reporting and/or recordkeeping requirement on the practicing veterinarians is minimal and necessary to enhance regulatory enforcement. A requirement imposed upon owners who may be involved in a stable name, and thus perhaps a small business, is the completion of an application for a license as an owner and in connection with the stable name. Such a filing requirement is necessary toward ascertaining the ownership interests of the horse or horses and, consequently, to insure proper enforcement of the underlying rules. As concerns sulky manufacturers, certain manufacturers may function as small businesses and may be licensed as vendors by the Commission. Subchapter 29 of the rules impose standards as to sulky manufacture, inspection of sulkys, the filing of documentation regarding individual sulky serial numbers, the maintenance of product liability insurance and the filing of evidence of such insurance by said manufacturers. While that subchapter thus imposes reporting and recordkeeping requirements on such manufacturers, some of which may be classified as small businesses, the uniform application of those rules is considered by the Commission as essential to the proper maintenance of sulkys, and consequently, of direct significance to the safety of the human and animal race participants.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:71.

TRANSPORTATION

(a)

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

Speed Limits

Route N.J. 47

Dennis Township, Cape May County

Proposed Amendment: N.J.A.C. 16:28-1.132

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

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

Proposal Number: PRN 1994-621.

Submit comments by January 4, 1995 to:

William E. Anderson

Manager

New Jersey Department of Transportation

Bureau of Traffic Engineering and Safety Programs

1035 Parkway Avenue

CN 613

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.132 to revise certain "speed limit" zones along Route N.J. 47 in Dennis Township, Cape May County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a meeting with the local government representatives of Dennis Township on September 30, 1994, regarding accidents caused by speeding and as part of a review of current conditions, the Depart-

ment's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that revising certain "speed limit" zones along Route N.J. 47 were warranted.

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

Social Impact

The proposed amendment will establish a 45 miles per hour "speed limit" zone along Route N.J. 47 in Dennis Township, Cape May County, in the vicinity of mileposts 16.79 to 20.16 for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28-1.132 Route 47

(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. In Cape May County:

i.-iii. (No change.)

iv. Dennis Township:

(1) (No change.)

[(2) Zone 2: 45 miles per hour between Beaver Dam Road (County Road 657) and 200 feet north of the bridge over Dennis Creek (approximate mileposts 16.79 to 17.73).

(3) Zone 3: 50 miles per hour between 200 feet north of the bridge over Dennis Creek to the Dennis Township-Maurice River Township corporate line (approximate mileposts 17.73 to 24.45).]

(2) **Zone 2: 45 miles per hour between Beaver Dam Road (County Road 657) and Washington Avenue (County Road 557) (approximate mileposts 16.79 to 20.16).**

(3) **Zone 3: 50 miles per hour between Washington Avenue (County Road 557) and the Dennis Township-Maurice River Township corporate line (approximate mileposts 20.16 to 24.45).**

2.-4. (No change.)

(a)

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

Lane Usage

Route U.S. 9

Middle Township, Cape May County

Proposed New Rule: N.J.A.C. 16:30-3.13

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

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

Proposal Number: PRN 1994-627.

Submit comments by January 4, 1995 to:

William E. Anderson

Manager

New Jersey Department of Transportation

Bureau of Traffic Engineering and Safety Programs

1035 Parkway Avenue

CN 613

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:30-3.13 concerning turning movements along Route U.S. 9 to effect a "center lane for left turns only" in Middle Township, Cape May County. This new rule has been further codified in compliance with the Department's rulemaking format.

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

This new rule is being proposed at the request of the local government of Middle Township, Cape May County, in a letter from Mayor Michael J. Voll dated March 17, 1994, that included an access permit to establish a certain lane for left turns only into the various driveways in the area. As part of the Department's on-going review of current conditions, from the intersection of Romney Place to Stone Harbor Boulevard the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation that concluded that the establishment of a center lane for left turns only restriction along Route U.S. 9 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish a center lane for left turns only along Route U.S. 9 in Middle Township, Cape May County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

The proposed new rule 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 new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:30-3.13 Route U.S. 9

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

1. In Cape May County:

i. In Middle Township:

(1) Center lane for left turns only:

(A) Both directions of Route U.S. 9 from the intersection of Romney Place to Stone Harbor Boulevard (approximate mileposts 12.7 to 13.0).

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Public Employees' Retirement System

Proposed New Rules: N.J.A.C. 17:2

Authorized By: Public Employees' Retirement System,

Wendy Jamison, Secretary.

Authority: N.J.S.A. 43:15A-53.

Proposal Number: PRN 1994-625.

Submit comments by January 4, 1995 to:

Peter J. Gorman, Esq.

Administrative Practice Officer

Division of Pensions and Benefits

CN 295

Trenton, New Jersey 08625

Summary

The Division of Pensions and Benefits is constantly reviewing the administrative rules within N.J.A.C. 17:2 concerning rules governing the Public Employees' Retirement System (PERS). When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operations of the PERS, the administrative rules are reviewed, and, if changes therein are mandated, recommendations are forwarded to the PERS Board of Trustees to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:2, the Board of Trustees of the PERS is satisfied that they are necessary and needed for the efficient operation of the system. The rules expired, in accordance with Executive Order No. 66(1978), on November 8, 1994.

The PERS Board of Trustees proposes as new, without change, the current rules within N.J.A.C. 17:2. The proposed rules concerning administration of the system; enrollment; insurance and death benefits; membership; purchases and eligible service; retirement; and transfers. The proposed rules reflect the requirements for eligibility and amounts of benefits available that are mandated within the statutes governing the Public Employees' Retirement System (PERS). Such rules do not expand or contract those statutory mandates. Essentially, the proposed rules attempt to clarify those portions of the laws that may not be totally clear.

Social Impact

The proposed rules affect and work to the benefit of the past, present and future persons who are members of the PERS. The taxpaying public is affected by these rules in the sense that public monies are used to fund the benefits. The benefits include the payment of pensions and health or medical coverage.

As of June 30, 1993, which is the latest reporting period, the active contributing membership of the system totaled 251,406 and the inactive membership totaled 31,228. There were 77,056 retirees and beneficiaries receiving annual pensions.

Economic Impact

While the continuation of the expired rules proposed as new rules will not itself present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not adopted, the benefits and claims mandated by the statutes must still be paid. The administrative rules provide for the efficient operation of the system.

The total benefits paid to retirees and beneficiaries during fiscal 1993 totaled \$545,607,739. The system's assets totaled \$10,082,773,232 at the close of the fiscal year 1993. Death benefits paid during such period totaled \$71,424,134. The Division of Pensions and Benefits cannot expand or contract the mandates specified within the laws governing the system and the proposed rules do not do either.

Regulatory Flexibility Statement

The rules of the Teachers' Pension and Annuity Fund only affect public employers and employees. Thus, this proposed readoption does not impose any reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility

Act, N.J.S.A. 52:14B-1 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the expired rules proposed herein as new can be found in the New Jersey Administrative Code at N.J.A.C. 17:2.

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Rules Governing Classification and Qualification of Bidders

Proposed Repeal and New Rules: N.J.A.C. 17:19

Authorized By: James Archibald, Deputy State Treasurer.

Authority: N.J.S.A. 52:35-1 et seq.

Proposal Number: PRN 1994-622.

Submit comments by January 4, 1995 to:

Maureen Adams, Director

Division of Building and Construction

New Jersey Department of the Treasury

CN 235

Trenton, NJ 08625-0235

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 17:19, Rules Governing the Classification and Qualification of Bidders, expires on March 8, 1995. This chapter describes the Division of Building and Construction's (DBC) rules and procedures for classification and qualification of firms to compete for construction, design, and consulting contracts for public works projects in New Jersey.

This proposed repeal and adoption of new rules is necessary to permit the design and construction of State building projects to continue without interruption. These rules effectively set forth the various bidding and award requirements imposed on State design and construction contracts by State law and various Executive Orders. The Department of Treasury has determined that these rules are necessary and reasonable.

The Department of the Treasury proposes revisions to N.J.A.C. 17:19 to include additional details on these procedures and rules than was previously contained in the regulations. This is intended to make them more understandable and eliminate any ambiguities or "gray areas" that could be misinterpreted by contractors and consultants, specifically in subchapters 2 and 5. The rules also include information about DBC programs that were implemented subsequent to the last revision of the regulations. Since significant modifications and additions have been made to clarify the existing rules, they are being repealed rather than readopted with changes. While none of the changes are major, they will increase the clarity of the regulations to eliminate ambiguous language which is often misinterpreted by contractors and consultants in subchapters 2 and 5.

A new subchapter (N.J.A.C. 17:19-4) has been added to the regulations to explain DBC's hearing procedures, and the rights of consultants and contractors to protest what they believe to be unfair classifications or contract awards.

Other new sections in the regulations cite DBC's commitment to classifying and awarding contracts to qualified and eligible minority- and women-owned businesses.

Adoption of these changes will make DBC's regulations more comprehensive and understandable, decrease the number of time-consuming and costly disputes lodged as a result of misunderstanding the regulations, and enhance the overall communication between the State and the private firms competing for public works contracts.

Subchapter 2, Classification and Qualification of Bidders, has been expanded to clarify the requirements construction contractors must meet to become classified for State work.

N.J.A.C. 17:19-2.1, Statements Required from Prospective Bidders, now contains a comprehensive list of the specific information that contractors must submit with the classification request form (GSA-27), particularly with respect to the types of financial statements needed.

In N.J.A.C. 17:19-2.6, Performance Ratings, the regulations detail how a contractor's performance rating is determined, and denote the various job performance factors used as a basis for this rating.

Revised N.J.A.C. 17:19-2.9 explains how DBC calculates the maximum dollar value of work each contractor is eligible to bid for in its trade(s).

The factors used to determine this "aggregate rating limit" are discussed, including a detailed description of how DBC determines "net quick current assets," and the mathematical formulas used to calculate the final classification rating.

Subchapter 2 also covers the effective dates of classifications and ratings in N.J.A.C. 17:19-2.11. This section includes the timeframes for classification determination, changes to classification, and classification deadlines for bidding which are also outlined in N.J.S.A. 52:35-1 et seq. This information will help contractors better plan and schedule for these activities and avoid missing crucial bidding deadlines.

There are no major changes in the content of subchapter 3, Debarment, Suspension and Disqualification of a Person(s), only minor rewording to help clarify some of the causes for debarment which were ambiguous and to make the rules gender neutral. The definition of "Disqualification" has been revised to clarify its meaning at N.J.A.C. 17:19-3.1 and the factors for disqualification have been revised at N.J.A.C. 17:19-3.8. These regulations are specifically based on Executive Order 34(1976). Subchapter 3 outlines the causes for the debarment, suspension or disqualification of a person; the conditions affecting such actions; and the procedures, period, scope of debarment, suspension and disqualification actions. In N.J.A.C. 17:19-3.9, the regulations specify that persons shall be excluded from State contracting by virtue of debarment, suspension or disqualification. A debarment list, specified in N.J.A.C. 17:19-3.11 will be assembled and forwarded to the State Treasurer in addition to being available for public inspection at all times.

The rules in proposed new subchapter 5, Consultant Selection Procedures, have been similarly revised (from the current N.J.A.C. 17:19-10) to more clearly communicate DBC's existing policies and procedures for the prequalification and quality-based selection of architectural, engineering, construction management or other consultant firms for assignments on State construction projects. This subchapter is also being recodified from its current codification as subchapter 10.

Subchapter 5 contains updated and reorganized information on the various types of consultant contract programs currently in use for DBC-administered projects. The new regulations trace all the steps involved with establishing major project contracts, from the initiation of the project to recommendation of contract award. DBC's term contract policies and selection procedures are also included.

Subchapter 5 also includes new regulations for the Agency Consultant and Client Agency Management programs. These contracting programs were recently created via Divisional policy and procedure to offer additional services to State client agencies. These programs delegate to State agencies the authority to manage their own design and/or construction projects for certain projects of a smaller dollar value.

The new subchapter on hearing procedures (N.J.A.C. 17:19-4) covers the respective rights of bidders, prospective bidders and the State with respect to protests of classification determinations, contract awards and other matters of dispute. This subchapter also details the situations that may call for a hearing, who may request a hearing and who must attend, and how the outcome of a hearing may affect a contract award.

Social Impact

The proposed new rules at N.J.A.C. 17:19 will continue the general procedures which have served to benefit the State, its facilities and infrastructures, and the general public which utilizes or receives services conducted at these State facilities. The chapter revisions are designed to elucidate regulations which in the past might have been considered vague or confusing to construction contractors and/or design consultants. This will result in better overall communication between DBC and these firms, and will promote the perception of DBC as more "business-friendly." The Division currently classifies approximately 3000 construction contractors and 800 architects, engineers and construction consultants for participation in State design and construction projects.

These rules implement the basic statutory purposes of N.J.S.A. 52:35-1 et seq. regarding bidder classification and responsibility which are crucial to ensuring State capital funds are expended effectively and efficiently while treating all vendors equally and fairly, and guarding against favoritism, improvidence, extravagance and corruption.

N.J.A.C. 17:19-3, Debarment, Suspension and Disqualification of a Person(s), and N.J.A.C. 17:19-4, Hearing Procedures, outline the Division procedures for dealing with prospective bidders lacking responsibility, protesting bid awards, disputing classification/prequalification actions, or contractual decisions made by the Division.

For contractor classification and consultant prequalification, the regulations have also been amended to include "Set-Aside" provisions which conform to the provisions of N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14.

These statements affirm DBC's commitment to continued good-faith efforts to award contracts and subcontracts to eligible minority- and women-owned businesses. It is hoped that DBC's ongoing outreach efforts toward minority- and women-owned businesses will result in additional opportunities for these firms, as well as further promoting the State's reputation for fairness.

Economic Impact

The rules affected by this proposed readoption will continue to enhance the competitiveness, efficiency and cost effectiveness of the State's capital design and construction program, thus resulting in a positive economic impact for the State. In providing contracting services for State construction projects, the Division has a significant effect on the State economy. Federal government and industry studies indicate approximately 30 private sector jobs are created for each \$1 million in construction contracts executed. Thus, the DBC's projected construction awards of \$127 million for Fiscal Year 95 could generate 3,800 new private sector jobs. Other industry sources estimate that for each \$1.00 spent on new construction, between \$2.00 and \$3.00 is generated in economic activity in industry and services. These factors demonstrate the great potential benefit of construction on New Jersey's economy.

The clarification of eligibility rules is an attempt to improve communication with all contracting and consulting firms. By "de-mystifying" classification/prequalification procedures, additional companies will be encouraged to compete for work on State design and construction projects, resulting in greater economic opportunities for more companies. Increased competition on State construction projects is also crucial to keeping construction costs as low as possible, resulting in savings to client agencies and in turn, the taxpayers of New Jersey.

The economic impact on contracting and consultant firms is an outgrowth of the bidding procedure requirements mandated by statute (N.J.S.A. 52:35-1 et seq.), and sound business practice and policies and procedures necessary to protect the use of public funds. These requirements are further explained in the Regulatory Flexibility Analysis below.

Regulatory Flexibility Analysis

The proposed new rules and revisions to N.J.A.C. 17:19 affect all persons and entities that bid for design and construction contracts with the State. Many construction contractors, architectural, engineering and consulting firms are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. No reporting or recordkeeping requirements are imposed by the rules.

The bidding procedure compliance requirements are necessary in order to ensure a fair, competitive system for the bid and award of capital construction projects. Bid bonds and performance and payment bonds are required to be obtained by construction contractors from a surety authorized to issue bonds in the State of New Jersey. A contractor who fails to obtain a statement of bonding capacity will receive a classification rating of not higher than \$100,000 and will not be eligible to bid on projects for which a bond is necessary, but may be eligible to bid on any project for which a bid is not required (N.J.A.C. 17:19-2.4).

Contractors seeking classification or reclassification as per N.J.A.C. 17:19-2.7(a) will also be required to obtain the services of a certified public accountant or public accountant as established in N.J.S.A. 45:2B-29 et seq. These requirements are necessary both as sound business practice and to protect the expenditure of State capital funds. The rules should impose no capital costs upon contractors beyond those normally incurred in the course of construction contracting in their respective business areas. There is no application cost for classification or prequalification requests. Furthermore, consultants are not required to submit performance and payment bonds or financial statements completed by a certified public accountant due to the nature of the services they provide; consequently, the design consultant's costs are limited to the time required to prepare the Prequalification Questionnaire and any professional licensure fees required by the State to practice architecture, engineering or specialized construction services in the State of New Jersey. No need for the engagement of professional services in the bidding or consultant selection process is anticipated unless bid protests or disputes arise which may result in the need for legal counsel for advisement purposes.

While contractor reclassification is required every seven months by N.J.A.C. 17:19-2.7(b), no application fee or professional fees are required for the seven-month extension request. The reclassification costs are limited to the time required to prepare the reclassification questionnaire. Based on the above explanations, the Division foresees no undue

burdensome requirements on small businesses resulting from the adoption of these regulations.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 17:19.

Full text of the proposed new rules follows:

CHAPTER 19

CLASSIFICATION AND QUALIFICATION OF BIDDERS

SUBCHAPTER 1. GENERAL PROVISIONS

17:19-1.1 Definitions

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

"Classification" means the process and product of assigning specific construction categories or trades and the maximum aggregate workload level(s) which define the eligibility of prospective bidders as determined by the Division, in accordance with this chapter.

"Director" means the Director of the Division of Building and Construction (hereinafter referred to as DBC) in the Department of the Treasury.

"Person" means any individual, copartnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.

"Public work" means any public building or other public betterment, work or improvements constructed, repaired or improved wholly or in part at the expense of the public.

"Questionnaire" means the Request for Classification (GSA-27).

SUBCHAPTER 2. RULES

17:19-2.1 Statements required from prospective bidders; contents

(a) Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as Request for Classification (GSA-27) Current Issue. The GSA-27 shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships and prior experience of the prospective bidder and shall be used by the Division of Building and Construction (DBC) in classifying prospective bidders pursuant to N.J.S.A. 52:35-1 et seq.

(b) Each GSA-27 submission shall include:

1. A certified audited, or reviewed, financial statement or compilation of financial statements. The financial statement shall include signed cover letter, by an accountant complete with a balance sheet, related statements of income and retained earnings and cash flows and notes to financial statements in complete detail. Such statements shall be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq. who is independent of and not an employee of the contractor for which the financial statements are being provided:

i. The certified audited financial statements shall have an unqualified opinion. The CPA review of financial statements shall be in conformity with generally accepted accounting principles. All financial statements shall be for a full one year accounting cycle;

ii. Submission of a CPA compilation of financial statements will limit a contractor's maximum aggregate rating to \$5,000,000.

iii. Submission of a CPA review of financial statements will limit contractor's maximum aggregate rating up to \$15,000,000.

iv. Submission of a certified audited financial statement will be required for aggregate ratings exceeding \$15,000,000.

v. Submission of combined or consolidated statements is not acceptable, unless complete supplementary (combining or consolidating) information is included within the report. This information shall be of such detail as to show the singular financial condition of the entity being classified;

2. A statement as to organization, which shall demonstrate the adequacy of such organization (officers and key management personnel) to undertake a project in the classification desired;

3. A statement as to prior experience, which shall show the number of years the prospective bidder has been engaged in the

contracting business and shall further disclose the bidder's experience over that period. In such statement, the applicant may demonstrate the experience of officers, managers and key personnel prior to their affiliation with applicant, which information shall be considered by the DBC;

4. A statement as to the past performance, which shall give an accurate and complete record of work completed in the past four years, by the contractor (not by subcontractors or individuals employed by others) giving the names of the projects, type of work, location, contract price and the names of the owner and of the architect/engineer in charge for the owner. This statement shall also disclose any labor problems experienced, any failure to complete a contract on schedule, any failure to meet contractual Affirmative Action requirements, any penalties imposed by reason of any contract undertaken within the said four year period. The prospective bidder shall explain any of the above problems, failures or penalties encountered during the past four years and what steps have been taken to avoid the recurrence of such problems, failures or penalties;

5. A statement that the applicant has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with New Jersey and Federal laws, rules and regulations;

6. A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey to the applicant contractor, and shall indicate aggregate bonding limits;

7. If the contractor is a corporation or partnership, a statement setting forth the names and addresses of all stockholders or partners owning 10 percent or greater interest in the contractor. If one or more stockholders or partners is itself, a corporation or partnership, the statement shall also indicate the stockholders holding 10 percent or more of the corporation's stock or the individual partners owning a 10 percent or greater interest in the partnership. The disclosure shall be continued until the names and addresses of every non-corporate stockholder or partner exceeding the 10 percent ownership criterion has been listed; and

8. A statement setting forth any other pertinent material and facts that will justify the classification and ratings requested by the contractor.

(c) All foreign corporations shall include a current "Certificate of Authority to perform work in New Jersey" as issued by the Department of State pursuant to N.J.S.A. 14A:13-4 et seq.

17:19-2.2 Fraudulent statements

(a) "Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted or in the course of any hearing under this chapter, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000.00 and shall be permanently disqualified from bidding on all public work of the State; or, in case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, co-partnership, association or corporation, to pay such fine or undergo imprisonment, not exceeding six months, or both." (N.J.S.A. 52:35-9)

(b) Any false, deceptive, or fraudulent information provided in the GSA-27, "Request For Classification," will be deemed a material breach; the State may declare any resulting contract(s) void and unenforceable.

17:19-2.3 Joint venture statement

(a) Where two or more contractors, each with valid classifications and ratings for the same trade category propose to form a joint venture for purposes of bidding on one specific project, the venturers shall jointly submit a Statement of Joint Venture Form DBC 606 to the Division which shall:

1. Be received by the Division no less than five calendar or work days prior to the bid due date set for the project on which they propose to bid;

2. State the classifications and ratings of the individual venturers;

3. Describe the purpose, structure and resources of the joint venture, and be supplemented by any other information requested by the Division;

4. Include a statement from an authorized surety of the bonding capacities of the individual venturers and the bonding capacity of the joint venture; and

5. Be signed by each of the venturers.

(b) Where two or more contractors holding valid classifications, (same trade) and ratings propose to form a joint venture for the purpose of bidding on a project, the joint venture shall submit with its Joint Venture Statement (see (a) above) a statement from an authorized surety of the Joint Venture's bonding capacity.

17:19-2.4 Statements from an authorized surety

(a) Any contractor proposing to submit bids on a public works project which requires a performance bond or a payment bond, or both, shall cause to be submitted with its GSA-27 a certified statement of the contractor's bonding capacity. The statement shall be contained on a standardized form prepared by the DBC and shall be from a surety authorized to issue bid bonds, performance and payment bonds in the State of New Jersey. This statement shall be used in part by the DBC in calculating the applicant's aggregate rating, pursuant to N.J.A.C. 17:19-2.9.

(b) A contractor who does not provide a statement of bonding capacity from an authorized surety shall receive an aggregate rating of no more than \$100,000 and shall not be eligible to bid on any projects for which a bond is necessary, but may be eligible to bid on any project for which a bond is not required, within the rating limits described in N.J.A.C. 17:19-2.9.

(c) In the event that a contractor obtains the required bonding statement subsequent to being classified and rated under (b) above, the contractor may apply for an amended classification. Such amendment shall be a prerequisite to the receipt by the contractor of any plans, specifications, proposals and associated documents for the preparation of a competitive bid. Amendments to classification will be effective 20 days after the receipt by DBC of required additional information.

17:19-2.5 Responsibility determination

(a) For bidders proposing to submit bids on public work, a determination as to responsibility shall be made by the DBC. Any applicant which has no prior public works experience with the State of New Jersey shall be evaluated on the applicant's financial resources, technical qualifications, organization and facilities, accounting and auditing procedures, integrity, references and experience on previous contracts.

(b) A "responsible" bidder is one which can perform the contracted work as agreed to by the contract parties. A determination of "responsibility" refers to the apparent ability of the bidder to successfully carry out the requirements of a contract. Factors affecting a bidder's responsibility include:

1. Financial resource;
2. Technical qualifications;
3. Experience;
4. Organization and facilities to carry out the work;
5. Resources needed to meet completion of contracts;
6. Satisfactory performance record for completion of contracts;
7. Accounting and auditing procedures adequate to control property, funds and other assets;
8. Civil rights compliance; and
9. Satisfactory record of integrity.

(c) Upon rendering an affirmative finding of responsibility, the DBC shall classify a bidder. A notice of classification will be mailed within a 30 day period upon approval.

(d) If a contractor objects to its assigned classification or a bidder objects to the classification of any other bidder, a hearing may be requested pursuant to N.J.S.A. 52:35-4. In the case of a contractor objecting to its own classification, the request must be made, in writing, to the Director within 15 calendar days after the date of the classification notice. In the case of a bidder objecting to the classification of another bidder, the request must be submitted to the Director in accordance with N.J.S.A. 52:35-4 and within three calendar days after the bid opening or at least three calendar days prior to the proposed date of contract award, whichever date is earlier. If a contractor or bidder remains dissatisfied, an appeal may

be made pursuant to N.J.S.A. 52:35-6. The appeal hearing shall be conducted as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1.

17:19-2.6 Performance ratings

(a) For any contractor proposing to submit bids on public work, a performance rating shall be determined. The rating shall be based on the information contained in the Performance Evaluation Form.

(b) For any applicant who has no prior public work experience with the State of New Jersey, the performance rating shall be based on an evaluation of the applicant's references and past experience on private sector projects, as identified in the applicant's form GSA-27.

(c) For any applicant who has prior public works experience with the State of New Jersey, a performance rating shall be based on the project evaluations done for those State projects as follows:

1. A project evaluation shall be made for each of the prime contractors on a public works project. The evaluation shall be made by no less than two persons employed by the State directly involved in the management, supervision or inspection of the project. The evaluators for a given project shall be appointed by the Director or his or her designee.

2. Project evaluations shall be presented on a standardized form (GSA-33) prepared by the DBC. Where necessary, interim evaluations may also be prepared and filed as required.

3. While the Director may establish special evaluation criteria for special projects, in general, a project evaluation shall be based on the following factors:

- i. Schedule adherence, including job planning, manning and submissions;
- ii. Workmanship;
- iii. Supervision;
- iv. Subcontractor performance;
- v. Compliance with all bidding and contract documents;
- vi. Cooperation with other prime contractors;
- vii. Completion of punch list items and prompt furnishing of closeout documents; and
- viii. Timely and cooperative processing of change orders.

4. A contractor's performance rating shall be calculated as the average of the various project evaluations.

(d) The performance ratings of contractors shall be updated as State work is completed and as these contractors bid on other projects.

(e) A contractor shall be notified of a project evaluation or performance rating which would adversely affect the contractor's classification. The contractor shall be afforded an opportunity to respond to such adverse evaluation or rating.

(f) Where a contractor receives an unfavorable performance rating, and where the contractor's performance exhibits a disregard for the standards of the DBC contract, the DBC may institute suspension or debarment proceedings against that contractor, pursuant to Executive Order No. 34(1976).

17:19-2.7 Bidders to be classified

(a) Upon receipt of the completed GSA-27, the Director or his or her designee shall classify the applicant as to the trade, character, and the dollar value of the work on which the applicant shall be qualified to submit bids. Classifications will be based on the information contained in and with the GSA-27 and on the contractor's performance rating. Applicants shall be classified as to the trades listed on current form GSA-27 as to the dollar value of total projects public and private on which they may work at any given time pursuant to the Aggregate Rating Limit.

(b) Bidders shall re-classify every seven months in order to remain eligible to bid on public work. However, prior to the expiration of the classification, a bidder may apply, in writing, for a single seven month extension of classification without filing a new Questionnaire.

1. In applying for an extension, the bidder shall submit a signed affidavit stating that the applicant's financial and bonding status has not so substantially changed since its last submission of a Questionnaire that a change of classification would be warranted. The

Division of Building and Construction may verify this statement and request additional documentation before an extension is granted.

2. The Division shall grant or deny the extension no later than 10 calendar days following receipt of the written extension request.

3. No more than one extension may be granted per classification period. Thereafter, a bidder shall submit an updated Questionnaire in order to continue its classification.

4. The extension of a classification shall be effective for a period of seven months from the expiration date of the preceding rating period which was based upon the submission of a GSA-27.

(c) Where a bidder has not been granted an extension or where an extension period is expiring, the bidder shall file an updated Questionnaire with the DBC. Based on this Questionnaire, the DBC shall reclassify the bidder, as appropriate.

(d) Where, in the course of a classification period, the financial, bonding and/or corporate status of a contractor changes so substantially as to warrant a change of classification or rating, the contractor shall notify the Division, in writing, within 30 days of the change(s) and include the submission of revised Form GSA-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding capacity and changes in ownership.

1. With this notice, the contractor may also request a change of classification or rating.

2. The DBC shall review the request for revision and issue a decision not later than 20 days from the date of the request.

3. Any change of classification or rating shall be effective only for the remainder of the original classification period.

17:19-2.8 Trade classifications

(a) In order to be classified for a given trade, a contractor must have successfully completed at least two significant projects in that trade within the previous four years. These projects may have been either public projects or private sector projects, or a combination of the two. Certified copies of contracts shall be submitted as proof.

(b) The trades for which an applicant may request classifications are as listed on the current issue of Form GSA-27.

17:19-2.9 Aggregate rating limit

(a) A contractor's aggregate rating shall limit the dollar value of State contracts which the contractor may perform at any given time. The aggregate rating limit shall be based on three factors:

1. The contractor's net current quick assets reported in its Financial Statement;

2. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.4; and

3. The contractor's performance rating as described in N.J.A.C. 17:19-2.6.

(b) Net current quick assets shall be determined according to generally accepted accounting principles, but shall not include:

1. Costs and estimated earnings in excess of billings on uncompleted contracts;

2. Any assets not in the name of the contractor;

3. Any past due accounts;

4. Any fixed assets or other assets which either are not liquid or are not readily convertible to cash such as assets in escrow;

5. Securities which are not readily saleable;

6. Securities which have been pledged;

7. The cash surrender value of a life insurance policy on the contractor unless that value is verified, in writing, from the insurance company; and

8. Any amounts due from related parties (affiliates, officers, employees, etc.)

(c) In no event shall a contractor's aggregate rating exceed the contractor's aggregate bonding capacity.

(d) The contractor's aggregate rating shall be calculated as follows:

1. Multiply the contractor's net current assets according to the following table:

Net Current Assets	Multiplier
\$1-20,000	6
\$20,001-40,000	8
\$40,001-80,000	10
\$80,000	12

2. Multiply the result of this calculation by the performance multiplier based upon at least three projects completed in last four years.

Average Performance Evaluations (APE)	Performance Multiplier
90.0 percent or higher	2.00
80.0 percent to 89.0 percent	1.00
70.0 percent to 79.9 percent	0.50
69.9 percent or lower	0.25

EXAMPLES: The following examples show the effect of a performance multiplier for a contractor (1) having an APE of 90.0 percent or higher and (2) an APE of 80.0 percent to 89.0 percent.

A = Net Current Assets

B = Asset Multiplier

C = Calculated Classification Limit

D = Performance Multiplier

E = Final Classification Limit

(Formula) $A \times B = C \times D = E$

1. $85,000 \times 12 = 1,020,000 \times 2.00 = 2,040,000$

2. $85,000 \times 12 = 1,020,000 \times 1.00 = 1,020,000$

3. If a contractor has received no performance evaluations and/or has not completed a project for the DBC, a performance multiplier of 1.00 will be assigned to that contractor.

4. Where a contractor has not provided a bonding statement as required in N.J.A.C. 17:19-2.7, the contractor's aggregate rating shall be equal to the total obtained above but not greater than \$100,000. Further, the contractor may bid only on projects which do not require any bond.

5. When the contractor's APE is less than 0.25, the Director may reject the application or assign a classification rating less than that provided for in N.J.A.C. 17:19-2.9, based on all factors relevant to contractor's ability to perform.

17:19-2.10 Special classification requirements

(a) The Director may establish appropriate and special classification requirements for a given project as may be necessary in order to ensure competitive bidding for that project or as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special classification requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformity with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously classified contractors via direct mail and/or published in major State newspapers and trade journals.

17:19-2.11 Effective dates of classifications and ratings

(a) A classification or rating resulting from the filing of a GSA-27 shall be effective eight days after receipt of all required and approved information in accordance with this subchapter, or the day following expiration of existing classification, whichever is later.

(b) A revision or amendment of a classification or rating, resulting from an administrative review or an application for revision, shall be effective 20 days from the date of the approved request but only for the unexpired remainder of the existing classification period.

(c) In order to be an eligible bidder for a project, a contractor must have been assigned by the DBC a valid classification and rating which is appropriate to the project and which is effective as of the date of the bid opening for the project. Any classification or rating which, as of the date of the bid opening, either has expired or has not yet been assigned, shall not be valid for that bid.

(d) If during a pre-bid review of a bidder's classification rating, a question arises as to whether a bid for a project is within a bidder's existing classification or rating limits, the bid shall be opened, and if it appears that the bid is at variance with the contractor's trade classification or dollar value ratings, the bid shall be rejected.

17:19-2.12 Award of contracts exceeding aggregate rating limits

(a) A contractor shall not be awarded a contract which, when added to the uncompleted portions of all other currently held contracts from whatever source (public or private) sources, would exceed the contractor's aggregate rating limit. For example, for purposes of determining the dollar value of currently held contracts, contracts from the State of New Jersey, from other governmental jurisdictions and from the private sector shall be counted.

(b) Where there is a question of whether a contractor's aggregate rating limit can accommodate a given award, the contractor's bid for the contract shall be opened in the normal course, and the contractor's eligibility shall thereafter be computed.

(c) A contractor shall include with each bid a statement of the current value and status of its uncompleted work, and whether the award of the given contract would exceed its aggregate rating limit. Whether a contract is eligible for a given award shall be determined based on the dollar value of the given contract, the contractor's aggregate rating limit as of the bid due date, and the dollar value of the contractor's uncompleted contract work as of the bid due date.

1. However, where a contractor provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating limit by the time the bid project is scheduled to begin, the Director shall base this determination on the complexity of the bid project, the duration of the bid project and the risk that the State will encounter if the bid is accepted.

(d) Where a contractor successfully bids for two or more contracts which, either in combination with each other or in combination with the uncompleted portions of other currently held contracts, would exceed the contractor's aggregate rating limit, the contractor shall be awarded only those contracts which in combination fall within the contractor's aggregate rating limit, as follows:

1. Contracts shall be considered for that contractor in chronological order of the bid due dates; and

2. Where a given contract award would exceed the contractor's aggregate limit, the contractor shall not be eligible for that award.

(e) As a contractor completes existing contracts or discrete portions thereof, the contractor's eligibility for new contracts within its existing aggregate rating shall be adjusted accordingly.

17:19-2.13 Removal of bidder from approved list

Where the Director determines that a prospective bidder is unqualified to submit bids on any public work, he/she shall so notify the prospective bidder of the proposed debarment, suspension or disqualification. In such circumstances, the contested case hearing provisions of N.J.A.C. 17:19-3 shall be followed.

SUBCHAPTER 3. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:19-3.1 Definitions

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

"DBC contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for a private or public person where the Division of Building and Construction (DBC) provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service, or the person(s) who may supply or perform the same.

"Debarment" means an exclusion from DBC contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

"Disqualification" means the denial or revocation of a qualification to bid or otherwise engage in DBC contracting, which has been granted or applied for pursuant to statute or rules and regulations.

"Person" means any natural person, company, firm, association, corporation or other entity.

"Suspension" means an exclusion from DBC contracting for a temporary period of time, pending the completion of an investigation, legal or hearing proceedings.

17:19-3.2 Causes for debarment of a person(s)

(a) In the public interest, the Division of Building and Construction shall debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;

3. Violations of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violations of any of the laws governing the conduct of elections of the Federal government, State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.), or of the act prohibiting discrimination by industries engaged in defense work in the employment of person therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;

7. Violations of any laws governing the conduct of occupations or professions or regulated industries;

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Division of Building and Construction to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment by some other department or agency in the executive branch.

14. Making any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

i. Any State officer or employee or special State officer or employee having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof; or

ii. Any person, firm or entity with which the State officer or employee is employed or associated or has an interest in within the meaning of N.J.S.A. 52:13D-13g.

17. Influencing or attempting to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

17:19-3.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Director, Division of Building and Construction, except as otherwise provided by law;

2. The existence of any of the causes set forth in N.J.A.C. 17:19-3.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, Division of Building and Construction, unless otherwise required by law, and shall be rendered in the best interests of the State;

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted;

4. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person, unless other cause for debarment exists;

5. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)9 through 11 shall be established by evidence which the Division of Building and Construction determines to be clear and convincing in nature;

6. Debarment for the cause set forth in N.J.A.C. 17:19-3.2(a)12 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-3.2(a)1 through 11 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency.

17:19-3.4 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)

(a) The procedures, period of debarment and scope of debarment to be followed by the Division of Building and Construction are as follows:

1. The Division of Building and Construction seeking to debar a person or his/her affiliates shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be afforded an opportunity for a hearing if he/she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. However, where another department or agency has imposed debarment upon a party,

the Division of Building and Construction may also impose a similar debarment without affording an opportunity for a hearing, provided that the Division of Building and Construction furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part;

2. Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed;

3. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Division of Building and Construction upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed;

4. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his/her official duty or was affected by him or her with the knowledge or approval of such person.

17:19-3.5 Causes for suspension of a person(s)

In the public interest, the Division of Building and Construction shall suspend a person for any cause specified in N.J.A.C. 17:19-3.2, or upon adequate evidence that such cause exists.

17:19-3.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension shall be adhered to:

1. Suspension shall be imposed only upon approval of the Director of the Division of Building and Construction, except as otherwise provided by law or code;

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director of the Division of Building and Construction and shall be rendered in the best interest of the State;

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists;

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts;

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 17:19-3.2(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment or by evidence that such violations of civil or criminal law did in fact occur;

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 17:19-3.2(a)1 through 13 may be the basis for the imposition of a concurrent suspension by the Division of Building and Construction, which may impose such suspension when found to be in the best interest of the State.

17:19-3.7 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Division of Building and Construction:

1. The Division of Building and Construction may suspend a person or his or her affiliates, provided that within 10 days before the effective date of the suspension, the Division of Building and Construction provides such party with a written notice:

- i. Stating that a suspension has been imposed and its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Director, Division of Building and Construction determines that such reasons may be properly disclosed;
- iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
- iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a contested case hearing 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, if he or she so requests, or a statement declining to give such reasons and setting forth the Division of Building and Construction's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Division of Building and Construction, the latter shall note the fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after given due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he/she is affiliated, where such conduct was accomplished within the course of his/her official duty or was effectuated by him/her with the knowledge or approval of such person.

17:19-3.8 Disqualification of a person(s)

The disqualification of a person shall be based upon the responsibility of the bidder as determined by the factors set forth in N.J.A.C. 17:19-2.5.

17:19-3.9 Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Division of Building and Construction, including any contracts which utilize State funds. When it is determined by the Director of the Division of Building and Construction to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract.

17:19-3.10 Prior notice by Division of Building and Construction

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given to the Attorney General and the State Treasurer.

17:19-3.11 List of debarred, suspended or disqualified persons

The Division of Building and Construction shall supply to the State Treasurer a monthly list of all persons having been debarred, suspended or disqualified in accordance with the procedures prescribed in this subchapter. Such list shall at all times be available for public inspection.

17:19-3.12 Director's authority to contract

Nothing contained in this chapter shall be construed to limit the authority of the Director of the Division of Building and Construction to refrain from contracting within the discretion allowed by law.

SUBCHAPTER 4. HEARING PROCEDURES

17:19-4.1 Hearings; subject matter

(a) Administrative hearings conducted by the Division of Building and Construction (DBC) may be called as follows:

1. Informal hearings requested by any participating bidder protesting an award by the Director, Division of Building and Construction;

2. Informal hearings requested by a consultant/contractor regarding evaluation or re-evaluation of classification for bidding;

3. Formal hearings heard by the Director, in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to suspend or debar a current or prospective bidder from doing business with the State of New Jersey for any of the reasons enumerated in subchapter 3 of this chapter; or

4. Certain other matters of dispute that may occur relative to the activities of the Division of Building and Construction.

17:19-4.2 Parties who may request hearings

(a) The following parties may request hearings in the above named matters:

1. The Director, Division of Building and Construction;
2. Any consultant/contractor that has submitted a bid for the contract in question; or
3. Any consultant/contractor duly objecting to a classification relative to evaluation of performance.

17:19-4.3 Request for hearings; hearing procedures; time limitations

(a) Any participating bidder seeking a hearing shall make written request to the Director setting forth the specific grounds for challenging the award. The request must be received by DBC within five calendar days after the opening of bids.

(b) Any consultant/contractor seeking to challenge a classification issued as a result of evaluation or re-evaluation must make written request to the Director setting forth the specific grounds for the challenge. Such request must be duly submitted within five calendar days of receipt of DBC's written notification of classification.

(c) Hearings which are not under the jurisdiction of the Office of Administrative Law shall be informal and held, where feasible, within 15 calendar days of receipt of request. Hearings will be heard, where practicable, by an impartial hearing officer. The hearing officer shall prepare a report to the Director within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and have 10 calendar days to provide written comments or exceptions to the Director. Subsequent to the 10 calendar day period for exceptions, the Director shall make a final judgment on the matter.

(d) Such informal hearings as convened under these rules are fact-finding for the benefit of the Director. The Director may determine that sufficient information already exists in the records so that a decision can be made without an informal hearing. The Director may waive the informal hearing and publish a final decision accordingly.

(e) The Director may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames noted above. In these instances, the Director shall document for the record the rationale for such amendment and give adequate notice to the parties involved.

(f) Hearings in those matters which are contested cases as defined pursuant to N.J.A.C. 1:1 shall be held under the jurisdiction of the Office of Administrative Law except in those instances where the Director reserves the right to hear the case in person. The judge designated by the Office of Administrative Law shall prepare a recommended report and decision to the Director within 45 calendar days of the conclusion of the hearing. The hearing report shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the administrative law judge's report and decision, and shall have 13 days from the date the administrative law judge's initial decision was mailed to provide written comments or exceptions to the Director, who shall make a final judgment in the matter within 45 calendar days following receipt of the comments or exceptions. Pursuant to N.J.S.A. 52:14B-10, failure to modify or reject the hearing report will result in the adoption of the decision of the administrative law judge as the final decision of the Director, Division of Building and Construction.

17:19-4.4 Necessary parties to the hearing

(a) In those instances where a hearing is requested by a participating bidder, the Director shall extend invitations to all consultants/contractors who participated in the bidding for the contract in question. The extent of the participation of these parties shall be limited to those matters in question as expressed by the complainant. The Director has discretionary authority to exclude invitations to bidders in those cases where such bidders are deemed to have no potential interest in the outcome of the hearing.

(b) Representatives of the protesting bidder or bidders, or in the case of debarment/suspension proceedings or of classification disputes, representatives of the party or parties against whom the action is called, shall be necessary parties to the hearing. Any such party has a right to be represented by counsel for such hearings, if desired.

(c) The State shall be represented by the Office of the Attorney General where necessary, as well as responsible members of the Division of Building and Construction staff and the using agency concerned.

17:19-4.5 Effect of requests for hearings on contract award

(a) The Division of Building and Construction shall, except in those instances noted in (b) below, hold, in situations where there has been a bypass of the apparent low bidder, all awards of contracts for at least five calendar days pending the outcome of any protests filed by interested parties. In these situations, all bidders will be notified of the intent to award to the successful bidder. If, in fact, the award of the contract is protested, the Division of Building and Construction shall not award the contract in question until the completion of the hearing process.

(b) The Director may, in those instances where the failure to award the contract will result in substantial costs to the State of New Jersey, or in those instances where the public exigency so requires, award the contract notwithstanding the provisions in (a) above. The Director shall document all cases where such action is required and shall notify all interested parties.

17:19-4.6 Discovery procedures

The Director shall be entitled, upon request, to review all records and documents used in evidence by a complainant. Such documents shall be made available to the Division of Building and Construction at the cost of reproduction, if such reproduction is required.

SUBCHAPTER 5. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES**17:19-5.1 Purpose**

The consultant selection procedures are established to give qualified architectural, engineering, construction management or other consultant firms an open opportunity to be selected for State project assignments on the basis of demonstrated competence and experience. Selection of consultants based upon a combination of technical qualifications and cost proposals enables the public interest to be best served.

17:19-5.2 Scope

(a) The principal elements of the consultant selection procedures provide for:

1. Verifying the qualifications of firms interested in providing consultant services to the State;
2. Initiating and advertising projects (which may include other solicitation requirements);
3. Screening all interested and qualified firms;
4. Evaluating procedures by Selection Committee; and
5. Obtaining final approval by the Director.

17:19-5.3 Definitions

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

"Administrator" means the Administrator, General Services Administration.

"Agency consultant" means a firm providing technical and professional services in support of construction projects for a client agency.

"Chairperson" means the principal member of the selection committee who is responsible for the management of the selection process.

"Client agency" means that Department or other element of State government for which the Division provides consultant selection services for design and construction projects.

"Construction cost estimate" for the purpose of these procedures means the estimated construction cost of a specific project.

"Consultant" means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction project.

"Consultant selection committee" (Committee) means the body responsible for the review, evaluation and selection of consultant firms for State projects.

"Cost proposal" means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

"Director" means the Director of the Division of Building and Construction or his or her duly authorized representative.

"Division" means the Division of Building and Construction in the Department of the Treasury, General Services Administration.

"Major project" means a project with an anticipated fee greater than that allowed by the term contract.

"Member" means an individual appointed to serve on a selection committee.

"Prequalification" means a process of reviewing information and experience data to determine the prequalification level and professional disciplines of consultant firms.

"Prequalification level" means the maximum construction cost estimate dollar level for which a consultant is prequalified. Prequalification rating levels are established and periodically adjusted by administrative procedure authorized by the Director, in accordance with this subchapter.

"Screening" or "ranking" means the process of evaluation utilized by the Committee to determine those firms to be given final consideration from among the total applicants for a specific project.

"Selection coordinator" means the administrator of the day-to-day committee operations and procedures, including advertising of projects, scheduling of meetings, preparing agendas, recording scores, preparing minutes of committee meetings and similar administrative responsibilities.

"Technical scoring" means the process of developing numerical ratings of consultants by individual Committee members in their evaluation of those firms seeking assignments.

"Term contract" means contracts awarded to multiple consultants for a specific time period based upon hourly rates.

"Work order" means a Division form utilized by an agency consultant to submit term contract hourly rates for work done for a client agency.

17:19-5.4 Prequalification of consultant firms

(a) Firms desiring to be considered for consultant work with the Division shall submit prequalification forms as specified by the Division. These forms provide comprehensive information on the management of the firm, its financial history, the type and value of past project work and other related information. This information is used to assist in the evaluation of firms for Division work and to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is qualified. The result of this evaluation is the firm's "prequalification."

(b) Review of the firm by the Division shall be completed within 30 calendar days of receipt of fully completed prequalification forms, and a notification of results shall be mailed to the firm within the same time period.

(c) If a prequalification is denied, the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the Division.

(d) If a firm does not agree with its classification as assigned by the Division, it may appeal to the State Architect for reconsideration. Results of this review will be made known to the firm in writing.

If the firm still does not agree with its prequalification, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update and keep current all prequalification forms. Major changes occurring in the firm's status shall be brought to the attention of the Division in order that the prequalification record is current.

(f) Any firm seeking prequalification shall have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for prequalification.

(g) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files which may be reviewed during the selection processes.

(h) The prequalification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. The Division endeavors to assign a level which is justified by applicable overall experience, length of time in business, prior Division experience, staffing and management depth.

(i) Firms may increase their technical qualification for a specific project by joint-venturing with other firms. Each individual firm of the joint venture must be separately prequalified. One of the firms shall have been prequalified at the level stipulated for the project.

17:19-5.5 Public notification

(a) The Division may publicly solicit the interest of prequalified firms to provide professional services by advertising in one or more of the following methods:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. In newspapers;
3. By written notice to New Jersey professional societies; or
4. By use of direct mailings to prequalified firms.

(b) Public notification shall include instructions to specify any special information or experience that a firm must submit by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

17:19-5.6 Set-aside program—minority-owned and female-owned businesses

The Division will conform to the provisions of N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14 in the award of contracts and subcontracts to eligible minority-owned and women-owned businesses.

17:19-5.7 Major project selection procedures

(a) The selection process is initiated upon the receipt by the Division of a request from a State client agency. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate (if applicable) of the proposed project for both design and the construction of the project.

(b) A selection committee is then established to choose a consultant for that specific project. The committee develops the selection schedule and evaluation criteria for the project.

(c) The evaluation process may include submission of Project Questionnaire Forms, technical proposals and interviews.

(d) Each individual member of the committee will evaluate all submissions based upon specific criteria. The selection coordinator shall compile and tabulate all individual scores and prepare a consolidated ranking. The chairperson shall call for a meeting of the committee to review the ranking and shortlist the appropriate number of firms for further consideration. Additional technical and/or organizational information may be requested from the firms before a final technical ranking is prepared.

(e) When all evaluations are completed, cost proposals shall be solicited from the top technically-ranked firms.

(f) Site visits, pre-interview conferences and pre-proposal conferences may be scheduled. Attendance shall be mandatory when so stipulated.

(g) Sealed cost proposals will be accepted on a pre-determined date and time by the selection coordinator. The committee will meet to open and review the cost proposals. Upon completion of the

review, the committee may begin negotiations with the highest technically-ranked firm or firms. If the top-ranked firms have insignificant differences in their technical scores, the committee may decide to meet with each of those firms to review and negotiate various aspects of their cost proposal. As required, the committee may request additional meetings, additional technical, organizational or cost data from any of the firms. If a satisfactory conclusion cannot be reached with the top technically ranked firm, the committee may negotiate with the next highest technically ranked firm. All proposals will be made a matter of public record and will be open to the public after award of the contract.

(h) The committee shall have the responsibility to recommend to the Director the selection of the proposal which will be most advantageous to the State—technical qualifications, cost and other factors considered.

(i) The technical scores, ranking and cost proposals of all firms, as well as all discussions and correspondence, are confidential until the contract is awarded.

17:19-5.8 Term contracts

(a) Firms desiring to perform consultant services for the Division may submit proposals for term contracts. Term contracts shall be awarded by the Director to consultants who have complied with the terms and conditions of the term contract request for proposal.

(b) Term contracts shall be used to provide consultant services for client agencies by utilizing a more expeditious selection process, especially in cases of construction emergencies.

17:19-5.9 Term contract project selection procedures

(a) Term contract site specific projects are those with a fee and/or construction value threshold established by the terms and conditions of the term contract. The initiation of the selection process shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7(a).

(b) Firms are selected to submit technical and cost proposals for site specific projects by computer-generated random selections and/or by special client agency requests.

(c) Emergency projects may be directly awarded upon the Director's authorization.

(d) Pre-proposal conference, site visits and interviews may be scheduled.

(e) Technical proposals shall be evaluated and ranked in accordance with the specific technical criteria for the project.

(f) The selection process regarding the sealed cost proposals shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7(g).

(g) The committee shall have the responsibility to recommend to the Director the most advantageous consultant selection for the State, considering technical qualifications, cost and other factors.

17:19-5.10 Agency consultant program

(a) The agency consultant program shall assist client agencies in the planning of construction projects, developing scopes of work, investigating construction-related problems, designing small projects and administering construction projects.

(b) The Division may delegate to client agencies the authority to award projects for consultants to perform professional services for construction projects. The client agency shall evaluate and rank the technical submissions according to selection procedures established by Division policy.

(c) An agency consultant fee limit for each work order shall be established by the Division, including a fee limit threshold per year.

(d) The client agency shall monitor and manage all activities of the consultant. Financial data and project files shall be available to Division auditors.

17:19-5.11 Client agency management of design/construction projects

(a) The Division may delegate authority to client agencies to manage design and/or construction phases of a project with a stipulated construction cost estimate.

(b) The selection of firms to submit technical and cost proposals

shall be in accordance with the term contract selection procedures, N.J.A.C. 17:19-5.9(b) and as outlined in the terms and conditions of the term contract.

OTHER AGENCIES

(a)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Executive Commission on Ethical Standards Rules Attendance at Events, Acceptance of Honoraria, and Acceptance of Compensation for Published Works

Proposed New Rules: N.J.A.C. 19:61-6

Authorized By: Executive Commission on Ethical Standards,

Rita L. Strmensky, Executive Director.

Authority: N.J.S.A. 52:13D-12 et seq.

Proposal Number: PRN 1994-623.

Submit written comments by January 4, 1995 to:

Rita L. Strmensky, Executive Director
Executive Commission on Ethical Standards
28 West State Street, Rm. 1407
CN 082
Trenton, New Jersey 08625-0082

The agency proposal follows:

Summary

The Executive Commission on Ethical Standards proposes new rules at N.J.A.C. 19:61-6 to establish standards for each State officer and employee and special State officer and employee regarding attendance at events sponsored by non-State entities, acceptance of honoraria and acceptance of compensation for published works.

The Commission feels that these rules are necessary so that all State officials are aware of the standards that apply to their conduct and so that the public can be assured that State officials are not compromised in the discharge of their duties by having been guests of vendors, licensees or regulated entities at events sponsored or paid for by such entities or by having accepted fees or honoraria from such entities.

N.J.A.C. 19:61-6.1 establishes the applicability of the new subchapter to all State officials in the Executive branch of State government.

N.J.A.C. 19:61-6.2 defines the terms applicable to this subchapter.

N.J.A.C. 19:61-6.3 is proposed to provide guidance to department heads and to provide a consistent process for determining whether approval to attend an event and to accept an honorarium should be granted.

N.J.A.C. 19:61-6.4 states that, with proper approval, a State official may attend an event sponsored by regulated or licensed entities, vendors, lobbying organizations, or their employees, agents and representatives and the State must pay the costs of the attendance. A State official attending such an event may not accept the cost of the event or reimbursement for the cost of the event from the sponsor and may not accept an honorarium or fee.

N.J.A.C. 19:61-6.5 states that State officials, with proper approval, may attend events sponsored by other than interested parties and the State may pay the necessary costs or may permit the State official to accept the costs of attendance directly or by reimbursement. With proper approval, the State official may accept an honorarium. State officials are not permitted to use their official titles in connection with fundraising for private organizations.

N.J.A.C. 19:61-6.6 states that a State official cannot accept compensation for published works which were created as part of his or her official duties on State time. With proper approval, however, a State official may accept compensation for a published work not created as part of his or her official responsibilities under certain conditions.

N.J.A.C. 19:61-6.7 provides a sample approval request form for State officials to submit to their department heads in order to secure approval for attending an event or accepting an honorarium.

Social Impact

The effect of the proposed new rules is to provide standards addressing the conditions under which State officials can attend events sponsored

by non-State government sources, accept fees or honoraria or accept compensation for published works. The rules will provide a procedural frame work for approvals.

All officers and employees of the Executive branch of State government will be affected by the proposed rules. The proposed rules will have a beneficial social impact in that there will be a published standard of conduct for all officers and employees. There will also be a beneficial social impact in terms of the public's awareness that there are standards being applied to the conduct of State officials so that they will not be compromised in the discharge of their duties. Further, records will be maintained as to requests for approval for attendance or receipt of an honorarium so that State officials and the public will be able to determine the circumstances under which any given State official attended any particular event.

Economic Impact

The proposed new rules may have a small economic impact on State agencies because they must make available forms for requests for approval and must retain those forms for a period of five years. With regard to costs for events, the Commission, in "Guidelines for Attendance at Events and Functions," first issued in 1972, has always advised that costs for attendance at events sponsored by regulated or licensed agencies must be borne by the State. It has always been, informally, acceptable for the participant to assume the costs. These rules do not have any economic impact that is different from the Commission's guidelines, in effect since 1972.

Regulatory Flexibility Statement

The proposed new rules impose no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary. The rules provide standards for attendance at events sponsored by non-State government sources, acceptance of honoraria and acceptance of compensation for published works.

Full text of the proposed new rules follows:

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, AND ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS

19:61-6.1 Applicability

The rules in this subchapter apply to all State officials in the Executive branch of State government.

19:61-6.2 Definitions

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

"Approval" means, for the purposes of N.J.A.C. 19:61-6.4 and 6.5, written permission from the department head to attend and/or participate in an event; to accept an honorarium or fee; and/or to accept direct or indirect benefits in connection with attendance.

"Commission" means the Executive Commission on Ethical Standards.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, refreshments, reasonable subsistence, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State.

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, and is sponsored or co-sponsored by a non-State government source.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, refreshments, reasonable subsistence, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State.

"Interested party" means:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or oversight authority of the State official's agency;
2. Any supplier, or employee, representative or agent thereof;
3. Any organization that advocates or represents the positions of its members to the State official's agency; or
4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Person" means any natural person, association, organization, firm, partnership or corporation.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software.

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).

"Supplier" means any private sector person that is providing or may reasonably be expected to provide goods and/or services to the State official's agency, including, but not limited to, consultants, vendors and lessors.

19:61-6.3 Granting of approval

(a) For the purposes of N.J.A.C. 19:61-6.4 and 6.5, when a department head grants permission to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. The identity of the sponsor;
2. The purpose of the event;
3. The identity of other expected participants;
4. Whether attendance/participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and
5. The monetary value and character of the costs, benefits and/or honoraria provided by the sponsor, including whether the costs, benefits and/or honoraria are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on a form similar to that provided in N.J.A.C. 19:61-6.7. Such forms shall be maintained by the Department for a period of five years from the date of approval of the form.

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) The State shall pay the reasonable expenses of the State official associated with attending the event. Neither the State official nor the State shall receive any direct or indirect benefit from any other source. The State official may pay his or her own expenses with his or her personal funds.

(c) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples

The Commissioner of Banking is asked, by the New Jersey Bankers Association, to attend their annual meeting in Hilton Head to address members on the subject of the effects of proposed banking regulations in New Jersey. The Association has offered to pay all travel and hotel expenses for the Commissioner. With proper approval, the Commissioner may attend the meeting; however, because the Department of Banking regulates the Association's members, the State or the Commissioner must pay the reasonable expenses of the trip and neither the State nor the Commissioner may accept any reimbursement or direct benefit from any other source. The Commissioner may not accept an honorarium or fee for his speech.

The Division of Motor Vehicles is considering the purchase of new pollution testing equipment. One of the companies that plans

to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore a vendor to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) The State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization.

(c) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance.

(d) A State official making a speech or presentation at the event may accept an honorarium or fee from the sponsor.

(e) Under no circumstances shall a State official accept entertainment collateral to the event or meals taken other than in a group setting with all attendees, or reimbursement therefor.

Examples

An employee of Travel and Tourism at the Department of Commerce has been invited, by the Mexican Tourist Bureau, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at a dinner on the final day of the meetings and has been offered a \$500.00 honorarium. With proper approval, the employee may attend the meetings and may accept an honorarium in connection with his speech. In addition, he may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

19:61-6.6 Compensation for published work(s)

(a) A State official shall not accept compensation for published work(s) created as part of his or her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his or her official duties.

(b) A State official shall secure the permission of the department head to accept compensation for published work(s) not created as part of his or her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the Commission's Guidelines for Secondary Employment, any other applicable guidelines or rules of the Commission, any applicable departmental administrative policies, and the following conditions:

1. Compensation shall not be from an interested party;
2. The published work(s) cannot use or disclose information not generally available to the public;
3. The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State.
4. The State official shall not use his or her official title in any way in soliciting compensation and shall indicate that his or her views do not represent those of the State.

Examples

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like

PROPOSALS**Interested Persons see Inside Front Cover****OTHER AGENCIES**

to publish the entire report in Transportation Magazine. He has been offered \$500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has been offered \$500 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

19:61-6.7 Sample approval request form

(a) The following form, or one containing substantially similar elements, may be used to request approval to attend events, accept honoraria, and/or accept compensation for published works.

Example**REQUEST FOR APPROVAL FOR ATTENDANCE AT EVENT**

Department of _____

Name _____ Division _____

Title _____ Telephone _____ FAX _____

Event _____

Sponsor _____

Location _____

Date(s) _____

Overnight accommodation required? Yes _____ No _____

Out-of-state travel required? Yes _____ No _____

Estimated cost? \$ _____

Agency to pay cost? Yes _____ No _____

Sponsor to pay cost? Yes _____ No _____

Employee to pay cost? Yes _____ No _____

Reason for attendance: _____

Will sponsor offer an honorarium or fee? Yes _____ No _____

Amount of honorarium \$ _____

Employee Signature

Date

Attendance approved Yes _____ No _____

Acceptance of honorarium approved Yes _____ No _____

Conditions: _____

Signature

Date

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction

Uniform Construction Code

Asbestos Safety Control Monitor

N.J.A.C. 5:23-8.11

Take notice that the Department of Community Affairs has discovered an error in the current text of N.J.A.C. 5:23-8.11(c)3v, which references N.J.A.C. 5:23-4.14(a)5 as containing the requirements imposed on private enforcing agencies to carry liability insurance. The correct reference for those requirements is N.J.A.C. 5:23-4.14(e)5. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

5:23-8.11 Asbestos safety control monitor

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

(c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, approved plans, air tests, log sheets and any other information that may be required by the enforcing agency or the department. These records shall be open to department audit and shall not be destroyed or removed from the offices of the asbestos safety control monitor without the permission of the department.

1.-2. (No change.)

3. Each asbestos safety control monitor shall have the following responsibilities:

i.-iv. (No change.)

v. To carry liability insurance equal to that required of private enforcing agencies pursuant to N.J.A.C. 5:23-4.14[(a)5](e)5;

vi.-xvi. (No change.)

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

HIGHER EDUCATION

(b)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Administrative Procedures and Policies

Program Support

Adopted Amendments: N.J.A.C. 9:11-1.2, 1.7, 1.8, 1.19, 1.20, 1.22, 1.23 and 9:12-1.1, 1.4, 1.6, 1.7, 1.8, 1.9, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.23, 2.5, 2.7, 2.8, and 2.10

Proposed: September 6, 1994 at 26 N.J.R. 3586(a).

Adopted: November 9, 1994 by the Board of Directors of Educational Opportunity Fund, Ernest L. Jolly, Chairperson.

Filed: November 9, 1994 as R.1994 d.596, **without change**.

Authority: N.J.S.A. 18A:71-33.

Effective Date: December 5, 1994

Expiration Date: April 11, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

9:11-1.2 Student eligibility

(a) (No change.)

(b) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-3. (No change.)

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate in an eligible institution as defined in N.J.S.A. 18A:71-47 of collegiate grade in New Jersey approved or licensed by the Commission on Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum required equivalent to 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i.-iv. (No change.)

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

9:11-1.7 Verification of financial eligibility

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

(c) Students who have been found eligible to receive student assistance must provide an authorization to the Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on a financial aid form approved by the EOF Board and Student Assistance Board may be verified by the Department and/or institution through the comparison of information reported on income tax returns and other documentation. Discrepancies will require the reevaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

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

9:11-1.8 Grant amount

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

(d) The EOF Board of Directors shall annually review the State grant amounts of EOF students and make adjustments, if necessary. The minimum and maximum award range for adjustments to full-time Undergraduate EOF grants for each type of institution follows:

Undergraduate	Minimum	Maximum
Community Colleges:	\$200	\$ 650
State Colleges:		
Commuter:	200	750
Residential:	200	1,000
Rutgers, NJIT, UMDNJ-SHRP:		
Commuter:	200	750
Residential:	200	1,000
Independent Colleges:	200	1,950

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

9:11-1.19 Operational provisions for undergraduate grants

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

(d) At the request of the Executive Director, institutions shall submit to the Commission/EOF office student background information that was essential in determining student eligibility for the EOF program. The format for the collection of this information shall be established prior to the academic year for which the students are enrolled.

(e) (No change.)

(f) All files of students receiving EOF grants are subject to a fiscal audit conducted by the Office of Student Assistance.

(g) All participating institutional programs shall be required to cooperate fully in specified program analysis and evaluation activities carried out by the Commission/EOF office, in accordance with N.J.A.C. 9:12-1.17 "Program audits and evaluations".

ADOPTIONS

HIGHER EDUCATION

9:11-1.20 Application procedures for EOF undergraduate grants

(a) (No change.)

(b) Applicants for undergraduate EOF must complete a financial aid form in accordance with N.J.A.C. 9:11-1.7(e). Students must apply for the Pell Grant and State student assistance programs by authorizing release of information to the New Jersey Office of Student Assistance.

9:11-1.22 Refunds and repayments of disbursements made to students

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

(f) If a cash disbursement has been made by an institution for non-institutional costs from EOF student grant funds, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Commission on Higher Education, EOF Office of the amount owed. Non-institutional cost may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

(g) (No change.)

9:11-1.23 Part-time students

(a) Eligibility for EOF grants shall be extended on an annual basis to part-time students upon the approval of the Board of Directors of EOF depending on the level of appropriated funds.

(b)-(g) (No change.)

9:12-1.1 Scope and purpose

(a) N.J.S.A. 18A:71-39 provides that the Educational Opportunity Fund Board of Directors shall develop, establish and maintain programs of remedial and supplementary education for students who receive assistance under the Educational Opportunity Fund. The Program shall be designed to provide access to and preparation for undergraduate, graduate and professional education.

(b) (No change.)

9:12-1.4 Application process

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

(c) The application will be reviewed by the EOF Executive Director in the Commission on Higher Education for compliance and development of program recommendations to the EOF Board of Directors. The Board shall conduct an annual meeting to determine funding allocations for the next academic year for each institution. The Executive Director of EOF shall provide written notification of the Board's decision on each application. This shall be in the form of a preliminary notification specifying the funding level and any stipulations regarding the conduct of the program or the disbursement of funds. This preliminary notification shall be endorsed by the institutional President and returned to the Executive Director of EOF.

(d) Institutions may appeal the funding decision of the Board by submitting a written request to the Executive Director of EOF within 30 days of issuance of the preliminary notification. The EOF Executive Director will conduct a review of the appeal and make appropriate recommendations to the Board of Directors.

(e) (No change.)

9:12-1.6 Institutional commitment

(a) (No change.)

(b) The EOF Executive Director shall conduct a review of any exceptional items to determine acceptability of in-kind contributions on all applications and make recommendations to the EOF Board of Directors. Institutions may appeal this decision by submitting a written request to the EOF Executive Director within 30 days of issuance of the formal agreement. The EOF Executive Director will conduct a review of the appeal and make a recommendation to the Board of Directors.

1.-2. (No change.)

9:12-1.7 Accountability of institutional share

The budget application shall provide a format to record items for consideration of institutional share. Final determination will be made

by the Board of Directors on the basis of their allocation decision on each budget application. Each institution will receive written notification of its allocation from the EOF Executive Director. Institutional share and grant award items including fringe benefits shall be recorded by the program and are subject to audit at any time by the Commission on Higher Education, EOF office.

9:12-1.8 Institutional administration

(a) (No change.)

(b) Each participating institution shall insure that provisions are made for the director to fulfill the following responsibilities:

1.-8. (No change.)

9. Supervision and submission of all required materials to the Commission/EOF Office; and

10. (No change.)

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

9:12-1.9 Recruitment and admission

(a) Each participating institution shall develop and implement an annual plan for the recruitment of potential students for the EOF program. This plan shall be subject to an audit by Commission/EOF at any time. The plan will identify a significant pool of potential students from specific disadvantaged groups in the geographic region. Target populations shall include significant numbers of students with a background of historical poverty (in the black, Puerto Rican and other Hispanic communities, as well as other disadvantaged ethnic groups of the region.) In addition, the plan shall identify a significant pool of potential non-traditional students such as welfare recipients, unemployed or under employed adults, and participants enrolled in JTPA and Veterans Programs, as well as various social rehabilitation services in the community. The recruitment plan shall include the timetable, goals, objectives, and selection process for EOF students at the participating institution.

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

9:12-1.16 Experimental programs

(a) The EOF Executive Director may request proposals from institutions to support research and developmental projects that may increase program effectiveness and encourage innovative practices. The Executive Director of EOF, upon the approval of the Board of Directors, is authorized to grant awards to institutions for such projects. Experimental areas may include, but are not limited to projects that would:

1.-3. (No change.)

9:12-1.17 Program audits and evaluations

(a) The EOF Executive Director shall maintain adequate procedures to monitor all program functions and components of all institutions receiving funds under this section. Due notice shall be provided from the Commission/EOF Office to visit any institution to conduct monitoring activities which may include evaluation, audits, and post-audit activities on a random or selected basis as needed.

(b) The EOF Executive Director shall conduct regular program audits and evaluations to determine regulatory compliance and program effectiveness. During these processes, Commission/EOF Staff shall document any exceptional budgetary items and ineffective program components and report such items to the EOF Executive Director.

9:12-1.18 Transfer of funds

(a) EOF grant funds may not be transferred to establish items that were not part of the original contract, without prior approval by the EOF Executive Director.

(b) (No change.)

9:12-1.19 Program non-compliance

(a) Upon the receipt of a complaint or unsatisfactory evaluation, the EOF Executive Director or his/her designee may conduct an inquiry at the institution which is the subject of the complaint to discuss the alleged violation or questionable practice with the institutional president, EOF Director, and other appropriate officials. Such inquiry shall be for the purpose of confirming or denying the existence of the questioned practice or violation of program regulations.

(b) The EOF Executive Director shall make a written report of the findings and a copy of the report will be transmitted to the institutional president and campus EOF Director. This report shall include a specific description of the violation or practice with specific recommendations to correct the situation within a specified time period as the EOF Executive Director shall determine.

(c) The institution may appeal the findings of this report. Such appeal shall be in writing and directed to the Chairman of the EOF Board. When such an appeal is taken, the EOF Board of Directors shall schedule a hearing of the appeal within a reasonable time period. The EOF Board may uphold or overturn the report of the EOF Executive Director and modify the recommendation as it deems appropriate.

9:12-1.20 Program probationary status

(a) The EOF Board of Directors may place an institutional program on probation for failure to correct program deficiencies within the time directed by the EOF Executive Director. The EOF Board shall place such restrictions as it believes are necessary upon an institutional program which is placed on probation. Restrictions which may be imposed include, but are not limited to, the following:

1.-3. (No change.)

9:12-1.21 Community Advisory Board

(a) (No change.)

(b) The Community Advisory Board shall meet at least six times during the calendar year. The Board shall demonstrate involvement in the following activities at a minimum:

1.-5. (No change.)

6. Reviewing and commenting on the institution's EOF funding application, prior to its submission to the Commission on Higher Education; and

7. (No change.)

(c) (No change.)

9:12-1.23 Annual Program Report

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

(c) Periodic reports will be requested in accordance with a timetable established in advance by the EOF Executive Director. Failure to submit reports in a timely manner may result in cancellation or non-payment of the grant award.

9:12-2.5 Funding process

(a) Funds will be allocated to eligible institutions according to program budget applications submitted to the Commission/EOF Office and approved by the EOF Board of Directors.

(b) (No change.)

9:12-2.7 Liability

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

(d) The EOF Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the Commission on Higher Education/Educational Opportunity Fund from ineligible students.

9:12-2.8 Operational provisions for summer program payment

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

(d) All files of students receiving EOF grants will be subject to a fiscal audit conducted by the Office of Student Assistance.

9:12-2.10 Summer program evaluation

(a) The EOF Executive Director shall distribute a standard summer program evaluation form to participating programs. Each institution shall submit the completed form according to the required submission timetable to the Commission/EOF Office.

(b) The Commission/EOF Office may, in addition, conduct summer program evaluations to insure maximum program effectiveness and accountability.

(c) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration

Pharmaceutical Services Manual

Manual for Hospital Services

Manual for Special Hospital Services

Manual for Physicians' Services Manual

Certified Nurse-Midwifery Services

Independent Laboratory Services

Independent Clinic Services Manual

Limitation on reimbursement for infertility related services

Adopted Amendments: N.J.A.C. 10:49-5.2, 5.3 and 5.4; 10:51-1.12; 10:52-1.3, 1.7 and 1.8; 10:53-1.6 and 1.7; 10:54-1.2; 10:58-1.3; 10:61-1.3 and 3.2; and 10:66-2.3

Proposed: August 15, 1994 at 26 N.J.R. 3345(a).

Adopted: November 9, 1994 by Millicent A. Wasell, Deputy Commissioner, Department of Human Services.

Filed: November 10, 1994 as R.1994 d.600, **without change**.

Authority: N.J.S.A. 30:4D-3i(1) through (8);

30:4D-6a(1)(2)(3)(5) and b(3)(6)(17)(18); 30:4D-12.

Effective Date: December 5, 1994

Expiration Date: August 17, 1997, N.J.A.C. 10:49

September 7, 1998, N.J.A.C. 10:51

February 8, 1995, N.J.A.C. 10:52

April 27, 1995, N.J.A.C. 10:53

February 15, 1996, N.J.A.C. 10:54

February 22, 1996, N.J.A.C. 10:58

February 15, 1996, N.J.A.C. 10:61

December 6, 1998, N.J.A.C. 10:66.

Summary of Public Comment and Agency Response:

COMMENT: A comment was received from Mrs. Robert I. Owen, who supported the proposal.

RESPONSE: The Division of Medical Assistance and Health Services respectfully acknowledges the comment.

Full text of adoption follows:

10:49-5.2 Services available to recipients eligible for the regular Medicaid Program

(a) The services listed below, in alphabetical order, are available to recipients eligible for the regular Medicaid Program:

1.-6. (No change.)

7. Family planning services including medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling.

i. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related office (medical and clinic) visits, drugs, laboratory services, radiological and diagnostic services and surgical procedures are not covered by the New Jersey Medicaid program.

8.-28. (No change.)

10:49-5.3 Services available to recipients eligible for the medically needy program

(a) Regular Medicaid services are available to Medically Needy recipients except for the following services which are not available or are not available to certain eligible Medically Needy groups: (See the service code next to the recipient's name on the Medicaid Eligibility Identification Card to ascertain the Medically Needy group under which the recipient's eligibility was established; that is, Group

ADOPTIONS

A—pregnant women, Group B—needy children, and Group C—aged, blind and disabled.)

1.-9. (No change.)

10. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related office (medical or clinic), drugs, laboratory services, radiological and diagnostic services and surgical procedures are not available to the Medically Needy group.

10:49-5.4 Services not covered by Medicaid Program

(a) Listed below are some general services and items excluded from payment under the New Jersey Medicaid program. There are specific exclusions and limitations detailed in the second chapter of each Provider Services Manual. Payment is not made for the following:

1.-13. (No change.)

14. Any claim submitted by a provider for service(s) rendered, except in a medical emergency, to a Medicaid recipient whose Medicaid Eligibility Identification Card (FD-73/178) has a printed message restricting the recipient to another provider of the same service(s). (See N.J.A.C. 10:49-2.13(e)2, Special Status Program);

15. Services or items reimbursed based upon submission of a cost study when there are no acceptable records or other evidence to substantiate either the costs allegedly incurred or recipient income available to offset those costs. In the absence of financial records, a provider may substantiate costs or available income by means of other evidence acceptable to the Division. If upon audit, financial records or other acceptable evidence are unavailable for these purposes:

i.-ii. (No change.)

iii. The Division shall seek recovery of any resulting overpayments; and

16. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related office (medical or clinic), drugs, laboratory services, radiological and diagnostic services and surgical procedures.

10:51-1.12 Non-covered pharmaceutical services

(a) The following classes of prescription drugs or conditions are not covered under the New Jersey Medicaid program. For recipients in the Medically Needy component of the New Jersey Care ... Special Medicaid programs, pharmaceutical services are not available to the aged, blind nor the disabled. For information on how to identify a covered person, see N.J.A.C. 10:49, Administration.

1.-15. (No change.)

16. If the provider has a delivery service, he or she may waive or discount delivery charges to the recipient but is prohibited from charging more than his or her usual customary charge to the general public for delivery;

17. Preventive vaccines, biologicals and therapeutic drugs distributed to hospital clinics and/or community health centers by the New Jersey Department of Health; and

18. Drugs provided primarily for the treatment of infertility or which may be used to treat other conditions related to infertility, including fertility preparations and gonadotropic (follicle stimulating and luteinizing) hormones.

i. When a drug is provided that is ordinarily considered an infertility drug, but is provided for conditions unrelated to infertility, the claim must be sent with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

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

10:52-1.3 Noncovered inpatient hospital services

(a) Benefits are not payable for any services rendered or items dispensed or furnished in connection with:

1.-16. (No change.)

17. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related medical visits, drugs, laboratory, radiological and diagnostic services and surgical procedures.

HUMAN SERVICES

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the hospital shall submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

(b) (No change.)

10:52-1.7 Covered outpatient hospital services

(a) Approved hospital outpatient departments may provide the following services to outpatients when medically necessary:

1.-15. (No change.)

16. Family planning services including medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling;

17.-18. (No change.)

(b) (No change.)

10:52-1.8 Noncovered outpatient hospital services

(a) Approved hospital outpatient departments will not be reimbursed for any of the following:

1.-8. (No change.)

9. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related medical visits, drugs, laboratory services, radiological and diagnostic services, and surgical procedures.

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the hospital must submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

10:53-1.3 Noncovered inpatient special hospital services

(a) Benefits are not payable for any services rendered or items dispensed or furnished in connection with:

1.-16. (No change.)

17. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related medical visits, drugs, laboratory, radiological and diagnostic services and surgical procedures.

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the hospital must submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

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

10:53-1.6 Covered outpatient hospital services

(a) Approved special hospital outpatient departments may provide the following services to outpatients when medically necessary:

1.-15. (No change.)

16. Family planning services including medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling;

17.-18. (No change.)

(b) (No change.)

10:53-1.7 Noncovered outpatient special hospital services

(a) Approved special hospital outpatient departments will not be reimbursed for any of the following:

1.-9. (No change.)

10. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related medical

HUMAN SERVICES

visits, drugs, laboratory services, radiological and diagnostic services, and surgical procedures.

i. Exception: When service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the hospital must submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

10:54-1.2 Scope of service

(a) Payment will be made for the medically necessary services, subject to the following limitations:

1.-9. (No change.)

10. Family planning services including medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling.

i. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related office visits, drugs, laboratory services, radiological and diagnostic services and surgical procedures are not covered by the New Jersey Medicaid program.

(1) Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the physician must submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

10:58-1.3 Scope of service

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

(e) Family planning services may be provided including medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling.

1. Services provided primarily for the diagnosis and treatment of infertility, including related office visits, drugs, laboratory services, radiological and diagnostic services and surgical procedures are not covered by the New Jersey Medicaid program.

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the certified nurse midwife must submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

10:61-1.3 Limitations on laboratory services

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

(d) Laboratory services provided primarily for the diagnosis or treatment of infertility are not covered by the New Jersey Medicaid program.

1. For those HCPCS procedure codes which are determined to be primarily for the diagnosis of infertility, refer to the HCPCS subchapter of this chapter and the Indicator "F".

10:61-3.1 Introduction

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

(c) Regarding specific elements of HCPCS codes which requires attention of provider, the lists of HCPCS code numbers for Pathology and Laboratory are arranged in tabular form with specific information for a code given under columns with titles such as: "IND", "HCPCS CODE", "MOD", "DESCRIPTION", and "MAXIMUM FEE ALLOWANCE". The information given under each column is summarized below:

ADOPTIONS

Column Title IND

Description

(Indicator-Qualifier) Lists alphabetic symbols used to refer provider to information concerning the New Jersey Medicaid Program's qualifications and requirements when a procedure or services code is used.

Explanation of indicators and qualifiers used in this column are given below:

"A" preceding any procedure code indicates that these tests can be and are frequently done as groups and combinations (profiles) on automated equipment.

"F" preceding any procedure code indicates that the code primarily for the diagnosis and treatment of infertility, and therefore, is not covered by the New Jersey Medicaid program, in accordance with N.J.A.C. 10:61-1.3(d).

"L" preceding any procedure code indicates that the complete narrative for the code is located in the Appendix A of this Pathology and Laboratory section.

"M" preceding any procedure code indicates that this service is a medical necessity procedure. Refer to Appendix D of this Pathology and Laboratory section.

"N" preceding any procedure code indicates that qualifiers are applicable to that code. These qualifiers are listed by procedure code number in Appendix B of this Pathology and Laboratory section.

HCPCS CODE

Lists the HCPCS procedure code numbers.

MOD

Lists alphabetic and numeric symbols. Services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of alphabetic and/or numeric characters at the end of the code. The New Jersey Medicaid Program's recognized modifier codes are listed at N.J.A.C. 10:61-3.5.

DESCRIP- TION

Lists the code narrative. (Narratives for Level I codes are found in CPT-4. Narratives for Level II and Level III codes are found at N.J.A.C. 10:61-3.3).

MAXIMUM FEE ALLOW- ANCE

Lists New Jersey Medicaid Program's maximum reimbursement schedule for Pathology and Laboratory services. If the symbols "B.R." (By Report) are listed instead of a dollar amount, it means that additional information will be required in order to properly evaluate the service. Attach a copy of the report to the MC-13A C2 claim form.

1.-2. (No change.)

(d) (No change.)

10:61-3.2 HCPCS code numbers and maximum fee schedule; pathology/laboratory (CPT-4)

Ind	HCPCS Code	MOD	Maximum Fee Allowance		
			Office Total Fee	\$	Prof. Comp.
...					
F	89329		31.00		
F	89330		8.00		
...					

10:66-2.3 Family planning

(a) Family planning services include medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continued medical supervision, continuity of care, and genetic counseling. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related clinic visits, drugs, laboratory services, radiological and diagnostic services, and

ADOPTIONS

surgical procedures are not covered by the New Jersey Medicaid program.

1. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, then the independent clinic must submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey 08625-0712.

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

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Correction

Assistance Standards Handbook

Aid to Families with Dependent Children (AFDC)

Deeming Income of Parents of Adolescent Parents

N.J.A.C. 10:82-3.14

Take notice that the Division of Family Development has discovered an error in the heading of N.J.A.C. 10:82-3.14, which continues to refer to "guardians" of adolescent parents when all references to such guardians were recently eliminated from the section (see 26 N.J.R. 1584(a) and 3483(a)). Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the section heading is amended to conform to the section scope.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

10:82-3.14 Deeming income of parents [and guardians] of adolescent parents

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

(b)

DIVISION OF FAMILY DEVELOPMENT

General Assistance Manual

Readoption with Amendments: N.J.A.C. 10:85

Proposed: July 5, 1994 at 26 N.J.R. 2757(b).

Adopted: November 4, 1994 by William Waldman,

Commissioner, Department of Human Services.

Filed: November 4, 1994 as R.1994 d.591, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-111(d).

Effective Date: November 4, 1994, Readoption;
December 5, 1994, Amendments.

Expiration Date: November 4, 1999.

Summary of Public Comments and Agency Responses:

The following provided comments on the proposed rulemaking:

Wilson H. Beebe Jr., Executive Director, New Jersey State Funeral Directors Association, Inc.

Leighton Holness, Senior Attorney, Legal Services of New Jersey
William R. Abrams, Vice President, New Jersey Association of Health Care Facilities

COMMENT: The New Jersey State Funeral Directors Association (NJSFDA), Inc. supports the exemption of prepaid irrevocable funeral/burial life insurance policies and annuities in the General Assistance (GA) program. However, the NJSFDA strongly objects to the fact that prepaid irrevocable funeral/burial trust funds, which NJSFDA states "constitutes the dominant prepaid funeral mechanism in the State of New Jersey," were not included for exemption in the GA program at this time. NJSFDA contends that the inclusion of prepaid funeral trust funds would not have any additional economic impact on the State beyond the impact already established by the prepaid irrevocable funeral/burial insurance policies and annuities and believes that the inclusion of such trust funds would be consistent with N.J.S.A. 2A:102-16.1, which addresses the use of irrevocable trust funds for funerals for public

HUMAN SERVICES

assistance programs (specifically SSI and Medicaid). In addition, the NJSFDA states that establishing prepaid irrevocable funeral/burial trust funds as an exempt resource in the GA program "would stop the needless and arbitrary conversion of existing trusts to life insurance policies, which conversions are frequently a bad economic value for the consumer," and "would make the broadest number of funeral homes able to serve this client base since all funeral homes in the State offer trusts, but only a fraction offer insurance products."

RESPONSE: The Department concurs with the commenter that the inclusion of prepaid irrevocable funeral/burial trust funds as an exempt resource in the GA program will not have an adverse economic or administrative impact beyond the already established prepaid irrevocable funeral/burial mechanisms, will benefit the client by providing a broader range of resources for purchasing prepaid irrevocable funeral/burial arrangements and will preclude needless and arbitrary conversions that may prove to be a bad economic value for the client. The Department points out that N.J.S.A. 2A:102-16.1 specifically concerns the use of prepaid irrevocable funeral/burial trust funds as an exempt resource in the SSI and Medicaid programs and does not relate to public assistance programs in general. The Department, however, determines that since the Medicaid program allows for such funeral/burial trusts, it would be feasible to align the GA program in this area to the Medicaid program, as this State's nursing facility population is primarily served by the Medicaid and GA programs. The Department, therefore, is adding prepaid irrevocable trust funds as an exempt resource at N.J.A.C. 10:85-3.4.

COMMENT: Legal Services of New Jersey states that the current provision at N.J.A.C. 10:85-3.2(g)7 which provides that "An employable person . . . who has been involuntarily terminated from employment for reasons attributable to his or her own negligence shall be considered unwilling to work for a period of 90 days which shall commence at the end of the month during which the person last received GA benefits." must be repealed. Legal Services contends that this provision incorporates a negligence standard for determining whether a person who has been involuntarily terminated from employment should be considered unwilling to work and subject to a penalty which Legal Services states is contrary to legislative intent, judicial interpretation and administrative policy. Legal Services cites that the court in *Newark Division of Public Welfare v. Ragin*, 197 N.J. Super. 255 (App. Div. 1984) held that "Negligence as a standard creates a basis for termination of welfare assistance beyond that which is statutorily provided."

RESPONSE: The Department is currently researching this negligence standard issue proposed by the commenter and will be pursuing a legal opinion to determine whether the regulations go beyond that which is statutorily provided. The results of the research will determine whether the regulation needs to be amended.

COMMENT: Legal Services of New Jersey commented that the provision of N.J.A.C. 10:85-3.2(g)6 is not clear that good cause for failure or refusal to report for work shall include, but not be limited to, the reasons enumerated at N.J.A.C. 10:85-3.2(g)6i through vii. The court, in *Robinson v. Department of Human Services*, 270 N.J. Super. 191, 198 (App. Div. 1994), held that "[e]ither the regulation is basically invalid because it permits no other reasonable exceptions or reduced penalties, or it must be read as incorporating the legislature's language of including but not being limited to the enumerated reasons . . . [W]e prefer to construe the regulation as including the power to relax it in other appropriate circumstances. This interpretation strikes us as the most sensible and the most consistent with the legislative purpose." Legal Services suggests that the regulation should be amended to state that "Good cause for failure or refusal to accept or retain employment shall include but is not limited to the following: i through vii". Legal Services further states that an administrator, unaware of the court's interpretation and the Legislature's intent, might impose the 90-day penalty for "attending a family funeral, caring for a sick or aged parent, responding to a court subpoena, [or] becoming lost trying to find the work site."

RESPONSE: The Department concludes that the court's interpretation in *Robinson v. Department of Human Services* concerning the inclusion of language that states "shall include but is not limited to," requires a legal opinion from this Department's legal staff. A question that will need to be answered is whether it was a legislative intent for the aforementioned phrase to be added so that other reasons could be entertained as "good cause" for failure or refusal to accept or retain employment as specified at N.J.A.C. 10:85-3.2(g)6.

COMMENT: Legal Services takes exception to the statement at N.J.A.C. 10:85-3.1(a)5ii which provides that persons who were listed as

employable prior to entering a hospital shall retain such status until hospital discharge. The definition of an employable person at N.J.A.C. 10:85-3.1(a)5 which outlines "unemployable criteria" should be amended to state that "employable" or "unemployable" status shall change based upon the disability criteria for "unemployable" status found elsewhere in the regulations.

RESPONSE: The Department concludes that the language in question at N.J.A.C. 10:85-3.1(a)5ii does preclude a GA individual who enters a hospital with employable status of having his or her status changed to "unemployable" prior to hospital discharge. The Department observes, however, that unemployability criteria for determining incapacity at N.J.A.C. 10:85-3.1(a)5x provides that a GA individual would be determined unemployable if written certification by an attending physician was submitted to the MWD attesting to that individual's incapacity. The Department recognizes the apparent discrepancy identified by the commenter, however, but concludes that an indepth review of this issue needs to be undertaken to determine the parameters for amendment, any associated impacts elsewhere in the GAM, as well as the fiscal ramifications of such an amendment. In any event, such a review process will necessitate this issue to be addressed through a separate rulemaking process.

COMMENT: Legal Services suggests that the regulation at N.J.A.C. 10:85-3.3(g) be amended to use the Standard of Need, instead of the GA allowance standard, for determining eligibility for the medically needy under the GA program. This provision assists individuals who are ineligible for AFDC or GA but who have "excessive" medical expenses. It is Legal Services' contention that, if eligibility for this program were determined with reference to the Standard of Need, rather than the allowance standard, more people might be eligible for the program and the State would probably save money because more people would stay off welfare and maintain employment, especially when the person, not disabled by Social Security standards, would require expensive medication in order to maintain his or her level of health and continue working. Legal Services maintains that amending the provision at N.J.A.C. 10:85-3.3(g)1 to using the Standard of Need would be consistent with ideals of welfare reform in that it would provide an incentive for employment. Additionally, such a change would vastly improve the lives of people who are struggling desperately to maintain their self-sufficiency, and for whom a small amount of assistance will prevent them from becoming wholly dependent upon the public welfare system.

RESPONSE: The Department concludes that the concept of using the Standard of Need amount for computing eligibility for the medically needy program within the GA program instead of the allowance standard would require additional appropriations, which the Division does not anticipate receiving in the near future. Therefore, the use of the Standard of Need amount for computing eligibility for the medically needy program cannot be considered.

COMMENT: The final comment from Legal Services suggests that the definition of "temporary rental assistance" at N.J.A.C. 10:85-11.2 is inadequate and should be amended to state:

"Temporary rental assistance is a form of emergency assistance in which payments are made to provide or continue housing of a permanent nature instead of in an emergency shelter or other temporary shelter arrangement."

RESPONSE: The Department agrees that the definition suggested by Legal Services of New Jersey more adequately defines "temporary rental assistance" and therefore, the definition for "temporary rental assistance" is being amended at N.J.A.C. 11:2. The amended definition accurately describes "temporary rental assistance" as an emergency assistance benefit rather than just an "assistance" benefit. In addition, the amended definition more adequately describes that the intent of temporary rental assistance is for housing of a permanent nature rather than a temporary nature, in accordance with the existing provisions of the General Assistance Manual at N.J.A.C. 10:85-4.6(e)2iii(1).

COMMENT: New Jersey Association of Health Care Facilities (NJAHCF) suggests that the provision at N.J.A.C. 10:85-5.1(f)2i be amended to require the MWD to make payment to a long term care facility within 30 calendar days of receiving a bill for services previously provided by the facility. NJAHCF believes this amendment will rectify a problem with certain MWDs where payment to nursing facilities is delayed for up to six months. In addition, the NJAHCF requests that the long-term-care facilities provision at N.J.A.C. 10:85-5.1(f) be supplemented to provide to community spouses of GA recipients, residing in nursing facilities, the identical spousal impoverishment protection currently provided by the Medicaid program.

RESPONSE: The Department agrees that a time-frame should be established for submitting payments by the MWDs to the nursing facilities for services provided by the facility for GA clients. In addition, the Department agrees that the GA long-term-care facility provisions need to be supplemented to provide protection for the community spouse of GA recipients residing in a nursing facility. Provisions concerning the community spouse are being included in a proposal that is currently being drafted to update and enhance the nursing facility provisions within the GA program and to align the GA program with the Medicaid program in this area. The time-frame for submission of payments by the MWDs will also be considered for inclusion in that proposal or through a separate rulemaking process.

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

10:85-1.4 Policy of nondiscrimination

(a) Eligibility for program benefits shall be determined without regard to race, color, sex, religious creed, marital or birth status, national origin, political beliefs, or disability.

1. Purchase of services: The municipality shall not purchase services for beneficiaries of the program from any organization, agency, or institution which practices discrimination.

i. The director shall notify appropriate vendors of this policy.

(1) Official statement on invoices: The director shall see that the following statement appears on all official invoices used in the municipality's General Assistance program:

Services are provided to all recipients without regard to race, color, sex, religious creed, marital or birth status, national origin, political beliefs, or disability.

ii. (No change.)

2. Notification of staff: The director of welfare shall inform his or her staff of the policy of nondiscrimination in the administration of the General Assistance program.

3. (No change.)

10:85-2.2 Establishment of local assistance board

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

(g) The LAB shall act as a body in discharging its duties. A board member shall not individually take upon himself or herself the responsibility for creation of policy, investigation of a client or disclosure of data contained in a case record. Actions taken by the LAB on all matters pertaining to the administration of General Assistance shall be discharged by the board at regular or special meetings and recorded in the secretary's minutes. Functions and activities of the LAB include the study of employment possibilities in local industry, health, housing, and social conditions of the community. Analysis of municipal financial needs, insofar as they are related to General Assistance, shall also be a matter of concern to the LAB.

1. (No change.)

2. Duties described: Specific duties of the local assistance board include, but are not limited to, the following:

i. (No change.)

ii. Assurance of nondiscrimination: Responsibility is vested in the LAB to safeguard the applicants for and/or recipients of public assistance from discrimination by MWD employees and vendors who provide services to clients. Any discrimination based upon race, color, sex, religious creed, national origin, marital or birth status, political beliefs or disability is unlawful and subject to appropriate action (see N.J.A.C. 10:85-1.4).

(h)-(i) (No change.)

10:85-3.1 Persons eligible for General Assistance

(a) General Assistance shall be provided to all eligible needy persons who, while in the State, are entitled to receive such assistance. Entitlement does not extend to persons who have been found eligible for or are recipients of public assistance programs administered by the county welfare agency, or who have been found ineligible for such programs due to voluntary refusal to comply with program requirements. (See also (c) and (d) below.)

1.-4. (No change.)

ADOPTIONS

5. An "unemployable" person is any person who meets any of the unemployable criteria below:

i.-viii. (No change.)

ix. Persons whose presence is required at home to care for one or more children under age two or for disabled family member(s). No more than one person in an eligible unit may be considered unemployable for this reason without written authorization from the Division of Family Development (DFD)/GAP Unit; and/or

x. Persons determined to be incapacitated by the MWD are unemployable when such determination of incapacity is supported by any of the following circumstances:

(1) Form GA-40, Medical Employability Evaluation, shall be completed to provide written certification by an examining physician that the individual is, by reason of an identified physical or mental defect, disease, or impairment, unable to engage in any useful occupation. Such certification shall include the date of examination, diagnosis, length of incapacity, functional limitations, prescribed treatment, an indication of whether or not reevaluation will be necessary, and the examining physician's signature. Any time period or termination date included in the written certification shall be observed. A time period of "indefinite" shall be construed to mean "three months" unless renewed by the examining physician or extended under (a)5x(4) below. When no date or time period is indicated, the certification shall be renewed monthly or such longer period as may be specified under (a)5x(4) below;

(2)-(3) (No change.)

(4) Written Record of Action (Form GA-38) from DFD/GAP Unit. The record may be applied for by MWD submission of such documentary material as the MWD finds appropriate. This may include, but is not limited to, medical or hospital reports and the MWD's own statement of specific observations and recommendations with reasons. Form PA-5/DRS-1, Examining Physician's Report, may be used in this process. MWDs shall submit social information on Form GA-39. Evaluation for General Assistance Employable/Unemployable Status, which provides such pertinent social information as client's age, educational level attained, experience, and a general description of the individual, especially as it relates to employment. The DFD/GAP Unit shall consider the individual's age, experience, education, vocational training, and work history as well as physical or mental defects, diseases or impairments in determining whether an individual is able to engage in any useful occupation for which he or she has competence, or his or her ability to engage in retraining.

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

(d) Rules concerning aged, blind and disabled are as follows:

1. Referral for SSI: Individuals who are aged, blind or disabled shall be referred to the nearest Social Security district office (SSA/DO) to apply for supplemental security income (SSI). However, any immediate need shall be met through General Assistance as a loan to the needy individual. (See N.J.A.C. 10:85-8.3(c)3ii for referral procedures and N.J.A.C. 10:85-6.5 for reimbursement procedures.)

2.-3. (No change.)

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

10:85-3.2 Application process

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

(c) Rules concerning taking applications are:

1. Application/affidavit: Any person who indicates a wish to apply for General Assistance shall be recognized as an applicant. Such individual will be assisted by an MWD worker in completing the application (Form GA-1). He or she shall then be required to sign under oath the attached affidavit attesting to the correctness of his or her statements.

i.-ii. (No change.)

Recodify existing iv.-v. as iii.-iv. (No change in text.)

2.-7. (No change.)

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

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows:

1. (No change.)

HUMAN SERVICES

2. Allowance schedules: Schedules I and II at N.J.A.C. 10:85-4.1 have been established under the authority in N.J.S.A. Title 44 and give the standards, in monthly amounts, to be used as the basis for granting assistance.

i. (No change.)

ii. Assistance allowance standards as given in Schedule I apply only to persons who, because of physical, mental, or emotional disabilities, are unable to accept employment.

iii.-vi. (No change.)

3.-5. (No change.)

(g) (No change.)

10:85-3.4 Resources

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

(c) Exempt resources: Exempt resources are not subject to any requirement for liquidation and are not considered in determining the assistance grant. Any resource which is not or is no longer exempt shall be considered as either available income or a potential resource, according to its nature. The exempt resources are:

1.-3. (No change.)

4. Life insurance policies, including:

*[i. Prepaid irrevocably assigned funeral/burial insurance policies; and

ii. Prepaid irrevocably assigned funeral/burial annuity policies.]*

*1. **Prepaid irrevocably assigned funeral/burial arrangements;**

(1) **Prepaid irrevocable funeral/burial insurance policies;**

(2) **Prepaid irrevocable funeral/burial annuity policies;**

(3) **Prepaid irrevocable funeral/burial trust funds.***

5.-10. (No change.)

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

10:85-5.1 Medical service payment

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

(f) Care of individuals in long term care facilities: The director of welfare shall authorize payments for patient care and allow for a personal needs allowance (PNA) in a nursing facility when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client. In the event that a person who is determined ineligible for Medicaid Only benefits by the county welfare agency applies promptly, and is found eligible for GA, payment of eligible medical expenses shall be made retroactive to the date of application for Medicaid Only.

1. Physician certification (completion of GA-18): Physician certification shall be accomplished by means of Form GA-18, Certification of Need for Patient Care in Facility Other than Public or Private General Hospital. This form shall be completed in duplicate, by the attending, or staff physician and the operator or superintendent of the appropriate facility. One copy shall be submitted to the DFD/GAP Unit for necessity of nursing facility care determination and subsequently, filed in the case record and the other copy shall be retained by the nursing facility or institution.

2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities, by the DFD/GAP Unit. The MWD shall contact the DFD/GAP Unit to obtain the per diem rate for room, board and nursing care. A personal needs allowance of \$35.00 per month shall be allowed to the patient.

i. In determining the amount the MWD will be authorized to pay the facility for room, board and nursing care, the Medicaid rate times the number of days of care less the payment by or on behalf of the client shall be used. Each month the MWD will obtain a current bill for all services rendered during the previous month.

(1) The MWD shall authorize per diem payments for periods of up to 10 days during which the client is temporarily absent from the facility for hospitalization or for periods of up to 25 days in a calendar year for therapeutic visits.

ii. (No change.)

(g) (No change.)

(h) Miscellaneous services: The director of welfare shall authorize payment for drugs, blood, blood plasma, infusions, hearing aids,

prosthesis, oxygen, dental services or dentures, eyeglasses and other visual prosthetics, braces and appliances, if recommended in writing by an appropriately licensed practitioner and if not otherwise available without cost to the patient.

1. (No change.)

2. Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program: See N.J.A.C. 10:85-8.4(f)1i regarding referral to the PAAD program.

3. Prosthetics and orthotics (for example, artificial limb, eye or brace): Clients who have a job disability which may be reduced or diminished if provided with an appliance (that is, prosthesis or brace) should be referred to the Division of Vocational Rehabilitation Services (DVRS) (see N.J.A.C. 10:85-8.4(g)). If accepted for service by that agency, the cost of the appliance is the responsibility of DVRS. Only if the client is rejected as not feasible for the services furnished by DVRS should the municipal welfare agency consider authorizing payment for such an appliance, and then only after consulting with the DFD/GAP Unit.

(i)-(j) (No change.)

10:85-6.3 Public Assistance Trust Fund Accounts

(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account. Effective July 1, 1991, approved municipalities will have both a Public Assistance Trust Fund I and a Public Assistance Trust Fund II account.

1.-3. (No change.)

4. Deposit of refunds and receipts: Except as noted in (a)3 above, all payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" designed on Form GA-12 and duly accounted for on a monthly basis.

i. Refunds and other receipts shall be separated and deposited as follows:

(1) Deposits to the Public Assistance Trust Fund I Account are as follows:

(A) Deposits into this account will include any municipal appropriation for non-GA eligible assistance, certain miscellaneous donations, refunds of non-GA assistance, refunds of 75 percent reimbursed assistance and 75 percent reimbursed SSI interim assistance.

(B) After calculation of the State funded portion (75 percent) of refunds, a check for that amount shall be drawn from the Public Assistance Trust Fund I Account and deposited into the Public Assistance Trust Fund II Account. Amounts remaining after this transfer of funds will be solely municipal funds.

(2) Deposits to the Public Assistance Trust Fund II Accounts are as follows:

(A) Deposits into this account will include State aid advances for expenditures eligible for 100 percent State aid, refunds of all 100 percent reimbursed assistance (to include fraud recoveries, insurance recoveries, vendor repayments, and so forth) and Supplemental Security Income (SSI) Interim Assistance checks (except as noted at N.J.A.C. 10:85-6.3(a)4i(1) above).

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

(b) Disbursement may be made from the Public Assistance Trust Fund Accounts only for payment of public assistance costs, exclusive of administrative costs. Disbursements will be made on the authority of the municipal treasurer or other authorized official.

1. (No change.)

2. Disbursements from the Public Assistance Trust Fund II Account are limited to:

i.-ii. (No change.)

iii. Payment of Supplemental Security Income (SSI) proceeds to SSI recipients, the Social Security Administration, or other municipal welfare departments from which the SSI recipient received Interim Assistance and completed a Form GA-30.

3. (No change.)

10:85-6.4 Fiscal and statistical reporting requirements

(a) General completion and submittal requirements: Forms described below shall be complete and either submitted to the Division of Family Development, as indicated, or retained by each municipality approved to receive State aid in the General Assistance program. Use of the forms described herein is required.

1.-3. (No change.)

4. All MWDs are required to submit, electronically or manually, data concerning actions taken on General Assistance cases. Those MWDs, which do not have computer capabilities to report data electronically, shall, at the end of every business day, complete a GA-48, General Assistance-Data Input for each case when any of the following actions are taken:

- i. Opening of a case;
- ii. Closing of a case;
- iii. Denying a case;
- iv. Imposing a sanction;
- v. Changing a homeless code;
- vi. Reopening a case;
- vii. Changing a case type (employability status); or
- viii. Issuing a payment on a case.

10:85-6.5 Reimbursement of assistance for cases pending SSI entitlement

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

(e) Rules concerning remittance of balance of SSI award to clients are:

1. Form SSA-(L)8125, Social Security Administration Supplemental Security Income Notice of Interim Assistance Reimbursement, provides the necessary information (SSI eligibility date, payment summary, client's address) to permit distribution of any proceeds due the client from the initial SSI award check, which shall be done as follows:

i.-ii. (No change.)

iii. If form SSA-(L)8125 is not received prior to Municipal Treasurer's receipt of the SSI award check, the local SSA/DO shall be contacted by the MWD, within a period of not more than three working days, to obtain the necessary information to permit distribution of the proceeds due the client from the SSI award check.

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

2.-4. (No change.)

5. The deposit of State share of Interim Assistance recovered shall be as follows:

i. If the retroactive eligibility period of the award began on or after July 1, 1991, the initial check received by the municipal treasurer shall be deposited into the Public Assistance Trust Fund II Account.

ii. If the retroactive eligibility period of the award includes periods of Interim Assistance prior to July 1, 1991, the deposit shall be made and the recovery allocated in accordance with N.J.A.C. 10:85-6.3(a)4i.

(f) (No change.)

10:85-6.7 Retention and destruction of case records

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

(c) Cases shall be selected for destruction in accordance with the following schedule:

Record	Retention period
Inactive case records	6 years
Denied cases	10 years
Copies of relief orders or vouchers	6 years
General correspondence not relating to policy or active cases	3 years
Form GA-6, Report of Assistance Commitments	6 years
Form 100, Original Invoice for Expenses	6 years
Form GA-12, Statement of Refunds	6 years
Form GA-30, Authorization for Reimbursement of Initial Supplemental Security Income or Initial SSI Post Eligibility	6 years
Form GA-31, Repayment of Interim Assistance	

ADOPTIONS

Authorization 6 years
Form GA-48, General Assistance Data Input 3 years
The current year shall not be counted when determining the retention period.

10:85-6.8 Pharmaceutical payments

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

(d) Periodically, the administrative costs of processing the MC-6 forms up to that time will either be billed to or deducted from payments of State aid to the respective municipalities.

1. A check shall be drawn from the municipal account used for administrative expenses and made payable to the Treasurer, State of New Jersey for the total amount billed the municipality for the processing of each prescription claim. The check shall be forwarded to the Division of Family Development, Bureau of Business Services, CN 716, Trenton, New Jersey 08625.

10:85-7.1 General provisions

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

(e) Denial of assistance: When an application for assistance is denied, the applicant shall be so informed in writing by a notice mailed as soon as possible, but in no event later than 30 days from the date of application. Such notice shall include a statement of the applicant's right to appeal the decision.

1.-2. (No change.)

10:85-7.2 Notice to applicants or recipients

(a) A timely notice is the notice which must be sent by the municipal welfare department in advance of any action which adversely affects the eligibility of a person who is receiving assistance.

1. Termination or reduction of assistance: The municipal welfare department shall send a notice to every recipient for whom assistance is to be terminated or reduced no later than 10 days before the date such action will be taken. In the event the 10-day period extends beyond the last date for which assistance has already been granted, the MWD will continue assistance at an unreduced per diem rate for the balance of the full 10-day period.

(b) (No change.)

(c) Content of notices: Notices of denial, reduction or termination and time-limited notices shall state in clear, simple language the nature of the action, the effective date and the reason such action is being taken.

1.-3. (No change.)

10:85-8.3 Referral to SSA district office

(a) Referral shall be made to the appropriate Social Security Administration district office when the General Assistance applicant appears eligible for the programs identified in (c) below. The Social Security Administration may be contacted directly, 24 hours a day, by calling toll free, 1-800-772-1213.

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

10:85-8.4 Referral to State agencies

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

(c) The New Jersey State Department of Health administers the programs and services described in (c)2 below.

1. (No change.)

2. Description of programs: The Department of Health administers the following programs:

i.-iii. (No change.)

iv. Special Child Health Service (SCHS): This program is designed to promote early identification, diagnosis, evaluation and treatment of any child under the age of 21 with disabling or potentially disabling conditions.

(1) This program replaces the former "Crippled Children's Program" and "Juvenile Terminal Illness Assistance Program" with expanded services for children and families who are at risk for developing a disabling condition. Services are provided by health care agencies/facilities throughout the State, which have contracted with the State Department of Health. Financial assistance is available through these agencies/facilities on a limited basis when third party resources are exhausted or unavailable to the child or family. Services that are supported include:

(A) Specialized and subspecialized evaluation, diagnostic and treatment services for infants and children who have multiple disabling conditions, chronic diseases/disorders and/or are at risk for delayed development.

(B)-(D) (No change.)

(2) Additional information may be obtained by telephone (609-292-5676) or by requesting a copy of "Specialized Pediatric Services Program Network Agencies" or "What You Need To Know About Case Management Services", from Special Child Health Services, CN 363, Trenton, New Jersey 08625. The individual program details may be obtained from the same address. Referrals may be made directly to the appropriate health care agency/facilities that the State Department of Health lists as an approved contracted provider in their resource directory.

(d) (No change.)

(e) Division of Youth and Family Services (DYFS): This State agency, which is a division of the New Jersey Department of Human Services, administers foster care, homemaker services, adoption, counseling, residential placement, parole supervision, and child abuse services.

1. (No change.)

2. How to apply for services: Information and application for adoption services may be made at one of the Division's four regional offices. The DYFS regional offices are listed below:

Northern Regional Office
100 Hamilton Plaza
7th Floor, Room 710
Paterson, N.J. 07501
(201) 977-4000

Central Regional Office
CN 717
Capital Center
50 E. State Street
5th Floor
Trenton, N.J. 08625
(609) 777-2000

Metropolitan Regional Office
153 Halsey Street, 2nd Floor
Newark, N.J. 07101
(201) 648-4100

Southern Regional Office
392 North White Horse Pike
P.O. Box 594
Hammonton, N.J. 08037
(609) 567-0010

Information and application for all other services may be made at the DYFS district office serving the area in which the MWD is located. The DYFS district offices are listed below.

DIVISION OF YOUTH AND FAMILY SERVICES DISTRICT OFFICES

NORTHERN REGION

BERGEN DISTRICT OFFICE
60 State Street
3rd Floor
Hackensack, NJ 07601
(201) 996-8900

CENTRAL PASSAIC DISTRICT
OFFICE
2 Market Street, 3rd Floor
Paterson, NJ 07501
(201) 977-4525

BAYONNE DISTRICT OFFICE
690 Broadway, 4th Floor
Bayonne, NJ 07002
(201) 823-5000

JERSEY CITY DISTRICT OFFICE
433 Summit Avenue
4th Floor
Jersey City, NJ 07306
(201) 217-7000

NORTH PASSAIC DISTRICT
OFFICE
223 Wanaque Avenue, 2nd Floor
Pompton Lakes, NJ 07442
(201) 831-7405

MORRIS DISTRICT OFFICE
855 Route 10 East
Randolph, NJ 07860
(201) 927-0931

HUMAN SERVICES**NORTH HUDSON DISTRICT OFFICE**

8901 Bergenline Avenue
2nd Floor
North Bergen, NJ 07047
(201) 854-7100

WARREN DISTRICT OFFICE

5 West Washington Avenue
3rd Floor
P.O. BOX 148
Washington, NJ 07882
(908) 689-7000

SUSSEX DISTRICT OFFICE

1 Cochran Plaza
3rd Floor
Newton, NJ 07860
(201) 383-8400

COASTAL MONMOUTH DISTRICT OFFICE

601 Bangs Avenue
2nd, 3rd & 4th Floors
Asbury Park, NJ 07712
(908) 988-2161

SOMERSET DISTRICT OFFICE

75 Veteran's Memorial Drive East
Suite 202
Somerville, NJ 08876
(908) 704-3050

ADOPTIONS**OCEAN DISTRICT OFFICE**

1510 Hooper Avenue
2nd Floor, Suite 210
Toms River, NJ 08753
(908) 255-0700

METROPOLITAN REGION**EAST ORANGE DISTRICT OFFICE**

240 South Harrison Street
East Orange, NJ 07018
(201) 414-4200

NEWARK CENTRAL DISTRICT OFFICE

153 Halsey Street, 3rd Floor
Newark, NJ 07101
(201) 648-4200

NEWARK WEST DISTRICT OFFICE

153 Halsey Street, 4th Floor
Newark, NJ 07101
(201) 648-2960

NEWARK NORTH/EAST DISTRICT OFFICE

153 Halsey Street, 3rd Floor
Newark, NJ 07101
(201) 648-6150

EDISON DISTRICT OFFICE

100 Metroplex Drive
4th Floor, Suite 400
Edison, NJ 08817
(908) 819-7003

EAST BRUNSWICK DISTRICT OFFICE

4 Cornwall Court
East Brunswick, NJ 08819
(908) 390-2100

NEWARK SOUTH DISTRICT OFFICE

153 Halsey Street, 4th Floor
Newark, NJ 07101
(201) 648-2400

PLAINFIELD DISTRICT OFFICE

700 Park Avenue
2nd Floor
Plainfield, NJ 07060
(908) 412-7900

ELIZABETH DISTRICT OFFICE

208 Commerce Place, 2nd Floor
Elizabeth, NJ 07201
(908) 820-3000

MAPLEWOOD DISTRICT OFFICE

2040 Millburn Avenue, 3rd Floor
Maplewood, NJ 07040
(201) 761-7127

PERTH AMBOY DISTRICT OFFICE

275 Hobart Street, 2nd Floor
Perth Amboy, NJ 08861
(201) 389-2700
(908) 324-1700

CENTRAL REGION**HUNTERDON DISTRICT OFFICE**

84 Park Avenue, 2nd Floor
Flemington, NJ 08822
(908) 782-8784

MERCER DISTRICT OFFICE

CN 717
676 North Olden Avenue
Trenton, NJ 08625
(609) 530-8770

NORTHERN MONMOUTH DISTRICT OFFICE

225 Highway #35
Middletown, NJ 07701
(908) 747-7655

WESTERN MONMOUTH DISTRICT OFFICE

1001 Route 9 North
Suite 100
Howell, NJ 07731
(908) 577-9210

SOUTHERN REGION**ATLANTIC DISTRICT OFFICE**

10-14 South New York Avenue
Atlantic City, NJ 08401
(609) 441-3232

BURLINGTON DISTRICT OFFICE

50 Rancocas Road
Mt. Holly, NJ 08060
(609) 267-7550

CAMDEN NORTH DISTRICT OFFICE

101 Haddon Avenue
3rd Floor
P.O. Box 738
Camden, NJ 08101
(609) 757-2700

CAMDEN SOUTH DISTRICT OFFICE

2 Echelon Plaza
2nd Floor, Suite 210
Laurel Road
Voorhees, NJ 08043
(609) 757-2903, 2911, 2921, 2924

SALEM DISTRICT OFFICE

5 Woodstown Road, 2nd Floor
Salem, NJ 08079
(609) 935-6350

CAMDEN CENTRAL DISTRICT OFFICE

101 Haddon Avenue, 3rd Floor
Camden, NJ 08101
(609) 757-2700

CAPE MAY DISTRICT OFFICE

Village Shoppes at Rio Grande
Routes 9 and 47
Rio Grande, NJ 08242
(609) 886-1105

CUMBERLAND DISTRICT OFFICE

40 East Broad Street
4th Floor
Bridgeton, NJ 08302
(609) 453-3833

GLOUCESTER DISTRICT OFFICE

251 North Delsea Drive
Suite 100
Deptford, NJ 08096
(609) 848-6604

(f) (No change.)

(g) The Division of Vocational Rehabilitation Services, which is a division of the New Jersey Department of Labor and Industry, is responsible for the administration of services described at (g)2 below.

1. General eligibility requirements: To be eligible for vocational rehabilitation services, a person must be at or near working age, have a physical or mental disability that is or will be a substantial impairment to employment, and have a capacity for benefiting from services offered under the rehabilitation program to the extent that he or she can become employable in a competitive or sheltered situation. Financial help offered by the division is based upon establishment of economic need.

2. (No change.)

3. How to apply for services: The New Jersey Division of Vocational Rehabilitation Services maintains a network of offices throughout the State. The addresses of these offices, with area of coverage, may be obtained directly from the division's main office, which is located in the Labor and Industry Building, Room 1005, John Fitch Plaza, Trenton, New Jersey 08625. A disabled person, or a relative or friend acting on his or her behalf, may make inquiry at any of the district offices.

4. (No change.)

(h) New Jersey Commission for the Blind and Visually Impaired: The New Jersey Commission for the Blind and Visually Impaired, which is a component of the New Jersey Department of Human

ADOPTIONS

Services, administers the programs and services described at (h)2 below.

1. (No change.)
2. Description of programs: Services are available through the following programs:
 - i-iv. (No change.)
 - v. Vocational Rehabilitation Department: This program attempts to place capable blind persons in remunerative work. It also attempts to help the newly-blind person adjust to his or her disability.
 - vi. (No change.)
3. (No change.)
- (i)-(k) (No change.)

10:85-11.1 Acronyms

The acronyms used in this manual are as follows:

"ACE" means Active Corps of Executives.

...
"AIDS" means Acquired Immune Deficiency Syndrome.

...
"CEAS" means Comprehensive Emergency Assistance System.

...
"DFD/BIC" means Bureau of Integrity Control, Division of Family Development.

...
"DMAHS" means Division of Medical Assistance and Health Services.

...
"FDP" means Family Development Program.

...
"FSP" means Food Stamp program.

"GA" means General Assistance.

...
"HEA" means Home Energy Assistance program.

"HIV" means Human Immunodeficiency Virus.

"HSAC" means Human Services Advisory Council.

...
"JPTA" means Job Training Partnership Act.

...
"LAP" means Lifeline Assistance Program.

...
"MDO" means Medicaid District Office.

...
"PNA" means personal needs allowance.

...
"RMA" means registered municipal accountant.

...
"SCHS" means Special Child Health Services.

"SCORE" means Service Corps of Retired Executives.

"SDX" means State Data Exchange.

...
"TDI" means Temporary Disability Insurance.

...
"TRA" means temporary rental assistance.

...
"VA" means Veterans Administration.

10:85-11.2 Definitions

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

...
"Emergency Assistance" means assistance provided to otherwise eligible GA clients, in addition to the regular GA grant, for the prevention of homelessness, the granting of emergency shelter or temporary rental assistance when such needs are a result of specific emergency circumstances as outlined at N.J.A.C. 10:85-4.6.

...
"General Assistance" means financial and/or medical assistance provided by municipal welfare departments to needy persons currently ineligible for participation in any other public assistance program in New Jersey or for supplemental security income.

...

CORRECTIONS

"Immediate need" means that the available resources of a GA applicant are insufficient to meet his or her current living expenses.

...
"Income exclusions" means income that is not counted when determining financial eligibility.

...
"Monthly review (of eligibility)" means required monthly evaluation of any changes in client's circumstances or income; may entail grant adjustment.

...
"Temporary rental assistance" means *[assistance payment provided to preclude the loss of an existing or potential housing arrangement]* ***a form of emergency assistance in which payments are made to provide or continue housing of a permanent nature instead of in an emergency shelter or other temporary shelter arrangements*.**

CORRECTIONS

(a)

STATE PAROLE BOARD

Notice of Administrative Correction

Parole Board Rules

Board Panel Action—Schedule of Future Parole

Eligibility Dates upon Revocation of Parole for Inmates Who Violated Parole on or after October 17, 1994

N.J.A.C. 10A:71-7.16

Take notice that the State Parole Board has discovered two typographic errors in the recently adopted (26 N.J.R. 4191(a)) amendments at N.J.A.C. 10A:71-7.16A(j). In the first sentence, the reference to "(l) above" should, logically, actually be a reference to "(i) above," and the phrase "past records of the parole" was adopted as "past records of the parolee" (see R.1994 d.511). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

10A:71-7.16A Board panel action—schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after October 17, 1994

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

(j) The future parole eligibility date required pursuant to [(l)](i) above may be decreased or increased when, in the opinion of the two-member young adult Board panel pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past records of the [parole] **parolee** warrant such consideration. The increase or decrease shall be no more than the following:

1.-5. (No change.)

(k)-(t) (No change.)

INSURANCE

(a)

UNSATISFIED CLAIM AND JUDGMENT FUND

Uninsured Motorist's Case Assignment Standards and Procedures

Adopted New Rules: N.J.A.C. 11:3-28.14, 28.15 and 28.17

Adopted Amendment: N.J.A.C. 11:3-28.2 and 11:3-28 Appendix B.

Proposed: June 6, 1994 at 26 N.J.R. 2190(a).

Adopted: November 9, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: November 9, 1994 as R.1994 d.597, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with N.J.A.C. 11:3-28.16 not adopted.

Authority: N.J.S.A. 17:1C-6(e) and 39:6-64.1.

Effective Date: December 5, 1994.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on June 6, 1994 at 26 N.J.R. 2190(a). The Department of Insurance (Department) received written comments from two insurers in response to the proposal. The insurance companies which responded are First Trenton Indemnity Company and New Jersey Manufacturers.

COMMENT: Both of the commenters expressed their concern about the two business day filing procedure set forth in N.J.A.C. 11:3-28.15(b). The commenters indicated that the requirement for insurance companies to file relevant documents with the Unsatisfied Claim and Judgment Fund (Fund) within two business days of receipt by companies is extremely difficult because it fails to provide insurers and defense counsel adequate time to review and discuss documents which relate to a claim after receipts. In addition, the proposed rule would require insurers to use overnight or messenger delivery of every document relating to the litigation and thereby increase the cost of legal expenses.

RESPONSE: The proposed two business day filing requirement is intended to allow the Fund sufficient time to review and process relevant claims information upon receipt from insurers. In addition, the Fund is frequently required to act within 10 business days upon the issuance of a court order or arbitration award resulting from a claim. Therefore, it is necessary that the Fund receive relevant documents from insurers as promptly as possible. The rule only requires a copy to be made and sent to the Fund; no analysis or additional work needs to be performed before this can be done.

Because of the concerns expressed by the commenters, however, the Department is amending N.J.A.C. 11:3-28.15(b) upon adoption to extend the time limit from two business days to five business days in regard to all documents which relate to claims.

COMMENT: One commenter requested that the Department specify what constitutes a filing with the Fund. The commenter also stated that the proposal fails to clearly indicate whether a filing is considered as the time the Fund receives a document, or the date of the postmark on the date of the transmittal letter.

RESPONSE: The term "file" in its common usage clearly requires receipt by the Fund.

COMMENT: One commenter requested an explanation of the purpose of N.J.A.C. 11:3-28.16. Furthermore, the commenter contends that this rule appears to be unnecessarily redundant because the language in N.J.A.C. 11:3-28.13 and 28.16 is identical.

RESPONSE: The commenter is correct in regard to the similarity of the language contained in the two rules referenced above. The Department recognizes that there may be some overlap between the two rules and that this may cause some confusion. Therefore, the Department has determined not to adopt N.J.A.C. 11:3-28.16 at this time. The Department has repropounded N.J.A.C. 11:3-28.16 and proposed an amendment to N.J.A.C. 11:3-28.13, which appeared in the November 21, 1994 issue of the New Jersey Register in order to clarify the effect of these rules and to ensure that both rules are in conformity with one another.

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

11:3-28.2 Definitions

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

"Board" means the Unsatisfied Claim and Judgment Fund Board created in accordance with N.J.S.A. 39:6-64.

...

"Uninsured motorist claims" means claims submitted against operators of uninsured vehicles and hit and run claims submitted pursuant to N.J.S.A. 39:6-61.

11:3-28.14 Insurer's responsibility upon assignment of an uninsured motorist claim

(a) An insurer shall, within 10 business days of receipt of a claim assignment and accompanying instruction sheet (see Appendix B, Item 1, incorporated herein by reference) from the Fund, submit a letter to the Fund which:

1. Acknowledges receipt of the assignment and the accompanying instruction sheet; and

2. Provides the names and telephone numbers of the case handler or manager, the claim investigator and the claim adjuster.

(b) An insurer shall, within 10 business days from the date it assigns the claim to defense counsel, provide the Fund with the name, address and telephone number of defense counsel.

(c) An insurer shall, within 10 business days, provide written notice to the Fund of any changes, substitutions or replacements which occur with respect to any of the persons identified pursuant to (a)2 or (b) above.

11:3-28.15 Procedures for handling an assigned uninsured motorist claim

(a) Each insurer shall:

1. Perform an investigation in accordance with the procedures set forth in the instruction sheet and obtain the following:

i. Confirmation that there is no insurance available for the claim;

ii. Confirmation of the claimant's eligibility based on N.J.S.A. 39:6-70 or 39:6-78.

iii. A police report;

iv. Witness statements;

v. Copies of medical reports, bills and hospital records; and

vi. A central index bureau ("C.I.B.") report;

2. Forward to assigned defense counsel a copy of the instruction sheet for reference; and

3. Forward to the Fund's claim adjuster for certification responses to interrogatories propounded upon the Commissioner in hit and run cases.

(b) An insurer or assigned defense counsel shall obtain and file with the Fund, within ***[two]* *five*** business days of receipt, all documents which relate to the claim including, but not limited to:

1. Documents relating to the discovery of information including, but not limited to:

i. Interrogatories propounded by the claimant and any responses thereto;

ii. Responses to interrogatories propounded by the insurer;

iii. Deposition notices; and

iv. Deposition transcripts;

2. Documents filed with the court including, but not limited to:

i. Motion papers;

ii. Briefs; and

iii. Settlement or consent agreements; and

iv. Orders entered by the Court; and

3. Scheduling notices, notices of arbitration and any results thereof; other correspondence from the courts; and any judgments or court decisions which affect the claim in whole or in part and copies of trial or hearing transcripts upon the request of the Fund.

(c) Within 60 days of receipt of a claim assignment, an insurer shall file with the Fund a completed 60-day Report as set forth in Appendix B, Item 2, incorporated herein by reference, and the following information:

ADOPTIONS

1. The results of the investigation conducted in accordance with (a)1 above;

2. An estimate of the amount of damages involved;

3. A brief synopsis of the status of the case;

4. All answers to interrogatories not previously filed, which have been propounded on the Fund, the Commissioner or any known defendants;

5. Answers to interrogatories propounded by the insurer; and

6. Any other pertinent documents filed with the court in connection with the matter which were not previously forwarded to the Fund.

(d) At six-month intervals, following the initial receipt of a case assignment, an insurer shall file with the Fund an updated, detailed Six-Month Summary Report as set forth at Appendix B, Item 3, incorporated herein by reference, and the following information:

1. An update of the information set forth in (b) and (c) above;

2. A brief summary which describes the status of the case, outlines the action taken to date, sets forth anticipated future action and/or strategy; and the anticipated outcome;

3. The discovery of any evidence of a fraudulent claim. Such information shall be referred to an insurer's special investigation unit. The unit shall, thereafter, forward its findings to the Department's Fraud Unit with a copy to the Fund; and

4. All other relevant information discovered during the pendency of the claim.

(e) An insurer shall provide notice to the Fund of any and all hearings, motions, arbitration and trial dates in a manner which provides sufficient notice to facilitate the Fund's review of the file prior thereto. An insurer shall provide notice to the Fund's claim adjuster either by telephone and confirming letter, facsimile transmission or mail.

(f) An insurer shall consult with the Fund and obtain prior approval from the Board before:

1. Entering into a settlement or judgment by consent in accordance with N.J.S.A. 39:6-72 or 6-82;

2. Proceeding to trial; or

3. Filing a motion for reconsideration.

(g) An insurer shall consult with the Fund and obtain prior approval from the Board before filing an appeal from an order or judgment adverse to the Fund.

(h) Prior approval from the Board shall be obtained by telephoning the Fund at (609) 292-3100 or by writing to:

Fund Adjuster

Unsatisfied Claim and Judgment Fund

CN 325

Trenton, NJ 08625

(i) For each assigned claim, an insurer shall review all medical bills submitted by claimants to ensure compliance with the medical fee schedule set forth at N.J.A.C. 11:3-29. Where a medical bill is not in compliance with N.J.A.C. 11:3-29, the insurer shall immediately notify the Fund of the discrepancy.

11:3-28.16 *[Insurer's obligation to obtain recovery of payments for paid personal injury protection benefits]* ***(Reserved)***

*[(a) An insurer shall pursue any and all responsible tortfeasors within the time prescribed by law at N.J.S.A. 39:6A-13.1.

1. An insurer's failure to diligently pursue its right of recovery of paid PIP benefits shall, as determined by the Board, result in a denial of PIP reimbursement by the Fund, or if already reimbursed by the Fund, in a penalty to the insurer not to exceed the amount of PIP benefits reimbursed on the claim.

2. An insurer shall obtain prior approval from the Fund before settling or compromising a claim against a tortfeasor.

(b) Any and all expenses and fees incurred by the insurer as a result of its pursuit of a right of recovery against a tortfeasor shall be borne by the insurer.]*

11:3-28.17 Penalties

Failure of an assigned insurer to comply with these rules shall result in the imposition of penalties prescribed by law.

INSURANCE

Appendix BItem 1UNSATISFIED CLAIM AND JUDGMENT FUNDINSTRUCTION SHEET

UCJF FILE NUMBER: _____

_____ Enter appearance for _____

_____ OBTAIN PROOF OF SERVICE ON ALL NAMED DEFENDANTS.

_____ Proceed with immediate discovery. Serve SPECIAL UCJF ELIGIBILITY INTERROGATORIES.

_____ Schedule depositions and/or
 IME if indicated.

_____ Obtain conformed copy of
 cancellation notice.

_____ Move to dismiss improper defendants:

_____ Commissioner of Insurance
 _____ Director of Motor Vehicles
 _____ UCJF

_____ PIP not payable: _____ LATE NOTICE
 _____ OUT OF STATE VEHICLE
 _____ COMMERCIAL VEHICLE
 _____ OTHER

_____ Claimant ineligible, not a resident of New Jersey.

_____ Determine if carrier notified Taxi Commission of cancellation of policy

_____ NOTICE OF INTENTION not sufficiently complete to qualify as a timely filing.

_____ File CIB.

_____ Obtain Police Report

_____ Obtain Medical Reports

_____ Obtain signed statement of uninsured.

_____ Obtain settlement agreement.

_____ Contract witness(es)

_____ Contact claimant's employer for possible health insurance coverage and Temporary Disability Benefits.

_____ Rule out vehicle ownership in household.

_____ Obtain the names, dates of birth and driver's license numbers of all household residents.

_____ Other: _____

Appendix B
Item 2

THIS FORM IS A FORMAT AND NOT TO BE USED IN SUBMITTING
REPORTS TO THE FUND

60 DAY REPORT

UCJ #_____

DATE_____

CLAIMANT: SS#_____ AGE_____

CLAIMANT'S ATTORNEY:

ELIGIBILITY OF CLAIMANT:

UNINSURED:

ASSIGNED ATTORNEY:

ASSIGNED ATTORNEY'S ACTIVITY:

DATE OF ACCIDENT:

PLACE OF ACCIDENT:

ACCIDENT DESCRIPTION:

LIABILITY:

WITNESSES:

POLICE INVOLVEMENT:

INJURIES:

EXPENSES:

ADJUSTER'S RECOMMENDATION:

WORK TO BE DONE:

COMPANY/CARRIER_____

ADJUSTER_____

CLAIM #_____

PHONE #_____

Appendix B
Item 3

THIS FORM IS A FORMAT AND NOT TO BE USED IN SUBMITTING
REPORTS TO THE FUND

6 MONTH SUMMARY REPORT

UCJ # _____

DATE _____

SS# _____ AGE _____

CLAIMANT(S):

CLAIMANT'(S) ATTORNEY:

UNINSURED:

ATTORNEY ASSIGNED:

COMPANY ASSIGNED:

CLAIM # _____

D/A:

TIME:

PLACE OF ACCIDENT:

SUIT:

COURT:

COUNTY:

ELIGIBILITY OF CLAIMANT(S):

DESCRIPTION OF ACCIDENT:

LIABILITY:

WITNESSES DESCRIPTION:

POLICE DESCRIPTION:

DESCRIPTION OF INJURIES:

UP TO DATE LIST OF MEDICAL EXPENSES:

CARRIER'S RECOMMENDATION:

ASSIGNED ATTORNEY'S RECOMMENDATION:

WORK TO BE DONE:

ADJUSTER _____

PHONE # _____

(a)

DIVISION OF PROPERTY AND CASUALTY**Personal Private Passenger Automobile Insurance
Provision of Coverage to All Eligible Persons/
Applicants****Adopted Amendments: N.J.A.C. 11:3-33.2, 44.3 and
44.4; and 11:17A-1.2 and 1.7**

Proposed: September 6, 1994 at 26 N.J.R. 3591(a).

Adopted: November 9, 1994 by Andrew J. Karpinski,
Commissioner, Department of Insurance.Filed: November 9, 1994 as R.1994 d.598, with substantive
changes not requiring additional public notice and comment
(see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e), 17:29A-7 and 17:33B-15.

Effective Date: December 5, 1994.

Expiration Date: January 4, 1996, N.J.A.C. 11:3;
January 2, 1995, N.J.A.C. 11:17A.**Summary of Public Comments and Agency Responses:**

During the comment period, which closed on October 6, 1994, a total of 16 comments were submitted to the Department of Insurance ("Department"). Seven comments were received from associations and professional groups composed of insurance producers. These included the New Jersey Professional Insurance Agents, the Insurance Brokers Association of New Jersey, the South Jersey Insurance Producers Association, two from the United Food and Commercial Workers Union (Professional, Insurance and Financial Division), the Independent Insurance Agents of New Jersey and the Independent Insurance Agents of Camden and Gloucester Counties. Additionally, one independent producer submitted written comments to the proposal. Five written comments were received from insurance companies. These companies are New Jersey Manufacturers Insurance Companies (including New Jersey Reinsurance Company), Chubb and Son, Inc. (including Chubb Custom Insurance Company, Chubb Insurance Company of New Jersey, Federal Insurance Company, Great Northern Insurance Company, Pacific Indemnity Company and Vigilant Insurance Company), State Farm Indemnity Company, First Trenton Indemnity Company and Liberty Mutual Insurance Group (by their counsel). Other comments were received from the New Jersey Automobile Dealers Association on behalf of franchised automobile retailers throughout the State; Ramesh Gupta; and The Alliance of American Insurers, an insurer trade association. These comments and the Department's responses are summarized below.

COMMENT: These amendments to N.J.A.C. 11:3-33.2, 44.3 and 44.4 and 11:17A-1.2 and 1.7 will require insurers to provide an applicant for private passenger automobile insurance with bound coverage of insurance within five days of the receipt of a completed application. If the binder is not issued within five business days after the completed application is received then it is deemed to have been denied. Seven commenters believe that no time limit should exist and that all producers should be provided with immediate binding authority from the insurance companies upon receipt of a properly documented application. These commenters state that New Jersey has an insurance system which imposes upon the insurance industry the obligation to "take-all-comers." They claim it is anomalous to impose an obligation to take all qualified applicants and then to allow a period of five days in order to process and bind the policy. Several of these commenters would like to return to the procedure employed in prior years when numerous producers possessed immediate binding authority.

RESPONSE: N.J.S.A. 17:33B-15 requires that all insurers who are licensed to transact private passenger automobile insurance must provide coverage to all applicants who qualify within the definition of N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4 as eligible persons. N.J.S.A. 17:33B-18a(2) prohibits agents from channeling eligible persons away from an insurer or from obtaining coverage to which they are entitled.

On March 1, 1993 the Department of Insurance ("Department") adopted emergency rules and amendments similar to these amendments. At that time, the Department found an emergent situation existing in which otherwise eligible persons were not able to secure insurance in a timely fashion. These rules were operative from March 8, 1993 (25 N.J.R. 1290(a)) until October 15, 1993, when the depopulation of the MTF was completed. During that period of time, the Department ob-

served that insurers and producers were not unduly burdened by the five day requirement and eligible persons were generally able to secure private passenger automobile insurance in a timely fashion.

The Department expected that after October 15, 1993, insurers would continue providing auto coverage promptly; however, it has monitored the private passenger automobile insurance market and has determined that continued imposition of appropriate standards of conduct is warranted. Notwithstanding the depopulation of the residual market, there remains substantial evidence that the prompt provision of coverage has not returned to normal.

Many insurers that previously conducted business through agents with immediate binding authority have failed to restore that authority. This alone contributes substantially to the delay encountered by eligible persons in obtaining insurance. Thereafter, other unnecessary delays occur when completed applications from otherwise eligible persons are sent off to the insurer for the policy to be issued. In many cases the coverage is not provided until 20 to 30 days after the application was submitted.

The Department has no desire to interfere with the details of the contractual relationship between insurers and their agents any more than is necessary to avoid or minimize market problems. If the insurers choose to require that applications be submitted from their agents for review before coverage is provided, then they should be compelled to act in a timely fashion on the completed applications of qualified applicants.

These rules set forth standards applicable to all automobile insurers, not just those that provide coverage through agents. Different insurers have different systems for doing so. The rule provides an appropriate standard, and leaves it to each insurer how to achieve it. Providing immediate binding authority to agents is one way, but not the only way.

COMMENT: Several commenters expressed concern about when the time period will commence, noting that neither the applicant nor producer will be able to calculate when the insurer should respond. These commenters suggested that the time period be triggered by the date of mailing. Some commenters suggested that the period should be five days from the date of mailing to the insurer; other commenters suggested a seven calendar day period from the date of postmark.

RESPONSE: After careful consideration, the Department has determined to adopt the rule as proposed with the triggering event for the five business day period being receipt by the insurer of a completed application. The adopted rule would use the same standard as before; this would permit use of the same systems employed when the standard was previously in effect.

In order to respond to the concern that the applicant and producer should know when the time period commences, and to facilitate enforcement of the standard, the Department has added at N.J.A.C. 11:3-33.2 and 44.3(b)1 a presumption of when delivery occurs. In accordance with statistics about mail delivery by the United States Postal Service, receipt by an insurer in New Jersey or within 300 miles of the place of mailing will be presumed to have occurred within two calendar days after the delivery of the completed application to the Postal Service as evidenced by a proof of mailing or the postmark. In other cases, the presumption of receipt by the insurer will be three calendar days.

The suggestion that the triggering event be the date of mailing to the insurer would significantly reduce the time for the insurer's in-house review from five business days to perhaps three or even two. Mandating so short a period might be unreasonable, and in any event would require reproposal of the rule for further public comment. The suggestion that the triggering event be the date of mailing to the insurer, but the time to act be extended to seven calendar days (rather than business days) could provide approximately the same time for the insurer to act, but would not when for example, the mailing occurred on a weekend or the week included a holiday. This may also shorten the time period for action by the insured.

If appropriate, the Department can take further action to enforce the provisions of these rules as well as the requirements of N.J.S.A. 17:33B-15 either on specific complaints or as the result of a market conduct examination.

COMMENT: Three commenters favor New Jersey Senate Bill 782 which imposes a mandatory implied acceptance of any application for insurance which is not declined within five business days of receipt of a completed application by an insurer or an insurance producer authorized to accept the application on behalf of the insurer, whichever is later. Under these rules, if notice of acceptance or denial is not given within five days by the insurer, then the application is deemed to have been denied. Thus, coverage will not be created automatically.

RESPONSE: While these commenters' views are duly noted, these rules are intended to implement existing statutes. The current amendments reestablish the standards that expired in 1993. The Department believes that these rules will lessen the problem of delay in providing private passenger automobile insurance. Additionally, the Department notes that there are sanctions and penalties available under the current amendments and the Department will monitor market availability to determine if these amendments are having the anticipated result. If it becomes necessary, the Department may consider further remedial action.

COMMENT: One commenter stated that persons not eligible for insurance coverage in the voluntary market may obtain insurance immediately with the New Jersey Personal Automobile Insurance Plan ("PAIP"). Under N.J.A.C. 11:3-2, producers have immediate binding authority. By contrast, immediate coverage may not be available to those applicants with a good driving record unless the producer with whom they are dealing has immediate binding authority from the voluntary market company for which he or she writes business. This commenter believes that any system which produces such a result is unfair.

RESPONSE: The Department recognizes the difference, but notes that this issue is outside the scope of the proposal. These amendments address the issue of lessening the delay being experienced by persons who are eligible to obtain auto insurance in the voluntary market. Currently, an eligible person may wait for weeks while his or her completed application is processed. These amendments are directed to resolving that unnecessary delay.

COMMENT: One commenter suggests that the burden of documenting the date of receipt of the application be placed upon the insurer. This commenter believes that the Department should adopt a collateral provision to the effect that "an insurer shall obtain and retain documentation of the date of receipt of said application and make such documentation and the date of receipt immediately available to the applicant or the applicant's producer upon request. An insurer shall make this information available through the means requested, including telephone confirmation or any wire transmissions such as facsimile transmission or computer modem." It is believed that the implementation of such a provision will allow for a proper determination of responsibility in the event of unreasonable delays and will eliminate consumer uncertainty.

RESPONSE: The Department notes that insurers may require producers to forward "bound applications" in fewer than five days according to their contractual provisions. This, of course, is in the situation where the producers possess the authority to bind the insurers. In such circumstances, five days is considered the upper limit in that the producer will have to gather all of the documents associated with the application and it will still allow the insurer sufficient time to complete any other underwriting review and activity within the 60 day time frame that is permitted by N.J.S.A. 17:29C-7.

In the case of producers without binding authority, the Department notes that N.J.A.C. 11:3-44.3(b) provides insurers with five business days from the receipt of the completed application to either bind or decline coverage. The Department believes that the current amendments will allow for a predictable mechanism in which insurers will monitor the actions of their producers, and consumers and producers will expect insurers to act within the required time frame. When appropriate, the Department will take further action to enforce these rules and the mandates of N.J.S.A. 17:33B-15.

COMMENT: Three commenters suggest that a mandatory deposit and/or non-refundable processing fee be accompanied with each application in order to lessen the economic burden placed upon producers. According to the commenters, the producer has to absorb the cost of Motor Vehicle Reports (MVR) and Claims Loss Underwriting Exchange (CLUE) reports in order to provide the insurer with a completed insurance application.

RESPONSE: With regard to deposit money and expenses associated with the processing of an application for insurance, insurers and producers are permitted to request payments in accordance with their filed rating systems and their usual procedures. Nothing in these rules compels insurers to provide coverage without obtaining payments in accordance with their approved rating systems.

N.J.A.C. 11:3-44.3 sets forth the information that is necessary to determine eligibility. Additional information is generally not directed at determining whether the applicant is eligible, but is used in fixing the proper rate. The Department notes that should the insurer determine after coverage is bound that the applicant is not an eligible person, then coverage can be cancelled in accordance with N.J.S.A. 17:29C-7. Ad-

ditionally, an insurer may re-rate the policy on information which is obtained after the policy is bound.

COMMENT: Two comments were received, one from an insurer trade association and the other from a large direct response insurer, which suggest that direct writers and insurance company inhouse producers should be excluded from the proposed amendments. These commenters contend that no evidence exists that direct writers of insurance have in any way caused the market availability problem of private passenger automobile insurance that is causing the Department to reestablish these rules. These commenters argue that because direct writers are not in any way involved with the problem, they should not be sanctioned by the imposition of the five day rule. These commenters point out that the overwhelming majority of their applicants do not need a five day time frame because they generally apply for coverage early. Furthermore, they state that the imposition of a five day rule is unfair to them because they have in no way contributed to the problem. One indicates that *IMO Commissioner of Insurance's March 24, 1992 Order*, 132 N.J. 209, 624 A.2d 565, 577 (1993) applies to the proposed amendments. It is suggested that this case further supports the position that the application of the five day rule to direct insurers is inequitable and arbitrary.

RESPONSE: These rules are intended to provide uniform standards for all insurers regardless of the marketing method used by an insurer. The Department notes that the amendments clarify that coverage need not be provided until the date requested by the applicant, and until the proper premium or deposit is received by the insurer. With regard to the commenters' statements that direct writers are not "part of the problem," the Department notes that the problem being addressed is the prompt provision of coverage to "eligible person" automobile insurance applicants. To the extent that direct writers of automobile insurance provide coverage promptly, they may be part of the solution. These rules are not penal, but are intended to establish standards to improve the market.

The Department also believes that the Supreme Court case cited by the commenter has no application to this matter.

COMMENT: One commenter is a private passenger automobile insurer which provides its voluntary agents with immediate binding authority in private passenger automobile policies. The insurer does not object to the five day rule in principle but rather raises objections which point to application of the rule. It is concerned that the non-routine "unbound applications" will cause the most problem. The commenter points out that its agents, who have binding authority, will have contact with the applicants and will be able to bind the policy within the required period of time in the normal case. However, in "unbound applications," which are relatively few, issues are raised regarding the interpretation of underwriting rules, regulations and even statutes. In such cases, the "unbound application" is referred back to the main office by the agent for legal or other underwriting opinions. Of necessity, the commenter opines, the decision will normally take longer than five days. As a result, a proposed revision is offered: "This provision should not apply to an automobile insurer for which more than 90% of the applications for private passenger automobile insurance the insurer receives from all of its producers have been immediately bound by the producers. For the purposes of this rule, an application is considered to be immediately bound if coverage is bound effective immediately, or is bound and effective at a specific date in the future selected by the applicant."

RESPONSE: As was noted by the commenter, in the normal situation there is no difficulty complying with the requirements of these rules. In the unusual circumstances when the producer with binding authority is not in a position to issue a binder due to questions of eligibility and/or rate, communication with the insurer's underwriting department or attorneys may be warranted. The Department believes that in those circumstances, five days from receipt of the application by the insurer should be sufficient time to make the decisions contemplated by the commenter. As indicated in response to a previous comment, in some circumstances it may be necessary to re-rate the policy or to cancel coverage.

COMMENT: One insurer which provides its voluntary agents with immediate binding authority is concerned about what will constitute "a completed application." The commenter suggests that insurers be permitted to do their underwriting before binding coverage and that proper underwriting requires all of the following: (1) fully completed application, coverage selection form, physical damage acknowledgement and down payment; (2) registration for all vehicles to be insured; (3) recent utility bill or other reasonable documentation pertaining to residence; (4) motor vehicle reports on all operators; (5) proof of in force

medical insurance or medical ID cards for all in the household; (6) documentation pertaining to the chargeability of any accidents of all in the household. This insurer suggests that this information is the minimum necessary in order to properly determine eligibility and thus bind any policy. The insurer states that it would support the five day requirement; however, it must contain provision that all of the above listed information be supplied prior to the commencement of the five day period.

RESPONSE: The Department notes that N.J.A.C. 11:3-44 sets forth the contents of a completed application. This information is what is necessary to determine eligibility and generally to rate the policy. Any information beyond the issue of eligibility and basic rating can be determined after the coverage is in effect.

Additional documentation and information such as MVRs and CLUE reports are tools for insurers to use during the underwriting process to verify the information provided by an applicant. For example, if the applicant seeks the premium credit for selection of his or her own medical insurance instead of the personal injury protection in the automobile policy, but is unable to provide proof of health coverage, the rate can be fixed without the credit. Thereafter, the applicant can produce proof of medical insurance for all persons insured under the policy and thus obtain a re-rating of the policy in order to secure the credit. The process of providing coverage to eligible persons should not be delayed for issues pertaining to the proper rating of the policy.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*):

SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER OR REGISTERED AS A LIMITED INSURANCE REPRESENTATIVE

11:17A-1.2 Definitions

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

...
“Declination,” “denied” or “denial” means:

1.-6. (No change.)

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if requested to notify the applicant whether coverage will be provided or denied, within five business days from the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). ***When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.***

...

11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

1.-2. (No change.)

3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the applicant.

i. Where a producer who, pursuant to the authority granted by an insurer, has the authority to immediately bind an application for private passenger automobile insurance, determines that the applicant is an eligible person, the producer shall bind the coverage, or if requested shall notify the applicant whether coverage will be provided or denied, and shall transmit the application to the insurer within five business days of receipt of the completed written application. Nothing in this section shall be construed to compel an insurer to provide a producer with the authority to bind coverage immediately except as provided at N.J.A.C. 11:3-44.4.

ii.-iii. (No change.)

4.-6. (No change.)

(b) (No change.)

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.2 Definitions

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

...

“Declination,” “denied” or “denial” means:

1.-6. (No change.)

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if requested to notify the applicant whether coverage will be provided or denied, within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a).

...

SUBCHAPTER 44. SPECIAL RULES FOR EFFECTING COVERAGE FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-44.3 Duty to provide coverage upon receipt of a completed written application

(a) (No change.)

(b) An insurer, by itself or through its producers with binding authority, shall provide coverage to an eligible person applicant who submits a completed written application that includes the information in (a) above.

1. Insurers shall have five business days from the date of receipt of a completed written application to either provide or decline insurance, or if requested to notify the applicant whether coverage will be provided or denied. An insurer shall obtain and retain documentation of the date of receipt of such application. ***When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.***

2.-3. (No change.)

(c) (No change.)

(d) Nothing in this rule shall be deemed to require an insurer to provide coverage prior to receipt by either the insurer or its producer of the premium deposit required based upon the premium quoted by the insurer or its producer.

11:3-44.4 Immediate binding authority for insurers with MTF rates

Insurers which are approved by the Commissioner to use MTF rates in accordance with N.J.S.A. 17:33B-11c shall provide their producers with authority to immediately bind coverage on behalf of the insurer for all applicants to be charged MTF rates. Insurers shall amend their approved rating system, if necessary, either to incorporate MTF Manual Rule 5 which shall be deemed approved by the Commissioner; or to extend immediate binding authority to their producers in accordance with their own immediate binding procedures. This requirement shall not apply to insurers which transact personal private passenger automobile insurance directly with the public.

LAW AND PUBLIC SAFETY**(a)**

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ELECTRICAL CONTRACTORS
Fee Schedule; Requirement of Identification Card
Defined**

Adopted Amendments: N.J.A.C. 13:31-1.11 and 1.16

Proposed: July 5, 1994 at 26 N.J.R. 2742(a).

Adopted: November 2, 1994 by the State Board of Electrical Contractors, Edward O'Hara, President.

Filed: November 7, 1994 as R.1994 d.594, **without change**.

Authority: N.J.S.A. 45:5A-6.

Effective Date: December 5, 1994.

Expiration Date: November 20, 1996.

**Summary of Public Comments and Agency Responses:
No public comments were received.**

Full text of the adoption follows:**13:31-1.11 Fee schedule**

(a) The following fees shall be charged by the Board:

1. Application fee (non-refundable)	\$100.00
2. Initial license fee:	
i. If paid during the first year of a triennial renewal period	\$150.00
ii. If paid during the second year of a triennial renewal period	\$100.00
iii. If paid during the third year of a triennial renewal period	\$ 50.00
3. Triennial license renewal	\$150.00
4. Late renewal fee (within 30 days)	\$ 50.00
5. Reinstatement fee	\$100.00
6. Initial business permit:	
i. If paid during the first year of a triennial renewal period	\$ 75.00
ii. If paid during the second year of a triennial renewal period	\$ 50.00
iii. If paid during the third year of a triennial renewal period	\$ 25.00
7. Triennial business permit renewal	\$ 75.00
8. Late renewal fee, permit	\$ 25.00
9. Replacement seal press	\$ 40.00
10. Duplicate license/business permit fee	\$ 25.00
11. Replacement wall license/business permit	\$ 40.00
12. Verification of licensure	\$ 25.00
13. Telecommunications wiring exemption— application fee and issuance of identification card (non-refundable)	\$120.00

13:31-1.16 Requirement of identification card defined

(a) At the time of triennial renewal of the license and business permit, the Board of Examiners of Electrical Contractors shall furnish a wallet size identification card to every licensee. The card shall be used exclusively by the licensee in the conduct of his practice. A licensee who willfully or negligently allows an unlicensed or an unauthorized person to use his identification card shall be deemed to have engaged in occupational misconduct and shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:5A-1 et seq. and N.J.S.A. 45:1-14 et seq. The licensee is required to present said identification card upon request to the appropriate duly licensed inspection agency upon all applications for electrical permits.

(b) (No change.)

(b)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS**

**Fitting and Dispensing of Deep Ear Canal Hearing
Aid Devices**

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

Proposed: March 21, 1994 at 26 N.J.R. 1301(b).

Adopted: July 13, 1994 by the Board of Medical Examiners, Fred Jacobs, President.

Filed: November 7, 1994 as R.1994 d.595, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2.

Effective Date: December 5, 1994.

Expiration Date: September 19, 1999.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment of N.J.A.C. 13:35-8.7, Scope of practice, and proposed new rule, N.J.A.C. 13:35-8.8, Fitting and dispensing of deep ear canal hearing aid devices. The official comment period ended on April 21, 1994.

Announcement of the opportunity to respond to the Board of Medical Examiners appeared in the New Jersey Register on March 21, 1994 at 26 N.J.R. 1301(b). Announcements were also forwarded to The Star Ledger, The Trenton Times, Anthony Marchetta, Esquire, Counsel to Philips Hearing Instruments Company, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Executive Director of the Board of Medical Examiners, Charles A. Janousek, 140 E. Front St., 2nd Floor, Trenton, NJ 08608.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board of Medical Examiners received four written comments regarding the proposed amendment and proposed new rule. A list of the commenters follows:

James W. Edmonds, Ph.D., Vice President, Marketing, Philips Hearing Instruments Company

Stephen F. Freifeld, M.D.

Susan Philpot, Secretary, New Jersey Guild of Hearing Aid Dispensers

Wayne J. Staab, Ph.D., Consultant, Philips Hearing Instruments Company

Following is a summary of the comments received together with the Board's responses:

COMMENT: One respondent asked the Board for a definition of a deep canal hearing aid, stating that no industry or professional definition exists for this device. The respondent more specifically asked if such a definition includes CIC (completely-in-the-canal) hearing aids, since the respondent states that CIC, deep, and peritympanic canal hearing aids are "often considered the same."

RESPONSE: The proposed amendments do not attempt to define "deep canal" hearing aids except as the impression taking process relates to them. These amendments are concerned with process, not the product, and as such address the technique utilized to obtain an impression for a hearing aid. The argument that all types of deep canal or CIC hearing aids require impressions that come in contact with the tympanic membrane was not supported by the Hearing Aid Dispensers Examining Committee's investigation, nor by hearing aid manufacturers' stated and written procedures to obtain an ear impression.

COMMENT: One respondent asked: how are "medical instruments" defined? Are cotton and foam blocks that come into contact with the tympanic membrane considered "medical instruments" because they frequently make contact with the tympanic membrane?

RESPONSE: Any material (including cotton or a foam block), as well as any device, object or material that physically contacts the tympanic membrane is, for the purposes of this regulation, a medical instrument.

COMMENT: In N.J.A.C. 13:35-8.8(a), the phrase "technique involving instruments applied to the tympanic membrane" should be revised to read: "technique involving instruments applied **against** the tympanic membrane" because the existing terminology suggests attachment, which is not used in any hearing aid impression technique.

RESPONSE: The Board accepts the requested clarification and will, in adopting this proposal, substitute "against" for the preposition "to."

COMMENT: Two respondents question why, given the alleged risk of complications, the proposal fails to require special training for any procedure considered to be a "deep canal hearing aid fitting". One of these two respondents stated that the dispenser should have on file with the Board a certificate attesting to the fact that he or she completed a course of special training or study.

RESPONSE: The Board reiterates that this rule relates to the impression taking technique to be utilized with the deep ear canal device, and not to the device itself. The Board is not in a position, nor does it believe it is necessary, to require licensees to obtain special certifications for instruments utilized by the licensee in the practice of hearing aid dispensing. Rather, the Board recognizes that the impression taking technique is an evolving art impacted by this as well as other advances in technology. Therefore, as a condition of biennial license renewal every licensed hearing aid dispenser is required to document the completion of 20 hours of continuing education course work accredited by the National Institute for Hearing Instruments Studies (NIHIS). Dispensers who perform deep ear canal impressions involving instruments that touch the tympanic membrane—or who utilize any new devices—will be able to avail themselves of approved continuing education courses specifically relating to the impression taking process as it relates to these types of devices. In fact, the Board is aware that one manufacturer currently requires such a course prior to providing the device.

COMMENT: One practitioner stated that the rule should ideally make clear that the "ENT physician" is not a party to the actual fitting of the hearing aid device and assumes no liability for the fitting process being done by the hearing aid dispenser.

RESPONSE: The Board does not have legal authority to absolve a physician of liability if, in fact, liability exists as a result of negligence pursuant to the physician's supervisory and evaluative responsibilities.

COMMENT: One respondent stated that the results of 4,000 instances of patients being provided with ear impressions made against the tympanic membrane by using an aerating tube prove that the necessity, cost, and inconvenience of a post-impression medical examination is unwarranted.

RESPONSE: The Board conducted a thorough inquiry of this matter so as to implement appropriate regulations and, in doing so, obtained expert opinion and testimony from professionals in the field. All of the evidence accumulated supports the Board's position that the stipulated post-impression medical examination is warranted. Given especially that the affected consumers constitute a vulnerable population of predominantly the elderly and the sick, the Board is convinced that a post-impression medical examination serves as the minimally necessary public protection measure because of the risk that the procedure at issue may result in bleeding and subsequent infection. Finally, it should be noted that the Board is unaware of reported results on over 4,000 patients, but it has no objection to receiving those results for the purpose of being provided with additional information.

COMMENT: One respondent questioned why a medical examination seven days prior to the taking of an impression is required, asserting that 60 days prior to taking an impression should be more than sufficient.

RESPONSE: In the opinion of the Board, the seven-day period is necessary in order to ensure that cerumen accumulation and other anomalies are not given ample time in which to develop. A longer time period, such as 60 days, would exacerbate the risk of anomalies that the medical examination is designed to detect prior to the taking of an impression. Indeed, the Board considered requiring the medical examination three days prior to the taking of an impression but decided against that standard because of concerns that the vulnerable population most likely to be affected by these regulations might have limited access to transportation and would, therefore, find such a condensed time frame to be unduly burdensome.

COMMENT: One respondent stated that, because plenary physicians are not adequately versed in this matter, it is not realistic nor an advantage in terms of ensuring patient safety to require a plenary physician to evaluate the placement of the device. Instead, the evaluation should be made by an ENT.

RESPONSE: Under this proposal, either a plenary licensed physician or an ENT may provide the evaluation. The Board has permitted this option to exist because it does not want to restrict patients in their choice of competent medical assistance. Moreover, the Board recognizes that there is a cost differential between the two options and does not want to impose any greater expense on patients than is deemed necessary to ensure sufficient consumer protection. It should be noted, however, that the opportunity to choose between these two options might be

eliminated, not by the Board, but by managed health care guidelines that are evolving toward cost-containment measures that would preclude unlimited access to specialists.

COMMENT: One respondent stated that the proposal is unduly restrictive and will not be economically beneficial to licensed hearing aid dispensers because the mandated increases in appointments, scheduling time, and physician visits will mean that the procedure and the hearing aid benefits are less likely to be enacted and fulfilled.

RESPONSE: The Board duly considered cost factors as noted in the response to the previous comment, and is confident that the economic impact upon licensees is the minimum necessary to ensure patient safety.

COMMENT: One respondent asked whether the proposed rule applies to all manufacturers of all hearing instruments when the impression making procedure requires component placement past the second bend where it comes in contact with the tympanic membrane.

RESPONSE: It is important to note that this rule regulates the conduct of the licensee, not the manufacturer. The regulations address all instances in which the licensee uses instruments applied to or against the tympanic membrane, as opposed to those instances in which the instruments merely go beyond the second bend of the external ear canal (but do not actually touch the tympanic membrane). The Board made this distinction based on information developed during the fact-finding process that the Board engaged in so as to implement appropriate regulations. Therefore, the licensee's use of any device produced by any manufacturer that requires an impression taking technique with instruments applied to or against the tympanic membrane is covered by this rule.

COMMENT: On behalf of the New Jersey Guild of Hearing Aid Dispenser, Susan Philpot requested that the proposal be amended as follows in order to distinguish the impression taking process of other manufacturers' small canal type hearing aids, which do not impact the tympanic membrane, from those processes suggested by the proposed rule and amendment.

N.J.A.C. 13:35-8.7(a)3:

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

N.J.A.C. 13:35-8.8(a) should be similarly amended.

RESPONSE: The Board is confident that the regulated community will understand that it is the impression taking technique, not the deep ear canal hearing aid device, that is being regulated in order to ensure consumer safety. Simply put, these regulations are applicable whenever any instrument touches the tympanic membrane. While the changes recommended have, therefore, been deemed unnecessary, the Board will monitor the impact of these regulations and, if necessary, will amend them to provide for enhanced comprehension.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[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]* ***against*** 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 STATE POLICE

Criminal History Record Information Background Checks for Non-Criminal Justice Purposes

Adopted Amendments: N.J.A.C. 13:59

Proposed: September 6, 1994 at 26 N.J.R. 3595(a).

Adopted: November 9, 1994 by Colonel Carl A. Williams,

Superintendent, Division of State Police, with the approval of Deborah T. Poritz, Attorney General.

Filed: November 10, 1994 as R.1994 d.601, 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. 53:1-20.5; 53:1-20.6 and 53:1-20.7 (P.L. 1994, c.60).

Effective Date: December 5, 1994.

Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendments were published September 6, 1994. During the comment period, which closed on October 6, 1994, comments on the proposed amendments were submitted by the Department of Human Services and International Business Research (U.S.A.), Inc. ("I.B.R."). Comments submitted by the Division of Consumer Affairs were withdrawn.

COMMENT: I.B.R. recommended that an addition be made to the proposed amendments to require the Division of State Police ("Division") to answer all requests for criminal history record background checks within a maximum time frame. I.B.R. suggested that the amendments require the Division to respond within 10 days of receipt of a request.

RESPONSE: The Division rejects this suggestion. Manpower limitations and volume fluctuations have a significant impact on the Division's response time. In addition, the first priority of the Division is to service the criminal justice community performing criminal investigations and criminal justice employment background checks. The Division notes, however, that at present, responses are typically provided within five to 10 days of receipt. The Division does not presently anticipate that these amendments will cause that response time to change. The Division will, of course, attempt to accommodate emergent matters and to respond accordingly.

COMMENT: I.B.R. further suggested that the proposed amendments be modified to permit authorized requesters to obtain criminal history background information via computer modem.

RESPONSE: The Division rejects this suggestion at this time. The Division has no immediate plans to provide authorized requesters with criminal history records via electronic means. The Division's computerized recordkeeping system is not presently capable of accommodating requests in such form from all authorized requesters. The Division does, however, envision electronic access as a possible viable means of dissemination in the future.

COMMENT: I.B.R. also suggested that the amendments be modified to permit authorized requesters to pay for criminal history background checks by regular business check and to maintain pre-paid accounts.

RESPONSE: The Division accepts this suggestion and has modified the proposed amendments to specify that the Division will accept business checks and will, with the approval of the Superintendent, maintain pre-paid accounts for requesters that submit large volumes of transactions.

COMMENT: The Department of Human Services commented by telephone and advised that pursuant to N.J.S.A. 9:3-54.1, the Department of Human Services submits State and Federal fingerprint cards on prospective adoptive parents and family members. After child placement, the Department of Human Services initiates an investigation to determine whether the child is being mistreated. The Department requests that the proposed amendments be modified to permit the Department to submit the Background Check Request Form (SBI 212B) in connection with this post placement investigation without obtaining the authorization of the subject of the request for the release of criminal history record information (Section E of SBI 212B).

RESPONSE: The Division rejects this suggestion at this time. The Division observes that the criminal history record check performed pursuant to N.J.S.A. 9:3-54.2 is conducted with the subject's knowledge and cooperation and that the information obtained is required to be kept confidential and not to be disclosed to any person or entity without the written permission of the person who is the subject of the record request. Where the amended rules require a subject's authorization to obtain criminal history information, it is to provide a safeguard against the improper use of the records and to guard against the release of inaccurate or incomplete information. The request form provides notice to the subject that he or she will be provided with adequate notice to complete or challenge the accuracy of any record provided by the Division and, that if requested by the subject of the record request, he or she will be provided with a reasonable period of time to correct or complete any information provided by the Division. It is the Division's present view that the importance of maintaining these protections outweighs the Department's need for obtaining a criminal history background check in these circumstances without the subject's consent. The Division notes, however, that these rules expire in July 1995 and that, if appropriate, this issue may be reassessed at that time.

COMMENT: The Department of Human Services, Division of Youth and Family Services, Bureau of Licensing ("DYFS") commented that the expansion of access to criminal background information for non-criminal justice purposes is an additional protection for the children and families that receive services from the providers that they regulate. DYFS observed that the expansion was especially important in the area of the use of volunteers, since many facilities/agencies rely on volunteers to supplement their staffing.

RESPONSE: The Division agrees with this comment.

COMMENT: DYFS further commented that request forms that require signature by the subject should require that the signature be notarized. This would reduce the likelihood of a requester forging a subject's signature.

RESPONSE: The Division expects to process over 100,000 requests for criminal history background checks in 1995. The need for timely processing is apparent, especially with respect to employment matters. It is the Division's view that requiring a notarized signature would result in unnecessary processing delays for authorized requesters and subjects and that the benefit which might result from requiring notarization of a subject's signature is insufficient to justify the anticipated processing delays.

COMMENT: DYFS commented that the proposed rules do not appear to provide sufficient protections for the persons for whom the request is made in terms of the potential for the abuse of this information. In particular, there seem to be a few safeguards to protect against the dissemination of these background information checks to other persons/organizations that should not have access to the information.

RESPONSE: The Division views the limitations on use described in these rules as consistent with the legislative authority delegated to the

Division. The regulations contain explicit limitations on dissemination of computerized criminal history (CCH) records and record retention. Requesters are specifically advised that any record received shall be used solely for the authorized purpose for which it was obtained and shall not be disseminated to persons not authorized to receive the record. Requesters are further advised that the record must be destroyed after it has served its intended and authorized purpose. These limitations are set forth on the information request form (SBI 212B) and the CCH record. Requesters who execute the SBI 212B information request form are required to certify on the form that they will adhere to these limitations on dissemination of the records. Moreover, the regulations explicitly advise that persons violating federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties (See, for example, N.J.S.A. 2C:30-2 (official misconduct); N.J.S.A. 2C:28-7 (Tampering with public records or information); N.J.S.A. 2C:21-3 (Frauds relating to public records and recordable instruments)).

COMMENT: DYFS commented that there should be specific penalties/fines outlined in the proposed amendments for requesters who misuse or obtain background information under false pretenses.

RESPONSE: The Division rejects this suggestion. The Division observes that the statute governing the dissemination of criminal history record background records in noncriminal matters does not provide for penalties or fines in such circumstances. The Division will not impose penalties or fines not authorized by the Legislature.

COMMENT: DYFS commented that it is unclear if employees have any rights or recourse if they are dismissed from their jobs as a result of these background checks. The proposed amendments should make it clear that the employers must abide by the provisions in the State Rehabilitated Convicted Offenders Act before dismissing an employee based on the results of the background check.

RESPONSE: The Division rejects this suggestion. The Division observes that the Legislature did not address employee rights on dismissal in the legislation governing the dissemination of criminal history background information in noncriminal matters. It is the Division's view that the requirements in these regulations that a subject will not be presumed guilty of any pending arrest or charge indicated on any record received from the SBI and that a subject be provided notice and an opportunity to correct or complete any information provided by the SBI serve to alert subjects that they may have legal recourse against the requester who takes improper adverse action against them. In addition, the Division considers it unnecessary to remind licensing authorities of their responsibilities under the State Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq.

COMMENT: DYFS recommended that pending arrest/charges be eliminated from the background information results. DYFS commented that the proposed amendment that requires a requester not to presume guilt in these cases does not afford the person on whom the request was made any protection from dismissal once the requester learns of the pending arrest/charges.

RESPONSE: The Division rejects this suggestion. Records of pending arrests/charges may prove valuable to particular requesters. (See, for example, N.J.S.A. 11A:4-10, 11A:4-11). For instance, a volunteer organization that works with children would clearly want to be informed of charges pending against a potential volunteer that involved child abuse or sex offenses. The regulations do, however, require a requester to afford notice and a reasonable period of time to the subject of a request to correct or complete the record where adverse action is contemplated. The Division further observes that existing civil service statutes do provide some protection against removal on criminal record to employees governed by those provisions. See N.J.S.A. 11A:4-11.

COMMENT: DYFS commented that the proposed amendment for the destruction of background information records is too vague. The Bureau suggested that the rule should specify the methods and time frames for the disposal of these records.

RESPONSE: The Division has modified the regulations to provide that the record must be destroyed immediately after it has served its intended and authorized purposes. Adding this requirement emphasizes the obligation to destroy the record.

COMMENT: DYFS commented that the proposed amendments need to clarify how and where fingerprints can be taken for the person who agrees to a background check.

RESPONSE: The Division rejects this suggestion. The Division cannot prescribe operating procedures for requesters. That responsibility is properly left to the requester. Local police departments, county sheriffs

or State Police stations may agree to provide fingerprinting services to requesters.

COMMENT: DYFS commented that the proposed amendments permit governmental entities of the State to request background information and that the rules need to specify if there are restrictions on who in State government can make a request.

RESPONSE: The Division agrees that the proposed amendments permit governmental entities of this State to request criminal history background checks, but rejects the comment that the rules need to be more specific concerning whether there are restrictions on who in State government can make such requests. It is the Division's view that it is properly left to the governmental entity to determine which of its employees will be authorized to submit requests.

COMMENT: DYFS commented that the proposed amendments do not appear to require any verification of the requester and recommended that the rules be modified to require the requester to submit some type of documentation verifying its identity.

RESPONSE: The Division rejects this suggestion. The SBI 212B form requires a certification from the requester which, if falsified, could result in criminal prosecution (See, for example, N.J.S.A. 2C:21-3.) In addition, the processing delays which might be occasioned by additional verification requirements are not justified by the concerns expressed by DYFS.

COMMENTS: DYFS commented that the proposed amendment at N.J.A.C. 13:59-1.6(e) needs to be clarified. DYFS stated that it is not clear whether or not providers regulated by the Bureau would have access to background information checks via the National Law Enforcement Telecommunications System (NLETS).

RESPONSE: The Division rejects this suggestion. The amended rules are clear that only criminal justice agencies can access NLETS.

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

13:59-1.1 Definitions

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

"Access" means to instruct, communicate with, store data in, gain entry into, retrieve data from, disseminate, or otherwise make use of any computer, computer system or computer network.

"Administration of criminal justice or criminal justice purpose" includes:

1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correction, supervision or rehabilitation of accused persons or criminal offenders;
2. The hiring of persons for employment by criminal justice agencies; and
3. Criminal identification activities, including the accessing of the New Jersey Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information, by criminal justice agencies for the purposes set forth in paragraphs 1 and 2 of this definition.

"Attorney General" includes the Attorney General of New Jersey and, when authorized by the Attorney General to access Criminal History Record Information, his or her Assistants and Deputies.

"Authorized requester" means any person, agency or entity, including national requesters, authorized by Federal or State statute, rule or regulation, executive order, administrative code, local ordinance, resolution or by this chapter, to obtain dissemination of Criminal History Record Information accessed from the computerized databases of the New Jersey Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information for non-criminal justice purposes, including licensing and/or employment.

"Criminal History Record Information" or "CHRI" means information collected by criminal justice agencies concerning persons and stored in the computerized databases of the New Jersey State Police SBI Criminal History Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information consisting of identifiable descriptions and notations of

arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing, correctional supervision and release.

"Criminal justice agency" means:

1. The courts of the State of New Jersey; and
2. A governmental entity of the State of New Jersey which performs functions pertaining to the administration of criminal justice pursuant to statute, ordinance, resolution or regulation, and which allocates a substantial portion of its budget to the administration of criminal justice.

"Dissemination of Criminal History Record Information" means the process whereby the State Bureau of Identification accesses the criminal history record databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information to compare sets of classified fingerprints or to conduct name search requests to determine if New Jersey, Federal or out-of-State criminal history record information exists for persons identified by authorized requesters, and includes:

1. The dissemination by the State Bureau of Identification to authorized requesters, other than national requesters, of all records of convictions in New Jersey State courts and all records of pending arrests and charges for violations of New Jersey laws, regardless of their age, unless such records have been expunged pursuant to law; or

2. The dissemination by the State Bureau of Identification to authorized national requesters of all criminal history record information from the databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information, unless such records have been expunged by law.

"Fee" means that cost established by law for processing all criminal history record requests for authorized requesters for noncriminal justice purposes, including licensing and/or employment.

"Governmental entities" include the State, any office, department, division, bureau, board, commission or agency of the State, and any county, municipality, district, public authority, public agency and any other political subdivision or public body within the State.

"National requesters" shall mean persons, agencies or entities authorized by Federal or State statute to obtain dissemination of Federal and out-of-State criminal history record information accessed by the State Bureau of Identification from the computerized databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) and other states' computerized repositories containing criminal history record information.

"Non-criminal justice purpose" means any purpose, other than administration of criminal justice or criminal justice purpose, including employment and licensing, for which applicant fingerprints or name search requests are submitted by authorized requesters, as required or permitted by a Federal or State statute, rule or regulation, executive order, administrative code provision, local ordinance, resolution or by this chapter, to the State Bureau of Identification for the dissemination of criminal history record information.

"Public servant" means any officer or employee of State government or of any political subdivision or public body of the State, including any advisor or consultant retained by government to perform a governmental function.

"State Bureau of Identification, (S.B.I.)" means the State Bureau of Identification created by P.L. 1930, c.65 as a bureau within the Division of State Police.

"Superintendent" shall mean the Superintendent of the New Jersey Division of State Police (P.L. 1984, c.439, §7).

13:59-1.2 Additional dissemination authorized by this chapter

(a) In addition to any other Federal or State laws, regulations, executive orders, ordinances or resolutions authorizing the dissemination of criminal history record information, the following requesters are authorized to obtain from the SBI all records of convictions in New Jersey State courts and, regardless of their age,

all records of pending arrests and charges for violations of New Jersey laws, unless such records have been expunged pursuant to law:

1. Governmental entities of this State, the Federal government or any other state for any official governmental purposes, including, but not limited to, employment, licensing and the procurement of services;
2. A person or non-governmental entity of this State for purposes of determining a person's qualifications for employment, volunteer work or other performance of services;
3. Attorneys-at-law licensed by the State of New Jersey for use in any contested matters docketed in any State or federal courts or administrative agencies of this State; and
4. Private detectives licensed by the Division of State Police pursuant to N.J.S.A. 45:19-8 et seq., for purposes of obtaining information in furtherance of the performance of their statutorily authorized functions, as specifically enumerated by N.J.S.A. 45:19-9(a)1 to 9.

(b) Requesters authorized by (a)1 and 2 above to obtain criminal history record information shall, on the completed forms or fingerprint cards prescribed pursuant to N.J.A.C. 13:59-1.4, obtain the signatures of the subjects of the requests. Requesters authorized by (a)1 and 2 and (a)4 above shall sign certifications on the forms prescribed by the Division of State Police. The signed certifications shall specify that:

1. The requesters are authorized to receive criminal history record information in conformity with (a) above;
2. That such records shall be used by the requesters solely for the purposes enumerated by the relevant provision of (a) above;
3. That such records will not be disseminated to persons for unauthorized purposes; and
4. That the requesters will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(a).

(c) Except in cases of attorneys-at-law of this State and licensed private detectives proceeding under (a)3 and 4 above, requesters authorized by (a) above to obtain criminal history record information shall sign certifications on the forms prescribed by the Division of State Police certifying:

1. They will furnish the subjects of their inquiries with adequate notice to complete or challenge the accuracy of the records provided by the SBI;
2. If requested by the subjects of the inquiries, they will provide them with a reasonable period of time to correct or complete any records provided by the SBI;
3. They will not presume guilt for any pending arrests or charges indicated on records received from the SBI; and
4. That they will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(b).

13:59-1.3 Fees

(a) A fee of \$25.00 shall be collected by the SBI for the purpose of processing fingerprint identification checks.

(b) A fee of \$15.00 shall be collected by the SBI for the purpose of processing criminal history name search identification checks.

(c) In addition to the fees collected in (a) and (b) above, a non-refundable fee shall be collected from each applicant to pay for the cost of securing and processing of national criminal record checks for non-criminal justice purposes where such checks are authorized by law.

(d) Unless otherwise provided by law, all fees collected for accessing and disseminating criminal history record information shall be deposited in the "Criminal History Record Information Fund".

(e) New Jersey State governmental entities may submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions to the State Bureau of Identification.

(f) ***Payment shall be made by cashiers check, certified check, money order or ordinary business check. Requesters who conduct large volumes of transactions may maintain prepaid accounts with the approval of the Superintendent.*** Any form of payment other than that specified in this section shall be first approved by the Superintendent. ***Checks or money orders shall be made payable to "Division of State Police—SBI."***

13:59-1.4 Prescribed forms

(a) Requests for Criminal History Record Information by authorized requesters shall be on forms as prescribed by this section, except that attorneys-at-law of the State of New Jersey may obtain criminal history record information pursuant to N.J.A.C. 13:59-1.2(a)3 upon the payment of the fees prescribed by N.J.A.C. 13:59-1.3 by the lawful issuance of subpoenas. Such subpoenas shall be issued in accordance with applicable rules of court and administrative procedure and shall be on notice to all parties required to receive same.

(b) The prescribed forms shall be used to access Criminal History Record Information for any requests from authorized requesters for non-criminal justice purposes, including licensing and/or employment.

(c) For fingerprint identification purposes an "Applicant" fingerprint card must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card.

1. Fingerprint card SBI-19 or SBI-19A: The fee as prescribed in this chapter, ***if*** in the form of a ***[cashiers]*** check, ***[certified check]*** or money order ***[payable to the "Division of State Police-SBI"]***, must be stapled to the lower left corner of the "Applicant" fingerprint card SBI-19 or "Firearms Application" fingerprint card SBI-19A and submitted to the State Bureau of Identification for processing.

2. For authorized requesters submitting fingerprint cards pursuant to the provisions of N.J.A.C. 13:59-1.2(a)1 and 2, the card shall be accompanied by "Request for Criminal History Record Information" form SBI-212B which must be completed in its entirety.

(d) For name search identification purposes, a "Request for Criminal History Record Information" form SBI-212 or SBI-212A must be used. In cases of name search identification requests pursuant to 13:59-1.2(a)(1), (2) and (4), a "Request for Criminal History Record Information" form SBI-212B must be used.

1. "Request for Criminal History Record Information Forms" (SBI-212, SBI-212A, or SBI-212B): These forms shall be completed in their entirety and shall contain all the information required to complete the check, including the name of the subject, the date of the birth of the subject and, when authorized pursuant to (d)2 above, the social security number of the subject. SBI forms submitted by private detectives and subpoenas issued by the attorneys-at-law of this State pursuant to N.J.A.C. 13:59-1.2(a)3 and 4, shall recite the name of the subject and the subject's date of birth.

2. Pursuant to the Privacy Act of 1974 (P.L. 93-579), the forms prescribed by this subsection shall advise the subjects of name searches that the furnishing of their social security numbers is voluntary and that their social security numbers will only be used for purposes of processing requests for criminal history record information.

3. The fee as prescribed in this chapter, ***if*** in the form of a ***[cashiers]*** check, ***[certified check]*** or money order ***[payable to the Division of State Police (SBI)]*** must be stapled to the front of each SBI-212, SBI-212A or SBI-212B form submitted to the State Bureau of Identification for processing.

13:59-*[1.7]**1.5* Rejection and resubmission procedures

(a) Any fingerprint card or Request for Criminal History Record Information form which is rejected will be returned with the submitted fee to the authorized requester. The procedure as set forth at N.J.A.C. 13:59-1.4 will be utilized for resubmissions with the following exceptions.

1. Fingerprint cards that cannot be classified will be rejected and returned to the authorized requesters. The fees which accompanied the fingerprint cards will be retained by the SBI. Upon resubmission, the rejected fingerprint card will be stapled to the newly taken fingerprint card and both cards will be submitted with the original rejection form to the SBI. No additional charges will be assessed for resubmitted fingerprint cards.

13:59-1.6 Limitations on access and use of Criminal History Record Information (CHRI)

(a) Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted

to authorized requesters as defined by this chapter. Such requesters shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained and Criminal History Record Information furnished by the SBI shall not be disseminated by authorized requesters to persons not authorized to receive the records for authorized purposes.

(b) If Criminal History Record Information may be used to disqualify a person from holding any position, employment or license or performing any services, whether compensated or uncompensated, the person acting on behalf of the authorized requester making such determination shall provide the applicant with adequate notice to complete or challenge the accuracy of any information obtained in the Criminal History Record. The applicant shall be afforded a reasonable period of time to correct or complete the record. A person shall not be presumed guilty of any pending charges or arrests for which there are no final dispositions indicated on the record.

(c) The State Bureau of Identification shall prominently display the following on any record disseminated for noncriminal justice purposes, including, employment licensing;

Use of this record is governed by Federal and State regulations. Unless fingerprints accompanied your inquiry, the State Bureau of Identification cannot guarantee this record relates to the person who is the subject of your request. Use of this record shall be limited solely to the authorized purpose for which it was given and it shall not be disseminated to any unauthorized persons. This record shall be destroyed ***immediately*** after it has served its intended and authorized purposes. Any person violating Federal or State regulations governing access to Criminal History Record Information may be subject to criminal and/or civil penalties.

If this record may disqualify an applicant for any purpose, the person making the determination shall provide the applicant with an opportunity to complete and challenge the accuracy of the information contained in the Criminal History Record. The applicant shall be afforded a reasonable period of time to correct and complete this record. A person is not presumed guilty of any charges or arrests for which there are no final dispositions indicated on the record. This record is certified as a true copy of the Criminal History Record Information on file for the assigned State identification number.

(d) Criminal justice agencies, for purposes of the administration of criminal justice, may access Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) or State Crime Information System data (SCIC) from the databases of the New Jersey State Police SBI Criminal Justice Information System or NLETS or other states' repositories of computerized CHRI. The Attorney General, or his or her designee, may access the databases of the New Jersey Criminal Justice Information System for any official purpose.

(e) Except when authorized as a lawful exercise of official duties in conformity with (d) above, or unless officially authorized for noncriminal justice purposes, no public servant shall access or permit any other person to access Criminal History Record Information (CHRI), the Computerized Criminal History-Automated Name Index (CCH/ANI), State Crime Information Center data (SCIC) stored in the New Jersey State Police SBI Criminal Justice Information System, NLETS or other states' repositories of computerized CHRI. This prohibition shall include use of any computer, computer system or computer network which may access CHRI, CCH/ANI, and SCIC stored in the New Jersey Criminal Justice Information System, NLETS or other states' repositories of computerized CHRI. Access by any public servant to CHRI, CCH/ANI and SCIC stored in the New Jersey State Police SBI Criminal Justice Information System, NLETS or other states' repositories of computerized CHRI shall be in strict conformity with these rules, the Federal regulations (28 CFR §20.1 et seq.) and any "New Jersey Criminal Justice Information System Users Agreement" entered into by any criminal justice agency and the Division of State Police.

(f) Any criminal justice agency which has executed a "New Jersey Criminal Justice Information System Users Agreement," and which accesses Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) State Crime Information System Data (SCIC) stored in the New

Jersey State Police SBI Criminal Justice Information System, or NLETS or other states' repositories of computerized CHRI for the performance of administration of criminal justice functions, shall be provided with the full text of these rules by the State Bureau of Identification.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Notice of Administrative Correction

Demand Side Management Resource Plan

Public Notice and Hearing

N.J.A.C. 14:12-5.3

Take notice that the Board of Public Utilities has discovered a typographic error in the current text of N.J.A.C. 14:12-5.3(i). Text proposed at 24 N.J.R. 2804(a) and adopted at 25 N.J.R. 1000(a) is omitted between the word "settlement" and the word fragment "nferences" in the subsection's first sentence. The missing text will be inserted through this notice, which is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

14:12-5.3 Public notice and hearing

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

(i) Approximately 60 days after the filing date, Board staff will convene a settlement [nferences] **conference of the parties in each case. Additional conferences** may be convened. In the event the parties determine that settlement is unlikely, the Board will determine whether it will retain the matter and establish an evidentiary hearing schedule for resolving all contested issues, or whether it will transmit the matter to the Office of Administrative Law for hearing.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 29

City of Trenton, Ewing Township and Hopewell Township in Mercer County and West Amwell Township, City of Lambertville, Delaware Township, Stockton Borough, Kingwood Township and Frenchtown Borough in Hunterdon County

Adopted Amendment: N.J.A.C. 16:28-1.77

Proposed: September 19, 1994 at 26 N.J.R. 3821(a).

Adopted: October 28, 1994 by William E. Anderson, Acting

Director, Division of Traffic Engineering and Local Aid.

Filed: October 28, 1994 as R.1994 d.586, **without change**.

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

Effective Date: December 5, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.77 Route 29

(a) The rate of speed for the certain part of State highway Route 29 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. In Mercer County:

(1) In the City of Trenton:

(A) Zone one: 50 miles per hour between South Warren Street and Lee Avenue (approximate mileposts 3.20 to 5.93); thence

(B) Zone two: 40 miles per hour between Lee Avenue and Aberfeldy Drive (approximate mileposts 5.93 to 6.73); thence

(C) Zone three: 55 miles per hour between Aberfeldy Drive and the City of Trenton-Township of Ewing corporate line (approximate mileposts 6.73 to 6.99); thence

(2) In Ewing Township:

(A) Zone one: 55 miles per hour between the City of Trenton-Township of Ewing corporate line and the Route 175 overpass (approximate mileposts 6.99 to 9.42); thence

(B) Zone two: 45 miles per hour between the Route 175 overpass and the Township of Ewing-Township of Hopewell corporate line (approximate mileposts 9.42 to 10.51); thence

(3) In Hopewell Township:

(A) Zone one: 45 miles per hour between the Ewing Township-Hopewell Township corporate line and 200 feet south of Wilford Avenue (approximate mileposts 10.51 to 11.79); thence

(B) Zone two: 40 miles per hour between 200 feet south of Wilford Avenue and 550 feet north of Washington Crossing-Pennington Road (approximate mileposts 11.79 to 12.10); thence

(C) Zone three: 45 miles per hour between 550 feet north of Washington Crossing-Pennington Road and 600 feet south of Church Road (approximate mileposts 12.10 to 13.00); thence

(D) Zone four: 40 miles per hour between 600 feet south of Church Road and Fiddlers Creek (approximate mileposts 13.00 to 13.37); thence

(E) Zone five: 45 miles per hour between Fiddlers Creek and the Township of Hopewell-Township of West Amwell corporate line (approximate mileposts 13.37 to 17.03); thence

ii. Hunterdon County:

(1) In West Amwell Township:

(A) Zone one: 45 miles per hour between the Township of Hopewell-Township of West Amwell corporate line and the Township of West Amwell-City of Lambertville corporate line (approximate mileposts 17.03 to 18.03); thence

(2) In the City of Lambertville:

(A) Zone one: 40 miles per hour between the Township of West Amwell-City of Lambertville corporate line and 500 feet south of Mount Hope Street (approximate mileposts 18.03 to 18.52); thence

(B) Zone two: 35 miles per hour between 500 feet south of Mount Hope Street and Mount Hope Street (approximate mileposts 18.52 to 18.62); thence

(C) Zone three: 25 miles per hour between Mount Hope Street and Elm Street (approximate mileposts 18.62 to 19.42) except that the maximum speed limit shall be 15 miles per hour in the City of Lambertville, within the Lambertville Public School Zone while 15 miles per hour "when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours.

(D) Zone four: 35 miles per hour between Elm Street and Cherry Lane (approximate mileposts 19.42 to 19.63); thence

(E) Zone five: 45 miles per hour between Cherry Lane and the City of Lambertville-Township of Delaware corporate line (approximate mileposts 19.63 to 19.93); thence

(3) In Delaware Township:

(A) Zone one: 45 miles per hour between the City of Lambertville-Township of Delaware corporate line and 1,200 feet south of Brookville Hollow Road (approximate mileposts 19.93 to 21.40); thence

(B) Zone two: 35 miles per hour between 1,200 feet south of Brookville Hollow Road and the Township of Delaware-Borough of Stockton southernmost corporate line (approximate mileposts 21.40 to 21.65); thence

ADOPTIONS

TRANSPORTATION

(4) In Stockton Borough:

(A) Zone one: 35 miles per hour between the Township of Delaware-Borough of Stockton southernmost corporate line and 1,200 feet south of Bridge Street (approximate mileposts 21.65 to 22.15); thence

(B) Zone two: 25 miles per hour between 1,200 feet south of Bridge Street and Stockton-Flemington Road (CR 523) (approximate mileposts 22.15 to 22.44), except for 15 miles per hour when passing through the Stockton Elementary School Zone when "15 mph when flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours.

(C) Zone three: 35 miles per hour between Stockton-Flemington Road (CR 523) and the Borough of Stockton-Township of Delaware northernmost corporate line (approximate mileposts 22.44 to 22.97); thence

(5) In Delaware Township (see also (a)1ii(3) above):

(A) Zone three: 35 miles per hour between the Borough of Stockton-Township of Delaware northernmost corporate line and 1,500 feet north of Kingwood-Stockton Road (CR 519) (approximate mileposts 22.97 to 23.32); thence

(B) Zone four: 50 miles per hour between 1,500 feet north of Kingwood-Stockton Road (CR 519) and the Township of Delaware-Township of Kingwood corporate line (approximate mileposts 23.32 to 26.26); thence

(6) In Kingwood Township:

(A) Zone one: 50 miles per hour between the Township of Delaware-Township of Kingwood corporate line and the Township of Kingwood-Borough of Frenchtown corporate line (approximate mileposts 26.26 to 34.06); thence

(7) In Frenchtown Borough:

(A) 50 miles per hour between the Township of Kingwood-Borough of Frenchtown corporate line and Washington Street (approximate mileposts 34.06 to 34.26).

(a)

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

Speed Limits

Route 179

Lambertville City, Hunterdon County

Adopted Amendment: N.J.A.C. 16:28-1.158

Proposed: September 19, 1994 at 26 N.J.R. 3820(b).

Adopted: October 28, 1994 by William E. Anderson, Acting

Director, Division of Traffic Engineering and Local Aid.

Filed: October 28, 1994 as R.1994 d.587, **without change**.

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

Effective Date: December 5, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.158 Route 179

(a) The rate of speed designated for the certain parts of State highway Route 179, described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Lambertville, Hunterdon County:

(1) Zone one: 25 mph between the northerly end of the Delaware Bridge and Route N.J. 165 (approximate mileposts 0.05 to 0.37);

(2) Zone two: 35 mph between Bridge Street-Route 165 and Hancock Street (approximate mileposts 0.37 to 0.60); thence

(3) Zone three: 40 mph between Hancock Street and the City of Lambertville-Township of West Amwell corporate line (approximate mileposts 0.60 to 0.90).

ii.-iii. (No change.)

2.-3. (No change.)

(b)

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

Restricted Parking and Stopping

Route U.S. 206

Princeton Township, Mercer County

Adopted Amendment: N.J.A.C. 16:28A-1.57

Proposed: September 19, 1994 at 26 N.J.R. 3820(a).

Adopted: October 28, 1994 by William E. Anderson, Acting

Director, Division of Traffic Engineering and Local Aid.

Filed: October 28, 1994 as R.1994 d.588, **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: December 5, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28A-1.57 Route U.S. 206

(a) (No change.)

(b) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-4. (No change.)

5. Along the northbound side in Princeton Township, Mercer County:

i. (No change.)

ii. Near side bus stops:

(1)-(4) (No change.)

iii. (No change.)

6.-12. (No change.)

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

(c)

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

Turn Prohibitions

Route N.J. 47

Vineland City, Cumberland County

Adopted Amendment: N.J.A.C. 16:31-1.8

Proposed: September 19, 1994 at 26 N.J.R. 3822(a).

Adopted: October 28, 1994 by William E. Anderson, Acting

Director, Division of Traffic Engineering and Local Aid.

Filed: October 28, 1994 as R.1994 d.589, **without change**.

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

Effective Date: December 5, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:31-1.8 Route 47

(a) Turning movements of traffic on certain parts of State highway Route 47 described in this subsection are regulated as follows:

1. In Cumberland County:

i. In the City of Vineland:

(1) No left turn:

(A) From southbound on Route 47 to eastbound into the most northerly driveway of the Cumberland Mall.

(B) From westbound on the most northerly driveway of the Cumberland Mall to southbound on Route 47.

(2) No "U" turn:

(A) From 925 feet south of College Drive to a point 1,065 feet south of College Drive.

2. In Gloucester County:

i. In Deptford Township:

(1) No left turn:

(A) From north on Route 47 to west on Bankbridge Road.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Notice of Administrative Correction

General Provisions; Accounting and Internal

Controls; Gaming Equipment; Rules of the Games

N.J.A.C. 19:40-1.6 and 4.1; 19:45-1.1, 1.18, 1.36, 1.40B and 1.44; 19:46-1.15 and 1.33; and 19:47-1.5 and 2.15

Take notice that the Casino Control Commission has discovered various technical and typographic errors in Title 19K of the New Jersey Administrative Code, as follows:

1. At N.J.A.C. 19:40-1.6, the word "direction" should be "discretion" (see 9 N.J.R. 546(a)).

2. In the definition of "confidential information" at N.J.A.C. 19:40-4.1, the phrase "of data" should be "or data."

3. In the definition of "bill changer" at N.J.A.C. 19:45-1.1, the word "demonstration" should be "denomination" (see PRN 1993-533), as logically corresponding to the word "amount."

4. The reference in N.J.A.C. 19:45-1.18(b) to the non-existent N.J.A.C. 19:45-1.46(j)6 is corrected to N.J.A.C. 19:45-1.46(j)4.

5. The reference in N.J.A.C. 19:45-1.36(f) to the non-existent N.J.A.C. 19:46-1.33(c)2 is corrected to N.J.A.C. 19:46-1.33(d)2.

6. The word "ensure" in the last sentence of N.J.A.C. 19:45-1.40B(d) should be "assure."

7. The reference in N.J.A.C. 19:45-1.44(a) to N.J.A.C. 19:45-1.42(d) is obviously inappropriate; the correct reference is to N.J.A.C. 19:45-1.42(e).

8. The requirements of N.J.A.C. 19:46-1.15(a)9 are also set forth in N.J.A.C. 19:46-1.15(a)10. To eliminate this redundancy, paragraph (a)9 is deleted, and paragraph (a)10 recodified as (a)9.

9. The reference in N.J.A.C. 19:46-1.33(a)12 to the non-existent N.J.A.C. 19:46-1.33(c)2 is corrected to N.J.A.C. 19:46-1.33(d)2.

10. The reference in N.J.A.C. 19:46-1.33(d)2iii to the non-existent N.J.A.C. 19:46-1.25(h) is corrected to N.J.A.C. 19:45-1.36(f).

11. At N.J.A.C. 19:47-1.5(a), the word "water" ending the first sentence is a typographic misspelling of "wager."

12. At N.J.A.C. 19:47-2.15(f), the word "roundof" is an erroneous joining of "round of."

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:40-1.6 Practice where regulations do not govern

In any matter not governed by these rules and regulations, the Commission or the Division shall exercise its [direction] **discretion** so as to carry out the purposes of the Act.

19:40-4.1 Definitions

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

...

"Confidential information" means any information [of] or data, furnished to or obtained by the Commission or Division from any source, which is considered confidential pursuant to the provisions of N.J.S.A. 5:12-74(d) and (e), or which is otherwise confidential pursuant to applicable statutory provision, judicial decision or rule of court.

...

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.

...

"Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of dispensing an amount of coins or slot tokens from the slot machine hopper equal to the amount of currency or the [demonstration] **denomination** of a coupon inserted into the bill changer.

...

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](j)4, at an authorized game in which a match play coupon may be used:

1.-4. (No change.)

(c) (No change.)

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; entry authorization logs

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

(f) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33[(c)2](d)2 shall contain a separate slot drop bucket or slot drop box to collect and retain all such slot tokens that are inserted into the slot machine.

(g)-(k) (No change.)

19:45-1.40B Jackpot payouts in the form of an annuity

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

(d) If the trustee or trustees purchase United States treasury bonds, treasury notes or treasury bills in satisfaction of (b)2 above, a separate treasury bond, note or bill shall be purchased for each payment which is required to be made under the terms of the annuity jackpot. Each treasury bond, note or bill shall have a surrender value at maturity, excluding any interest which is paid before the maturity date, which is equal to or greater than the value of the corresponding annuity jackpot payment, and shall have a maturity date which is prior to the date the annuity jackpot payment is required to be made. All treasury bonds, notes or bills shall be purchased within 180 days after the annuity jackpot is won, and a copy of the bonds, notes or bills will be provided to the Commission and the Division within 30 days of their purchase. No treasury bond, note or bill purchased pursuant to this section shall be sold prior to its maturity date unless the proceeds are used to purchase another treasury bond, note or bill or an annuity contract in compliance with the requirements of this section to [ensure] **assure** that the remaining deferred payments are made as promised, which purchase must be completed within 30 days of the sale of the bonds, notes or bills.

(e)-(k) (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) In lieu of the requirements of N.J.A.C. 19:45-1.37(b) and (c), and N.J.A.C. 19:45-1.42[(d)](e), a casino licensee may have a computer connected to slot machines in the casino to record and monitor the activities of such machines.

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

19:46-1.15 Dice; physical characteristics

(a) Except as otherwise provided in (b) below, each die used in gaming shall:

1.-8. (No change.)

[9. Have imprinted or impressed thereon the name of the casino in which the die is being used;] and

[10.]9. Have the name or trade name of the casino licensee in which the die is being used imprinted or impressed thereon.

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

19:46-1.33 Issuance and use of tokens for gaming; slot token specifications

(a) A casino licensee may, with Commission approval, issue metal tokens designed for gaming use in its slot machines and in simulcast wagering, provided that each slot token:

1.-11. (No change.)

12. Contains a statement that it is not redeemable for cash, if the slot token is issued pursuant to [section (c)2] (d)2 below.

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

(d) A slot token shall be capable of insertion into and activating the play of a designated slot machine operated by the casino licensee which issued the slot token.

1. (No change.)

2. A slot token that is exchangeable only for a coupon pursuant to N.J.A.C. 19:46-1.5(f)2 shall:

i.-ii. (No change.)

iii. Be retained in a separate slot drop bucket or slot drop box, pursuant to N.J.A.C. [19:46-1.25(h)] **19:45-1.36(f)**; and

iv. (No change.)

19:47-1.5 True odds on place bets (buy and lay bets); vigorish prohibited

(a) Buy Bets: In addition to the payout odds set forth in N.J.A.C. 19:47-1.4 for place bets to win on 4, 5, 6, 8, 9 and 10, a casino licensee may offer a player the option of receiving true odds on these bets in return for the player paying to the casino licensee, at the time of making the bet, a percentage of the amount wagered which in no event shall exceed five percent of such [water] **wager**. Under such circumstances, a casino licensee shall conform to the odds listed below in paying off winning wagers on these bets:

Bet	Odds
4 to Win	2 to 1
5 to Win	3 to 2
6 to Win	6 to 5
8 to Win	6 to 5
9 to Win	3 to 2
10 to Win	2 to 1

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

19:47-2.15 Irregularities

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

(f) If there are insufficient cards remaining in the shoe to complete a [roundoff] **round of** play, all of the cards in the discard rack or in a segregated area of the double shoe shall be shuffled and cut according to the procedures outlined in N.J.A.C. 19:47-2.5, the first card shall be drawn face downwards and burned, and the dealer shall complete the round of play.

(g)-(l) (No change.)

(a)

CASINO CONTROL COMMISSION

Applications

Forms; Key Standard Qualifier Renewal Form

Casino Licensees

Application for Renewal Qualification

Adopted New Rule: N.J.A.C. 19:41-5.5A

Adopted Amendment: N.J.A.C. 19:43-2.7A

Proposed: September 19, 1994 at 26 N.J.R. 3824(a).

Adopted: November 3, 1994 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: November 7, 1994 as R.1994 d.592, with technical changes not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70a, and 89b.

Effective Date: December 5, 1994.

Expiration Dates: April 15, 1995, N.J.A.C. 19:41;

December 21, 1997, N.J.A.C. 19:43.

Summary of Agency-Initiated Changes:

The codification of the key standard qualifier renewal form has been changed to better establish a logical organization scheme, from N.J.A.C. 19:41-5.13 to N.J.A.C. 19:41-5.5A. The Key Standard Qualifier Renewal Form must be filed by all persons required to be qualified pursuant to N.J.A.C. 19:43-2.2 as part of an application for the issuance or renewal of a casino license. Not all of those persons can be considered to be "affiliated" with a casino licensee as that term is defined by N.J.A.C. 19:40-1.2(b). Therefore, the use of the term "affiliated" in N.J.A.C. 19:41-5.5A(a)6 is changed to "associated" to avoid any possible misunderstanding.

Summary of Public Comments and Agency Response:

Comments were received from the Division of Gaming Enforcement (Division).

COMMENT: The Division indicates that it supports the adoption of the proposed new rule and amendment.

RESPONSE: Accepted.

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

19:41-5.13**5.5A* Key Standard Qualifier Renewal Form

(a) A Key Standard Qualifier Renewal Form shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1. Name, including any aliases or nicknames;

2. Date of birth;

3. Physical description;

4. Current address and residence history;

5. Social security number, which information is voluntarily provided in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a;

6. The casino licensee or applicant, or holding company, as applicable, with which the applicant is *[affiliated]* ***associated***, and the nature of the applicant's position with or interest in such entity;

7. Telephone number at current place of employment;

8. Financial data, as follows:

i. All assets and liabilities of the applicant and the applicant's spouse and dependent children, as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;

ii. Bank accounts and safe deposit boxes; and

iii. Copies of Federal tax returns and related information.

(b) A Key Standard Qualifier Renewal Form may also require an applicant to provide the following information for the time period since the submission of his or her most recent disclosure form:

OTHER AGENCIES

1. Judgments or petitions for bankruptcy or insolvency concerning the applicant or any business entity in which the applicant held a five percent or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;
 2. Referral or finder's fees in excess of \$10,000;
 3. Gifts in excess of \$10,000 given or received by the applicant or the applicant's immediate family;
 4. Business owned;
 5. Government positions and offices presently or previously held, and offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;
 6. Trusteeships or other fiduciary positions held by the applicant and the applicant's spouse, and any denial or suspension of, or removal from, such positions;
 7. Licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in this State or any other jurisdiction, as follows:
 - i. Any professional or occupational license held by or applied for by the applicant or the applicant's spouse;
 - ii. Any license, permit, approval or registration required to participate in any lawful gambling operation in this State or any jurisdiction held by or applied for by the applicant; and
 - iii. Any denial, suspension or revocation by a governmental agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or an owner of a five percent or greater interest;
 8. Civil, criminal and investigatory proceedings in any jurisdiction, as follows:
 - i. Arrests, charges or convictions for any criminal or disorderly persons offenses committed by the applicant or any member of the applicant's immediate family;
 - ii. Any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;
 - iii. Any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, or grand jury or investigatory body;
 - iv. Lawsuits to which the applicant was or is a party; and
 - v. Any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal, disorderly persons, petty disorderly persons or motor vehicle violation; and
 9. Whether any entity in which the applicant has been a director, officer, principal employee or a holder of more than five percent interest has:
 - i. Donated or used funds or property for the use or benefit of or in opposing any government, political party, candidate or committee;
 - ii. Compensated its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposing any government or political party;
 - iii. Made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions;
 - iv. Made bribes or kickbacks to any government official; and
 - v. Maintained a bank account or other account which is not reflected on the books or records of the business or which is in a name other than the name of the business.
- (c) In addition to the information in (a) and (b) above, a completed Key Standard Qualifier Renewal Form may include the following:
1. A signed, dated and notarized certification of truth; and
 2. A signed, dated and notarized Release Authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division.

ADOPTIONS

19:43-2.7A Application for renewal of qualification

- (a) (No change.)
(b) An application for renewal of qualification shall consist of the following:

1. A complete Key Standard Qualifier Renewal Form;
2. A signed, dated and notarized certification of truth; and
3. A signed, dated and notarized release authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division.

(a)

CASINO CONTROL COMMISSION

Rules of the Game

Double Down Stud

Adopted Amendments: N.J.A.C. 19:46-1.17 and 1.19

Adopted New Rules: N.J.A.C. 19:46-1.13F and 19:47-17.1 through 17.11

Proposed: March 21, 1994 at 26 N.J.R. 1323(a).

Adopted: November 3, 1994 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: November 7, 1994 as R.1994 d.593, **with a substantive and technical change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-5, 69(e), 70(f), 99(a) and 100.

Effective Date: December 5, 1994.

Expiration Dates: April 15, 1998, N.J.A.C. 19:46;

April 15, 1996, N.J.A.C. 19:47.

Summary of Public Comment and Agency Response:

COMMENT: Atlantic City Showboat, Inc. (Showboat Casino-Hotel) suggested that the proposed definition of "double down wager" in N.J.A.C. 19:47-17.1 be changed from "an amount equal to the amount of a player's original wager," to an amount "not to exceed" the amount of the original wager. This would give a patron additional flexibility when making double down wagers.

RESPONSE: Accepted. This change would allow a patron to bet up to the amount of the original wager, instead of requiring a double down bet to be the same amount as the original wager.

This minor substantive change would not impact the integrity or security of the game nor would it change the house advantage or payoff odds. A patron may still place a double down bet in the amount of the original wager; this change would simply permit a double down bet in any additional amount which does not exceed the original wager.

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

(OAL Note: The text of N.J.A.C. 19:46-1.17 below includes changes made to subsection (a) and the addition of subsections (i) and (j) at 25 N.J.R. 5906(a) and 26 N.J.R. 1380(a).)

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."

ADOPTIONS

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, red dog*, **poker*** 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)-(j) (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, 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, red dog and double down stud in addition to a manual or automated dealing shoe, provided that the automated card shuffling device and the procedures for 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]* ***not to exceed*** 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.

OTHER AGENCIES

"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

ADOPTIONS

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.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Notice of Administrative Corrections

Control and Prohibition of Air Pollution by Volatile Organic Compounds

N.J.A.C. 7:27-16.3, 16.7, 16.13, 16.17 and 16.18

Take notice that the Department of Environmental Protection (the Department) has discovered errors in the current text of N.J.A.C. 7:27-16. Corrections of these errors are being made as follows:

1. At N.J.A.C. 7:27-16.3(f), the incorrect reference to subsection (p) is corrected to subsection (r), which includes a compliance schedule for the subsection (f) requirements.

2. At N.J.A.C. 7:27-16.7(c)4iii, parentheses surrounding two terms in the equation, which were omitted in the June 20, 1994 supplement to the Administrative Code, are being added herein. See: 26 N.J.R. 2600(a), 2652.

ENVIRONMENTAL PROTECTION

3. At N.J.A.C. 7:27-16.7(c)4iv, the incorrect reference to paragraph (a)3 in the explanation of the term VOC in both equations is corrected to paragraph (c)3.

4. At N.J.A.C. 7:27-16.7(c)4iv, the left hand side of the second equation was inadvertently changed upon adoption at 26 N.J.R. 2600(a), 2652 and is corrected herein.

5. At N.J.A.C. 7:27-16.7(c)4iv, parentheses surrounding two terms in the second equation, which were omitted in the June 20, 1994 supplement to the Administrative Code, are being added herein. See: 26 N.J.R. 2600(a), 2652.

6. At N.J.A.C. 7:27-16.7, Table 7B, Group II, the typographical error in "Table Coating" is corrected to "Tablet Coating."

7. At N.J.A.C. 7:27-16.7(k)1 and 2, the incorrect reference to removed subsection (b) is corrected to subsection (c), and the Department's name corrected to reflect the recent reorganization.

8. At N.J.A.C. 7:27-16.13(b), the CN number for the Division of Enforcement Field Operations is corrected.

9. At N.J.A.C. 7:27-16.17(a)1, "VOC" was inadvertently omitted from the term "major VOC facility" upon adoption at 25 N.J.R. 6002(a), 6008. This error of omission is corrected herein, revising the term to that defined in N.J.A.C. 7:27-16.1.

10. At N.J.A.C. 7:27-16.17(s), the CN number for the Bureau of New Source Review is corrected and the Department's name is changed to reflect the recent reorganization.

11. At N.J.A.C. 7:27-16.18(i), the incorrect reference to "(d) and (e) above" is changed to "(c) and (d) above," which contains the regulated leak prohibitions.

This notice is published in accordance with N.J.A.C. 1:30-2.7.

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

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

7:27-16.3 Gasoline transfer operations

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

(f) Except as provided in (g) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless such person complies with (h) and [(p)] (r) below, and unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1.-2. (No change.)

(g)-(s) (No change.)

7:27-16.7 Surface coating and graphic arts operations

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

(c) No person shall cause, suffer, allow, or permit the use of any surface coating operation or graphic arts operation subject to this section, unless:

1.-3. (No change.)

4. The surface coating or graphic arts operation is served by VOC control apparatus satisfying the requirements listed in (c)4i through iii below:

i.-ii. (No change.)

iii. The VOC emissions from the surface coating or graphic arts operation are controlled by the control apparatus so that the operation results in an hourly VOC emission rate no greater than the maximum allowable hourly emission rate calculated on a solids as applied basis in accordance with the following equation:

$$\text{Maximum allowable hourly rate} = \frac{\left(1 - \frac{y}{d}\right) (z) (x)}{\left(1 - \frac{x}{d}\right)}$$

where x = maximum allowable VOC content per volume of surface coating formulation (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 7A, 7B, 7C, or 7D of this section;

- d = density of the VOC of the applied surface coating formulation in pounds per gallon (lb/gal) or kilograms per liter (kg/l);
- y = VOC content of the applied surface coating formulation (minus water) in pounds per gallon (lb/gal) or kilograms per liter (kg/l); and
- z = volume of the surface coating formulation (minus water) applied per hour in gallons per hour (gal/hr) or liters per hour (l/hr); or

iv. For a surface coating or graphic arts operation that applies more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table, the control apparatus collects and prevents VOC from being discharged into the outdoor atmosphere so that the actual daily emissions are less than the allowable daily emissions as calculated below:

$$\text{Actual daily emissions} = (1 - \eta_c \eta_d) (\text{VOC}_a) (V)$$

where: VOC_a = daily mean VOC content of the surface coating formulations as calculated by [(a)(c)3 above;

V = total daily volume of the surface coating formulations, as applied;

η_c = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and

η_d = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by a method approved by the Department and EPA; and

$$\text{Allowable daily emissions} = \frac{\left(1 - \frac{\text{VOC}_a}{d}\right) (V) (x)}{\left(1 - \frac{x}{d}\right)}$$

where x = maximum allowable VOC content per volume of surface coating formulation (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 7A, 7B, 7C, or 7D of this section;

d = density of the VOC of the applied surface coating formulations in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

V = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and

VOC_a = daily mean VOC content of the applied surface coating formulations as calculated by [(a)(c)3 above.

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

TABLE 7A
(No change.)

TABLE 7B
MISCELLANEOUS SURFACE COATING OPERATIONS
CONTROL CRITERIA AND COMPLIANCE DATES

Type of Operation	Maximum Allowable VOC Content per Volume of Coating (minus water)		Final Compliance Date
	Pounds per Gallon	Kilogram per Liter	
...			
Group II			
Leather Coating	5.8	0.70	December 31, 1987
Urethane Coating	3.8	0.45	December 31, 1987
[Table] Tablet Coating	5.5	0.66	December 31, 1987
Glass Coating	3.0	0.36	December 31, 1987
Wood Furniture			December 31, 1987
Semitransparent stain	6.8	0.82	
Wash Coat	6.1	0.73	
Opaque Stain	4.7	0.56	
Sealer	5.6	0.67	
Pigment Coat	5.0	0.60	
Clear Topcoat	5.6	0.67	
...			

TABLES 7C and 7D (No change.)

(g)-(j) (No change.)

(k) The owner or operator of any pipe coating operation, gravure printing operation (sheet-fed), or screen printing operation subject to (c) above shall comply with the following schedule:

1. By October 26, 1994, submit to the Chief, Bureau of New Source Review, Environmental Regulation Program, Department of Environmental Protection [and Energy], CN 027, Trenton, New Jersey 08625-0027, a complete application for each permit required, pursuant to N.J.A.C. 7:27-8, to achieve compliance with [(b)(c) above; and

2. By May 31, 1995, achieve compliance with [(b)(c) above and maintain compliance with this section thereafter.

(l)-(q) (No change.)

7:27-16.13 Flares

(a) (No change.)

(b) The owner or operator of any existing flare subject to this section shall submit in writing, to the Assistant Director of Air and Environmental Quality Enforcement, Division of Enforcement Field Operations, Department of Environmental Protection [and Energy], CN [411] 422, Trenton, N.J. 08625-[0411] 0422, the following information prior to May 31, 1995. The following information shall be submitted with any permit application for any flare to be installed after that date. Such submittal shall be certified in accordance with N.J.A.C. 7:27-8.24.

1.-6. (No change.)

(c) (No change.)

7:27-16.17 Facility-specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements for any source operation that:

1. Is located at a major VOC facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:

i. and ii. (No change.)

2. (No change.)

(b)-(r) (No change.)

(s) The owner or operator submitting a proposed alternative VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection [and Energy]
CN [401] 027
Trenton, New Jersey 08625-[0401] 0027

ADOPTIONS

7:27-16.18 Leak detection and repair

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

(i) The owner or operator of a chemical plant that is a major VOC facility shall develop and implement a leak detection and repair program for any equipment subject to the provisions of (c) and (d) [and (e)] above if such equipment is not subject to the provisions of (f), (g), or (h) above. The program shall include the following provisions:

1.-8. (No change.)

(j)-(s) (No change.)

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Adopted Amendments: N.J.A.C. 7:50-2.11, 3.1, 3.15, 3.17, 3.35, 3.37, 3.39, 4.1, 4.2, 4.3, 4.14 through 4.22, 4.25, 4.26, 4.27, 4.31, 4.32, 4.34, 4.35, 4.38 through 4.42, 4.52, 4.53, 4.55, 4.56, 4.57, 4.62 through 4.66, 4.68, 4.69, 4.70, 4.73, 4.76, 4.79, 4.81, 4.83, 4.91, 4.92, 5.1 through 5.5, 5.13, 5.16, 5.18, 5.22 through 5.32, 5.43, 5.44, 5.47, 5.51, 5.52, 5.53, 6.3, 6.4, 6.5, 6.7, 6.12, 6.23, 6.33, 6.63, 6.64, 6.66, 6.67, 6.84, 6.85, 6.86, 6.93, 6.104, 6.107, 6.109, 6.111, 6.143, 6.144, 6.154, 6.155, 6.156, 7.3 and 7.6.
Adopted New Rules: N.J.A.C. 7:50-5.19, 6.65, 6.66, 6.67 and 7:50-6, Appendix A.

Proposed: January 3, 1994 at 26 N.J.R. 165(a).

Adopted: September 9, 1994 by the New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.

Filed: November 3, 1994 as R.1994 d.590, **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3) **with proposed repeals and new rules at N.J.A.C. 7:50-6.71 and 6.73 through 6.79 not adopted.**

Authorized by: New Jersey Pinelands Commission.

Authority: N.J.S.A. 13:18A-6j.

Effective Date: December 5, 1994.

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

In association with publication of the proposed rules in the January 3, 1994 edition of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands Area municipality and county for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the hearings to all persons and organizations which subscribe to the Commission's public hearing registry;
- Placed advertisements of the hearings in the five official newspapers of the Commission;
- Submitted the proposed rules to the members of the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f.

Two formal public hearings were held before the Commission, one on January 24, 1994 and the second on February 23, 1994. Oral testimony was received from 20 individuals and organizations, some of whom also submitted written comments. The hearing record can be reviewed by contacting Susan Grogan, Pinelands Commission, P.O. Box 7, New Lisbon, NJ 08064. Written comments were received from 43 individuals and organizations. Forms of comment and a list of commenters follows:

Written Comments (* indicates oral comments were also received)

December 3, 1993 letter from Mitchell H. Kizner, attorney with Riesenburger & Kizner for the Borough of Woodbine

December 3, 1993 letter from Joanne M. Harkins, Director of Land Use & Planning for the New Jersey Builders Association

December 15, 1993 written testimony of Christian Bethmann, Superintendent of Lebanon State Forest

January 13, 1994 letter from F. Howard Zahn, Director of the Division of Project Development for the New Jersey Department of Transportation

ENVIRONMENTAL PROTECTION

January 14, 1994 letter from Douglas S. Tavella, American Tree Farm System

*January 24, 1994 written testimony of Janet N. Larson

*January 24, 1994 written testimony of Donald Kirchhoffer, Pinelands Preservation Alliance

*January 24, 1994 letter from Craig Kane, Vice-Chairman of the Society of American Foresters, New Jersey Division

January 24, 1994 letter from Marilyn Beard

February 3, 1994 letter from Kenneth T. Hart, Director of the Division of Solid Waste Management, New Jersey Department of Environmental Protection and Energy

February 3, 1994 letter from Joanne Harkins, Director of Land Use & Planning for the New Jersey Builders Association

February 17, 1994 letter from Terence Vogt, Remington & Vernick, municipal engineers representing Egg Harbor City

*February 23, 1994 written testimony of Janet N. Larson

*February 23, 1994 written testimony of Julie Akers, Association of New Jersey Environmental Commissions

*February 23, 1994 written testimony of Donald Kirchhoffer, Pinelands Preservation Alliance

*February 21, 1994 letter from Andrew L. Wade of Wade Salvage, Inc.

February 23, 1994 letter from Jefferson Van Drew, Mayor of Dennis Township

*February 23, 1994 written testimony of John Burkle

February 28, 1994 letter from Kenneth T. Hart, Director of the Division of Solid Waste Management, New Jersey Department of Environmental Protection and Energy

March 7, 1994 memorandum from Ernest P. Hahn, Administrator of the Land Use Regulation Program, New Jersey Department of Environmental Protection and Energy

March 2, 1994 letter from R. Thomas Jaggard, Planning Engineer for Burlington County

February 26, 1994 letter from William McLaughlin

March 17, 1994 letter from Alan W. Emmons

March 23, 1994 letter from Noble F. McNaughton, President of the New Jersey State Board of Agriculture

March 23, 1994 letter from Michael Haydinger, Director of Legislative Affairs for the Utility and Transportation Contractors Association of New Jersey

Undated written comments of the New Jersey Division of the Society of American Foresters

March 28, 1994 letter from Judith A. Thornton, Executive Director of the New Jersey Manufactured Housing Association

March 24, 1994 letter from S. Howard Davis, Executive Director of the New Jersey Nursery & Landscape Association, Inc.

*March 23, 1994 letter from Thomas F. Bullock, President of the New Jersey Forestry Association, Inc.

March 28, 1994 letter from J. Scott Worrell, South Jersey Forest Resource Council

*March 28, 1994 letter from William J. Cleary, Executive Director of the New Jersey Concrete and Aggregate Association

March 25, 1994 letter from George Marinakis, Executive Director of the Cape May County Municipal Utilities Authority

March 28, 1994 letter from Wade R. Sjogren, President of WHIBCO, Inc.

March 28, 1994 memorandum from Stephen J. George, President of the New Jersey Farm Bureau

March 28, 1994 letter from Mary Pat Robbie, Management Specialist, on behalf of the Burlington County Board of Chosen Freeholders

*March 28, 1994 letter from Warren O. Stilwell, attorney representing Bell Atlantic Mobile Systems, Comcast/Metrophone and Cellular One

*February 23, 1994 written testimony of Sally B. Price, Executive Director of the Pinelands Preservation Alliance

March 1, 1994 Resolution (#31-94) of West Cape May Borough

January 4, 1994 letter from Paul R. Langevin, Jr., Acting Commissioner of Health, New Jersey Department of Health

March 28, 1994 letter from John E. Kuser, Associate Professor, Rutgers University

March 22, 1994 letter from Guliet D. Hirsch, General Counsel for Heritage Minerals, Inc.

March 25, 1994 letter from Noble F. McNaughton, President of the New Jersey State Board of Agriculture

March 25, 1994 letter from Michael Gallaway, Pinelands Coordinator for the New Jersey Chapter of the Sierra Club

March 31, 1994 letter from Edward Putnam, Assistant Director, Remedial Planning and Design Element, New Jersey Department of Environmental Protection and Energy

April 12, 1994 letter from James F. Hall, Assistant Commissioner, Natural and Historic Resources, New Jersey Department of Environmental Protection and Energy

May 3, 1994 letter from Steven Whitney, Manager, Coastal/Land Planning, Office of Land and Water Planning, New Jersey Department of Environmental Protection and Energy

May 27, 1994 letter from Timothy W. Douth, Supervisor, Residuals Management Permits Section, Bureau of Pretreatment and Residuals, New Jersey Department of Environmental Protection and Energy

June 2, 1994 letter from Neil Yoskin, attorney with Picco, Mack Herbert

Oral Comments (No written comments submitted)

January 24, 1994 testimony of John Perry, New Jersey Society of American Foresters

January 24, 1994 testimony of Harry Fischer, Bell Atlantic Mobile Systems

January 24, 1994 testimony of Nan Walnut

February 23, 1994 testimony of Charles Norkis, Cape May County Municipal Utilities Authority

February 23, 1994 testimony of David Bernard

February 23, 1994 testimony of William Mills, attorney with Riesenburg & Kizner for the Borough of Woodbine

April 15, 1994 comments of Susan Catlett, Division of Property Maintenance and Outdoor Advertising, New Jersey Department of Transportation

May 10, 1994 comments of Audrey Winzinger of Winzinger Construction & Demolition Recycling

Oral comments were recorded on magnetic tape which is on file at the Commission's office at Springfield Road, New Lisbon, New Jersey. Written comments may be examined or the tapes may be heard during normal business days from 9:00 A.M. to 5:00 P.M.

The Commission's response to the comments received on the rule proposal is set forth below. It should be noted that a number of comments were received which are unrelated to the proposed amendments. Nearly all of these comments involve suggestions to improve the Commission's permitting procedures. The majority are specifically targeted to the Commission's application process for forestry activities. Although these comments are certainly of interest to the Commission, a detailed response is not being provided because they are outside the scope of the current rule proposal. The Commission is currently in the process of conducting a study of its development review process; the comments received on this issue will be considered during that process.

COMMENT: One organization suggested that, in the definitions of accessory structure and ancillary in N.J.A.C. 7:50-2.11, the term "parcel" may be too loosely defined and might be better replaced with either "lot" or "property." This organization also noted that the terms "parcel," "lot" and "property" appear to be used interchangeably throughout the Comprehensive Management Plan and that the Commission should consider using only one term, preferably "property."

RESPONSE: In terms of the definitions of accessory structure and ancillary, the Commission believes that use of the term parcel is appropriate. However, the Commission does recognize that parcel, lot and property are used interchangeably throughout the Comprehensive Management Plan and that this potentially confusing situation should be rectified. The term property is not defined in N.J.A.C. 7:50-2.11 while definitions for parcel and lot are included. Therefore, changes are being made to various sections of the Comprehensive Management Plan to replace "property" with "parcel" wherever appropriate. In addition, a minor change is being made to the definition of parcel in N.J.A.C. 7:50-2.11 to clarify that parcel means one or more lots, but may not be viewed as a portion of a lot. This change appropriately distinguishes the terms "parcel" and "lot."

COMMENT: Several organizations and individuals objected to the proposed change to the definition of forestry in N.J.A.C. 7:50-2.11 on the basis that it does not provide a better understanding of how forestry is treated in the Comprehensive Management Plan. A variety of suggestions as to how the term might be better defined were also made. Numerous comments were also received on other aspects of the rule proposal relating to forestry, including the development application exemptions contained in N.J.A.C. 7:50-4.1, the forestry application requirements in N.J.A.C. 7:50-4.2(b)vi, the vegetation removal and landscap-

ing standards in N.J.A.C. 7:50-6.23(a)6 and the forestry standards in N.J.A.C. 7:50-6.44(a).

RESPONSE: The volume of comments received on the forestry-related portions of the proposal clearly indicate that this topic is of significant concern. The Commission recognizes the importance of affording adequate time and effort to address this issue and is therefore making no changes to the Comprehensive Management Plan related to forestry at this time. Instead, amendments to the Comprehensive Management Plan related to forestry may be incorporated in an upcoming rule proposal, once the recommendations of a recently formed working group have been made and reviewed by the Commission.

COMMENT: One organization felt that the addition of the phrase "requires no significant modifications" to the definition of low intensity recreational facility in N.J.A.C. 7:50-2.11 might make it impossible for certain facilities that support such recreational uses to be provided. It was suggested that the phrase be deleted or that the term "significant modification" be defined.

RESPONSE: The Commission agrees that the phrase "no significant modifications" may be misinterpreted as implying that facilities such as boat launches, docks and wilderness campsites will no longer be permitted in support of low intensity recreational uses. Therefore, a change is being made to the definition of low intensity recreational facility to indicate that modifications necessary to provide access to recreational uses are permissible.

COMMENT: One individual questioned the justification for the revision to N.J.A.C. 7:50-3.1(d) and the reason behind the Commission's apparent decision to emphasize density limitations in Pinelands Forest and Rural Development Areas. This individual also questioned why the minimum density requirements in Pinelands Regional Growth Areas were no longer being stressed.

RESPONSE: Changes to N.J.A.C. 7:50-3.1(d) were made in recognition of the proposal at N.J.A.C. 7:50-5.28(a)7ii to provide municipalities with an opportunity to adjust their Regional Growth Area residential zoning obligations by 10 percent above or below that required by the Comprehensive Management Plan. N.J.A.C. 7:50-3.1(d) includes examples of Comprehensive Management Plan standards that must be strictly followed. Because of the flexibility given to municipalities under the proposal at N.J.A.C. 7:50-5.28(a)7ii, the Commission felt that it no longer made sense to include the minimum density provisions in Regional Growth Areas as one of these examples. With respect to the comment that the Commission has chosen to place new emphasis on density limitations in Forest and Rural Development Areas, it should be noted that N.J.A.C. 7:50-3.1(d) already indicated that the density limitations in areas other than the Regional Growth Area were critical to the overall objectives of the Comprehensive Management Plan. The proposed amendments to N.J.A.C. 7:50-3.1(d) merely make it clear that these "other" areas include, for example, the Forest and Rural Development Areas.

COMMENT: One individual expressed support for the proposed limitation on commercial strip development incorporated in proposed N.J.A.C. 7:50-3.39(a)2v. Another individual objected to the addition of this standard on the basis that it is unnecessary and duplicative as such commercial development is already reviewed by the Commission in terms of its environmental impacts. This individual felt that placing additional regulations on this type of development would result in an economic hardship to applicants.

RESPONSE: It should first be noted that the proposed limitation on commercial strip development originally arose based on both aesthetic considerations and the provisions of the new State Highway Access Code. The Commission continues to believe that these considerations remain valid and that a requirement for coordinated and comprehensive planning for commercial development is an appropriate addition to the Plan.

COMMENT: One individual objected to the use of the term "Pinelands" in proposed N.J.A.C. 7:50-3.39(a)4 on the basis that the Commission's authority is limited to the regulation of development activities in the Pinelands Area and does not extend to the Pinelands National Reserve Area.

RESPONSE: The Pinelands Comprehensive Management Plan includes land use and development policies governing the future use and development of land within the entire Pinelands National Reserve Area. However, the Commission does not exercise direct regulatory jurisdiction to implement the policies of the Comprehensive Management Plan outside the state designated Pinelands Area. Therefore, because N.J.A.C. 7:50-3.39(a)4 deals with regulatory procedures, a change is being made to clarify that municipal review and action is required for all development

ADOPTIONS

in the Pinelands Area. In addition, language is being added at N.J.A.C. 7:50-3.39(b) to indicate that the standards for certification contained in N.J.A.C. 7:50-3.39(a) may be used as guidelines when a municipality elects to conform its entire land area, including that portion in the Pinelands National Reserve outside the Pinelands Area, with the standards of the Comprehensive Management Plan.

COMMENT: With respect to the development application exemptions contained in N.J.A.C. 7:50-4.1(a), one organization felt that local permits should be required for all of the exempt activities listed and that the Commission should review these permits to verify that the involved activities qualify as exemptions. Another organization indicated its support for the Commission's attempts to streamline its permitting process but felt that the proposed changes to N.J.A.C. 7:50-4.1(a) are arbitrary and that the Commission should maintain greater oversight responsibilities. Finally, one individual cautioned that the addition of agricultural clearing to the list of exempt activities might result in the misuse of this exemption by people who have no intention of farming lands once they have been cleared. This individual suggested that the Commission should retain oversight responsibilities for such activities.

RESPONSE: It should first be noted that municipalities have the option of requiring local review and approval for any of the development application exemptions set forth in N.J.A.C. 7:50-4.1(a). However, even if a municipality does choose to issue permits for exempt activities, the Commission does not believe it is necessary for these permits to be provided to the Commission for review. The application exemptions included in N.J.A.C. 7:50-4.1(a) were all selected based on their extremely limited potential for raising significant environmental issues. It is the Commission's opinion that all these activities are more appropriately addressed at the local level, should a municipality choose to do so, and that oversight by the Commission would not prove to be an efficient use of the Commission's resources. The change would not preclude the Commission from seeking and obtaining judicial relief if a parcel is cleared and no agricultural use is established.

It should be further noted that a comprehensive review of these permit exemptions is being conducted as part of the Commission's examination of the development review process. This examination may lead to additional changes at a later date.

COMMENT: One organization suggested that an exemption be added at N.J.A.C. 7:50-4.1(a) for structures and uses that are accessory or ancillary to agricultural operations.

RESPONSE: N.J.A.C. 7:50-4.1(a)3 specifies that the improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes is exempt from the development application procedures of the Comprehensive Management Plan. This exemption includes structures and uses that are accessory to agricultural operations. With respect to ancillary structures and uses, the Commission does not believe that this would be an appropriate addition to N.J.A.C. 7:50-4.1(a) at this time. As defined in N.J.A.C. 7:50-2.11, ancillary structures or uses need not be related to the principal use of the parcel on which they are located. Therefore, a structure that is merely ancillary to a farm may be completely unrelated to that agricultural operation. The Commission believes that such structures and uses should be subject to the development application procedures of the Comprehensive Management Plan.

COMMENT: One organization suggested that the proposed language in N.J.A.C. 7:50-4.1(a)13 should be clarified to indicate that fencing of any amount of land for agricultural purposes is exempted from application requirements.

RESPONSE: N.J.A.C. 7:50-4.1(a)3 exempts the improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes from the application requirements of the Comprehensive Management Plan. Because this exemption clearly includes such structures as fences for agricultural purposes, the Commission does not believe clarification of the exemption proposed at N.J.A.C. 7:50-4.1(a)13 is necessary.

COMMENT: One individual cautioned that the expanded responsibilities envisioned for local review officers included in the proposed changes to N.J.A.C. 7:50-4.34(b) might result in violations and that there might not be sufficient Commission staff or time for adequate oversight. Another individual suggested that only those Pinelands Area municipalities with environmental commissions should be permitted to utilize the local review officer system.

RESPONSE: The Commission recognizes that, as with the implementation of any new regulatory system, expanding the responsibilities of local review officers may also increase the possibility that mistakes will

ENVIRONMENTAL PROTECTION

be made at the outset. However, training will take place, coordination between Commission staff and the local review officers will be ongoing and technical assistance will be provided by Commission staff where needed. Therefore, the Commission believes that errors will be the exception, rather than the rule, and that the local review officer system remains an important component of the Commission's commitment to expedite the development review process. The Commission would still have the authority to review local approvals if any substantial issues arise as a result of an error made by a local review officer.

As for the suggested restriction on use of the local review officer system to municipalities with environmental commissions, the Commission does not believe this to be an appropriate criterion. The establishment of a local environmental commission is a very worthwhile goal for a number of reasons. However, the Commission believes that, in terms of the local review officer program, it is more important that the qualifications set forth in the definition of local review officer in N.J.A.C. 7:50-2.11 be met and that an effective working relationship between Commission staff and a designated local review officer is developed.

COMMENT: One organization indicated its support for the proposed changes to N.J.A.C. 7:50-4.52(c) which provide the Commission with the opportunity to enter into memoranda of agreement with other agencies. One individual questioned whether the Pinelands Protection Act gives the Commission the authority to enter into memoranda of agreement that will permit development that is not entirely consistent with the standards of the Comprehensive Management Plan. Another organization noted that the proposed change to N.J.A.C. 7:50-4.52(c)1 appears to prohibit the Commission from entering into a memorandum of agreement that relieves another agency from securing individual development approvals if any of the involved activities would deviate from the standards of the Plan. This organization felt that such a prohibition would be contrary to the intent of the original Comprehensive Management Plan.

RESPONSE: With respect to the question raised concerning the authority given the Commission by the Pinelands Protection Act, the Act authorizes the Commission to enter into intergovernmental agreements, directs the Commission to detail the ways in which governmental programs and policies may be best coordinated to promote the goals and policies of the Comprehensive Management Plan, and requires a program for governmental implementation of the Comprehensive Management Plan which will ensure protection of the Pinelands. The addition at N.J.A.C. 7:50-4.52(c)2 merely authorizes intergovernmental agreements which serve to implement the goals and policies of the Comprehensive Management Plan. These comprehensive agreements, similar to municipal ordinances, must accomplish at least an equivalent level of protection as that afforded by a strict application of the Comprehensive Management Plan's land use and development standards.

If, for example, the normal buffer around an entire wetlands system was determined to be 300 feet, it is possible that a development node within 250 feet of the wetland could be authorized if larger buffers were provided for the balance of the wetland. Under such a scenario, the entire wetlands system, when taken as a whole, would be afforded equivalent, and potentially increased, protection. In any case, the test will be whether the other measures that are being proposed in an agreement will provide a level of protection to the resources of the Pinelands that is equivalent to what would be provided if there were no deviation.

In executing any memorandum of agreement pursuant to N.J.A.C. 7:50-4.52(c)2, the Commission will specifically describe how it reached the conclusion that an "equivalent level of protection" is being ensured. Given the wide variety of possible cases, the Commission believes it would be impossible to anticipate the appropriate tests for each of these in advance.

The Commission's intent in revising N.J.A.C. 7:50-4.52(c)1 and 2 was to permit the Commission to enter into a memorandum of agreement that relieves another state agency from securing individual development approvals and also permits specified development activities that are not fully consistent with the standards of the Plan. It is the Commission's interpretation that N.J.A.C. 7:50-4.52(c)1 and 2, as revised, do enable the Commission to enter into such an agreement. Therefore, further changes to these sections are not being made.

COMMENT: With respect to the proposed requirement for public hearings on intergovernmental memoranda of agreement in N.J.A.C. 7:50-4.52(c), one organization felt that the Commission should reserve

the right to conduct such hearings itself, rather than delegating this function to the Executive Director.

RESPONSE: The Comprehensive Management Plan currently specifies that the Executive Director shall conduct a variety of hearings, including those on applications for development approval which will be reviewed by the Commission and municipal and county master plans and land use ordinances. The Commission believes that it is appropriate for the Executive Director to conduct hearings on intergovernmental memoranda of agreement as well.

COMMENT: One organization suggested that accessory and ancillary structures and uses that are essential to agricultural operations should be added to the list of activities that qualify as "presumptive" waivers in N.J.A.C. 7:50-4.63(a)1.

RESPONSE: It should first be noted that structures and uses which are accessory to agricultural or horticultural operations are considered to be "exempt" from the application requirements of the Comprehensive Management Plan. In light of this fact, including these structures and uses in the list of "presumptive" waivers would appear to make little sense as they are not currently reviewed and approved by the Commission. With respect to ancillary structures and uses, however, the Commission does not believe that this would be an appropriate addition to N.J.A.C. 7:50-4.63(a)1. The definition of ancillary contained in N.J.A.C. 7:50-2.11 does not require that there be a relationship between an ancillary structure and the principal use of the parcel on which it is located. Therefore, a structure that is merely ancillary to a farm may be completely unrelated to that agricultural operation. The Commission believes that such structures and uses should not automatically be deemed to have an extraordinary hardship, as would be the case if they were added to the list of presumptive waiver categories.

COMMENT: One organization suggested that the requirement for public hearings on waiver projects that involve the demonstration of a compelling public need being added to N.J.A.C. 7:50-4.66(i) should be revised so that such hearings would only be required for "major" or controversial projects.

RESPONSE: It is extremely difficult, if not impossible, to develop an objective way to judge whether a specific development proposal is controversial. Moreover, many people might feel that a deviation from the Pinelands Comprehensive Management Plan is, by its very nature, a major action since the Pinelands Protection Act allows such deviations in very limited cases and only if directly approved by the Pinelands Commission. Therefore, no changes to this proposed subsection are being made.

COMMENT: One individual objected to the proposed change to N.J.A.C. 7:50-4.81(a) on the basis that the Commission has no authority to prevent other State agencies from issuing permits which affect land outside the statutorily defined Pinelands Area.

RESPONSE: As noted previously, the Pinelands Commission does not exercise direct regulatory jurisdiction in implementing the land use and development policies of the Comprehensive Management Plan in that area of the Pinelands National Reserve that is outside the State designated Pinelands Area. Therefore, a change is being made at N.J.A.C. 7:50-4.81(a) to clarify that, within the Pinelands Area only, State agencies shall not issue approvals unless such approvals are consistent with the minimum standards of the Comprehensive Management Plan.

COMMENT: One organization felt that the proposed change to N.J.A.C. 7:50-4.81(b) should allow the Commission to enter into memoranda of agreement with soil conservation districts for purposes of exempting agricultural and forestry activities from permitting requirements.

RESPONSE: It is the Commission's interpretation that the proposed change to N.J.A.C. 7:50-4.81(b) will provide the Commission with the opportunity to enter into memoranda of agreement with a variety of agencies and officials, including soil conservation districts.

COMMENT: One organization objected to the proposed addition to N.J.A.C. 7:50-5.1(d) on the basis that it would limit opportunities for manufactured housing.

RESPONSE: The Pinelands Comprehensive Management Plan places no limitations on manufactured housing, other than various density limitations which apply equally to all housing types. The proposed addition of N.J.A.C. 7:50-5.1(d) is merely intended to exempt mobile homes or similarly manufactured dwelling units from the density limitations of the Plan when these units are part of a government sponsored program that provides housing for the elderly.

COMMENT: One organization felt that the proposed changes to the height limitations in N.J.A.C. 7:50-5.4(a) do not provide sufficient flex-

ibility concerning the location of towers in the Pinelands Area. This organization requested that the definition of public service infrastructure in N.J.A.C. 7:50-2.11 be revised to include cellular telephone towers and that such towers be viewed as accessory to otherwise permitted uses.

RESPONSE: Although the Commission believes that the relatively minor changes proposed at N.J.A.C. 7:50-5.4(a) are appropriate, it recognizes that a larger issue concerning the siting of towers in the Pinelands Area also exists. Due to the complexity of this larger issue, the Commission has determined that it would be prudent to proceed with adoption of the proposed minor changes at this time and incorporate a more comprehensive analysis of the Plan's height limitations as part of a new rule proposal.

COMMENT: One individual questioned the justification for the proposed addition of a one acre minimum lot size requirement for all non-residential uses, regardless of intensity, type of use, access and environmental constraints, to N.J.A.C. 7:50-5.22(d), 5.23(d), 5.24(d), 5.25(d) and 5.26(d).

RESPONSE: The Comprehensive Management Plan currently requires a minimum of one acre for any non-residential use in a Regional Growth Area, Pinelands Village or Pinelands Town if sewer service is not available. The Commission believes that the addition of this requirement in the more conservation oriented management areas of the Pinelands is appropriate. It should be noted that a one acre requirement was originally selected based on concerns with water quality, and in recognition of the fact that few, if any, non-residential uses are likely to be able to meet the water quality standards of the Plan on lots under one acre in size.

COMMENT: One organization felt that the proposed changes to the non-farm housing standards in N.J.A.C. 7:50-5.24(a)3 will make the costs of establishing new farms prohibitive and are contrary to the Commission's legislative mandate to promote agriculture. This organization suggested that the permitted density for non-farm housing be increased to one unit per 20 acres.

RESPONSE: It should first be noted that the revisions being made at N.J.A.C. 7:50-5.24(a)3 are merely clarifications of the Plan's non-farm housing standards. No substantive changes have been proposed. In addition, the Commission believes that its non-farm housing standards promote, rather than inhibit, agriculture as they provide the opportunity for limited residential development if relatively large tracts of lands are permanently dedicated for agricultural uses.

As for the suggestion that the permitted density for non-farm housing be increased, the Commission continues to believe that the current density of one unit per 40 acres is sufficient. Nevertheless, it should be noted that the Commission is in the process of conducting a more comprehensive study on the relationship between zoning provisions and the promotion of agriculture. It is possible that this study will result in recommendations for future revisions to the non-farm housing standards in N.J.A.C. 7:50-5.24(a)3.

COMMENT: One organization objected to the proposed change to N.J.A.C. 7:50-5.24(b)4 on the basis that light industrial uses which support agriculture are a logical and efficient land use that should continue to be permitted in Agricultural Production Areas.

RESPONSE: Light industrial uses will continue to be permitted in Agricultural Production Areas, provided they are within a designated area which adjoins a publicly owned airport. The change to N.J.A.C. 7:50-5.24(b)4 was made merely to reflect the Commission's original intent to permit these uses only in areas adjacent to existing airports, when the airport in question meets one of two criteria: (1) it is publicly owned; or (2) it serves a Pinelands Town. Given the fact that there is only one existing airport in the Pinelands Agricultural Production Area that meets the tests described above, N.J.A.C. 7:50-5.24(b)4 was revised accordingly.

COMMENT: One individual indicated support for the proposed changes to N.J.A.C. 7:50-5.28(a)7ii that would allow municipalities to adjust the Comprehensive Management Plan's residential zoning obligations in their Regional Growth Areas if certain conditions were met. Another individual felt that the proposed changes do not take into account the potential impacts on infrastructure that might result if the permitted density in some Regional Growth Areas were to be increased by 10 percent. This individual also felt that only those municipalities with environmental commissions should be allowed to adjust their Regional Growth Area densities. Another individual suggested that additional guidelines should be incorporated, public meetings should be required and the Commission should have the right to "veto" decreases in density. Another individual felt that the proposed changes might limit the amount of housing which can be constructed in the Pinelands Area.

RESPONSE: As proposed, N.J.A.C. 7:50-5.28(a)7ii would require that a number of factors be considered before the Commission approves an adjustment in a municipality's Regional Growth Area residential zoning obligation. These factors include an assessment of the impacts the adjustment may have on the provision of infrastructure and community services. Land tenure patterns, as well as natural resource characteristics, must also be taken into consideration. The Commission believes that these guidelines are sufficient.

Any adjustment in a municipality's Regional Growth Area residential zoning obligation will need to be implemented through a municipal ordinance amendment. Any such amendment would need to be adopted by a municipality in accordance with the Municipal Land Use Law, thereby providing the opportunity for public comment at a hearing held by the governing body. The Comprehensive Management Plan also requires that the Commission hold a public hearing on any such amendment and also gives the Commission the authority to certify, certify with conditions or disapprove the amendment, depending on whether or not it complies with the standards of the Plan.

With respect to the concern that proposed N.J.A.C. 7:50-5.28(a)7ii will restrict the amount of housing permitted in the Pinelands Area, it must be noted that the section in question not only allows municipalities to decrease their residential zoning obligations, it also provides municipalities with the opportunity to increase residential densities in their Regional Growth Areas. On balance, the Commission does not believe that this amendment will have a significant effect on the zoning capacities of the Pinelands region.

COMMENT: One individual objected to the proposed changes in N.J.A.C. 7:50-5.52(b) that permit the creation of municipal reserves in Regional Growth Areas on the basis that these changes would authorize unjustified restrictions on development as well as a form of land use regulation that is not permitted by the Municipal Land Use Law. In addition, this individual felt that the proposed changes would make large areas of land in Regional Growth Areas unavailable for housing, thereby reducing the likelihood that housing needs will be met.

RESPONSE: As has been noted previously, the Pinelands Protection Act is enabling legislation separate and apart from the Municipal Land Use Law. Thus, the Commission's proposal to allow the creation of municipal reserves within Regional Growth Areas is not bound by the Municipal Land Use Law. In addition, municipal implementation of the proposal at N.J.A.C. 7:50-5.52(b) will neither restrict nor change the ultimate residential zoning capacity of any Regional Growth Area. Rather, the proposal merely provides a municipality with an opportunity to exercise greater control over when development in a Regional Growth Area will occur, in consideration of such factors as the availability of infrastructure. The proposal also includes safeguards to guarantee that development in a municipal reserve at Regional Growth Area densities will ultimately be permitted.

COMMENT: With respect to the incorporation of the Commission's wetlands delineation manual in N.J.A.C. 7:50-6.3, one organization noted that the Department of Environmental Protection has assumed wetlands permitting jurisdiction from the Army Corps of Engineers and that the Commission's role in this assumption needs to be clarified. This organization also suggested that approval of the wetlands delineation manual by the Environmental Protection Agency may be necessary. Another organization felt that because the use of the wetlands delineation model creates confusion and causes lands of questionable ecological value to be designated as wetlands, the Commission should utilize the Federal wetlands delineation model and other Statewide criteria. In addition, this organization noted the need for the Commission and the agricultural industry to reach agreement concerning blueberry production in wetlands.

RESPONSE: In terms of the suggestion concerning State assumption of Federal wetlands permitting jurisdiction from the Federal government, it should be noted that the Commission and the Department of Environmental Protection recently completed a memorandum of agreement for purposes of addressing this issue. This memorandum of agreement delineates and outlines all procedures involved in the State's assumption of the Federal permitting program in the Pinelands Area.

With respect to the suggestion that the Commission obtain EPA approval of its wetlands delineation manual, the Commission does not believe such approval is necessary or appropriate. The Commission's wetlands delineation manual is specific to Pinelands ecosystems and is based upon separate State and Federal enabling legislation. Furthermore, the Commission's wetlands protection program was part of the material submitted to EPA as part of the Department of Environmental Protection's request for assumption.

Relative to confusion created by the Commission's manual, it should be noted that the manual is designed to adapt the Federal and State delineation procedures to the special conditions evident in the Pinelands. This approach has been in effect for many years and appears to be well understood by practitioners.

Finally, the Commission is not aware of any areas of disagreement between the Commission and the agricultural industry regarding blueberry production in wetlands. Such an activity is expressly permitted by the Comprehensive Management Plan and is also exempted from the Commission's application requirements. The comment made on this issue more likely refers to areas of disagreement between the agricultural industry and the Federal government.

COMMENT: One organization suggested that the term "inland wetlands" in N.J.A.C. 7:50-6.5 be changed to "freshwater wetlands" for purposes of consistency with Department of Environmental Protection regulations.

RESPONSE: In general, the Commission agrees that use of terminology that is similar or identical to that used by other State agencies is a worthwhile goal. However, in this specific case, the term "freshwater wetlands" is used by the Department of Environmental Protection to refer to a specific program and its accompanying regulations that are administered by the Department. Use of the term "freshwater wetlands" in the Comprehensive Management Plan is likely to lead to the mistaken interpretation that a reference is being made to the Department's regulatory program. Therefore, the Commission does not believe that a change in terminology is advisable in this case.

COMMENT: With respect to incorporation of the Commission's wetlands buffer delineation model in N.J.A.C. 7:50-6.7(c), one organization felt that approval of the model by the Environmental Protection Agency may be necessary. Another organization suggested that the Commission should utilize Department of Environmental Protection standards to determine buffer areas as the Commission's model results in unnecessary restrictions being placed on excessive amounts of private property.

RESPONSE: It should first be recognized that the Commission's wetlands buffer delineation model is being incorporated in the Comprehensive Management Plan as a guideline to aid in interpretation of the Plan's wetlands standards. The proposal does not require that the model be used, it merely indicates that the Commission believes the model provides accurate guidance. Applicants are free to use other models, provided these models adequately reflect the wetlands standards of the Comprehensive Management Plan.

In terms of the suggestion that the Commission obtain EPA approval of its buffer delineation model, the Commission notes that the Federal program does not address wetlands buffers. Although the statewide program does address buffers, the State Freshwater Wetlands Act expressly recognizes and authorizes the Pinelands program and its ability to be more stringent than the Freshwater Wetlands Act (N.J.S.A. 13:9B-1 et seq.).

COMMENT: One organization suggested that N.J.A.C. 7:50-6.12 should be revised to indicate that some water-dependent recreational facilities and activities must comply with the Freshwater Wetlands Protection Act, the Waterfront Development Act and/or the Rules on Coastal Zone Management.

RESPONSE: Any use permitted by the Comprehensive Management Plan is still required to meet all other applicable State and Federal regulations. While this is an important fact for applicants to remember, it is virtually impossible to address in a regulatory manner. The Commission does not believe that attempting to include a citation of all potentially relevant State and Federal regulations in the Comprehensive Management Plan is advisable. Likewise, citing all the relevant regulations for only a few specific uses, such as water-dependent recreational facilities, is not advisable as this could easily lead to the interpretation that there are no additional State or Federal regulations which apply to other types of uses. However, the Commission does intend to look into this matter further as part of its examination of the development review process.

COMMENT: One organization indicated its concern that requirements for the replanting of native trees and shrubs in N.J.A.C. 7:50-6.23(a)6 may be problematic if clearing is necessary to permit fencing for safety reasons.

RESPONSE: If clearing is necessary to permit fencing for safety or other reasons, the Commission sees no reason to exempt these types of activities from the native species requirements of the Comprehensive Management Plan. However, it should be noted that the landscaping standards contained in N.J.A.C. 7:50-6.23(a)6 would not necessarily re-

quire the use of native trees and shrubs; the use of grasses would also be permitted.

COMMENT: One individual indicated support for the proposed addition of N.J.A.C. 7:50-6.23(a)6iii which places limitations on soil amendments. Two organizations objected to the addition of this section on the basis that it utilizes vague terms and will require too much subjective opinion. One of these organizations noted that pesticide applications are not commonly considered to be soil amendments and that the proposal should be revised accordingly.

RESPONSE: The Commission agrees with the suggestion that the proposal be revised to clarify that pesticide applications are not considered to be soil amendments and is therefore making a change at N.J.A.C. 7:50-6.23(a)6ii. However, the Commission does not agree that the section in question is vague. The objectives set forth in proposed N.J.A.C. 7:50-6.23(a)6ii are clear: landscaping should maximize native tree and shrub cover and minimize the need for supplemental water, soil amendments, herbicides, fungicides and pesticides.

COMMENT: One organization objected to the proposed changes to N.J.A.C. 7:50-6.23(a)6iv and v on the basis that a requirement for the use of non-native species adapted to Pinelands soils is not practical. Another organization felt that the proposed changes would result in subjective, individual interpretation and that the existing standards in the Plan are clear and measurable.

RESPONSE: The Commission recognizes that, in some areas of the Pinelands, a requirement for the use of native species or non-native species that are adapted to Pinelands soils may not be practical. Therefore, a change is being made to N.J.A.C. 7:50-6.23(a)6iv to indicate that, in addition to Pinelands-adapted non-native species, other non-native trees and shrubs may be used for foundation plantings, provided that species not of the Heath family do not exceed 20 percent of the plantings.

COMMENT: With respect to the proposed limitations on managed turfed areas included in N.J.A.C. 7:50-6.23(a)6vii, one individual indicated support while one organization stated that it is unclear whether these limitations apply to transportation projects. Another organization felt that the proposed limitation for residential uses is unrealistic.

RESPONSE: The Commission agrees that the proposed limitations on managed turfed areas are somewhat unclear and would benefit from some minor clarifications. Therefore, a change is being made at N.J.A.C. 7:50-6.23(a)6vii to indicate that the managed turfed area limitations shall not apply to areas that are not intended to be managed once landscaping or replanting has been completed. This revision is intended to include certain areas that are part of transportation projects which may be landscaped for erosion control purposes but are not intended for active, continued management. With respect to the contention that the proposed limitation for residential uses is unrealistic, the Commission believes that a limitation of 10,000 square feet for each dwelling unit is more than sufficient as it will allow many homeowners to maintain lawns on their entire parcels. Increasing the amount of allowable managed turfed area would be contrary to the Commission's goal of reducing the non-point pollution effects of stormwater.

The Commission does acknowledge, however, that the standards may be difficult to administer. Consequently, the Commission will be looking into this matter further as part of its examination of the development review process.

COMMENT: With respect to the general limitations on resource extraction in N.J.A.C. 7:50-6.63, one organization indicated its concern that these limitations might cause a hardship for Department of Transportation projects that utilize "borrow" areas.

RESPONSE: Borrow pits are not considered to be resource extraction operations if they are on the site of and used as part of an otherwise permitted development. For example, a borrow pit used to provide a new irrigation pond on a farm is not viewed as resource extraction. Likewise, the excavation of borrow on a site associated with a permitted road is not considered to be resource extraction. If, however, the borrow pit is located off-site but was previously used for the construction of a road, continued use of that borrow pit would be viewed as the expansion of a nonconforming use and would be subject to the limitations at N.J.A.C. 7:50-6.63.

COMMENT: One organization indicated its support for the opportunity to extend the duration of mining permits included in N.J.A.C. 7:50-6.64(a). Another organization also supported the proposed changes but felt that the Commission does not have the legal authority to grant enforcement powers to the Executive Director. Another organization felt that the longer permit periods provided in N.J.A.C. 7:50-6.64(a) were

appropriately balanced by giving the Executive Director the authority to resolve violations together with local jurisdictions.

RESPONSE: The addition at N.J.A.C. 7:50-6.64(a) authorizes municipalities to grant five year, rather than two year, mining permits if appropriate steps are taken to minimize the potential for violations during the extended permit period. These safeguards are comparable to those afforded in a two year permit cycle but will be less expensive and time consuming for mining operations which adhere to their permits.

With respect to the so-called "enforcement" mechanism specified at N.J.A.C. 7:50-6.64(a), it should be noted that this section is merely one example of the Commission's ability to revoke permits (as described in N.J.A.C. 7:50-4.41 and 4.42) and enforce the regulations of the CMP through its civil enforcement procedures (N.J.A.C. 7:50-8). It is what the Commission does in all such "potential" violation cases. This clause merely describes the specific steps and provides the applicant with an explicit procedure to resolve the dispute before court action. Aside from being highly useful to the applicant, it is also prudent given the unique land intensive on-going nature of resource extraction activities.

It should also be noted that any determination reached by the Executive Director pursuant to N.J.A.C. 7:50-6.64(a) would not be final. Instead, the determinations made by the Executive Director would ultimately be subject to the Commission's review or to a decision made by a court of law.

COMMENT: One organization supported the proposed addition of N.J.A.C. 7:50-6.64(c) that would exempt certain structures and uses accessory to mining operations from application requirements. Another organization felt that the Commission should still be given the opportunity to review local approvals for these accessory structures and uses.

RESPONSE: The Commission agrees that while it is appropriate to exempt certain structures and uses that are accessory to mining operations from the application requirements of the Comprehensive Management Plan, it is also appropriate and important for the Commission to retain its oversight authority over local approvals granted for such structures and uses. Therefore, an addition is being made at N.J.A.C. 7:50-6.64(c) to indicate that local approvals granted pursuant to this section shall be subject to review by the Commission.

COMMENT: One organization noted that there are some existing mining areas in the Preservation Area that are administered by the Division of Parks and Forestry but have not been registered with the Commission as required in N.J.A.C. 7:50-6.65(a). This organization suggested that the areas be registered and future operations permitted through a memorandum of agreement between the Commission and the Department of Environmental Protection.

RESPONSE: As is noted previously, on-site borrow pits that are accessory to an otherwise permitted use are not considered to be resource extraction and will be permitted to continue operation. If a borrow pit is accessory to a permitted use but is not located on the same parcel, any future operation could be permitted only in accordance with the limitations set forth at N.J.A.C. 7:50-6.65(a). It may also be possible for such borrow pits to be addressed in memoranda of agreement.

COMMENT: One individual suggested that use of the term void development approval in N.J.A.C. 7:50-6.66(b) and (c) is insufficient as it relates only to approvals granted by the Commission in uncertified municipalities and for public development.

RESPONSE: The Commission agrees that, as defined in N.J.A.C. 7:50-2.11, the term development approval does not currently include determinations made in certified municipalities. Therefore, a change is being made to expand this definition to include N.J.A.C. 7:50-4, Part III, which contains requirements for certified municipalities. This change reflects Commission providers since 1981.

COMMENT: One organization supported the proposed prohibition on new resource extraction operations in Pinelands Forest Areas being added to N.J.A.C. 7:50-6.66(a). Three organizations objected to the prohibition for the following reasons: the prohibition is too restrictive, does not consider future needs and will require the importation of raw materials, thereby placing local contractors at a disadvantage; the prohibition is inconsistent with the legislative intent of the Pinelands Protection Act and is contrary to the protections given nonconforming uses by the Municipal Land Use Law; and the Commission lacks credible scientific evidence to support the prohibition as well as the authority to enact the prohibition.

RESPONSE: The Commission continues to believe that a prohibition on new resource extraction operations in the Pinelands Forest Area will help to minimize negative impacts within some of the most sensitive and important ecological areas within the Pinelands, bearing in mind that

existing sites may continue to be mined. Subject to buffer requirements and other on-site limitations, up to 10,700 acres may be available for mining in the future. Furthermore, the Commission has the authority to adopt such a provision and it does not conflict with the Pinelands Protection Act, since the Act specifically directs the Commission to adopt a comprehensive management plan that includes "a comprehensive statement of policies for planning and managing the development and use of land in the pinelands area" which considers a variety of land management techniques, including zoning and "development and use standards" (N.J.S.A. 13:18A-8(d)). In addition, the adopted rule furthers the statutory requirement that the Comprehensive Management Plan is "to protect, preserve and enhance the significant values of the resources" of the Pinelands Area (N.J.S.A. 13:18A-9(a)). It also furthers the statutory goal of the Comprehensive Management Plan for the protection area to "preserve and maintain the essential character of the existing Pinelands environment, including the plant and animal species indigenous thereto and the habitat therefor" (N.J.S.A. 13:18A-9(b)(1)). With respect to the assertion that the proposed prohibition is contrary to the protection given nonconforming uses by the Municipal Land Use Law, it should be noted again that proposed N.J.A.C. 7:50-6.66(b) does allow existing operations in the Forest Area to continue extraction activities within the limits of the parcel(s) which were identified in that operation's approved application. There is no requirement that the provisions of the Comprehensive Management Plan be consistent with the Municipal Land Use Law; however, this particular provision is consistent with the MLUL which, in N.J.S.A. 40:55D-68, states that existing nonconforming uses and structures may be continued upon the lot(s) on which they were located at the time they were rendered nonconforming.

COMMENT: With respect to the status of mining permits in the Forest Area addressed in proposed N.J.A.C. 7:50-6.66(b) and (c), one organization felt that some of the specified dates are retroactive and therefore unfair to miners who rely on reserves. This organization suggested that all of the dates in these subsections be changed to coincide with the effective date of the new rules. One individual suggested that the proposed rules should address resource extraction operations that were pre-existing, non-conforming uses when the Comprehensive Management Plan was adopted and were allowed to continue without further development approvals.

RESPONSE: The Commission agrees that the new rules should not be applied retroactively and that it is therefore appropriate to revise the date specified at N.J.A.C. 7:50-6.66(b) to coincide with the effective date of the new rules. Thus, a change is being made to that section. However, the Commission believes that a similar change to N.J.A.C. 7:50-6.66(c) is not appropriate. The Commission continues to believe that a distinction should be made between applications for resource extraction that were approved prior to the Commission's decision to proceed with the proposed rules and those that were filed and approved with the knowledge that significant restrictions on operations in the Forest Area were under consideration. Therefore, no change is being made at N.J.A.C. 7:50-6.66(c) in order to maintain what the Commission believes to be an important distinction.

The Commission does not agree that a change should be made to allow non-conforming resource extraction operations which received no development approvals to continue to operate, whether or not such operations were in existence prior to the implementation of the Comprehensive Management Plan. The Comprehensive Management Plan has been in effect for 13 years and these operations have had that period of time to seek and obtain the necessary approvals pursuant to the Plan. The Commission does not believe a change to its rules is warranted in order to recognize operations that have continued to operate without the required approvals.

COMMENT: One organization supported the proposed clarification to N.J.A.C. 7:50-6.68(a)9 while another organization objected to the establishment of a 20-acre cell limitation.

RESPONSE: Neither N.J.A.C. 7:50-6.68(a)9 nor the proposed revisions to this paragraph establish a 20-acre cell limitation for resource extraction operations. Rather, N.J.A.C. 7:50-6.68(a)9, as revised, specifically states that the Comprehensive Management Plan does not preclude more than one 20 acre unit from being worked at any one time, provided certain conditions are met.

COMMENT: A large volume of comments was received on the Commission's proposed solid waste management standards contained in N.J.A.C. 7:50-6.71 through 6.79. More specifically, one person was concerned that the proposed definition of hazardous waste was too broad.

Two people requested that the proposed definition of landfill be less broad. One person suggested that certain transfer stations be exempt. One person recommended that the proposed definitions of waste and waste management facility be less broad. One person questioned the rationale for including waste management regulations in the Comprehensive Management Plan. Another individual suggested that the waste management rules should not apply to the portion of the Pinelands National Reserve located outside the Pinelands Area. Four people suggested that the waste importation limitations be less restrictive. One person noted that the remediation standard was not needed. One person recommended that management of agricultural waste be dealt with elsewhere in the Comprehensive Management Plan. One person suggested that specific references to DEP standards for on-site waste be incorporated. Seven people questioned the need for the timeframe and impermeable capping requirements for existing landfills. One person requested information as to what materials may be used for landfill capping. One person noted that household hazardous waste should be addressed in the proposed regulations. Two people requested additional flexibility in siting transfer stations. One person opposed the proposed limitations on the siting of composting facilities. One person recommended further exemptions for the composting of vegetative waste. One person supported the prohibition on incinerators. Two people recommended flexibility in siting all other waste management facilities. Two people expressed concerns with the proposed limitations on the importation of regulated medical waste. Five people opposed certain of the proposed limitations on the land application of waste. Two people suggested further flexibility in the land application of sludge and composted vegetative waste standards. One person indicated support for the proposed land application standards. One person recommended soil conservation district review of certain land applications. Two people expressed concern with the clarity of the standards for memoranda of agreement concerning waste importation. Four people, while supporting the standards for memoranda of agreement concerning land application, expressed concerns regarding the proposed monitoring program.

RESPONSE: Waste management is a complicated regulatory issue and the original rule proposal will need to be substantively changed in several important areas. Therefore, all of the changes related to solid waste management (N.J.A.C. 7:50-2.11, 4.52(c)2, and 6.71 through 6.79) are being removed from the rule proposal at this time. A revised version of the proposal on waste management will be prepared and included in a forthcoming rule proposal.

COMMENT: One organization noted that remediation situations may exist which require discharges to surface water and that N.J.A.C. 7:50-6.84(a)1i should be revised to permit such discharges.

RESPONSE: Remediation situations that require discharges to surface water may be addressed through the Commission's existing Waiver of Strict Compliance program which provides the opportunity for a deviation from certain Comprehensive Management Plan standards if a compelling public need is demonstrated. The Commission believes this method is adequate to deal with remediation situations and that a change to N.J.A.C. 7:50-6.84(a)1i is not necessary.

It should be noted that the Commission's proposed waste management standards contain provisions at N.J.A.C. 7:50-6.73(d) which are intended to deal with the possibility of allowing discharges to surface water and other activities necessary for remediation. The proposed waste standards are being removed from the proposal at this time. However, it is the Commission's intention to incorporate them in a new rule proposal in the near future and it is anticipated that the language proposed at N.J.A.C. 7:50-6.73(d) will be considered at that time.

COMMENT: One organization objected to the proposed change to N.J.A.C. 7:50-6.84(a)2iv on the basis that a change from 10 parts per million nitrate/nitrogen to five parts per million will unreasonably require ground water quality to exceed drinking water standards on properties that may have malfunctioning septic systems.

RESPONSE: The proposed change at N.J.A.C. 7:50-6.84(a)2iv does not represent a substantive change in the Commission's water quality regulations. Rather, the revision from 10 parts per million nitrate/nitrogen to five parts per million was made merely to reflect previous amendments adopted by the Commission concerning the Waiver of Strict Compliance program. According to these amendments, which took effect on March 2, 1992, substantial impairment of Pinelands resources occurs when nitrate/nitrogen levels exceed five parts per million. The change to N.J.A.C. 7:50-6.84(a)2iv was made to recognize this definition of substantial impairment. It should be noted that the Commission's normal water quality standard is two parts per million nitrate/nitrogen, and that

this standard is based on ecological considerations rather than the potable water standard of 10 parts per million.

COMMENT: Three organizations indicated their support for the proposed changes to N.J.A.C. 7:50-6.84(a)6i concerning standards for management of the volume of stormwater runoff. Another organization suggested that recharge of runoff should not be required unless more than 10,000 square feet of new impervious cover is proposed. Finally, another organization questioned the proposed use of a 10 year design storm.

RESPONSE: The Commission agrees that the establishment of thresholds is both useful and necessary. Therefore, language is being added at N.J.A.C. 7:50-6.84(a)6iii to indicate a threshold for when the retention of stormwater will be required. In order to arrive at the specified threshold, the Commission examined and ultimately decided to utilize the existing distinction made in the Comprehensive Management Plan and Pinelands Protection Act between major and minor development. Specifically, the threshold selected will mean that retention will not be required for minor residential development, provided the construction of new roads is not involved, nor for minor non-residential development, provided the disturbance of more than 5,000 square feet is not involved. Minor residential development (four or fewer homes) with no new roads will result in roughly the same disturbance and stormwater generation as 5,000 square feet of non-residential disturbance. From a regional perspective, the Commission believes that the amount of run-off from such developments will be relatively inconsequential.

With respect to the concern expressed with use of a 10 year storm, it should be noted that the Commission previously used a 50 year storm for retention purposes. The proposed change to a 10 year design storm was based on two factors. First, and most importantly, analysis of storm events demonstrated that retention of runoff generated from any net increase in impervious surfaces from a 10 year storm would be adequate to capture a significant amount of the stormwater from most storms, as well as most of the first flush of all storm events which would contain most of the pollutants. Second, the 10 year storm was selected in recognition of the fact that many other State agencies utilize the two, 10 and 100 year storms for calculation purposes. The Commission felt there would be a significant benefit to applicants if the Comprehensive Management Plan were to require use of these storms for calculation purposes as well.

In response to the concerns raised regarding recharge of runoff, a change is also being made at N.J.A.C. 7:50-6.84(a)6i and ii to clarify that the Commission's use of the term "impervious" is consistent with that used in TR-55.

COMMENT: With respect to the changes proposed at N.J.A.C. 7:50-6.84(a)6ii concerning management of the rate of stormwater runoff, one organization indicated support and one individual suggested that the Commission emphasize the use of non-structural controls to reduce the rate of runoff. Another organization noted that it may be difficult to maintain the rate of runoff from the two, 10 and 100 year storms for large projects. Another organization recommended that the Commission utilize a maximum storm of 25 years, rather than 100, and noted that detention of runoff will not be feasible for most linear projects. This organization also suggested that detention of runoff should not be required unless more than one acre of new impervious surface is proposed.

RESPONSE: The Commission recognizes that the use of non-structural controls to reduce the rate of stormwater runoff may be an important aspect of stormwater management. However, the Commission also believes that selection of the specific controls that will be used in a certain development is the prerogative of the applicant.

In response to the concerns raised regarding use of the 100 year storm, it should be noted that a number of counties and other State agencies currently use the 100 year storm standard. In addition, the new State Site Planning standards also require use of the 100 year storm standard. Therefore, the Commission believes that its use of a similar storm is appropriate. The Commission understands the concerns with the impacts of this requirement on linear projects; however, the Commission has, under the current 50 year storm requirement, been able to apply the rule in a flexible manner that has enabled applicants to comply with the standard and will continue to do so under the new rule.

The suggestion that detention of runoff not be required when less than one acre of new impervious surface is proposed is one with which the Commission disagrees. However, it is worth noting that TR-55 methodology specifically may not be used for calculating runoff rates for drainage areas that are less than one acre in size. Although the

Commission does not believe that a specific change in its regulations is necessary to reflect this situation, it does believe that other clarifications are appropriate. Therefore, language is being added at N.J.A.C. 7:50-6.84(a)6iii to clarify that the detention requirements of the Plan do not apply to minor residential development, provided the construction of new roads is not involved, nor to minor non-residential development, provided the disturbance of more than 5,000 square feet in any five year period is not involved. A more detailed explanation as to how the specific thresholds were selected is contained in the preceding response.

COMMENT: One organization felt that the proposed changes to N.J.A.C. 7:50-6.84(a)6iii concerning the discharge of runoff to surface water bodies potentially conflict with N.J.A.C. 7:50-6.84(a)6ii.

RESPONSE: As proposed N.J.A.C. 7:50-6.84(a)6iii deals with both the volume and rate of discharges to surface water bodies. More specific standards concerning the volume and rate of stormwater runoff are contained in N.J.A.C. 7:50-6.84(a)6i and 6ii, respectively. These standards ensure that the volume of stormwater runoff will, in almost all cases, not increase following development. In addition, the restrictions contained in N.J.A.C. 7:50-6.84(a)6iii deal only with surface water bodies, which are not present in the majority of cases.

COMMENT: One organization suggested that the minimum separation between a detention basin and the seasonal high water table be increased from the two feet proposed in N.J.A.C. 7:50-6.84(a)6v to three feet in order to be consistent with the currently proposed rules on Coastal Zone Management.

RESPONSE: The Commission believes that the proposed requirement for a two foot separation is appropriate. This requirement was selected because of its previous use by the Department of Environmental Protection in its CAFRA regulations and the fact that it was advocated in a number of other Department proposals. Moreover, the recently adopted Coastal Zone Management rules (26 N.J.R. 2990(a)) do not require a three foot separation. However, if such a requirement is adopted by the Department in the future, such a standard will be considered for incorporation in the Comprehensive Management Plan at that time.

COMMENT: One individual and one organization indicated support for the proposed stormwater maintenance requirements proposed at N.J.A.C. 7:50-6.84(a)6vi. Another organization objected on the basis that there is no statutory authority to require the municipal pre-collection of annual operating expenses and also requested that, as one possible alternative, the proposed changes be modified to require a four year maintenance guarantee. Another organization questioned whether or not the Commission will be responsible for the processing of maintenance guarantees and suggested that while the requirement for annual inspections may be feasible for municipalities, it is inappropriate for county projects. Finally, another organization felt that clarification of the proposed maintenance requirements is needed and questioned whether the requirements would be consistent with current soil conservation standards and other State programs.

RESPONSE: The Commission agrees that a number of clarifications to the proposed stormwater maintenance requirements in N.J.A.C. 7:50-6.84(a)6vi (now recodified as N.J.A.C. 7:50-6.84(a)6vii) are warranted. It should be noted that the Commission engaged in discussions with the primary commenter on this issue and a number of the clarifications were agreed to as a result of those discussions. First, it was noted that the length of the required maintenance program appeared to be somewhat ambiguous in the proposal and that the proposal did not adequately reflect the larger concern with maintenance immediately following construction as a means of ensuring that the stormwater management system was properly designed and constructed. Thus, the length of the overall program is being specified as 10 years but the initial maintenance guarantees are being lengthened from two to four years. Second, because it is frequently the case that the applicant or original developer is not involved in the development after construction has been completed, the responsibility for ensuring that annual inspections and maintenance take place is being clarified so that it is more specific and also not limited to a municipality. For public applications, the applicant remains involved in the project; therefore, it is unnecessary for such applicants to provide the initial maintenance guarantee and a change is being made to reflect this fact. Finally, rather than specify a particular funding mechanism, the Commission decided that it would be better to provide flexibility to developers and municipalities by leaving the choice of funding mechanisms up to them. It should be noted that although the use of pre-paid escrow accounts is being eliminated as an example of a possible funding mechanism, the Commission does not necessarily agree with the comment that such a mechanism may not be used due

ADOPTIONS

to a lack of statutory authority. Should a municipality indicate its intention to require the pre-collection of annual operating expenses for stormwater maintenance, the Commission is likely to look on such a proposal as meeting the intent of the new stormwater maintenance standards. It should be noted that none of the above described changes are substantial in nature as they deal with the details of the required maintenance programs and are clearly consistent with the purpose and requirements of the originally proposed standards.

COMMENT: With respect to the proposed standards for water supply diversions added at N.J.A.C. 7:50-6.86(e), one individual indicated support while another suggested that water users exceeding 100,000 gallons per day be required to mitigate the impacts of such use through the purchase of Pinelands Development Credits.

RESPONSE: The proposed standards for water supply diversion in N.J.A.C. 7:50-6.86(e) prohibit diversions or increases in diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer unless it is demonstrated that no alternative water sources are available and that no adverse ecological impact on the Pinelands Area will result. The Commission believes that these two standards will prevent excessive or nonessential diversions from the Kirkwood-Cohansey aquifer and that additional requirements, such as the purchase of Pinelands Development Credits, are unnecessary.

COMMENT: One organization questioned whether the proposed standards for off-site signs in N.J.A.C. 7:50-6.107 would permit "overhead" signs and Department of Transportation signs in the Preservation and Agricultural Production Areas. Another organization felt that clarification is needed as to whether Department of Environmental Protection identification signs are permitted in the Pinelands. Finally, another organization indicated concern that the proposed standards would restrict off-site signs for agricultural commercial establishments to certain areas of the Pinelands.

RESPONSE: The proposed provisions to permit off-site directional signs added at N.J.A.C. 7:50-6.107(c)2 indicate that such signs may be permitted in any management area. In addition, the existing standards in N.J.A.C. 7:50-6.108(b)1 permit official public safety and information signs in the Preservation and Agricultural Production Areas. Therefore, provided that "overhead" signs and Department of Transportation signs comply with one of these two sections of the Plan, no issues should be raised. The same applies to Department of Environmental Protection identification signs throughout the Pinelands.

With respect to signs for agricultural commercial establishments, the proposed standards impose no new restrictions on this type of off-site commercial advertising signs. Rather, the proposal seeks to clarify that while municipalities may continue to permit these off-site signs in any Pinelands management area, they will now be required to do so in Agricultural Production and Special Agricultural Production Areas.

COMMENT: One organization noted that an error in proposed N.J.A.C. 7:50-6.109(a)9i should be corrected, replacing the cite to N.J.A.C. 7:50-6.107(c)3 with a correct cite to the sign removal provision at N.J.A.C. 7:50-6.107(d) and also that proposed N.J.A.C. 7:50-6.109(a)9ii should be deleted as the Department of Transportation will not be issuing permits for new off-site commercial advertising signs.

RESPONSE: The Commission agrees that the recommended revisions are appropriate; therefore, changes are being made to N.J.A.C. 7:50-6.109 in accordance with the suggestions of the Department of Transportation.

Summary of Agency-Initiated Changes:

Several other changes are being made, although not directly in response to public comment. All references to the New Jersey Department of Environmental Protection and Energy are being changed to the New Jersey Department of Environmental Protection in recognition of the recent reorganization of this State department. Also, the terms "local approval agency" and "local approving agency" are being replaced with the term "local permitting agency" wherever they occur in the rule proposal for purposes of consistency. Clarifications are also being made to a number of sections.

First, the proposed change to the definition of home occupation in N.J.A.C. 7:50-2.11 is being deleted based on the Commission's realization that the change would not help to clarify the definition in question and might actually make interpretation of its applicability more difficult in a number of circumstances. The net effect is that there will be no change to the definition of home occupation contained in the Commission's existing regulations.

ENVIRONMENTAL PROTECTION

Second, a clarification to the resource extraction application requirements is being made at N.J.A.C. 7:50-4.2(b)7x to reflect the proposal to extend the duration of mining permits at N.J.A.C. 7:50-6.64.

Third, N.J.A.C. 7:50-5.2(b) is being clarified so as to make clear that the Commission's provisions relating to nonconforming use should not be interpreted as allowing a conforming use to be changed to a nonconforming use. In order to accomplish this, the term "lawful" is being replaced with the phrase "currently non-conforming." For purposes of consistency, the same language changes are being made in N.J.A.C. 7:50-5.2(a).

Fourth, the cluster development standards in N.J.A.C. 7:50-5.19(b) are being reorganized and clarified as to their relationship to other existing sections of the Comprehensive Management Plan. Specifically, language is being added to emphasize that when cluster development is proposed on a parcel of land partially located in the Regional Growth Area, the existing provision in N.J.A.C. 7:50-5.28(a)7 which precludes the use of other land use techniques that interfere with or impair the potential use of Pinelands Development Credits continues to take precedence.

Fifth, N.J.A.C. 7:50-5.28(a)6 is being clarified to indicate that the requirement for Pinelands Development Credit purchase when a municipal use variance is granted was never intended to apply to certain existing uses. This clarification reflects the fact that when densities and zoning capacities for Regional Growth Areas were calculated, it was presumed that developed parcels did not have the potential for using Pinelands Development Credits.

Sixth, the landscaping standards in N.J.A.C. 7:50-6.23(a)6v are being clarified so that the distinction between native and non-native grasses is apparent and also so that the use of non-native annual species for temporary cover will be viewed as permissible, rather than mandatory.

Lastly, the provisions in N.J.A.C. 7:50-6.23(a)6vi which permit the use of non-native grasses for certain recreational uses are being simplified.

A number of technical changes are also being made: six to correct typographical errors in N.J.A.C. 7:50-4.16, 4.17, 4.53(c), 4.73(b) and 5.23(b) and three to correct errors in the publication of the original rule proposal in N.J.A.C. 7:50-4.2(b)7, 6.64(a)2vii and 6.69(a)9ii(3). All of these are changes of language only, with no change of substance involved.

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

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

"Accessory structure or use" means a structure or use which:

1.-2. (No change.)

3. Contributes primarily to the comfort, convenience or necessity of the occupants, business or industry of the principal structure or principal use served; and

4. Is located on the same parcel as the principal structure or principal use served, except as otherwise expressly authorized by the provisions of this Plan.

...

"Ancillary" means a structure or use which:

1. Is located on the same parcel but is not necessarily related to a principal structure or use; and

2. Is subordinate in area, extent and purpose to the principal structure or principal building.

...

"Certificate of Completeness". See N.J.A.C. 7:50-4.11 through 4.27.

...

"Composting facility" means a waste management facility which utilizes a controlled biological process of degrading non-hazardous solid waste or sewage sludge. For purposes of this definition, composting facility shall include co-composting facility which utilizes a controlled biological process of degrading mixtures of non-hazardous solid waste, including sewage sludge.

...

"Construction debris" means non-hazardous solid waste building material and refuse resulting from construction, remodeling, and repair operations on residences, commercial buildings, pavements and other structures.

...

"Day" means, for purposes of computing time limits, a calendar day; provided, however, that should the last day of a specified time limit be a Saturday, Sunday or holiday, then the time limit shall extend until the next working day following said Saturday, Sunday or holiday.

"Development approval" means any approval granted by the Commission pursuant to N.J.A.C. 7:50-4, Part II*, Part III* or Part IV.

"Fair market value" means the value of a parcel based on what a willing buyer will pay a willing seller in an arms length transaction for the parcel if no Waiver of Strict Compliance is approved. For undersized lots, the determination of fair market value shall include consideration of the extent to which the parcel would contribute to the value of a developable parcel if combined with one or more parcels.

"Forestry" means the growing and harvesting of trees for *[sale or other]* commercial purposes except that the following activities shall not be defined as forestry:

1.-6. (No change.)

"Hazardous or toxic substances" means such elements, compounds and substances which pose a present or potential threat to human health, living organisms or the environment. They include, but are not necessarily limited to, petroleum and petroleum products, and hazardous and toxic substances defined as such by the New Jersey Department of Environmental Protection and Energy.]*

"Hazardous waste" means any waste or combination of wastes which are toxic, carcinogenic, corrosive, radioactive, irritating, sensitizing, biologically infectious, explosive or flammable. They include, but are not necessarily limited to, hazardous waste defined as such by the New Jersey Department of Environmental Protection and Energy.]*

"Historic resource" means any site, building, area, district, structure or object important in American history or prehistory, architecture, archaeology and culture at the national, state, county, local or regional level.

"Home occupations" means an activity for economic gain, carried out in a residential dwelling or accessory structure thereto, in which an occupant of the residence and no more than two other individuals are employed and which is clearly secondary to the use of the dwelling as a residence. *[Home occupations operating as retail sales or service establishments shall be primarily devoted to the sale of those products or services which are produced within the residence, or an accessory structure thereto, in which the home occupation is located.]*

"Immediate family" means those persons related by blood or legal relationship in the following manner: husbands and wives, great-grandparents, grandparents, great-grandchildren, grandchildren, parents, sons, daughters, brothers and sisters, aunts and uncles, nephews, nieces and first cousins.

"Incinerator" means a thermal device in which waste is burned and results in volume reduction. For purposes of this definition, it shall include an incinerator used to obtain energy and an incinerator for burning hazardous or toxic waste.]*

"Landfill" means a site where any waste is disposed of by application on or into the land, with or without the use of management practices or soil covering.]*

"Landfill" means sites, including open dumps, where solid waste, liquid and dry sewage sludge, and liquid and dry chemical waste are disposed of by land application with or without the use of management practices or soil covering. For the purposes of this Plan, solid waste transfer stations shall not be considered landfills.*

"Local review officer" means an individual with experience in municipal land use and environmental permitting procedures and

the Pinelands development review process who is designated by a certified municipality to administer the review procedures set forth in N.J.A.C. 7:50-4.34(b).

"Parcel" means any quantity of land*, consisting of one or more lots, that is* capable of being described with such definiteness that its location and boundaries may be established*[*, and which is designated by its owner as land to be used as a unit]*.

"Recreational facility, low intensive" means a facility or area which complies with the standards in N.J.A.C. 7:50-5, Part III, utilizes and depends on the natural environment of the Pinelands and requires no significant modifications of that environment *other than to provide access*, and which has an insignificant impact on surrounding uses or on the environmental integrity of the area. It permits such low intensity uses as hiking, hunting, trapping, fishing, canoeing, nature study, orienteering, horseback riding, and bicycling.

"Regulated medical waste" means any waste regulated pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

"Remediation" means a process to remove or treat a waste or hazardous or toxic substance from soil or water but does not include any subsequent burial or land application of contaminated soil or other solids.]*

"Solid waste transfer station" means a facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a landfill.*

"Structural alteration" means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimensions or configurations of the roof or exterior walls.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation having a fixed location on, above or below the surface of land or attached to something having a fixed location on, above or below the surface of land.

"Submerged land" means those lands which are inundated with water throughout the year.

"Transfer station or facility" means either a facility at which waste is transferred from one waste vehicle to another waste vehicle for transportation to a waste management facility or a facility where source separated non-putrescible recyclable materials are dropped off for collection before transportation to a waste management facility.]*

"Utility distribution lines" means lines, conduits or pipes located in a street, road, alley or easement through which natural gas, electricity, telephone, cable television, water, sewage or storm water discharge is distributed to or from service lines extending from the main line to the distribution system of the building or premises served. Utility distribution lines do not include electric transmission lines.

"Vegetative waste" means leaves, grass clippings, twigs, shrubbery and residue from the raising of plants, such as stalks, hulls and leaves. It includes vegetative processing wastes which do not contain additives; whole trees, branches, tree trunks and stumps processed through a wood chipper.

"Waste" means any hazardous waste, regulated medical waste, garbage, refuse, septage, sludge, discarded materials, and other by-products and substances which become unsuitable for their original purpose, resulting from industrial, commercial and agricultural operations and from domestic and community activities. They shall include solid and liquid waste materials. For purposes of this definition, liquids which are released from a sewage treatment plant or on-site septic waste water treatment system and solid animal and vegetable wastes collected by swine producers licensed by the New Jersey Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms shall not be considered waste.

ADOPTIONS

"Waste derived material" means a waste which has been separated, collected or processed such that it is converted into an economically valuable raw material or product which is not hazardous.

"Waste management facility" means any property, site, system, equipment or structure which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, reclamation, recovery, reuse or disposal of waste. It includes, but is not necessarily limited to, landfills, composting facilities, recycling facilities and centers, incinerators, materials recovery facilities, reclamation facilities, resource recovery facilities, waste reuse facilities and transfer facilities.]*

"Waste water collection facility" means any part of a system used to carry waste water and includes laterals, mains, trunks, interceptors and other similar facilities.

...

7:50-3.1 Purpose

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

(d) A local authority that incorporates all of the elements of this Plan in its local plan and ordinances will be assured of certification. In contrast, municipal plans and ordinances that deviate from the essential nature of this Plan are unlikely to be certified. However, it is a policy of this Plan to allow municipalities the greatest degree of flexibility and discretion in the preparation of local plans and ordinances so long as the plans and ordinances do not conflict with the ultimate objectives and minimum requirements of this Plan. There are some elements of this Plan which must be strictly followed. For example, the maximum density limitations in the designated forest and rural development areas are critical to the overall objectives of the Plan for the distribution and intensity of land uses, as is the requirement that lands in designated growth areas be eligible for density bonuses in the form of transferred Pinelands Development Credits. Conversely, the distribution of densities and many of the uses authorized in the various areas are left to local discretion. This subchapter permits the Commission to assess local decisions on an individualized basis and will preserve local discretion to the maximum extent practical, provided that local preferences are in fundamental harmony with the overall objectives of this Plan.

7:50-3.15 Certification of county master plans and ordinances

Upon receipt of the report of the Executive Director, the Commission shall review the findings, conclusions and recommendations of the Executive Director and shall, within 60 days following the receipt of the plan and ordinances, issue an order certifying, certifying with conditions or disapproving the county master plan and ordinances. If the county master plan or ordinances are conditionally certified or disapproved, the Commission shall specify the changes necessary in order to secure Commission certification.

7:50-3.17 Effect of failure of county to obtain Commission approval of master plan and ordinances

No person shall initiate any development which requires county approval or receive any county approval for development of land in the Preservation Area or, subsequent to one year following the adoption of this Plan, of any land in the Pinelands Area located within any county whose master plan or ordinances have not been certified by the Commission pursuant to N.J.A.C. 7:50-3.15 without first obtaining approval by the Commission pursuant to N.J.A.C. 7:50-4, Part II. If the Commission conditionally certifies or disapproves an amendment to a county master plan or ordinance pursuant to N.J.A.C. 7:50-3.15 and the county does not comply with the requirements of N.J.A.C. 7:50-3.16, the amendment shall be deemed to be disapproved. The county's previously certified master plan and ordinances shall remain in effect unless the amendment constituted the required response to an order issued pursuant to Part VI of this subchapter or to an amendment adopted by the Commission pursuant to N.J.A.C. 7:50-7. In that case, the county's master plan and ordinances shall be deemed to be uncertified.

7:50-3.35 Certification of municipal master plans and land use ordinances

Upon receipt of the report of the Executive Director, the Commission shall review the findings, conclusions and recommendation

ENVIRONMENTAL PROTECTION

of the Executive Director and shall, within 120 days following receipt of the plan and land use ordinances, issue an order certifying, certifying with conditions or disapproving the municipal master plan and land use ordinances. If the municipal master plan and land use ordinances are certified with conditions or disapproved, the Commission shall specify the changes necessary in order to secure Commission certification of the municipal master plan and land use ordinance.

7:50-3.37 Effect of municipality's failure to obtain Commission certification of master plan and land use ordinances

In the Preservation Area, and after one year from the effective date of this Plan, in the Pinelands Area, no person shall carry out any development in an uncertified municipality unless such development has been approved by the Commission pursuant to N.J.A.C. 7:50-4, Part II. Such approval shall supersede any local decision if a municipality has not received certification of its master plan and land use ordinances. If the Commission conditionally certifies or disapproves an amendment to a municipal master plan or land use ordinance pursuant to N.J.A.C. 7:50-3.35 and the municipality does not comply with the requirements of N.J.A.C. 7:50-3.36, the amendment shall be deemed to be disapproved. The municipality's previously certified master plan and land use ordinances shall remain in effect unless the amendment constituted the required response to an order issued pursuant to Part VI of this subchapter or to an amendment adopted by the Commission pursuant to N.J.A.C. 7:50-7. In that case, the municipality's master plan and land use ordinances shall be deemed to be uncertified and the provisions of N.J.A.C. 7:50-4, Part II shall apply to all development requiring municipal approval.

7:50-3.39 Standards for certification of municipal master plans and land use ordinances

(a) Municipal master plans and land use ordinances, and any parts thereof, shall be certified only if:

1. (No change.)

2. They include provisions which:

i.-ii. (No change.)

iii. Implement the overall development intensity standards contained in this Plan through minimum lot specifications or other appropriate means;

iv. Are adequate to ensure that all development of land in the Pinelands Area is in conformance with the development standards established by N.J.A.C. 7:50-5 and 6; and

v. Encourage coordinated development along roadways by concentrating commercial development at transportation nodes, providing shared access points, encouraging comprehensive commercial planning and design and use of other appropriate techniques.

3. They provide that no application for development within the Pinelands Area, except for those types of development enumerated in N.J.A.C. 7:50-4.1, shall be determined to be complete by any municipal department, body or agency unless it is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-4.34 and contains at least the information required by the Commission pursuant to N.J.A.C. 7:50-4.2(b). Certain types of applications for development may be exempted from the certificate of filing requirement if a municipality assigns review responsibility to a local review officer pursuant to N.J.A.C. 7:50-4.34(b) and the Commission finds that the municipal review system is adequate to ensure that the local review officer's responsibilities will be fulfilled;

4. They provide that municipal review and approval or denial are required for all development in the Pinelands *Area* except where pre-empted by State or Federal laws or regulations;

Recodify existing 4.-11. as 5.-12. (No change in text.)

(b) The standards for certification set forth in (a)1, 2, 6, 7 and 9 through 12 above may also be used as guidelines for those areas of a municipality located outside the Pinelands Area but within the Pinelands National Reserve when said municipality elects to revise its master plan and land use ordinances applicable to such an area for purposes of conformance with the standards of this Plan.

7:50-4.1 Applicability

(a) For the purposes of this subchapter only, the following shall not be considered development except for development of any historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154:

- 1.-4. (No change.)
5. The repair of existing utility distribution lines;
6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits;
7. The clearing of less than 1,500 square feet of land;
8. The construction of any addition or accessory structure for any non-residential use or any multi-family residential structure provided said addition or structure will be located on or below an existing impermeable surface and the existing use is served by public sewers and said addition or structure will cover an area of no more than 1,000 square feet;
9. The demolition of any structure less than 50 years old;
10. The repair or replacement of any existing on-site waste water disposal system;
11. The repaving of existing paved roads, provided no increase in the paved width of said roads will occur;
12. The clearing of land solely for agricultural purposes;
13. Fences, provided no more than 1,500 square feet of land is to be cleared; or
14. Above-ground telephone equipment cabinets.

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

7:50-4.2 Pre-application conference; application requirements

- (a) (No change.)
- (b) Application requirements.
 - 1.-4. (No change.)
 5. Application for approval of major development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for approval of major development, except for forestry and resource extraction operations, shall include at least the following information:
 - i. (No change.)
 - ii. A brief written statement generally describing the proposed development; the number of total units; and the floor area of all units to be included in the proposed development;
 - iii.-xv. (No change.)
 6. Application for forestry: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for a forestry operation shall include at least the following information:
 - i.-v. (No change.)
 - vi. Demonstration that the cutting boundaries and property boundaries have been adequately marked and that all adjacent property owners have been notified in writing of the proposed forestry operation; ***and***
 - vii. Demonstration that for any proposed selective cut, that all trees to be harvested have been marked unless the State Bureau of Forest Management is the applicant*; and]**.*
 - *[viii. Demonstration that consent has been obtained from those property owners whose lands are to be used for access purposes, unless a written professional opinion from an attorney licensed to practice in the State of New Jersey is submitted which demonstrates that the applicant has established a legal right to use the proposed access route.]*
 7. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:
 - i.-ix. (No change.)
 - x. ***A*** financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.68 and 7:50-6.69 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the cost of restoration of the area to be excavated during the ***[two year]*** duration of any approval which is granted. The financial surety, which shall name the Commission and the

certified municipality, if applicable, as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified.

8.-10. (No change.)

(c) Determination of whether application is complete.

1. Determination by Executive Director:

i.-ii. (No change.)

iii. Any applicant who is aggrieved by any determination by the Executive Director pursuant to (c)1ii above may, within 15 days of that determination, appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91.

2.-3. (No change.)

7:50-4.3 Commission hearing procedures

(a) (No change.)

(b) Notice of public hearing.

1. (No change.)

2. Persons entitled to notice:

i. Notice of public hearings shall be given by the Commission:

(1)-(5) (No change.)

(6) If the public hearing involves an amendment proposed by the Commission pursuant to N.J.A.C. 7:50-7, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and to the freeholder director and county executive of each Pinelands county. In addition, a copy of the notice shall be published in all the official newspapers of the Pinelands Commission.

(7) If the public hearing involves an inter-governmental agreement pursuant to N.J.A.C. 7:50-4.52, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive of each Pinelands county that may be directly affected by the memorandum of agreement under consideration. In addition, a copy of the notice shall be published in those official newspapers of the Pinelands Commission having general circulation in the area that may be directly affected by the memorandum of agreement.

(8) If the public hearing involves a resource extraction issue arising pursuant to N.J.A.C. 7:50-6.64(a), by sending a copy of the notice, by mail, to the local ***[approval]*** ***permitting*** agency and the resource extraction operator.

ii. Notice of public hearings shall be given by the applicant:

(1) (No change.)

(2) If the public hearing relates to an application for development approval or an application for a Waiver of Strict Compliance submitted pursuant to N.J.A.C. 7:50-4.64(a)1, by sending a copy of the notice, by mail, to:

(A) The secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction over the ***[property]*** ***parcel*** on which development has been proposed;

(B) Any landowners within 200 feet of any border of the ***[property]*** ***parcel*** proposed for development, except as otherwise provided in N.J.A.C. 7:50-4.66(c).

(3)-(4) (No change.)

3.-4. (No change.)

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

7:50-4.14 Application for development approval in uncertified municipalities

(a) (No change.)

(b) In addition to the requirements of N.J.A.C. 7:50-4.2(b), an applicant for major development, as defined in N.J.A.C. 7:50-2.11 of this Plan, which will be located on a specific parcel, shall provide notice of the application for development as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject ***[property]*** ***parcel*** as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); and

ADOPTIONS

2. (No change.)

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

(g) The Executive Director shall not issue a Certificate of Completeness for any application for which the above notice is required until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that the public comments have been received prior to issuing a Certificate of Completeness.

7:50-4.15 Action by Executive Director on application

Within 90 days following the receipt of a complete application for development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a Certificate of Completeness stating whether the application should be approved, approved with conditions or disapproved. The application may be approved or approved with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.16. The Executive Director may propose in said Certificate of Completeness any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall provide a copy of the Certificate of Completeness to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

7:50-4.16 Standards for uncertified areas

(a) No local approval may be granted by an uncertified municipality and no approval may be granted pursuant to this Part unless the proposed development:

1. Satisfies all of the criteria and standards established in N.J.A.C. 7:50-5 and 6 of this Plan, provided, however, that the optional land uses contained in N.J.A.C. 7:50-5 shall be permitted, that N.J.A.C. 7:50-5.28(a) shall not apply to exclusive non-residential uses, and that in N.J.A.C. 7:50-6 only the optional elements of N.J.A.C. 7:50-6.144 shall be mandatory for any jurisdiction which is uncertified*[-]*;*

2. (No change.)

7:50-4.17 Certificate of Completeness required for determination of completeness and action

No local permitting agency shall determine that any application for development is complete or take any action *[of]* *on* any application for development unless the application is accompanied by a Certificate of Completeness issued pursuant to N.J.A.C. 7:50-4.15.

7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a) (No change.)

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, in writing, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1.-3. (No change.)

4. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;

5. The date on which the application, or change thereto, was filed and any application or other identifying number assigned to such application by the local permitting agency;

6.-8. (No change.)

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by the local agency in writing not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the

ENVIRONMENTAL PROTECTION

Executive Director shall from time to time specify. Each notice shall contain at least the following information:

1. (No change.)

2. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;

3.-6. (No change.)

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal ordinance shall be given to the Commission by the local agency, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;

4.-7. (No change.)

(e) Notice of final determination: Notice of any final determination approving or denying any application for development shall be given to the Commission by the local agency, by certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued; and

4. (No change.)

(f) Nothing in this section shall provide for a tolling of time pursuant to N.J.S.A. 40:55D-21 due to the failure of the applicant or local permitting agency to meet the notice requirements of (a) through (e) above. No person shall carry out any development in the Pinelands Area prior to satisfying the notice requirements of (a) through (e) above.

7:50-4.19 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of preliminary local approval given pursuant to N.J.A.C. 7:50-4.18(d), the Executive Director shall review the application for development and all other information in the file, the Certificate of Completeness and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this section. The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines that there is insufficient information to evaluate whether the proposed development conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16. If the Executive Director determines that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the preliminary approval will not be reviewed by the Commission.

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

7:50-4.20 Decision on review

(a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Executive Director shall, within 60 days after the time to request an appeal has expired, review the application, all other information in the file, the Certificate of Completeness and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local *[approving]* *permitting* agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy

of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, upon receipt of the initial decision of the Administrative Law Judge, review the initial decision, the application, and the record of the hearing only, and approve, approve with conditions, or disapprove the preliminary approval. If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file, the Certificate of Completeness and the local approval only and approve, approve with conditions or disapprove the preliminary approval.

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

7:50-4.21 Notice of changes made subsequent to local preliminary approval

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.18(d), including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.20, to the Executive Director, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;

4.-5. (No change.)

(b) (No change.)

7:50-4.22 Commission review following final local approval

(a) Decision to review local approval: Upon receipt of any notice of final local approval given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Completeness and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this section. The Executive Director shall also initiate the review procedures set forth in this section if it is determined there is insufficient information to evaluate whether the proposed development conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16. If the Executive Director determines that sufficient information is available and that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the final approval will not be reviewed by the Commission.

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

7:50-4.25 Commission review following local denial

(a) Decision to review local denial: Upon receipt of a notice of a local denial given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Completeness and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development may conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 and that the local denial may be contrary to the standards of the Plan, he shall initiate the review procedures set forth in this section. If the Executive Director determines that the proposed development does not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 or that the local denial is based on matters not regulated by the Plan and is not contrary to any such standards, the local denial will not be reviewed by the Commission.

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

7:50-4.26 Decision on review

(a) If no hearing is requested pursuant to N.J.A.C. 7:50 4.25(b), the Executive Director shall, within 60 days after the time to request an appeal has expired, review the application and all other information in the file, the Certificate of Completeness and the local denial and determine whether the denial is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the application, approve the application with conditions, disapprove the application or allow the local denial to stand. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local *[approving]* *permitting* agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall, upon receipt of the initial decision of the Administrative Law Judge, review the initial decision, the application, and the record of the hearing only, and approve, approve with conditions, or disapprove the proposed development or let the local denial stand. If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall after receipt of the Executive Director's recommendation, review said recommendation, the application, the Certificate of Completeness, other material in the file and the local denial only, and approve, approve with conditions or disapprove the proposed development or allow the local denial to stand.

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

7:50-4.27 Effect of Pinelands Development Approval

A Pinelands Development Approval issued pursuant to the provisions of this Part in effect prior to July 15, 1985 shall have the same effect as a Certificate of Completeness issued pursuant to N.J.A.C. 7:50-4.15 unless the applicant received a valid local approval prior to July 15, 1985. If such a valid local approval was granted, the Pinelands Development Approval shall continue to have the same force and effect as if this Part had not been amended effective July 15, 1985.

7:50-4.31 Purpose

(a) (No change.)

(b) The procedures established in this Part provide for Commission review of all permits issued by local permitting agencies in certified municipalities except for activities specifically exempted by the Pinelands Protection Act or this Plan. Except where municipal review is pre-empted by State or Federal laws or regulations, municipal review and approval or denial shall occur for all development in the Pinelands *Area*. If development is proposed, but a permit from a local permitting agency is pre-empted by State or Federal laws or regulations, the provisions of Part VII of this subchapter shall apply. The standards of this Part are minimum standards to be met by all development in the Pinelands *Area* and are designed to assure that all such development will be adequately planned, designed and served to protect the unique environment of the Pinelands Area.

(c) (No change.)

7:50-4.32 Applicability

The provisions of this Part shall be applicable to development of land located within a certified municipality, except for those activities specifically excepted in N.J.A.C. 7:50-4.1. No person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with a certified plan and land use ordinances without first complying with all applicable procedures set forth in this Part and the provisions of said certified ordinances. Any decision made pursuant to this Part shall supersede any local decision. No local decision shall impose any requirements which in any way contravene any standard contained in this Plan or the applicable certified land use ordinance.

7:50-4.34 Certificate of Filing; required for determination of completeness

(a) Except as provided in (b) below, upon determining that an application is complete, the Executive Director shall issue a Certificate of Filing. No local permitting agency shall determine that any application for development is complete unless it is accompanied by a Certificate of Filing issued pursuant to this section or a determination of completeness issued by the designated municipal local review officer as provided in (b) below. Such certificate may identify any inconsistencies of the proposed development with the standards of this Plan or the local certified land use ordinances and may indicate that if such inconsistencies are not resolved by a local approval, that local approval will be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40. Any such information contained in the Certificate of Filing is for the guidance of the applicant and the local permitting agency only. Such information in no way shall be considered a final determination by either the Executive Director or the Pinelands Commission.

(b) A certified municipality may provide in its certified land use ordinances that a completed application for specified minor development may be filed initially with the designated local review officer of the municipality. The local review officer shall be responsible for determining whether said application contains all the information required by the municipality's certified ordinances. Upon determining the application to be complete, the local review officer shall submit a duplicate copy of the application to the Executive Director along with a statement that the application has been determined to be complete. Within 15 days of receiving a duplicate copy of the application, the Executive Director shall issue a Notice of Filing stating that the Commission has received the duplicate application. The Executive Director may state in the Notice of Filing any potential deficiencies in the completeness of the application. The local review officer shall also be responsible for determining whether the application for development complies with the applicable provisions of N.J.A.C. 7:50-5 and 6 as incorporated in the certified municipal master plan and ordinances. A copy of said determination shall be submitted to the applicant and the Executive Director. The determination by the local review officer shall be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40. If the Executive Director determines that the designated municipal local review officer may be willfully or negligently failing to implement the responsibilities specified above or if no local review officer has been designated by the municipality, then the procedures specified in Part VI of N.J.A.C. 7:50-3 shall be implemented by the Executive Director and the procedures specified in Part II of this subchapter shall apply for all applications for development.

7:50-4.35 Report requirements of local permitting agency with respect to applications for development

(a) (No change.)

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, by mail, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1.-3. (No change.)

4. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

5. The date on which the application, or change thereto, was filed and any application or other identifying number assigned to such application by the local permitting agency;

6.-8. (No change.)

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by mail or delivery of the same to the principal office of the Commission not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the Executive Director

shall from time to time specify. Each notice shall contain at least the following information:

1. (No change.)

2. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

3.-6. (No change.)

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal ordinance shall be given to the Commission, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

4.-7. (No change.)

(e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission by certified mail within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued; and

4. (No change.)

(f) Nothing in this section shall provide for a tolling of time pursuant to N.J.S.A. 40:55D-21 due to the failure of the applicant or local permitting agency to meet the notice requirements of (a) through (e) above. No person shall carry out any development in the Pinelands Area prior to satisfying the notice requirements of (a) through (e) above.

7:50-4.38 Decision on review

(a) Determination by Executive Director: If no hearing is requested by the applicant, the local permitting agency or any interested person pursuant to N.J.A.C. 7:50-4.37(b), the Executive Director shall, within 60 days after the time to request a hearing has expired, review the application, all other information in the file including any staff reports and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan and the provisions of the relevant certified local ordinance. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local *[approving]* *permitting* agency, interested persons, including all persons who have individually submitted information concerning the application, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

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

7:50-4.39 Notice of changes made subsequent to local preliminary approval

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.35(d), including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.38, to the Executive Director, by mail, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

4.-5. (No change.)

(b) (No change.)

7:50-4.40 Commission review following final local approval

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

(c) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to an approval of an application for development which has been granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice provides that the Commission intends to review such approval pursuant to N.J.A.C. 7:50-4.41 and 4.42 of this Part, no development shall be carried out unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.42(c) have been fulfilled.

(d) (No change.)

7:50-4.41 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.35(c), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Applications from applicants who do not provide notice for any hearing and do not make a timely request for adjournment shall be recommended for denial. For applicants who do not appear at more than one scheduled public hearing, the Executive Director may determine that no further adjournment of the public hearing will be provided. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local *[approval]* ***permitting*** agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

7:50-4.42 Decision on review

(a) Determination by Commission: If a hearing is held pursuant to N.J.A.C. 7:50-4.3, the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-4.40(b) unless extended pursuant to N.J.A.C. 7:50-4.4, review the record of the hearing and the Executive Director's report only and make a determination as to whether the proposed development should be approved, approved with conditions or disapproved. If a hearing is held before an Administrative Law Judge pursuant to N.J.A.C. 7:50-4.91, the Commission shall, within 45 days of receipt of the initial decision of the Administrative Law Judge, review the initial decision, the record of the hearing and the application only and approve, approve with conditions or disapprove the proposed development. If no hearing is held because of the failure of the applicant to appear, the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-4.40(b) unless extended pursuant to N.J.A.C. 7:50-4.4, review the Executive Director's recommendation, the application, other material in the file including any staff reports and the local approval only and approve, approve with conditions or disapprove the proposed development. If no hearing is held because of the failure of the applicant to provide notice, the Commission shall deny the proposed development without prejudice.

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

7:50-4.52 General requirements

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

(c) Intergovernmental agreements:

1. The Commission may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities without securing individual development approval from the Commission under this Part, provided the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6.

2. The Commission may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through a strict application of the standards of this Plan. *[Any intergovernmental memorandum of agreement relating to waste management shall be consistent with the standards and provisions of N.J.A.C. 7:50-6.79.]*

3. Prior to the execution of any intergovernmental memorandum of agreement by the Commission, the Executive Director shall set the date, time and place of a public hearing for consideration of the agreement. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3.

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

7:50-4.53 Pre-application conference and submission requirements

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

(c) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11, which will be located on a specific parcel, shall provide notice of the application for public development as follows:

1. Notice will be given to owners of all real property within 200 feet of the subject *[property]* ***parcel*** as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in *[N.J.S.A. 40:553-12(c)]* ***N.J.S.A. 40:55D-12(c)***. The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); and

2. (No change.)

(d) (No change.)

(e) The notice in (c) and (d) above shall state:

1.-5. (No change.)

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

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

7:50-4.55 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may only be presented to the Pinelands Commission by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

7:50-4.56 Action by Commission

At the next regular Commission meeting after the time for appeal under N.J.A.C. 7:50-4.91 has expired and no interested person has requested a hearing, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Pinelands Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4. If the Executive

ADOPTIONS

Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for appeal in accordance with the provisions of N.J.A.C. 7:50-4.91.

7:50-4.57 Standards for public development

(a) The Commission shall approve or conditionally approve an application filed pursuant to this Part only if the development as proposed, or with any conditions which are imposed:

1. (No change.)

2. If the proposed development includes any public roads, the applicant demonstrates that: alternative locations or transportation modes including mass transit and non-motorized methods cannot be employed to satisfy transportation needs; and public fishing, crabbing or canoe access facilities in association with bridge crossings will be provided as appropriate.

7:50-4.62 General standards

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

(c) Notwithstanding (a) and (b) above, the requested relief may not be granted if it will involve trespass or create a public or private nuisance by being materially detrimental or injurious to other property or improvements in the area in which the subject *[property]* ***parcel*** is located, increase the danger of fire or endanger public safety.

(d) When approved, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

1. Any waiver which grants relief from the standards of this Plan to permit development of the *[property]* ***parcel*** in question shall require:

i.-ii. (No change.)

iii. Except for State projects located on and directly related to the management and use of State conservation lands, the acquisition and redemption of 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6 and the acquisition and redemption of an additional 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the wetlands protection standards contained in N.J.A.C. 7:50-6, Part I; and

iv. (No change.)

2. Any parcel for which an extraordinary hardship otherwise exists pursuant to N.J.A.C. 7:50-4.63(b) but which is precluded from on-site development pursuant to N.J.A.C. 7:50-4.63(b)4 and 4.65(b) shall receive an additional use right of an allocation of Pinelands Development Credits based on the fair market value of the parcel. The allocation shall be based on the market value of the Pinelands Development Credits at the time the application for a waiver is completed, provided that the applicant shall be entitled to a minimum allocation of 0.25 Pinelands Development Credits. Unless severed from the parcel pursuant to N.J.A.C. 7:50-5.47, any conveyance, sale or transfer of the parcel shall include the Pinelands Development Credits allocated herein. The applicant shall be entitled to demonstrate that the allocation of Pinelands Development Credits based on fair market value in conjunction with the permitted uses on the parcel does not give the parcel a beneficial use. If the applicant believes that even considering this allocation of Credits the parcel does not have a beneficial use, the applicant is entitled to appeal the allocation pursuant to N.J.A.C. 7:50-4.68.

7:50-4.63 Standards for establishing extraordinary hardship

(a) An extraordinary hardship is deemed to exist when the applicant demonstrates based on specific facts and the Pinelands Commission verifies that all of the following conditions exist:

1. The only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for one of the following:

i.-ix. (No change.)

x. A single family dwelling accessory to an active agricultural operation in a Special Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.25(b)1;

xi. An agricultural commercial establishment with a gross floor area no greater than 500 square feet which is located on a *[property]* ***parcel*** which otherwise qualifies for a single family

ENVIRONMENTAL PROTECTION

dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1; or

xii. Agricultural employee housing which is located on a *[property]* ***parcel*** which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1;

2. (No change.)

3. Except as expressly provided in N.J.A.C. 7:50-5.1(c), the proposed use will be either the sole principal use or an accessory use to the sole principal use as permitted in (a)1ix, (a)1x, (a)1xi or (a)1xii above on the entire contiguous parcel, as established in (a)2 above;

4.-5. (No change.)

(b) An extraordinary hardship as distinguished from a mere inconvenience also exists when the applicant demonstrates and the Pinelands Commission verifies that all of the following conditions exist:

1.-2. (No change.)

3. The parcel, including all contiguous lands which are available pursuant to (b)1 and 2 above, may not have a beneficial use considering the following factors:

i.-iv. (No change.)

v. Any inability to have a beneficial use relates to or arises out of the characteristics of the subject parcel and results from unique circumstances peculiar to the subject *[property]* ***parcel*** which:

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

4. (No change.)

7:50-4.64 Standards for establishing compelling public need

(a) An applicant shall be deemed to have established compelling public need if the applicant demonstrates based on specific facts and the Pinelands Commission verifies that one of the following conditions exist:

1. (No change.)

2. The proposed development constitutes an adaptive reuse of a historic resource designated pursuant to N.J.A.C. 7:50-6.154, and:

i.-ii. (No change.)

(b) (No change.)

7:50-4.65 Substantial impairment and consistency

(a) (No change.)

(b) Unless alleviating measures are taken pursuant to (c) below for waivers based on compelling public need, the following circumstances do not comply with (a) above:

1.-3. (No change.)

4. Any non-residential use to be served by an on-site sewage disposal system where the nitrate-nitrogen level exceeds five parts per million at the *[property]* ***parcel*** line;

5.-10. (No change.)

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

7:50-4.66 Application

(a) (No change.)

(b) In addition to the requirements in (a) above, an applicant requesting a Waiver of Strict Compliance which involves a specific parcel shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given to owners of real property within 200 feet of the subject *[property]* ***parcel*** as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c).

2. (No change.)

(c) (No change.)

(d) The notice in (b) and (c) above shall state:

1.-5. (No change.)

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

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

(i) For an application submitted pursuant to N.J.A.C. 7:50-4.64(a)1, the Executive Director shall set the date, time and place for a public hearing for consideration of the application. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3. The applicant shall give notice of the hearing in accordance with N.J.A.C. 7:50-4.3(b)2ii and the notice required pursuant to (b) or (c) above may be incorporated therein.

7:50-4.68 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91. If the appeal is based on an allegation that the parcel does not have a beneficial use even considering the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-4.62(c)2, the applicant must include specific documentation concerning the economic value of each of the permitted uses of the parcel once the Pinelands Development Credits are transferred and documentation of the value necessary to give the *[property]* *parcel* a beneficial use as part of the appeal process. If the applicant demonstrates that the allocation of the Pinelands Development Credits based on fair market value along with the other permitted uses of the parcel does not result in the parcel having a beneficial use, the allocation of Pinelands Development Credits shall be increased to the number necessary to provide the parcel with a beneficial use.

7:50-4.69 Action by Commission

If at the next regular Commission meeting after the time for appeal under N.J.A.C. 7:50-4.91 has expired and no request for an appeal has been received, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for appeal in accordance with the provisions of N.J.A.C. 7:50-4.91.

7:50-4.70 Effect of grant of waiver, expiration; recordation; effective date

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

(c) Any waiver approved pursuant to N.J.A.C. 7:50-4.63 which authorizes development of the parcel shall expire five years after the Waiver is approved unless all necessary construction permits have been issued within said five year period, the authorized work was commenced within 12 months after issuance of the permits and no such permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said five year period.

(d) (No change.)

(e) The N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50-4.2(b)8 and 4.61 through this section, as amended or adopted effective March 2, 1992, shall apply to all applications except for those applications on which an Executive Director's determination was issued prior to March 2, 1992. For those applications, the above-referenced provisions in effect prior to March 2, 1992 shall govern, provided that:

1.-2. (No change.)

3. The Pinelands Commission acts on the application at its next regularly scheduled meeting after the time to appeal under N.J.A.C. 7:50-4.91 has expired and no request for appeal has been received; or

4. A timely request for an appeal is received under N.J.A.C. 7:50-4.91 or the Executive Director's determination is referred to

the Office of Administrative Law by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.69 (formerly N.J.A.C. 7:50-4.65).

7:50-4.73 Request for interpretation

(a) (No change.)

(b) An applicant for a letter of clarification or interpretation involving a specific parcel, except where the letter of interpretation involves solely the question of the number of Pinelands Development Credits which are attributed to a specific parcel, shall provide notice of the application as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject *[property]* *parcel* as provided for in *[N.J.S.A. 40:553-12(b)]* *N.J.S.A. 40:55D-12(b)*. The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); and

2. (No change.)

(c) An applicant for a letter of clarification or interpretation not involving a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the *[property]* *parcel* that is the subject of the proposed interpretation or clarification is located or in all the official newspapers of the Pinelands Commission if the requested clarification or interpretation does not apply to a specific development proposal; and

2. (No change.)

(d) The notice in (b) and (c) above shall state:

1.-5. (No change.)

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(e)-(g) (No change.)

7:50-4.76 Effect of and limitation on favorable interpretation

(a) No letter of clarification or interpretation shall authorize the establishment of a use or the carrying out of any development, but shall merely authorize the preparation, filing and processing of applications for any permits and approvals which may be required by the codes and ordinances of any local permitting agency with jurisdiction over the subject *[property]* *parcel* or this Plan.

(b) No letter of clarification or interpretation shall be valid for a period longer than two years from the date of issuance, unless a final approval pursuant to this Plan has been granted within that period, and development is thereafter diligently pursued to completion, or the use is legally commenced within that period.

7:50-4.79 Appeal

Any interested person who is aggrieved by any clarification or interpretation given by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's clarification or interpretation to the Commission as provided in N.J.A.C. 7:50-4.91.

7:50-4.81 General requirements; applicant to submit application to Executive Director

(a) No department, board, bureau, official or other agency of the State of New Jersey shall issue any approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land in the Pinelands *Area* unless such approval or grant is consistent with the minimum standards of this Plan.

(b) Prior to filing any application for development in the Pinelands Area with any department, board, bureau, official or other agency of the State of New Jersey, the applicant shall file with the Commission a duplicate copy of the application. The Executive Director may within 30 days require the applicant to submit any additional information which he determines is necessary in order to evaluate the interest of the Commission in such application. No

ADOPTIONS

State department, board, bureau, official or other agency shall deem an application for development complete unless it is accompanied by a Certificate of Filing, a Notice of Filing, a Certificate of Completeness or a resolution of the Pinelands Commission approving, pursuant to the provisions of Part IV of this subchapter, an application for public development. Notwithstanding these requirements, the Pinelands Commission may enter into an intergovernmental memorandum of agreement with any State department, board, bureau, official or other agency for the purpose of eliminating or altering any of the procedural requirements set forth in this subsection concerning the review by a State agency of third party development.

7:50-4.83 Notice from State agencies with respect to applications for development

(a) (No change.)

(b) Notice of application: Notice of submission of any application for development shall be given by mail within seven days following such filing and shall contain the following information:

1.-3. (No change.)

4. The Pinelands Commission application number;

5. The date on which the application was filed and any application or other identifying number assigned to such application by the State agency;

6.-7. (No change.)

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which the filing or disposition of any application for development in the Pinelands Area is to be considered shall be given by mail no less than five days prior to such meeting or hearing and shall contain the following information:

1. (No change.)

2. The Pinelands Commission application number;

3.-6. (No change.)

(d) Notice of grant of final determination: Notice of any final determination by any department, board, bureau, official or other agency of the State with respect to any application for development in the Pinelands Area shall be given by mail within five days of the grant or denial of such approval and shall contain the following information:

1.-2. (No change.)

3. The Pinelands Commission application number;

4.-5. (No change.)

7:50-4.91 Appeal

(a) Notice: Any person who is granted, by any provision of this Plan, a right to appeal any determination made by the Executive Director to the Commission shall, within 15 days after the decision is rendered, perfect such right by giving notice by mail of his intent to appeal to the Commission. Such notice shall include:

1. The name and address of the person requesting the appeal;

2. The number of the application which is the subject of the appeal;

3. The date on which the determination to be appealed was made;

4. A statement detailing the basis for the appeal; and

5. (No change.)

(b) Any person who is granted, by any provision of this Plan, a right to request a hearing conducted by the Office of Administrative Law concerning a local approval which the Executive Director has determined should be reviewed by the Pinelands Commission shall, within 15 days after the Executive Director's determination, perfect such right by giving notice by mail of his intent to request a hearing to the Commission. Such notice shall include the information specified in (a)1 through 5 above.

(c) Hearing: Within 15 days following receipt of a notice filed pursuant to (a) or (b) above, or of any demand for a hearing at which an Administrative Law Judge is to preside which is provided for in this Plan, the Executive Director shall initiate the procedures for assignment of an Administrative Law Judge to preside at the hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the procedures established by the Office of Administrative Law. The time, date and location of such hearing shall be designated by the Office of Administrative Law.

ENVIRONMENTAL PROTECTION

(d) Burden: The person requesting the appeal or hearing shall have the burden of going forward and the burden of proof on all issues.

(e) Commission review of record: Within 45 days following receipt of the initial decision of the Administrative Law Judge, unless an extension has been approved pursuant to the Administrative Procedures Act, N.J.S.A. 52:15B-1 et seq. and the procedures adopted by the Office of Administrative Law, the Commission shall consider the hearing record and the initial decision only and issue a final order with respect to the matter in controversy.

7:50-4.92 Judicial review

Judicial review may be had of any final determination or order of the Commission as provided by Section 19 of the Pinelands Protection Act or any other provision of State law. All appeals of determinations of the Executive Director shall be made to the Office of Administrative Law pursuant to N.J.A.C. 7:50-4.91. If an appeal of a determination of the Executive Director is sought by any person pursuant to N.J.A.C. 7:50-4.91, all limitation periods provided by State law for seeking judicial review of any decision of the Commission shall be deemed to commence upon entry of the Commission's order on the appeal or hearing pursuant to N.J.A.C. 7:50-4.91(d).

SUBCHAPTER 5. MINIMUM STANDARDS FOR LAND USES AND INTENSITIES

INTRODUCTION

The Pinelands Protection Act provides in part that the Comprehensive Management Plan is to "encourage appropriate patterns of compatible residential, commercial and industrial development in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the Pinelands environment from the individual and cumulative adverse impacts thereof" and to "discourage piecemeal and scattered development" while protecting the Pinelands environment. Subchapter 5 contains minimum standards for the development and use of land which the Pinelands Commission has determined are necessary to protect and maintain the essential character of the Pinelands environment and to accomplish the purposes of the Pinelands Protection Act and the Federal Act.

The provisions of this subchapter are intended to serve as minimum standards for the preparation and adoption of county and municipal master plans and land use ordinances and State agency plans. The provisions of this subchapter are also intended to serve as guidelines for the preparation of Federal installation plans. It is recognized that specific provisions of this subchapter, including the management area delineations, can be refined by local agencies provided that the objectives and goals the minimum standards represent will be achieved. In determining whether to certify a municipal or county master plan or land use ordinance under the provisions of N.J.A.C. 7:50-3 of this Plan, approve a State agency plan under the provisions of N.J.A.C. 7:50-4.52(e) of this Plan, or find a Federal installation master plan in substantial conformance under the provisions of N.J.A.C. 7:50-3, Part V, the Pinelands Commission will consider the extent to which the plan or land use ordinance ensures that all development of land will be in conformance with the minimum standards of this subchapter.

It is also recognized that a municipality, county, State, or Federal agency may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of this Plan. In such cases, all development must adhere to the more restrictive regulations.

7:50-5.1 Development in accordance with this plan

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

(c) Unless expressly permitted in a certified municipal land use ordinance, no more than one principal use shall be located on one lot, except for forestry, agriculture, horticulture, fish and wildlife management, and, on agricultural lands, recreation development.

(d) A municipality may include in its master plan and land use ordinance provisions which permit mobile homes or other similarly manufactured dwelling units as part of a government-sponsored

program which provides housing for the elderly. Such mobile homes or manufactured dwelling units shall be exempt from the density limitations of this Part, provided that:

1. They are associated with existing single family dwellings; and
2. They are intended only for temporary housing and occupancy for no longer than three years.

7:50-5.2 Expansion and changes of existing uses

(a) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the expansion or alteration of any ***[lawful]*** use existing on January 14, 1981 ***that is currently non-conforming*** or ***any use*** which was constructed based upon an approval granted pursuant to this Plan, other than intensive recreation facilities and those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;
2. The expansion or alteration of the use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6; and
3. The area of expansion does not exceed 50 percent of the floor area, the area of the use or the capacity of the use, whichever is applicable, on January 14, 1981 or which was approved pursuant to this Plan.

(b) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any ***[lawful]*** use existing on January 14, 1981 ***that is currently non-conforming*** or ***any use*** which was constructed based upon an approval granted pursuant to this Plan, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;
2. The new use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6 including N.J.A.C. 7:50-6.84(a)4, unless a new septic system permit will not be required as a result of the change in use, in which case the standards of N.J.A.C. 7:50-6.83(b) and (c) must be met; and
3. The area, capacity, and intensity of the new use is comparable to that of the existing use.

(c) (No change.)

7:50-5.3 Map status

(a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this plan as if they were set out in full in this Plan:

- 1.-23. (No change.)
24. Land Capability, as amended;
- 25.-26. (No change.)

7:50-5.4 Height limitations

(a) In all Pinelands Management Areas other than Regional Growth Areas and Pinelands Towns, no structure, including radio and television transmission and other communication facilities which are not accessory to an otherwise permitted use, shall exceed a height of 35 feet, except as provided in (b) below.

(b) The height limitation in (a) above shall not apply to any of the following structures, provided that such structures are compatible with uses in the immediate vicinity and conform to the objectives of N.J.A.C. 7:50-6, Part X: antennas which do not exceed a height of 200 feet and which are accessory to an otherwise permitted use, silos, barns and other agricultural structures, church spires, cupolas, domes, monuments, water towers, fire observation towers, electric transmission lines and supporting structures, windmills, smokestacks, derricks, conveyors, flag poles and masts, or aials, solar energy facilities, chimneys and similar structures required to be placed above the roof level and not intended for human occupancy.

7:50-5.5 Setback standards

(a) All buildings within the Preservation Area District, Rural Development Area, and Forest Area shall be set back from public, paved roads in accordance with N.J.A.C. 7:50-6.103 and 104.

(b) (No change.)

7:50-5.13 Goals and objectives of Pinelands Management Areas

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

(f) Pinelands Villages and Towns are existing spatially discrete settlements in the Pinelands. These traditional communities are appropriate for infill residential, commercial and industrial development that is compatible with their existing character.

1. Pinelands Area Villages are:

- i. Bamber Lake;
- ii. Beckerville;
- Recodify existing ii.-vii. as iii.-viii. (No change in text.)
- ix. Collings Lake;
- Recodify existing viii.-xlix. as x.-li. (No change in text.)
- 2.-4. (No change.)
- (g)-(h) (No change.)

7:50-5.16 Guidelines for delineation of boundaries of Pinelands Villages

(a) In the preparation of municipal master plans and land use ordinances, municipalities shall designate the boundaries of Pinelands Villages; provided that the designated village area shall maintain its existing character and does not contain more vacant land than built land, nor provide for an additional increment of development which is greater than the number of nonaccessory structures that currently exist in the village. For the purposes of this requirement, built land for residential structures shall be calculated as the existing lot size or 3.2 acres, whichever is less, and built land for non-residential structures shall be calculated as the lot size required by existing zoning at the time of adoption of this Plan. Municipalities should also consider the following guidelines in designating village boundaries to the greatest extent practicable:

1.-5. (No change.)

6. Villages should include areas of high septic suitability contiguous to developed lands.

7:50-5.18 Minimum residential allocation of density in wetlands

Each municipality shall allocate a minimum residential density to all wetlands that is at least one-fifth of the average gross residential density of uplands located in the same management area as the wetlands.

7:50-5.19 Cluster development

(a) Clustering of residential development on ***[properties]*** ***parcels*** located within the Regional Growth Areas and Rural Development Areas is encouraged, provided that the densities established in the certified municipal ordinance are not exceeded and that the development otherwise conforms to the standards of this Plan.

(b) Clustering of residential development on ***[properties]*** ***parcels*** located within more than one Pinelands management area may be permitted, provided that:

1. ***[the property]*** ***The parcel*** in question is contiguous^{*}[, the]^{**};

2. The portion of the ***[property]*** ***parcel*** to be developed is located within the management area with the highest assigned residential density^{*}[, the]^{**};

3. The amount of the development proposed does not exceed that which would be permitted separately in each management area as determined by application of the standards contained in this subchapter and in N.J.A.C. 7:50-6.84^{*}[, and the]^{**};

4. The minimum lot area requirements of the management area in which the portion of the ***[property]*** ***parcel*** to be developed is located are met^{*}[.]^{**}; and

5. If any portion of the parcel is located within the Regional Growth Area, opportunities for the use of Pinelands Development Credits established pursuant to N.J.A.C. 7:50-5.28(a)3 are not reduced as a result of the cluster development.

7:50-5.20 (Reserved)

7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the Preservation Area District

(a) The following uses shall be permitted in the Preservation Area District:

ADOPTIONS

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.
- 2.-7. (No change.)
- (b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in the Preservation Area District:
 1. (No change.)
 2. Expansion of intensive recreational uses, provided that:
 - i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
 - ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
 - iii. The use is environmentally and aesthetically compatible with the character of the Preservation Area District and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.
 3. (No change.)
 4. Public service infrastructure which is necessary to serve only the needs of the Preservation Area District uses. Centralized waste water treatment and collection facilities shall be permitted to service the Preservation Area District only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of the Preservation Area District may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.
 5. Continuation of existing resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6, Part VI.
 6. (No change.)
 7. Infill areas: Residential dwellings and commercial uses on lots existing as of January 14, 1981 of at least one acre in size within an area designated by a municipality in its ordinance in accordance with the following criteria:
 - i.-ii. (No change.)
 - iii. The area must contain vacant lots of at least one acre in size or smaller lots which could reasonably be assembled into one acre or greater lots; and
 - iv. Commercial uses shall be limited to those specific portions of the area which are predominantly occupied by existing commercial uses.
 8. (No change.)
 9. Home occupations*[, and]**.*
 - *[10. Waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII.]*
 - (c) No residential dwelling shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.32.
 - (d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)4 above, provided, however, that no such structure shall be located on a parcel of less than one acre.
- 7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas
 - (a) The following uses shall be permitted in a Forest Area:
 1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.
 - 2.-5. (No change.)
 - (b) In addition to ***the*** uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:
 1. (No change.)
 2. Pinelands resource-related industrial or manufacturing uses, excluding resource extraction and uses that rely on sand or gravel as raw products, provided that:
 - i.-iii. (No change.)
 3. Light industrial uses within an area designated by a municipality in accordance with the following criteria:

ENVIRONMENTAL PROTECTION

- i. The area adjoins an existing airport, and the airport is either publicly owned or serves a Pinelands Town;
 - ii.-iii. (No change.)
 4. Campgrounds, not to exceed one campsite per gross acre, provided that the campsites may be clustered at a net density not to exceed 10 campsites per acre.
 - 5.-6. (No change.)
 7. Continuation of existing resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6, Part VI.
 8. *[Waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII]* ***Landfills***.
 - 9.-10. (No change.)
 11. Expansion of intensive recreational uses, provided that:
 - i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
 - ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
 - iii. The use is environmentally and aesthetically compatible with the character of the Forest Area and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.
 12. Public service infrastructure intended to primarily serve only the needs of the Pinelands. Centralized waste water treatment and collection facilities shall be permitted to service the Forest Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of the Forest Area may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.
 - 13.-16. (No change.)
 - (c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30, 5.31 and 5.32. When the residential density otherwise permitted on a particular parcel of land is clustered on 3.2 acre lots, the remainder of the parcel not assigned to individual residential lots shall be permanently dedicated through recordation of a restriction on the deed to the ***[property]* *parcel*** as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.
 - (d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)12 above, provided, however, that no such structure shall be located on a parcel of less than one acre.
- 7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in Agricultural Production Areas
- (a) The following uses shall be permitted in an Agricultural Production Area:
 1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.
 2. (No change.)
 3. Residential dwelling units at a gross density of one unit per 40 acres, provided that:
 - i. The unit(s) shall be clustered on one acre lots, unless the municipality determines that residential development is not compatible and interferes with the use of the remaining ***[property]* *parcel*** and adjoining lands for agricultural use;
 - ii. The remainder of the parcel, including all contiguous lands in common ownership, which is not assigned to individual residential lots shall be permanently dedicated for agricultural uses through recordation of a restriction on the deed to the ***[property]* *parcel***; and

iii. The restriction on the deed to the *[property]* *parcel*, including any rights to be redeemed for future residential development, shall be done in accordance with N.J.A.C. 7:50-5, Part IV, so as to sever any Pinelands Development Credits allocated to the *[property]* *parcel*.

4.-9. (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:

1. (No change.)

2. Pinelands resource-related industries, excluding resource extraction and uses that rely on sand or gravel as raw products, provided that:

i.-iii. (No change.)

3. (No change.)

4. Light industrial uses within an area designated by a municipality in accordance with the following criteria:

i. The area adjoins a publicly owned airport;

ii.-iii. (No change.)

5.-6. (No change.)

7. Expansion of intensive recreational uses, provided that:

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the character of the Agricultural Production Area and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.

8. *[Waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII]* *Landfills*.

9. Public service infrastructure except that centralized waste water treatment and collection facilities shall be permitted to service the Agricultural Production Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of Agricultural Production Areas may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

10.-13. (No change.)

(c) No residential dwelling unit shall be located on a lot of less than 1.0 acre.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)9 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

7:50-5.25 Minimum standards governing the distribution and intensity of development and land use in Special Agricultural Production Areas

(a) The following uses shall be permitted in a Special Agricultural Production Area:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.

2.-6. (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may permit, at its option, the following uses in a Special Agricultural Production Area:

1.-2. (No change.)

3. Public service infrastructure which is necessary to serve only the needs of the Special Agricultural Production Area uses. Centralized waste water treatment and collection facilities shall be permitted to service the Special Agricultural Production Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of Special Agricultural Production Areas may be permitted provided that they are installed within existing developed rights of way and are installed under-

ground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

4.-5. (No change.)

6. Signs*[, and]**.*

[7. Waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII.]

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.32.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)3 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

7:50-5.26 Minimum standards governing the distribution and intensity of development and land use in Rural Development Areas

(a) (No change.)

(b) In addition to the residential uses permitted under (a) above, a municipality may permit any use which is compatible with the essential character of the Pinelands environment and is similar in character, intensity and impact to the following uses:

1.-8. (No change.)

9. *[Waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII]* *Landfills*;

10. Public service infrastructure except that centralized waste water treatment and collection facilities shall be permitted to service the Rural Development Area only in accordance with N.J.A.C. 7:50-6.84(a)2;

11.-14. (No change.)

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30, 5.31 and 5.32. A municipality may also permit the residential density otherwise permitted on a particular parcel of land to be clustered on one acre lots if the remainder of the parcel not assigned to individual residential lots is permanently dedicated through recordation of a restriction on the deed to the *[property]* *parcel* as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)10 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages and Towns

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be authorized in a Pinelands Village or Town, provided that:

1.-3. (No change.)

(b) No residential dwelling units or nonresidential use shall be located on a parcel of less than one acre unless served by a centralized waste water treatment plant.

(c) Any municipal variance approval which grants relief from density or lot area requirements for a residential or principal non-residential use shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance. This requirement shall not apply to use variances which authorize development on lots which conform to the area requirements for the principal uses normally permitted in the zone.

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a Regional Growth Area, provided that:

1. Except as provided in (a)2, 3, 4, 5, 6 and 7 below and Part IV of this subchapter, the total number of dwelling units authorized

ADOPTIONS

by a municipality for a Regional Growth Area shall be equal to and not exceed the following density per acre of developable land:

i.-xxx. (No change.)

2. (No change.)

3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities, provided that the total amount of residential development permitted in (a)1 above is exceeded by at least 50 percent through the use of Pinelands Development Credits; that a reasonable proportion of the density increase permits the development of single family detached residences; and that the residentially zoned districts in which the ranges are established are reasonably expected to be developed within the assigned density ranges.

i.-ii. (No change.)

4.-5. (No change.)

6. Any municipal variance for an approval of nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in which density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above, shall require that Pinelands Development Credits be used at the maximum rate permitted for Pinelands Development Credit use in the zone in which the development is located. ***This requirement shall not apply to the expansion of or changes to existing uses in accordance with N.J.A.C. 7:50-5.2 or to uses that were constructed based upon an approval granted pursuant to the provisions of this Plan.***

7. Nothing in (a) above is intended to prevent a municipality, as a part of a certified master plan or land use ordinance, from:

i. Employing additional density bonus or incentive programs, provided that such programs do not interfere with nor otherwise impair in any way the required municipal program for use of Pinelands Development Credits; or

ii. Increasing or decreasing by as much as ten percent the total number of dwelling units assigned pursuant to (a)1 above, provided that the Pinelands Development Credit program requirements set forth in (a)3 above are met relative to the adjusted dwelling unit total and provided further that the adjustment is consistent with land tenure patterns, the character of portions of the regional growth area, the provision of infrastructure and community services, and the natural resource characteristics of the area.

(b) (No change.)

7:50-5.29 Minimum standards governing the distribution and intensity of development and land use in Military and Federal Installation Areas

(a) Any use associated with the function of the Federal installation may be permitted in a Military and Federal Installation Area, provided that:

1. Where feasible, development shall be located in that portion of the installation located within the Pinelands Protection Area;

2. The use shall not require any development, including public service infrastructure, in the Preservation Area District or in a Forest Area; and

3. All development undertaken by the Federal government substantially meets the standards of N.J.A.C. 7:50-6 of this Plan or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

(b) Any other public purpose use undertaken by or on behalf of another level of government may be permitted in a Military and Federal Installation Area, provided that:

1. The use is sanctioned by the installation;

2. The use is located within a substantially developed area which is served by a centralized sewer treatment and collection system; and

3. All development meets the standards of N.J.A.C. 7:50-6 or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

7:50-5.30 Development transfer programs in Forest Areas and Rural Development Areas

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

ENVIRONMENTAL PROTECTION

(c) A municipality may adapt the program to its particular circumstances and vary the standards in (b) above provided that the program is otherwise consistent with the land use and density provisions of this subchapter. This may include, but is not limited to, identifying specific areas to receive the development transfers or excluding certain areas from the program considering:

1.-4. (No change.)

(d) (No change.)

7:50-5.31 Minimum standards for substandard lots

(a) A municipality may, as a part of its master plan and land use ordinance prepared and certified under the provisions of N.J.A.C. 7:50-3, exempt the owners of parcels of land within the Protection Area from the density limitations of this Part, provided that:

1. (No change.)

2. The dwelling unit will be the principal residence of the applicant;

3. The parcel has been in the continuous ownership of the applicant, a member of his immediate family, or a partnership or corporation made up of members of a qualifying immediate family who collectively own more than a majority interest in such partnership or corporation since February 7, 1979;

4. No lot that was in common ownership with any contiguous land on or after February 7, 1979 is exempt from the density provisions of this Part;

5.-6. (No change.)

(b) (No change.)

7:50-5.32 Special provisions for cultural housing

(a) Residential dwellings on 3.2 acre lots may be permitted within any management area provided that:

1.-2. (No change.)

3. The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:

i. The parcel of land on which the dwelling is to be located has been in the continuous ownership of the applicant, a member of his immediate family, or a partnership or corporation made up of members of a qualifying immediate family who collectively own more than a majority interest in such partnership or corporation since February 7, 1979; and either

ii.-iii. (No change.)

(b) (No change.)

7:50-5.43 Pinelands Development Credits established

(a) Except for land which is owned by a public agency on January 14, 1981, land which is thereafter purchased by the State for conservation purposes, land which is subject to an easement limiting the use of land to nonresidential uses or land otherwise excluded from entitlement pursuant to (b) below, every parcel of land in the Preservation Area District, an Agricultural Production Area or a Special Agricultural Production Area shall have a use right known as "Pinelands Development Credits" that can be used to secure a density bonus for lands located in Regional Growth Areas.

(b) Pinelands Development Credits are hereby established at the following ratios:

1. In the Preservation Area District, including those areas designated pursuant to N.J.A.C. 7:50-5.22(b)7:

i. Uplands which are undisturbed but currently or previously approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii.-iv. (No change.)

2.-3. (No change.)

4. If the allocations established in (b)1 and 2 above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on or after February 7, 1979, and the parcel has not been sold or transferred except to a member of the owner's immediate family.

5. The provisions of (b)4 above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands which, when combined with the acreage of the original parcel, total at least one-tenth of an acre.

(c) (No change.)

7:50-5.44 Limitations on use of Pinelands Development Credits

(a) No Pinelands Development Credit may be conveyed, sold, encumbered or transferred unless the owner of the land from which the credit has been obtained has received a Pinelands Development Credit Certificate from the New Jersey Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-3, and has deed restricted the use of the land in perpetuity to those uses set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction which is in favor of a public agency or not for profit incorporated organization and specifically and expressly enforceable by the Commission.

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

7:50-5.47 Recordation of deed restriction

(a) (No change.)

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the *[property]* *parcel* may only be used in perpetuity for the following uses:

1.-2. (No change.)

3. In Agricultural Production Areas:

i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; agricultural commercial establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.

ii. (No change.)

4. In all other Pinelands management areas where Pinelands Development Credits have been allocated pursuant to N.J.A.C. 7:50-4.62(d)2:

i. Agriculture; forestry; and low intensity recreational uses.

(c) No development involving the use of Pinelands Development Credits shall be approved by a local permitting agency until the developer has provided the Commission and the municipality in which the parcel of land to be developed is located with evidence of his ownership of the requisite Pinelands Development Credits; provided, however, that a municipality may grant preliminary subdivision or site plan approval conditioned upon such evidence being presented as a prerequisite to final subdivision or site plan approval. For such a final subdivision or site plan, the developer shall provide evidence of Pinelands Development Credit ownership to secure the same proportion of lots or residential units as was approved for Pinelands Development Credit use in the preliminary approval. Notification of a local permitting agency development approval shall be made to the Pinelands Commission pursuant to N.J.A.C. 7:50-4, and to the New Jersey Pinelands Development Credit Bank in accordance with N.J.A.C. 3:42-3. Redemption of Pinelands Development Credits shall thereafter be accomplished in accordance with N.J.A.C. 3:42-3.6.

7:50-5.51 Purpose

In order to enable counties and municipalities with jurisdiction over land in Rural Development Areas and Regional Growth Areas to plan for an orderly rate and pattern of growth within both areas, the Pinelands Commission hereby establishes a municipal option that may be incorporated in a municipal master plan or land use ordinance which allows a municipality to designate areas in a Rural Development Area or Regional Growth Area as Municipal Reserve Areas. These areas would be eligible for development under the minimum standards established for development and land use in

Regional Growth Areas, including use of Pinelands Development Credits at a future date.

7:50-5.52 Designation of Municipal Reserve Areas

(a) (No change.)

(b) A municipality may, in its master plan and land use ordinance, designate lands in a Regional Growth Area as Municipal Reserve Areas, provided that sufficient vacant, developable land remains in the municipality's Regional Growth Area to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the municipality is located, as well as by the Pinelands Commission, and the area designated:

1. Does not have available and is not planned for sewer service and other essential public services in the next five years;

2. Has a relatively uniform boundary which conforms to physical or environmental features;

3. Is contiguous to areas designated for less intense development or is not in close proximity to currently developing areas; and

4. Is designated as, and zoned in accordance with the requirements for, Rural Development Areas.

7:50-5.53 Development in Municipal Reserve Areas

(a) A municipal master plan or land use ordinance that designates areas in a Rural Development Area as a Municipal Reserve Area shall include provisions ensuring that development of the reserve area at Regional Growth Area densities will occur only when all of the following conditions are met:

1.-3. (No change.)

(b) A municipal master plan and land use ordinance that designate areas in a Regional Growth Area as a Municipal Reserve Area shall include provisions ensuring that development of the reserve area at Regional Growth Area densities will automatically be permitted within a period of five years. A municipality may demonstrate that such development should be further delayed because one of the following conditions is met:

1. Adjacent developable land in the Regional Growth Area has not yet been substantially developed in accordance with the land use and management programs provided in this Plan;

2. All sewer service and other essential public services are not yet reasonably available; or

3. The amount of vacant developable land in all other Regional Growth Areas in the municipality is sufficient to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the reserve area is located, as well as by the Pinelands Commission.

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

INTRODUCTION

This subchapter establishes management programs and minimum standards governing development and land use in the Pinelands. In addition, guidelines for county and municipality preparation of management programs for scenic resources and recreation are provided. All the programs are intended to be implemented by the administration of municipal and county master plans and land use ordinances and by State and Federal agencies through the development review procedures established in N.J.A.C. 7:50-4. Prior to certification of county or municipal master plans and land use ordinances, the standards of this subchapter except for those guidelines or optional programs, will be implemented and enforced by the Pinelands Commission. The standards set forth in this subchapter are minimum requirements and a municipality, county, State, or Federal agency may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of this Plan. In such cases, all development must adhere to the more restrictive regulations. In addition to the models specified herein, the Pinelands Commission may utilize other scientifically based models, on a case by case basis, in determining compliance with the standards contained in this subchapter.

ADOPTIONS

ENVIRONMENTAL PROTECTION

7:50-6.3 Wetlands

Wetlands are lands which are inundated or saturated by water at a magnitude, duration and frequency sufficient to support the growth of hydrophytes. Wetlands include lands with poorly drained or very poorly drained soils as designated by the National Cooperative Soils Survey of the Soil Conservation Service of the United States Department of Agriculture. Wetlands include coastal wetlands and inland wetlands, including submerged lands. The "New Jersey Pinelands Commission Manual for Identifying and Delineating Pinelands Area Wetlands—a Pinelands Supplement to the Federal Manual for Identifying and Delineating Jurisdictional Wetlands," dated January, 1991, as amended, may be utilized in delineating the extent of wetlands based on the definitions of wetlands and wetlands soils contained in this section, N.J.A.C. 7:50-2.11, 6.4 and 6.5.

7:50-6.4 Coastal wetlands

(a) Coastal wetlands are banks, low-lying marshes, swamps, meadows, flats, and other lowlands subject to tidal inundation which support or are capable of supporting one or more of the following plants:

1.-25. (No change.)

26. Atlantic white cedar (*Chamaecyparis thyoides*).

(b) Coastal wetlands include those lands which are delineated by the New Jersey Department of Environmental Protection *[and Energy]* on official maps at a scale of 1:2, 400 listed in N.J.A.C. 7:7A-1.13.

7:50-6.5 Inland wetlands

(a) Inland wetlands include, but are not limited to:

1. Atlantic white cedar swamps which are areas dominated by Atlantic white cedars (*Chamaecyparis thyoides*) and supporting one or more of the following hydrophytic plants:

i.-viii. (No change.)

ix. Inkberry (*Ilex glabra*);

x.-xiv. (No change.)

2. (No change.)

3. Pitch pine lowlands which are areas dominated by pitch pine (*Pinus rigida*) and supporting one or more of the following hydrophytic plants:

i.-ix. (No change.)

4.-7. (No change.)

7:50-6.7 Significant adverse impact

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

(c) The "Buffer Delineation Model for New Jersey Pinelands Wetlands" dated May, 1985, as amended, (Division of Pinelands Research, Center for Coastal and Environmental Studies, Rutgers—The State University of New Jersey, New Brunswick, New Jersey 08903) may be utilized as a guide in determining the extent of the wetlands transition area necessary so that no significant adverse impact will be deemed to exist pursuant to (a) above.

7:50-6.12 Water-dependent recreational facilities

(a) Docks, piers, moorings, and boat launches for the use of a landowner shall be permitted in all wetlands, provided that the use will not result in a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, and conforms to all State and Federal regulations.

(b) (No change.)

7:50-6.23 Vegetation removal and landscaping standards

(a) The clearing of more than 1,500 square feet of vegetation from any parcel of land, other than clearing for agricultural activities, and the development of previously cleared lands shall be authorized only if the applicant can demonstrate:

1-5. (No change.)

6. That the cleared area will be landscaped in accordance with the following requirements:

i.-ii. (No change.)

iii. All landscaping shall be conducted with the objective of maximizing native tree and shrub cover and minimizing the need for supplemental water*,* *[and]* applications of soil amendments, such as fertilizers and lime, *and the use of* herbicides, fungicides, and pesticides.

iv. Native Pinelands trees and shrubs shall be utilized for landscaping; provided, however, that non-native tree and shrub species may be used for foundation plantings provided that the species are adapted to sandy, acid and nutrient poor conditions characteristic of uncultivated Pinelands soils *or that species not of the Heath family (*Ericaceae*) comprise no more than 20 percent of such plantings*. Native plants include:

(1)-(11) (No change.)

(12) Dangleberry;

(13)-(45) (No change.)

v. Native Pinelands grasses and *non-native* species adapted to sandy, acid and nutrient poor conditions characteristic of uncultivated Pinelands soils shall be utilized. In addition, *non-native* annual species used for temporary cover *[shall]* *may* be utilized unless mulch is used to stabilize soil. Appropriate species include, but are not *[necessarily]* limited to:

(1) Little bluestem;

(2) Deertongue;

(3) Red top;

(4) Switch grass;

(5) Tall fescue;

(6) Sheep fescue;

(7) Chewings fescue;

(8) Red fescue;

(9) Smooth brome grass;

(10) Annual ryegrass; and

(11) Oats.

vi. Notwithstanding the requirements of (a)6v above, other grasses may be used:

(1) In areas not exceeding 2,000 square feet per building; and

(2) In areas *[dedicated]* for *[public]* *intensive* recreational use, *[including commercial recreation facilities that are open to the public,]* when it is demonstrated that alternative grasses are required due to the type and intensity of recreational use.

[vii. For residential uses, managed turf areas which require supplemental water and applications of soil amendments, herbicides, fungicides, and pesticides shall not exceed 10,000 square feet, whether or not the species listed in (a)6v above are used. For non-residential uses, such managed turf areas shall not exceed 25 percent of the parcel being landscaped or replanted. These requirements shall not apply to recreational uses.]

*viii. Managed turf areas which require supplemental water, application of soil amendments or the use of herbicides, fungicides and pesticides shall be limited as set forth in (1) through (3) below, whether such areas are composed of native or non-native grasses. Managed turf areas shall include those areas planted with non-native grasses in accordance with (a)vi(1) above. Nothing herein shall be construed as relieving an applicant of the requirement to demonstrate that the clearing of more than 1,500 square feet of vegetation from any parcel of land complies with (a)1 through 5 above. Managed turf areas shall not exceed the following:

(1) For single family detached dwellings, 10,000 square feet for each dwelling unit;

(2) For non-residential uses, 25 percent of the parcel being landscaped; and

(3) For intensive recreational uses and for areas that are not intended to be managed once landscaping has been completed, the limitations set forth in (1) and (2) above shall not apply.*

(b) A municipality may, as part of its certified land use ordinance, exempt certain areas from the requirements of (a)6iv above provided that these areas contain a predominance of non-Pinelands plant species and are clearly delineated in the land use ordinance.

7:50-6.33 Protection of threatened or endangered wildlife required

No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened or endangered animal species designated by the Department of Environmental Protection and Energy pursuant to N.J.S.A. 23:2A-1 et seq.

7:50-6.44 Forestry standards

(a) Forestry shall be authorized throughout the Pinelands provided:

1.-2. (No change.)

3. That access to land proposed for harvesting **[is the most direct route that will avoid or minimize adverse environmental impacts, considering the following factors]**:

i. Is direct;

**[i.]*ii.* *Following]* *Follows* previously established roads and trails to the maximum extent practical:*

**[ii.]*iii.* *Avoiding]* *Avoids* wetland areas except as are absolutely necessary to harvest wetland species or to gain access to the harvesting site; and*

**[iii.]*iv.* *Avoiding]* *Avoids* crossing streams with high and unstable banks and those with approaching slopes exceeding 10 percent where alternative crossings exist.*

4.-7. (No change.)

8. That harvesting and reforestation activities shall ensure the regeneration of Atlantic White Cedar in harvested cedar and mixed hardwood/cedar swamps**, or any other native forest [species] type* in other harvested areas*, or any non-native species in areas where that species is harvested**; and

9. That harvesting and reforestation in Atlantic White Cedar and hardwood swamps is conducted in the following manner:

i. (No change.)

ii. Reforestation to ensure Atlantic White Cedar regeneration will involve control of competitive hardwood species **[and may include the application of herbicides permitted by the Environmental Protection Agency to be used in Atlantic white cedar wetlands when it has been demonstrated that hardwood control is necessary on the site, that other steps necessary for the regeneration of cedar have been taken, that no other feasible alternative to the use of herbicides exists, that no adverse off-site impact will occur, and that no threatened or endangered plant or animal species will be adversely affected]**;

iii.-v. (No change.)

10. (No change.)

7:50-6.63 General limitations

(a) (No change.)

(b) Nothing in this Part shall be construed to authorize resource extraction activities without receiving permits pursuant to this Plan or from complying with the standards of this subchapter.

7:50-6.64 Time limit and scope of resource extraction permits

(a) No permit authorizing resource extraction shall be issued for any period exceeding two years unless a program extending the duration of such permits has been established and certified by the Commission pursuant to N.J.A.C. 7:50-3.39. Such a program may allow permits authorizing resource extraction to be issued for periods exceeding two years, provided that:

1. No permit authorizing resource extraction shall be issued for any period exceeding five years;

2. Every such permit shall be issued subject to the following conditions to ensure conformance with the approved permit:

i. Operators shall be required to certify, in writing and on an annual basis, to the satisfaction of the local **[approval]* *permitting* agency and the Commission that all mining, restoration and other activities have been and continue to be conducted in accordance with the approved permit;*

ii. If the local **[approval]* *permitting* agency or the Executive Director determines that any activity deviates from an approved permit, the operator shall be immediately notified of the deviation;*

iii. The notice shall state the nature of the deviation, order the action necessary to correct it, and set forth the date, time and location of a meeting to be held within 10 days of the notice at which the operator shall present all relevant information concerning the deviation and the action taken or to be taken to correct it;

iv. The order to take corrective action shall specify any activity which must be immediately ceased to prevent direct or indirect aggravation of the deviation or to avoid a danger to the public health, safety or welfare. Such cessation shall continue until the deviation

has been resolved to the satisfaction of the local **[approval]* *permitting* agency and the Executive Director or until an agreement to resolve the deviation has been reached;*

v. Any interested person who is aggrieved by any determination of the Executive Director pursuant to (a)2iii or iv above may, within 15 days, appeal the Executive Director's determination to the Pinelands Commission as provided in N.J.A.C. 7:50-4.91(a). The Executive Director shall thereafter conduct a hearing pursuant to N.J.A.C. 7:50-4.3, unless the applicant requests a hearing before an Administrative Law Judge in which case the matter shall be referred to the Office of Administrative Law pursuant to N.J.A.C. 7:50-4.91(b), and submit a hearing report to the Pinelands Commission for a final determination;

vi. Failure to resolve a deviation or to adhere to the terms and conditions of any agreement to resolve a deviation shall constitute sufficient cause for revocation of the permit. Either the local **[approval]* *permitting* agency or the Executive Director may institute such proceedings. The local **[approval]* *permitting* agency shall institute such proceedings in accordance with its procedures relative to resource extraction permit approvals. The Executive Director shall institute revocation proceedings in accordance with the procedures of N.J.A.C. 7:50-4.41 and 4.42.**

vii. Notwithstanding **[the]* (a)2i through vi above, permit provisions may also be enforced either by the Pinelands Commission pursuant to the provisions of N.J.A.C. 7:50-8 or by the local **[approval]* *permitting* agency instituting appropriate enforcement proceedings.**

(b) Nothing in (a) above shall be construed to prohibit any person from securing additional permits provided that the requirements of this Part are otherwise met.

(c) Municipalities may approve otherwise permitted structures and uses that are clearly accessory to a resource extraction operation and necessary for on-going operations without the need for a certificate of filing issued pursuant to N.J.A.C. 7:50-4.34, provided that all such structures or uses will be located in a discrete, disturbed area that is encompassed within or in close proximity to the processing area that supports the resource extraction operation. The area must be delineated as part of a resource extraction application that has been submitted to and approved by the local **[approval]* *permitting* agency and reviewed pursuant to N.J.A.C. 7:50-4.37 or 4.40. ***Any such local approval shall be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40.****

7:50-6.65 Specific limitations in the Preservation Area

(a) No resource extraction operations shall be permitted in the Preservation Area District or Special Agricultural Production Areas other than those operations which were registered with the Pinelands Commission on or before January 21, 1981 and received all necessary development permits for resource extraction on or before December 31, 1985.

(b) In no case shall the area of extraction exceed the value given under the category "acreage to be mined" on the mine registration application submitted to the Department of Labor and Industry as of February 7, 1979, or that area approved by a valid municipal permit as of February 7, 1979 in the case of an operation exempted from registration with the Department of Labor and Industry.

7:50-6.66 Specific limitations in the Forest Area

(a) No development permit or other approval for resource extraction in the Forest Area shall be approved or issued after **[the effective date of these rules]* *December 5, 1994** except as expressly authorized in (b) and (c) below.

(b) An operation which received a valid development approval pursuant to the provisions of this Plan for resource extraction on or after January 14, 1981 but prior to **[January 1, 1993]* *December 5, 1994** may continue to operate, subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may be authorized to continue within the limits of the parcel or parcels which were identified in the resource extraction application which was approved pursuant to this Plan.

(c) Any land for which a valid development approval pursuant to the provisions of this Plan for resource extraction has not been

ADOPTIONS

issued between January 14, 1981 and December 31, 1992 may be authorized to undertake extraction operations only if a development permit is approved prior to ***[(the effective date of these rules)]* *December 5, 1994***. In such cases, extraction operations may operate subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may continue only within the areas mined and not restored as of the expiration date of the approval.

7:50-6.67 Specific limitations in the Agricultural Production Area

No development permit or other approval for resource extraction in the Agricultural Production Area shall be approved or issued after November 2, 1987.

7:50-6.68 Resource extraction standards

(a) Resource extraction operations shall be approved only if the applicant can demonstrate that the proposed resource extraction operation:

1.-8. (No change.)

9. Will be carried out in accordance with an extraction schedule which depicts the anticipated sequence, as well as anticipated length of time that each of the 20 acre units of the parcel proposed for extraction will be worked. This shall not preclude more than one 20 acre unit from being worked at any one time, provided that there is a demonstrated need for additional units, restoration is proceeding on previously mined units and the area of clearing does not exceed that specified in (a)11 below;

10-11. (No change.)

7:50-6.69 Restoration standards

(a) All parcels of land which are used for resource extraction operations shall be restored as follows:

1.-2. (No change.)

3. All restored areas shall be graded so as to conform to the natural contours of the parcel to the maximum extent practical. Grading techniques that help to control erosion and foster revegetation shall be utilized. The slope of surface of restored surfaces shall not exceed one foot vertical to three feet horizontal except as provided in (a)6 below;

4. Topsoil shall be restored in approximately the same quality and quantity as existed at the time the resource extraction operation was initiated. All topsoil removed shall be stockpiled and used for the next area to be restored unless it is immediately reused for reclamation that is currently underway;

5. (No change.)

6. Any body of water created by the resource extraction operation shall have a shoreline not less than three feet above and three feet below the projected average water table elevation. The shoreline both above and below the surface water elevation shall have a slope of not less than five feet horizontal to one foot vertical. This requirement shall apply to any water body or portion of a water body created after ***[(the effective date of these regulations)]* *December 5, 1994***. For any water body or portion of a water body created prior to ***[(the effective date of these regulations)]* *December 5, 1994***, this requirement shall apply to the extent that it does not require grading of areas which have not been disturbed by mining activities. Where grading would require such disturbance, a reduction in the distance of the graded shoreline above and below the average water table elevation shall be permitted;

7. Slopes beyond a water body's shoreline shall be permitted at the natural angle of repose to the bottom of the pond;

8. All equipment, machinery and structures, except for structures that are useable for recreational purposes or any other use authorized in the area, shall be removed within six months after the resource extraction operation is terminated and restoration is completed;

9. Reclamation shall to the maximum extent practical result in the re-establishment of the vegetation association which existed prior to the extraction activity and shall include:

i. Stabilization of exposed areas by establishing ground cover vegetation; and

ii. Re-establishment of the composition of the natural forest and shrub types that existed prior to the extraction activity through one of the following:

(1) The planting of a minimum of 1,000 one-year-old pitch pine seedlings or other native Pinelands tree species per acre in a random pattern;

(2) Cluster planting of characteristic Pinelands oak species, such as blackjack oak, bear oak, chestnut oak and black oak, and shrubs such as black huckleberry, sheep laurel and mountain laurel, at a spacing sufficient to ensure establishment of these species;

[3.](3) A combination of the planting techniques set forth in (a)9ii(1) and (2) above; or

(4) The use of other planting techniques or native Pinelands species as may be necessary to restore the vegetation association which existed prior to the extraction activity.

10. The letter of credit, surety bond, or other guarantee of performance which secures restoration for each section shall be released after the requirements of (a)1 through 9 above are determined by a certified municipality or the Commission, as appropriate, as being met and is replaced with a maintenance guarantee for a period of two years thereafter.

7:50-6.70 (Reserved)

7:50-6.71 Purpose

[Federal and State efforts to manage the use of hazardous and toxic substances and the disposition of wastes are recognized but the water and other natural resources of the Pinelands are particularly vulnerable to impacts from these substances and wastes. It is the purpose of this Part to protect the Pinelands from degradation by supplementing Federal and State requirements relative to the use and management of these substances and wastes.]* *The disposal of solid and liquid waste by application to land in the Pinelands represents a substantial threat to surface and ground water quality. It is the purpose of this Part to provide standards to protect the Pinelands from degradation resulting from waste disposal activities.

***[7:50-6.73 General prohibitions**

(a) Except as expressly authorized in this Part or in a valid development approval issued pursuant to the provisions of this Plan, no waste management facility shall be developed within the Pinelands.

(b) Except as expressly authorized in this Part, no hazardous or toxic substances shall be stored, transferred, processed, discharged, disposed or otherwise used within the Pinelands. This prohibition does not apply to the lawful use of a hazardous or toxic substance in a commercial, industrial, agricultural, domestic, community or other lawful property use.

(c) Except as expressly authorized in this Part, no waste shall be accepted for disposal, stored, collected, processed, transferred, separated, recycled, reclaimed, recovered or reused unless it originates from one or more Pinelands municipalities or from one or more non-Pinelands municipalities located within Atlantic, Burlington, Cape May or Ocean counties. Except for disposal, this limitation shall not apply to source-separated non-putrescible metal, glass, paper, plastic containers and corrugated and other cardboard.

(d) Nothing in this Part shall be construed to prohibit the development and operation of a waste management facility essential for the remediation of a site contaminated with wastes or hazardous or toxic substances and located within the Pinelands.

(e) Nothing in this Part shall be construed to prohibit activities essential to comply with the NJPDES requirements of N.J.A.C. 7:14A for wastes generated as by-products of an otherwise lawful use of a property.

7:50-6.74 Authorized landfills

(a) Any landfill which is lawfully operating as of (the effective date of these rules) pursuant to a Waiver of Strict Compliance from the standards in the now repealed N.J.A.C. 7:50-6.75 may continue to operate and shall be closed in accordance with such waiver or court approved settlement agreement.

(b) Landfills which accept only vegetative waste, are located within an Agricultural Production Area, Regional Growth Area or Pinelands Town and which are clearly ancillary to an agricultural use of the parcel on which they are located shall be permitted.

(c) Nothing in this Part shall be construed to prohibit the disposal of vegetative waste on the property on which it was generated, provided that the vegetative clearing or harvesting is otherwise authorized by this Plan.

(d) All landfills which ceased operation on or after September 23, 1980 if located in the Preservation Area or on or after January 14, 1981 if located in the Protection Area shall be capped with an impermeable material (within one year of the effective date of these rules) unless it can be clearly demonstrated that the landfill accepted only vegetative waste or construction debris for disposal.

7:50-6.75 Authorized collection and transfer facilities

(a) Transfer stations and collection facilities shall be permitted in Regional Growth and Town management areas.

(b) Transfer stations shall also be permitted in Pinelands Villages and at properly closed landfills if the waste accepted for transfer is from the municipality in which the transfer station is located. Waste from other municipalities qualifying under N.J.A.C. 7:50-6.73(c) may be accepted if the size and scale of the transfer station is not materially increased.

(c) Petroleum waste collection, storage and transfer facilities shall be permitted in any Pinelands management area provided that the wastes are not stored for more than six months and that the facilities are ancillary to an otherwise lawful use of the property on which they are located.

(d) Nothing in this Part shall be construed to prohibit the use of containers or the development of facilities which are intended solely for the collection and storage of waste generated from the lawful use of the property on which the containers or facilities are located. Wastes shall not be stored for more than six months.

7:50-6.76 Authorized composting facilities

(a) Composting facilities shall be permitted in Regional Growth and Town management areas.

(b) Composting facilities which accept only vegetative waste, are located within an Agricultural Production Area, and which are clearly ancillary to an agricultural use of the parcel on which they are located shall also be permitted.

(c) Composting facilities which accept only vegetative waste shall also be permitted in Pinelands Villages and at properly closed landfills if the vegetative waste accepted for composting is from the municipality in which the composting facility is located. Vegetative waste from other municipalities qualifying under N.J.A.C. 7:50-6.73(c) may be accepted if the size and scale of the composting facility is not materially increased.

7:50-6.77 Other authorized waste management facilities

(a) In addition to those authorized in N.J.A.C. 7:50-6.74 through 6.76, other waste management facilities, excluding incinerators and hazardous waste facilities, shall be permitted in Regional Growth and Town management areas.

(b) Notwithstanding (a) above, generators of regulated medical waste may, as an accessory use, collect, store, treat and destroy such waste on-site or at another generator's facility. Notwithstanding N.J.A.C. 7:50-6.73(c), a generator's facility may accept regulated medical waste from outside the Pinelands if the nature and volume of such waste is incidental to that which the facility handles from within the Pinelands.

7:50-6.78 Land application of waste or waste derived materials

(a) Except as expressly authorized in this Part, the application of waste or waste derived material to any parcel of land is prohibited. Notwithstanding this prohibition, the lawful application to any parcel of land of not more than 100 cubic yards of waste or waste derived material in support of an otherwise lawful use of the property shall be permitted.

(b) The land application of liquid or dewatered sludge, composted sludge and other sludge derived products, and composted vegetative

waste shall be exempt from the limitations of N.J.A.C. 7:50-6.73(c) and may be permitted, provided that:

1. The property is an active agricultural operation;
2. The material is applied to benefit the agricultural operation;
3. The material is applied according to the agronomic rate of application for its intended purpose;
4. The property is located in the Pinelands Protection Area or that portion of the Pinelands Preservation Area designated as an Agricultural Production Area; and
5. No treatment or processing occurs at the site of land application.

(c) Vegetative waste or animal manure from agricultural operations within the Pinelands Area may be applied to land for agricultural purposes, provided the application of animal manure is managed in accordance with all relevant criteria and standards developed by the Department of Agriculture.

7:50-6.79 Memoranda of agreement may permit deviations

(a) Exemptions to the waste importation limitations prescribed in N.J.A.C. 7:50-6.73(c) may be permitted through an intergovernmental agreement between the Pinelands Commission and another governmental agency provided that the Commission determines that:

1. Such agreement serves to implement a comprehensive district or region-wide waste management plan;
2. Such agreement provides that certain waste management facilities and activities which could otherwise occur within the Pinelands will occur outside of the Pinelands;
3. The net effect of the plan, when viewed in its entirety, is that the resources of the Pinelands are afforded a greater level of protection than would be provided through a strict application of the requirements of this Part; and
4. The exemption will not in any way authorize the importation of waste which originates from other than Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester or Ocean counties.

(b) Exceptions to the management area limitations prescribed in N.J.A.C. 7:50-6.75, 6.76 and 6.77 for otherwise permitted facilities may be allowed through an intergovernmental agreement between the Pinelands Commission, the municipality where the facility is located, and any other relevant governmental agency provided that the Commission determines that:

1. The exception involves a new use of an existing waste management facility which is located in a Rural Development Area and which was originally developed in accordance with the provisions of this Plan;
2. The existing facility is uniquely suited for conversion to the proposed new use;
3. The proposed new use will not materially increase the area, intensity or capacity of the existing facility;
4. The type of waste to be managed is either the same as is currently permitted at the facility, or is a Class A or Class B recyclable material as classified in N.J.A.C. 7:26A; and
5. A deviation from N.J.A.C. 7:50-6.73(c) is not proposed.

(c) Waste or waste derived materials permitted to be land applied pursuant to N.J.A.C. 7:50-6.78(b) may be exempted from the limitations of N.J.A.C. 7:50-6.78(b)1 and 2 through an intergovernmental agreement between the Pinelands Commission and another governmental agency provided that the Pinelands Commission determines that:

1. The land application activities are intended to support otherwise permitted land uses or to support reclamation of disturbed areas;
2. Reasonable safeguards are established to limit the type and total amount of material to be land applied;
3. Such agreement serves to implement a monitoring program to determine the effects of the land application activities on Pinelands resources; and
4. The duration of the agreement is limited to that necessary to complete the monitoring program.

(d) Land application of compost derived from source separated municipal waste may also be permitted, subject to the provisions of (b) above.

ADOPTIONS

(e) Prior to the execution of any intergovernmental memorandum of agreement pursuant to this section, a public hearing shall be held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.52(c)3.]*

*7:50-6.73 Landfills prohibited

Except as otherwise provided in this Part, no person shall operate any Landfill within the Pinelands.

7:50-6.74 Existing landfills

(a) Landfill operations that were in lawful use on August 8, 1980 may be continued provided that:

1. No landfill shall be operated within the Preservation Area;
2. Landfills in Regional Growth Areas, Pinelands Towns and Villages, or Rural Development Areas are terminated on August 8, 1990;

3. Landfills in Agricultural Production Areas or Forest Areas are terminated on August 8, 1990, or when the disposal capacity authorized as of January 14, 1981 is exceeded by 25 percent, whichever occurs first.

4. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands;

5. The operation of the landfill will meet the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and all adopted and certified district waste management plans;

6. All areas filled to final design elevations shall be capped with an impervious material within one year. Prior to the establishment and filling of new areas, all existing areas shall be filled to final elevation and capped with an impervious material. The type and nature of capping shall be in accordance with the standards of the New Jersey Solid Waste Administration; and

7. Expansion of any existing landfill operation shall only occur if:

i. There are no practical alternative disposal sites outside of the Pinelands;

ii. No feasible alternative disposal techniques are available;

iii. The expansion does not involve the disposal of waste within 2,500 feet of an existing residential use;

iv. The expansion area is lined and includes a leachate collection and treatment system and a methane collection and removal system; and either

v. The expansion will occur only on lands containing adequate clay aquicludes as determined by the Commission in consultation with the New Jersey Solid Waste Administration; or

vi. When there are no lands containing adequate clay aquicludes, all measures necessary to prevent the degradation of ground water shall be reviewed and analyzed. Those measures determined to be most effective to prevent the degradation of ground water shall be implemented.

7:50-6.75 New landfills

(a) Landfills not existing on August 8, 1980 shall be permitted in the Protection Area only if a solid waste management district demonstrates to the Commission that:

1. A new landfill is significantly preferable from an environmental perspective to continuation of an existing landfill;

2. There are no practical alternative disposal techniques available, as demonstrated in a certified solid waste management plan;

3. There are no feasible alternative land sites available outside of the Pinelands;

4. All waste to be accepted is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and

5. The new landfill shall be operated in accordance with N.J.A.C. 7:50-6.74(a)5-7. Use of the landfill shall be terminated on August 8, 1990.

(b) Notwithstanding (a) above, landfills designed and operated exclusively to accept vegetative wastes may be permitted in Rural Development Areas, Regional Growth Areas, Agricultural Production Areas, and Pinelands Towns and Villages.

ENVIRONMENTAL PROTECTION

7:50-6.76 Solid waste transfer stations

(a) Solid waste transfer stations may be permitted provided that:

1. The facility meets all standards and requirements of the Department of Environmental Protection;

2. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and

3. The facility is located in a Regional Growth Area, Pinelands Town, or Rural Development Area.

(b) Notwithstanding the requirements of (a)2 and 3 above, a facility may be permitted in a Pinelands Village provided that all waste accepted is from the municipality in which the facility is located; or in any other Pinelands management area if the facility is located on the site of an existing landfill which is no longer active when the transfer station is built, and all waste accepted is from the municipality in which the facility is to be located.

7:50-6.77 Categories of wastes prohibited

(a) No hazardous, toxic, chemical, petroleum (including oil spill pollutants), septic or nuclear waste shall be stored, discharged or disposed of on any land within the Pinelands. Liquid or dewatered sludge may only be applied as part of a land application program for agricultural purposes when also approved by the New Jersey Department of Environmental Protection.

(b) Notwithstanding (a) above:

1. Petroleum wastes collected and temporarily stored for delivery to another facility for processing may be permitted in the Pinelands provided that the storage facility is designed and operated in accord with state and federal regulations.

2. Other wastes and byproducts may be temporarily stored at the facility where generated provided that the storage facility is designed and operated in accord with state and federal regulations.

7:50-6.78 Compliance with county, state and federal requirements

No provision of this Plan shall be construed as authorizing any landfill operation in violation of any local, state or federal regulation or plan governing the disposal of waste material, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., and associated implementing rules and regulations.*

7:50-6.80 (Reserved)

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1. Development of new or the expansion of existing commercial, industrial, and waste water treatment facilities, or the development of new or the expansion of existing non-point sources otherwise permitted in N.J.A.C. 7:50-5, except those specifically regulated in (a)2 through 6 below, provided that:

i. There will be no direct discharge into any surface water body;

ii. All discharges from the facility or use are of a quality and quantity such that ground water exiting from the parcel of land or entering a surface body of water will not exceed two parts per million nitrate/nitrogen;

iii. All public waste water treatment facilities are designed to accept and treat septage; and

iv. All storage facilities, including ponds or lagoons, are lined to prevent leakage into ground water.

2. Development of new waste water treatment or collection facilities which are designed to improve the level of nitrate/nitrogen attenuation of more than one existing on-site waste water treatment system where a public health problem has been identified may be exempted from the standards of (a)1ii above provided that:

i.-ii. (No change.)

iii. Adherence to (a)1ii above cannot be achieved due to limiting site conditions or that the costs to comply with the standard will result in excessive user fees; and

iv. The design level of nitrate/nitrogen attenuation is the maximum possible within the cost limitations imposed by such user fee guidelines but in no case shall ground water exiting from the parcel

or entering a surface body of water exceed five parts per million nitrate/nitrogen.

3. Improvements to existing commercial, industrial, and waste water treatment facilities which discharge directly into surface waters provided that:

i. There is no practical alternative available that would adhere to the standards of N.J.A.C. 7:50-6.84(a)1i.

ii-iii. (No change.)

4. Individual on-site septic waste water treatment systems which are not intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. (No change.)

ii. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, incorporated herein by reference as subchapter Appendix A, subject to the provisions of (a)4iii below. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47;

iii. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

iv. The depth to seasonal high water table is at least five feet;

v. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

vi. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

vii. The technology has been approved for use by the New Jersey Department of Environmental Protection *[and Energy]*; and

viii. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses.

5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. The technology has been approved for use by the New Jersey Department of Environmental Protection *[and Energy]*;

ii. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;

iii. The proposed development is either residential or, if non-residential, is located in a Regional Growth Area, a Pinelands Village, a Pinelands Town or in an area within the Preservation Area District designated pursuant to N.J.A.C. 7:50-5.22(b)7;

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, (Appendix A) subject to the provisions of (a)5v below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) For RUCK septic systems:

(A) For residential development, the system will reduce total nitrogen concentration in the waste water entering the disposal field to 20 parts per million; or

(B) For non-residential development, no reduction in total nitrogen concentration will be assumed, except that a reduction in total nitrogen concentration in the waste water entering the disposal field to 20 parts per million will be assumed if either:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrate/nitrogen concentration of the waste water flow is similar to that of a residential use and the ratio of greywater to blackwater is similar to that of a residential use.

(2) For pressure dosed septic systems:

(A) For residential development, either the system will be located on a lot of at least one acre for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or less than one residential dwelling unit per acre of land and each system shall comply with the following monitoring program either by contributing \$855.00 to the Commission monitoring program and agreeing to have each system monitored by the Commission or by having the system monitored in accordance with the following requirements:

(I) Within each system effluent samples shall be collected from the septic tank, the pump tank, and from each of the following depths at three randomly located points within the disposal area: six inches below the disposal bed; three feet below the disposal bed; and one foot below the select fill-native soil interface. Porous aluminum cup tension lysimeters shall be used to collect wastewater samples from the disposal area. Dose counters shall be installed in all pressure dosed systems and monitored to estimate wastewater flows. All sampling equipment designs shall be approved by the Pinelands Commission and all sampling equipment shall be installed under the supervision of the Pinelands Commission during construction of each system; and

(II) For a three year period, duplicate samples shall be collected on a quarterly basis from the septic tank and pump tank and individual samples shall be collected on a quarterly basis from each of the nine disposal area lysimeters. Parameters to be measured during each sampling event shall include temperature, pH, alkalinity, dissolved oxygen, Kjeldhal-nitrogen, nitrite-nitrogen, nitrate-nitrogen, ammonia-nitrogen, total phosphorus, total organic carbon, dissolved organic carbon, and chloride. Chemical analysis shall follow methods required of New Jersey state certified laboratories; or

(B) For non-residential development, no reduction in total nitrogen concentration will be assumed, except that a reduction in total nitrogen concentration in the waste water entering the system by 40 percent will be assumed if either:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrogen concentration of the waste water flow is similar to that of a residential use.

(3) Other on-site septic waste water treatment systems shall only be credited with reducing total nitrogen concentration to the extent authorized by an experimental monitoring program approved by the Pinelands Commission. Such an experimental monitoring program shall only be approved if:

(A) The specific theoretical basis for the nitrogen removal process to be utilized is sound and has been satisfactorily documented in the scientific literature;

(B) The nitrogen removal efficiency of operating systems using the design concept to service one or more types of development has been satisfactorily demonstrated and adequately documented in the scientific literature;

(C) The proposed application of the treatment process could be expected to meet the two parts per million nitrate/nitrogen ground

water quality standard in the Pinelands Area and the ability to meet this requirement can be continuously achieved on a long-term basis;

(D) Systems utilizing the design concept can be expected not to require any maintenance beyond that required of conventional septic systems or, if additional maintenance is required, sufficient measures can feasibly be taken to insure that the system will be properly maintained and operated;

(E) A comprehensive monitoring program is feasible to fully evaluate the nitrogen removal efficiency of the application of the proposed design concept;

(F) The system contains components which will allow it to function as a standard system if the alternate experimental technology were to fail; and

(G) The design concept can be expected to meet those requirements of the New Jersey Department of Environmental Protection *[and Energy]* necessary to receive a Treatment Works Approval.

v. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

vi. The depth to seasonal high water table is at least five feet;

vii. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

viii. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

ix. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses.

6. Surface water runoff, provided that:

i. The total runoff generated from any net increase in impervious surfaces by a 10 year storm of a 24 hour duration shall be retained and infiltrated on-site. Runoff volumes shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55*, **including the definitions, methodologies and guidance contained therein,*** or the S.C.S. National Engineering Handbook, section 4;

ii. The rates of runoff generated from the parcel by a two year, 10 year and 100 year storm, each of a 24 hour duration, shall not increase as a result of the proposed development. Runoff rates shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55*, **including the definitions, methodologies and guidance contained therein,*** or the S.C.S. National Engineering Handbook, section 4;

*iii. **The standards set forth in (a)6i and ii above shall not apply to minor residential development, provided such development does not involve the construction of any new roads, or to minor non-residential development, provided such development does not involve the grading, clearing or disturbance of an area in excess of 5,000 square feet within any five year period;***

*[iii.]*iv.* Surface water runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel;

*[iv.]*v.* Excessively and somewhat excessively drained soils, as defined by the Soil Conservation Service, should be avoided for recharge of runoff wherever practical;

*[v.]*vi.* A minimum separation of at least two feet between the elevation of the lowest point of the bottom of the infiltration or detention facility and the seasonal high water table is met, or a lesser separation when it is demonstrated that the separation, either due to soil conditions or when considered in combination with other stormwater management techniques, is adequate to protect ground water quality; and

*[vi.]*vii.* ***[A two]* *For private development applications, a four* year maintenance guarantee is provided for the entire stormwater management system by the applicant. In addition, *for**

both private and public development applications,* the applicant or other interested party shall fund or otherwise guarantee an inspection and maintenance program ***for a period of no less than 10 years*.** This may be accomplished by various mechanisms, including but not limited to, the assumption of the inspection and maintenance program obligation by a municipality, county, public utility or homeowners association or ***[through escrow funding in an amount equal to the net present value of the cost of annual inspection, maintenance, and liability insurance for a period of 25 years]* *or other viable mechanisms to achieve the purposes of this section*.** ***[The municipality shall ensure that annual inspections are conducted and any necessary maintenance is completed.]* *The program proposed shall identify the entity charged with responsibility for annual inspections and the completion of any necessary maintenance, and the method to finance said program.***

7:50-6.85 Individual wastewater treatment facility and petroleum tank maintenance

(a) (No change.)

(b) The owners of commercial petroleum storage tanks shall comply with the requirements of P.L. 1986, c.102 (N.J.S.A. 58:10A-29).

7:50-6.86 Water management

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

(c) All wells and all increases in diversion from existing wells which require water allocation permits from the New Jersey Department of Environmental Protection *[and Energy]* shall be designed and located so as to minimize impacts on wetlands and surface waters. Hydrologic analyses shall be conducted in accordance with the New Jersey Department of Environmental Protection *[and Energy]* Guidelines for Water Allocation Permits, with an Appendix on Aquifer-Test Analysis Procedures, New Jersey Geological Survey Report GSR 29, 1992, incorporated herein by reference, as contained in pages 53 through 91 of the Technical Manual for Water Supply Element, Bureau of Water Allocation, Water Allocation Permits dated May 19, 1993, as amended.

(d) All applications for the development of water supply wells or the expansion of existing water distribution systems shall address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system. This shall include efforts by water purveyors and local governments to reduce water demands by users and to reduce losses in the supply and distribution system.

(e) Except for agricultural uses, all new potable and non-potable water supply diversions of more than 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer as a source of water supply and new increases in existing potable and non-potable water supply diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer may be permitted only if it is demonstrated that:

1. No viable alternative water supply sources are available; or

2. The proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area.

7:50-6.93 General standard

All development shall adhere to the relevant air quality standards of N.J.A.C. 7:27. Adherence to the standards of this Part shall be determined by means of an air quality simulation model approved by the New Jersey Department of Environmental Protection *[and Energy]* pursuant to N.J.A.C. 7:27-18.3.

7:50-6.104 Requirements for scenic corridors

(a) Except as provided in this section, no permit shall be issued for development other than for agricultural commercial establishments unless the applicant demonstrates that all buildings are set back at least 200 feet from the center line of the scenic corridor.

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

7:50-6.107 Mandatory sign provisions

(a) (No change.)

(b) No sign, other than warning or safety signs, which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation shall be permitted in any area.

(c) No outdoor off-site commercial advertising sign, other than those off-site signs specifically authorized in N.J.A.C. 7:50-6.108 and 6.109, shall be permitted in the Pinelands except as follows:

1. Off-site outdoor signs advertising agricultural commercial establishments shall be permitted in Agricultural Production Areas and Special Agricultural Production Areas and may be permitted in any other management area. All such off-site signs shall be subject to the following conditions:

i. A maximum of two signs may be placed in any one direction along each road directly approaching the stand; and

ii. Each sign along four lane State or U.S. highways shall be limited to a maximum of 50 square feet in area; each sign along all other roads shall be limited to a maximum of 32 square feet in area.

2. Off-site outdoor directional signs may be permitted in any management area, provided that such signs do not contain advertising and are restricted to the name of the public or private use and any necessary directions, the number of signs per use is the minimum necessary to give adequate directions and the size of such signs does not exceed that necessary to convey directions.

3. Existing lawful off-site commercial advertising signs, in existence as of January 14, 1981, shall be permitted in:

i. Regional Growth Areas;

ii. Pinelands Towns; and

iii. Certified municipal non-residential zones in Rural Development Areas and Villages in existence as of *[the effective date of these amendments]* ***December 5, 1994*** if the sign is located within *[1000]* ***1,000*** feet of a Regional Growth Area or Pinelands Town and is located on a United States Highway.

(d) Any existing sign that violates (a) or (b) shall be removed immediately. Any existing off-site commercial advertising sign which does not conform to (c) shall be removed *[within two years of the effective date of these amendments]* ***no later than December 5, 1996.***

(e) (No change.)

7:50-6.109 Guidelines for sign provisions outside the Preservation Area District and Special Agricultural Production Areas

(a) The following guidelines may be used in formulating municipal sign ordinances:

1.-4. (No change.)

5. Temporary on- and off-site signs advertising civic, social or political gatherings and activities may be permitted, provided that the size of such signs does not exceed 12 square feet;

6.-8. (No change.)

9. New off-site commercial advertising signs may be permitted by certified municipalities in Regional Growth Areas and Pinelands Towns provided that*:

i.)* The applicant can demonstrate that for each new sign an existing lawful off-site commercial advertising sign has been removed by the applicant pursuant to *[N.J.A.C. 7:50-6.107(c)3; and]* ***N.J.A.C. 7:50-6.107(d).***

[ii. The sign complies with N.J.A.C. 16:41C.]

7:50-6.111 Location of utilities

(a) New utility distribution lines to locations not presently served by utilities shall be placed underground, except for those lines which are located on or adjacent to active agricultural operations.

(b) All electric transmission lines shall be located on existing towers or underground to the maximum extent practical.

(c) (No change.)

7:50-6.143 General requirements

(a) All recreational facilities in the Pinelands shall comply with the following requirements:

1. No power vessel in excess of 10 horsepower shall operate on waters of the State within the Pinelands Area except on:

i. (No change.)

ii. That portion of the Wading River downstream from its confluence with the Oswego River; and

iii. That portion of the Great Egg Harbor River downstream from its confluence with Mare Run.

2. (No change.)

3. The Commission shall from time to time designate such areas which are inappropriate for use of motor vehicles. Such designation shall be based upon the following considerations and upon consultation with the New Jersey Department of Environmental Protection *[and Energy]* and other interested persons:

i.-ix. (No change.)

4.-6. (No change.)

7:50-6.144 Guidelines for recreational land and facilities

(a) In preparing the recreational program element of its master plan and ordinances, each municipality may consider the following requirements. In municipalities that have not received certification of their master plans and land use ordinances, all development shall meet the standards of (a)3i below as long as the densities established pursuant to N.J.A.C. 7:50-5 can be met.

1.-2. (No change.)

3. Each municipality shall have ordinances which provide for open space and recreational facilities in association with residential developments. The following guidelines may be utilized to develop these ordinances:

i. All residential development of 25 units or more shall provide:

(1) Eight acres of land to be used for recreational purposes for every 1,000 projected residents of the development, or a prorated acreage if less than 1,000 projected residents; provided, however, that such acreage shall not be required to exceed 10 percent of the total acreage of the proposed development;

(2)-(4) (No change.)

ii. (No change.)

7:50-6.154 Designation of historic resources and districts

(a) Those historic resources within the Pinelands which are from time to time listed in the State or National Registers of Historic Places, pursuant to N.J.S.A. 13:1B-15.128 et seq. and P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470, respectively, are hereby designated by the Pinelands Commission as historic resources of significance to the Pinelands.

(b)-(g) (No change.)

7:50-6.155 Evaluation of development proposals

(a) Identification of Resources:

1. A cultural resource survey shall accompany all applications for development in a Pinelands Village or Town and applications for major development in other Pinelands Management Areas in order to determine whether any significant historic resources exist on the *[property]* ***parcel***. Guidelines for this survey are contained in Appendix B of the "Cultural Resource Management Plan," dated April 1991, as amended. In general, the survey shall include: a statement as to the presence of any properties listed on the National and State Registers of Historic Places on the site or within the area of the project's potential environmental impacts; a thorough search of state, local and any other pertinent inventories to identify sites of potential significance; a review of the literature and consultation with professional and avocational archaeologists knowledgeable about the area; thorough pedestrian and natural resources surveys; archaeological testing as necessary to provide reasonable evidence of the presence or absence of historic resources of significance; adequate recording of the information gained and methodologies and sources used; and a list of personnel involved and qualifications of the person(s) performing the survey.

(b) (No change.)

(c) Evaluation of Resources:

1. The "Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a guide in the evaluation and treatment of cultural resources.

2. Except for those resources designated pursuant to N.J.A.C. 7:50-6.154, each historic resource identified through the survey shall be evaluated to determine its significance according to the individual criteria set forth in N.J.A.C. 7:50-6.154(b). The evaluation questions contained within the "Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a guide to assist in this determination of significance.

3. (No change.)

7:50-6.156 Treatment of resources

(a) A Certificate of Appropriateness is required and issued as follows:

1. No construction, or encroachment upon nor alteration, remodeling, removal, disturbance, or demolition of any resource, structure or area designated pursuant to N.J.A.C. 7:50-6.154 nor any action which shall render such a site inaccessible, shall be permitted without first obtaining a certificate of appropriateness. A certificate of appropriateness shall not be required for routine repair or maintenance, nor interior renovations unless the interior has been expressly found to possess significance according to the designation criteria of N.J.A.C. 7:50-6.154.

2. No application for development which involves a resource, structure or area found significant pursuant to N.J.A.C. 7:50-6.155 shall be approved without first obtaining a certificate of appropriateness unless the cultural resource survey accomplishes the recording in accordance with (c) below, in which case no certificate of appropriateness shall be required. A certificate of appropriateness shall not be required for routine repair or maintenance, nor interior renovations unless the interior has been expressly found to possess significance according to the designation criteria of N.J.A.C. 7:50-6.154.

3. The issuance of certificates of appropriateness by a certified municipality shall be subject to the Pinelands Commission notice and review procedures of N.J.A.C. 7:50-4 unless the proposed developments are exempted pursuant to N.J.A.C. 7:50-4.1(a). The exemptions of N.J.A.C. 7:50-4.1(a) shall not apply to activities set forth in (a)1 above which affect a resource listed in the State or National Registers of Historic Places or which is specifically designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154. In uncertified municipalities, certificates of appropriateness shall be issued by the Pinelands Commission except as provided above. The Commission's review of a certificate of appropriateness for locally designated sites or areas shall accept the determination for treatment of the local [approval]* ***permitting*** agency, unless the Commission finds the resource meets the standards of N.J.A.C. 7:50-6.154(b), in which case the certificate of appropriateness must meet the standards of N.J.A.C. 7:50-6.156(c).

4. (No change.)

(b) (No change.)

(c) The standards for Certificates of Appropriateness are as follows:

1. (No change.)

2. In determining the type of treatment required pursuant to (c)1 above, the "Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a guide. In general, the criteria shall include, but not be limited to, consideration of the following:

i. Preservation in place:

(1)-(4) (No change.)

(5) Whether the steps necessary to preserve the resource are both technically and economically feasible and practical; and

(6) (No change.)

ii. Preservation at another location:

(1)-(3) (No change.)

(4) Whether it is both technically and economically feasible and practical to relocate the resource; and

(5) (No change.)

iii. (No change.)

3. The following requirements shall apply to the treatments specified in (c)1 above:

i. Preservation in Place:

(1) Buildings, architectural features, and engineering features:

(A) Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any rehabilitation, including additions, of the building or feature must be performed in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (Federal Register/Vol. 48, No. 190/Thursday, September 29, 1983, as amended), incorporated herein by reference; and the structure or feature must be protected sufficiently to preserve those qualities that make it significant.

(B) (No change.)

(2) (No change.)

ii. Preservation at Another Location:

(1) Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any new construction or rehabilitation, including additions, of a building or feature must be performed in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (Federal Register/Vol. 48, No. 190/Thursday, September 29, 1983, as amended); and the structure or feature must be protected and maintained sufficiently to preserve those qualities that make it significant.

(2)-(3) (No change.)

iii. Recordation: The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (Federal Register/Vol. 48, No. 190/Thursday, September 29, 1983, as amended) shall be utilized when recording resources. In addition, the "Pinelands Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a further guide for recording resources.

(d) Effect of Issuance of Certificate of Appropriateness:

1. (No change.)

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for two years. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within two years, the standards of this Part shall thereafter not apply to the cultural resource in question.

APPENDIX A

PINELANDS SEPTIC DILUTION MODEL

December 1993

The water quality standards of the Pinelands Comprehensive Management Plan allow the use of individual on-site septic systems provided that the design of the system and the size of the parcel on which the system is located will ensure that the concentration of nitrate-nitrogen in the groundwater exiting the parcel or entering a surface water body will not exceed 2 ppm (N.J.A.C. 7:50-6.84(a)4iii). The model used to calculate the minimum land area necessary to dilute nitrogen from septic systems to concentrations that will comply with the water quality standards was developed by K.W. Brown (An Assessment of the Impact of Septic Leach Fields, Home Lawn Fertilization and Agricultural Activities on Groundwater Quality, 1980). The following formula is used:

$$A_t = A_f + \frac{\left(\frac{FL_f}{C} - D_f\right)A_f}{D_o}$$

Where:

A_t = total parcel area

A_f = area of disposal field

F = unit conversion factor of 10

L_f = flux of nitrate-nitrogen below disposal field (kg/ha/yr)

C = concentration of nitrate-nitrogen (ppm)

D_f = equivalent depth of percolate below disposal field (cm/yr)

D_o = equivalent depth of percolate below open acres (cm/yr)

In using this model, it is necessary to assume values for factors such as wastewater flow into the system, the concentration of nitrogen in the wastewater and the amount of rainfall diluting the nitrogen. The standard assumptions required for use in the Pinelands Dilution Model are contained in Table 1.

The assumed wastewater flow for non-residential uses must be consistent with the values contained in N.J.A.C. 7:9A-7.4, as amended, except that the number of employees may not be utilized in calculating wastewater flow for office uses. Absent actual monitoring of nitrogen concentration in the wastewater, the residential

nitrogen concentration of 39.45 ppm will be utilized. If the applicant establishes wastewater flow based on monitoring of flows pursuant to N.J.A.C. 7:9A-7.4, then water quality monitoring must also be done to establish actual nitrogen concentration in the wastewater. All structures are assumed to contribute to the generation of wastewater unless it is demonstrated that the nature of the building construction precludes human occupancy.

TABLE 1

Parameter	Assumption
1. Number of persons/dwelling	3.5
2. Number of persons/age restricted dwelling	2.0
3. Residential wastewater flow (gallons/capita/day)	75
4. Plant Uptake of nitrogen	4.5% (A soils) 9.0% (B soils)
5. Infiltrating rainfall	20 inches/year (50.8 cm/year)
6. Nitrogen production (grams/capita/day)	11.2 gms
7. Distribution of Nitrogen in wastewater	83% blackwater 17% greywater
8. Nitrogen concentration in wastewater for residential uses	39.45 ppm

7:50-7.3 Petitions for amendment

(a) (No change.)

(b) Any other person desiring to petition the Commission for an amendment to this Plan shall file a petition with the Executive Director in such form and number as the Executive Director shall from time to time establish and containing at least the following information:

1.-4. (No change.)

5. In the event that the proposed amendment would change the classification of any *[property]* *parcel* as shown on the Land Capability Map:

i.-iii. (No change.)

iv. The names and addresses of all owners of property required to be notified pursuant to (c)1 below;

v.-vi. (No change.)

6. In the event that the proposed amendment would affect zoning districts, permitted uses or intensity of permitted uses within one or more municipalities whose master plans and land use ordinances have been certified by the Pinelands Commission, duly adopted resolutions of the planning board and governing body of each municipality expressing their support for changes to the master plan and land use ordinances to effectuate the proposed amendment if approved by the Pinelands Commission.

(c) For petitions filed pursuant to (b) above, the petitioner shall be required to provide notice of the filing of the petition within 20 days after receiving notification from the Executive Director that a complete petition has been filed with the Commission as follows:

1. If the petition proposes to change the classification of any *[property]* *parcel* as shown on the Land Capability Map or is intended to affect a specific *[property]* *parcel* or an area less than 100 acres in size:

i. Notice shall be given to the secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction over any *[property]* *parcel* or area that would be directly affected by the proposed amendment;

ii. Notice shall be given to owners of all real property within 200 feet of any *[property]* *parcel* or area that would be directly affected by the proposed amendment as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality in which the subject *[property]* *parcel* or area is located shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The petitioner shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c);

iii. Notice shall be given by publication in the official newspaper of the municipality in which the subject *[property]* *parcel* or area

is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12; and

iv. Notice shall be given by conspicuous posting on any parcel or parcels that would be directly affected by the proposed amendment.

2. For all other petitions, notice shall be given by publication in all the official newspapers of the Pinelands Commission.

3. The petitioner shall file with the Executive Director, no less than 25 days after receiving notification from the Executive Director that a complete petition has been filed with the Commission, an affidavit that the requirements of (c)1 or 2 above, whichever may be applicable, have been satisfied.

7:50-7.6 Submission to Pinelands Municipal Council

All proposed amendments shall, at least 60 days prior to any meeting at which the Commission will consider such amendment, be submitted by the Executive Director to the Pinelands Municipal Council, by mailing such amendments to each municipality in the Pinelands, for its review and recommendation.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration

Readoption with Amendments: N.J.A.C. 12:90

Proposed: September 19, 1994 at 26 N.J.R. 3810(a).

Adopted: November 9, 1994 by Peter J. Calderone,

Commissioner, Department of Labor.

Filed: November 9, 1994 as R.1994 d.599, with substantive and technical changes not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1-47, 34:1A-3(e) and 34:7-18.

Effective Date: November 9, 1994, Readoption
December 5, 1994, Amendments.

Expiration Date: November 9, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed readoption with amendments was held on October 12, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, was available to preside at the hearing and receive testimony. She responded to certain statements made during the course of testimony and recommended that the proposed readoption with amendments be adopted with changes not in violation of N.J.A.C. 1:30-4.3.

Persons wishing to review the transcript of the hearing may contact Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

It is first recognized that the members of the Office of Boiler and Pressure Vessel Compliance (OB&PVC) Board support the readoption with amendments with changes not requiring additional public notice and comment under N.J.A.C. 1:30-4.3. Written and oral comments were received from Steven C. Cyr, Consultant Materials Engineering, Dupont Engineering; Martin R. Hansen, Quality Assurance Manager, Dupont Chambers Works; William J. Neill, Jr., President, Corrosion and Materials Technology, Inc.; H.R. Van Handle, Manager, Environmental & Engineering Services, Bayway Refining Company; Steven J. Picco, Esq., Picco, Mack, and Herbert, P.C.; Stanley LaBruna, Vice President, Nuclear Engineering, Public Services Electric & Gas Company; Richard Stokes, Esq., Manager Government Affairs, Atlantic Electric; and John A. Maxwell, Director, New Jersey Petroleum Council.

COMMENT: The adoption of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code 1992 edition with addenda as safety standards would pose compliance problems for the industry unless the Department is able to update the ASME Code edition changes through amendments to N.J.A.C. 12:90. This would be a difficult task since ASME Code addendas become mandatory six months after

ADOPTIONS

issuance. This problem can be avoided by adopting the current edition of the ASME Boiler and Pressure Vessel Code with addenda throughout N.J.A.C. 12:90 rather than 1992 edition and addenda.

RESPONSE: The ASME Codes are updated every three years. The year of manufacture of boilers and pressure vessels is defined in the ASME Code itself. It states that only the current edition and addenda can be used. N.J.A.C. 12:90 has been modified to allow for the use of the current year and addenda of the applicable ASME Code. This modification provides consistency with the ASME Code.

COMMENT: The Department should provide specific estimates concerning the increased costs to employers to comply with the proposal.

RESPONSE: The Department does not feel that this readoption will increase costs to employers. On the contrary, increased regulatory flexibility and reduced paperwork requirements should decrease costs.

COMMENT: The required authorization to proceed with repairs noted in N.J.A.C. 12:90-4.8(d) could delay the start of repairs and could cause forced electrical outages. This is especially true since there is no guarantee that a National Board Commission inspector will be available for consultation regarding proposed actions prior to the work performed. As a result, it is recommended that the words "prior approval" be deleted from the proposal.

RESPONSE: N.J.A.C. 12:90 has adopted by reference the National Board Inspection Code (NBIC). This Code has been used in New Jersey for dozens of years and has been adopted by nearly every State and every Province in Canada. The NBIC has always required prior inspector approval; therefore, the requirement at N.J.A.C. 12:90-4.8(d) only enforces the previous requirements. Routine welded repairs to boilers will continue to be handled as in the past. Such routine welded repairs have not delayed the start of repairs or caused forced electrical outages.

COMMENT: N.J.A.C. 12:90-4.10 should be modified to increase the time interval between inspections to a minimum of 18 months in order to reduce boiler downtime and to be more consistent with other states' requirements.

RESPONSE: A review of the Uniform Boiler and Pressure Vessel Laws Society Synopsis indicates that the majority of the States of the United States mandate annual internal inspections. Currently, N.J.S.A. 34:7-14(a) requires all boilers to be inspected annually.

COMMENT: N.J.A.C. 12:90 requires that when repairs or alterations are performed on boilers or pressure vessels, the individuals performing such activities shall possess either an appropriate ASME or National Board (National Board) of Boiler and Pressure Vessel Inspectors Certificate of Authorization. However, Federal regulations require that all nuclear power facilities within the United States comply with Section XI of the ASME Boiler and Pressure Vessel Code titled "Rules for Inservice Inspection of Nuclear Power Plants." Both of these regulations provide stringent specifications to ensure personnel and equipment safety during the repair and replacement of boiler and pressure vessel components. Although the requirements contained in these two codes are, for all intents and purposes, identical, the application of these redundant regulations to owners/operators of nuclear facilities creates unnecessary duplication of effort, taxes resources needed to maintain economic competitiveness and adds no tangible measure of safety. To enable the New Jersey Code to recognize and default to the unique and prescriptive regulatory requirements applicable to owners/operators of nuclear facilities without compromising the State's goal of assuring continued, safe operation of regulated activities, the following changes to the proposal are recommended: N.J.A.C. 12:90-4.8(b) should be amended to read "... except Owner's of nuclear power plants that are required to comply with the rules of ASME Section XI"; the proposed language in N.J.A.C. 12:90-4.8(f) should be changed to read "Owners of nuclear power plants that are required to comply with ASME Section XI and who directly perform alterations are not required to possess either an ASME Code symbol or National Board Alteration Certificate"; N.J.A.C. 12:90-5.12 should be amended to read "... except Owners of nuclear power plants that are required to comply with the rules of ASME Section XI"; and N.J.A.C. 12:90-5.12(d) should be amended to read "Owners of nuclear power plants that are required to comply with ASME Section XI and who directly perform alterations are not required to possess either an ASME Code symbol or National Board Alteration Certificate."

RESPONSE: It is not a requirement under the New Jersey Administrative Code to require owners of nuclear power plant equipment to maintain a National Board, "NR" repair stamp, provided the owner maintains an ASME Section XI program as mandated under 10 C.F.R. Part 50.55(a). Any non-owner or outside contractor who performs repairs

LABOR

for or on behalf of the owner, must hold and maintain the appropriate National Board repair or applicable ASME Code construction stamp.

COMMENT: The last sentence in the definition for shop inspection found in N.J.A.C. 12:90-2.1 should be changed to read "Such inspections shall also include National Board audits and joint reviews as required and assigned by the ASME and National Board for issuance or renewal of ASME Code symbol stamps or National Board stamps."

RESPONSE: Current language accommodates the intent of the commenter's requested change. The proposed definition is clear and does not need to be reworded.

COMMENT: The OB&PVC has consistently adopted the latest ASME Boiler and Pressure Vessel Code and addenda without revisions or deletions. The proposed amendment to N.J.A.C. 12:90-4.2(b) and N.J.A.C. 12:90-5.2(b) should be changed to reference the current edition with addenda. This will make it clear and easier for all to follow in terms of new construction, welded repairs and alterations.

RESPONSE: The ASME Codes are updated every three years. The year of manufacture of boilers and pressure vessels is defined in the ASME Code itself. It states that only the current edition and addenda can be used. N.J.A.C. 12:90 has been modified to allow for use of the current edition and addenda of the applicable ASME Code. This modification provides consistency with the ASME Code.

COMMENT: N.J.A.C. 12:90 should be amended throughout the regulation to adopt the 1992 National Board Inspection Code (NBIC) rather than the 1989 version of the Code. The 1992 NBIC is a better document, contains a number of useful improvements, is formatted in loose-leaf style to make it easier to add and keep track of the addenda. It is also noted that the NBIC Committee will issue a 1995 edition in July. As a result, reference to the 1989 NBIC will pose a substantial time gap between the 1989 NBIC and the 1995 NBIC. In addition, it may be some time before the Board considers adoption and legislative review of the later NBIC.

RESPONSE: The OB&PVC Board agrees that the 1992 edition of the NBIC should be applied in these rules and is making the necessary changes at N.J.A.C. 12:90-4.2(c), N.J.A.C. 12:90-4.8(a)3, N.J.A.C. 12:90-5.2(c), N.J.A.C. 12:90-5.12(a)3 and N.J.A.C. 12:90-8.1(a)3. The 1992 edition is being adopted because it has enhanced recommended techniques for inspection. It is also noted that NBIC Paragraph 301.2.2 was excluded in the 1987 edition of the NBIC. However, due to rewording of this paragraph in the 1992 edition, Paragraph 301.2.2 will now be allowed. The text proposing this provision is being deleted on adoption at N.J.A.C. 12:90-4.2(c)2 and N.J.A.C. 12:90-5.2(c)2 as it is already incorporated as part of the 1992 edition.

COMMENT: N.J.A.C. 12:90-4.2(c) should be amended to adopt the API 510 and API 510 certified inspectors. The NBIC and API 510 have mutually cross-referenced each other for specific industries for many years. It is also noted that 11 states have adopted API 510 and that two states are in the process of adopting it. N.J.A.C. 12:90-4.2(c) should also be amended to adopt the NBIC provision for Owner-User acceptance inspection of repairs by his employer.

RESPONSE: API 510 is a valid National Standard used by most of the petroleum and chemical process industry as a pressure vessel inspection standard. The adoption of API 510 will require a substantive change and additional research. The OB&PVC Board is currently reviewing the adoption of the API 510 document for possible later inclusion in N.J.A.C. 12:90. User-inspection is defined in NBIC Paragraph 301.2.2 which has been excluded in the 1987 edition of the NBIC. Due to rewording of this paragraph and adoption of the 1992 edition, Paragraph 301.2.2, User inspection will now be allowed.

COMMENT: N.J.A.C. 12:90-4.7(g) should be amended to read "Repairs and alterations to blowdown tanks and separators with an internal operating pressure greater than 15 psig shall be in accordance with N.J.A.C. 12:90-5.12."

RESPONSE: Pressure vessels which are ASME Code stamped shall be repaired in accordance with provisions of the N.J.A.C. 12:90. The 15 psi is not the only criteria in determining ASME requirements.

COMMENT: N.J.A.C. 12:90-4.8(d) concerning welded repairs and alterations to boilers should be amended to read "All plans for welded repairs ... their guidance and a record of welded repairs made at completion of the work."

RESPONSE: The commenter's suggestion is consistent with current language; therefore, no change is made to the proposed text.

COMMENT: N.J.A.C. 12:90-4.8(e) and (g) and 5.12(c) and (e) should be amended to require that owners are responsible for keeping a legible

copy of the original manufacturer's data report and a legible copy of a welded repair or alteration report on file for the life of the unit.

RESPONSE: The records are required to be filed with the National Board per N.J.A.C. 12:90-5.4(d). To impose additional recordkeeping requirements on New Jersey manufacturers may cause undue economic hardships.

COMMENT: The proposed amendment to N.J.A.C. 12:90-4.9(h) which provides that welded repair shops shall be located within jurisdictional New Jersey could raise a question on out-of-State companies such as CB&I and Nooter with appropriate ASME and National Board stamps performing repairs.

RESPONSE: Requirements stating that welded repair shops be located within jurisdictional New Jersey is mandated by N.J.S.A. 34:7-15(c). N.J.A.C. 12:90-4.9(h) only applies to New Jersey "R" stamp holders and does not apply to companies located outside of New Jersey.

COMMENT: The proposed amendment to N.J.A.C. 12:90-4.9(i) should be changed to make it consistent with N.J.A.C. 12:90-4.8(h) as follows: "Nothing herein shall be intended to prohibit welded repairs by a contractor or firm possessing a valid and appropriate ASME Code symbol stamp or having a National Board repair authorization or having a New Jersey repair authorization".

RESPONSE: The commenter's suggestion is consistent with current language, therefore, no change is made to the proposed text.

COMMENT: The headings to N.J.A.C. 12:90-4.12 and 5.14 should be changed to "Fee and visit charge for shop inspection by New Jersey Inspector."

RESPONSE: The fees for a "shop inspection" include the visit. In addition, it is understood by the industry that State inspections are conducted by inspectors employed by the Department.

COMMENT: Given the checks and balances provided by the Authorized Inspector audit and the OB&PVC approval, boiler internal inspection interval extensions may be safely granted beyond 24 months. In the past, the OB&PVC has granted such consecutive extensions for a number of refineries after reviewing the supporting letters by the Authorized Inspector companies. For these reasons, N.J.A.C. 12:90-4.11 concerning ultrasonic testing should be amended by adding the following phrase "... or within a 12 month period following the previous OB&PVC approved internal inspection extension".

RESPONSE: Language has been added at N.J.A.C. 12:90-4.11(b)3 granting additional time periods between internal inspections under limited circumstances.

COMMENT: N.J.A.C. 12:90 should be amended to include requirements to cover the steps involved in a rerating in terms of an increase or decrease in maximum allowable working pressures (MAWP) or temperature (MAWT) and the installation of a nameplate to cover the new MAWP or MAWT.

RESPONSE: With the adoption of the 1992 NBIC, rerating, increasing or decreasing of the MAWP is not prohibited by the regulation. The OB&PVC should be contacted concerning specific procedures as allowed in the 1992 NBIC.

COMMENT: N.J.A.C. 12:90-4.10 concerning alternate internal inspection requirements should be amended to provide latitude for the extension of internal inspection interval, as recognized in N.J.S.A. 34:7-14.

RESPONSE: Language has been included at N.J.A.C. 12:90-4.10(a) granting additional time periods between internal inspections under limited circumstances.

COMMENT: N.J.A.C. 12:90 should be amended to clarify the OB&PVC's authority under N.J.S.A. 34:7-14 and N.J.A.C. 12:90-2.1 and 4.11 to grant consecutive external inspections in lieu of internal inspections for boilers which are integral elements of continuous process units. The OB&PVC has interpreted the statute and regulations to provide it authority to grant, and has granted, extensions of the time interval between internal inspections for boilers in continuous processing operations on a case-by-case basis with approval of the authorized inspection agency, consistent with statutory language. This practice which is consistent with the statute should be codified by regulation. By allowing this alternative to annual out-of-service internal inspections for specific equipment operating as integral components of a continuous processing operation provides for increased safety and environmental benefit, and is consistent with the enabling legislation. In addition, such alternative deters significant economic costs which may result from removing an operating boiler from service in a continuous operating unit when inspection time limits cannot be met.

RESPONSE: Language has been added at N.J.A.C. 12:90-4.11(b)3 granting additional time periods between internal inspections under

limited circumstances. This rule has been clarified by the addition of a definition for the term "continuous processing operation" at N.J.A.C. 12:90-2.1. The inclusion of this definition is necessary due to the requirement in N.J.S.A. 34:7-14(a) that companies have their boilers inspected each year unless they are a continuous operation in which case inspections may be performed in intervals deemed necessary by the Commissioner of Labor. By including this definition, companies who do not have a true continuous processing operation are precluded from claiming that they do. The definition was derived from the Uniform Boiler and Pressure Vessel Laws Society synopsis which is recognized in various jurisdictions. Further clarification is provided by the addition of N.J.A.C. 12:90-4.11(b)6 which requires owners/users to have a documented in service inspection, operation and maintenance program which is subject to a field audit prior to approval of a boiler inspection extension. By adding this paragraph, the Department is codifying its practice of auditing in service inspection programs to verify the existence of the ultrasonic test requirements mandated by N.J.A.C. 12:90-4.11 as well as the history of boilers. It should be noted that the amendments to N.J.A.C. 12:90-4.11, including the definition for "continuous processing operation," provide regulatory flexibility in that they relieve the chemical processing industry from having to shut down operations for inspections.

COMMENT: N.J.A.C. 12:90-4.2 and 5.2 should be amended to provide that the replacement of a pressure retaining part with a material of different nominal composition, equal to or greater in allowable stress from that used in the original design shall be considered a repair and not an alteration, provided the replacement material satisfies the material and design requirements of the Code of Construction under which the vessel was built. This language is taken from the NBIC 1992 edition and is necessary to provide flexibility to the industry and to reduce unnecessary paperwork for both the Department and Industry. It would also promote safer designs by providing an incentive to upgrade materials of construction.

RESPONSE: The replacement of pressure retaining parts with material of different compositions of equal or greater allowable stress will be allowed by adoption of the 1992 NBIC.

COMMENT: N.J.A.C. 12:90-5.2 should be amended to adopt the API Standard 510 as the governing code for pressure vessels in the petroleum and chemical processing industry instead of the currently governing NBIC. The API 510 has been developed specifically for the petroleum and chemical processing industry and includes necessary flexibility while also addressing additional safety concerns specific to the applicable industries.

RESPONSE: API 510 is a valid national standard used by most of the petroleum and chemical process industry as a pressure inspection standard. The adoption of API 510 will require a substantive change and additional research. The OB&PVC Board is currently reviewing the possible adoption of the API 510 document for later inclusion into N.J.A.C. 12:90.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:90.

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

12:90-2.1 Definitions

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

...
 "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for external use by the direct application of heat. The term "boiler" shall include fired or waste heat units used for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

1.-3. (No change.)

4. "High pressure boiler" means a power boiler in which steam or other vapor is generated at a pressure of more than 15 psig. High pressure boiler also means a high temperature, high pressure water boiler or heat recovery steam generator.

5. "High temperature water boiler" means a water boiler operating at a pressure exceeding 160 psig or a temperature exceeding 250 degrees Fahrenheit.

6. "Heat recovery steam generator" means a high pressure boiler in which steam or other vapor is generated and where steam is super heated. The term "heat recovery steam generator" shall include both fired and indirect fired units whose heat source is derived from duct burners and/or waste exhaust gasses.

...
"Continuous processing operation" means a continuously operating processing or environmental control unit within the petroleum refining or chemical manufacturing industry where an associated boiler or similar equipment cannot be taken out-of-service outside of a scheduled, pre-planned periodic shut down of the entire continuous processing operation without incurring significant safety, environmental or economic harm.*

...
"Occupied building" means a building which is occupied by persons other than custodial or security personnel. A building is not deemed to be occupied solely on the basis of attendance by custodial or security personnel.

...
"Prime mover" means a turbine, pump or other steam driven device which produces work (energy).

...
"Shop inspection" means an inspection performed when any boiler or pressure vessel is being constructed, fabricated or undergoing welded repair. Such inspections shall include National Board audits and joint reviews as required and assigned by the ASME and National Board.

...
"Welded repair" means a repair affecting the strength of a boiler or pressure vessel or other equipment.

12:90-3.3 Equipment requiring a licensed operator

(a) No person shall operate the equipment listed below without the appropriate license as specified in N.J.A.C. 12:90-3.4 through 3.8.

1. (No change.)

2. A steam or hot water heating plant with an indicated or rated capacity that exceeds either 499 square feet of heating surface, or 100 boiler horsepower, or 1,000 kilowatts, or 4,000,000 Btu input regardless of pressure or temperature conditions only when the building or building being served is deemed occupied;

3.-6. (No change.)

12:90-3.5 Licenses for low pressure boilers

(a) (No change.)

(b) No unlicensed person shall operate a low pressure steam or hot water heating boiler in which the rated capacity exceeds 100 horsepower or 499 square feet of heating surface or 4,000,000 Btu input or 1,000 kilowatts regardless of pressure or temperature conditions only when the building or building being served is deemed occupied.

(c) (No change.)

12:90-3.9 Chief engineer and scope of certain licenses

(a) When more than one licensed person is required to operate a high pressure boiler, refrigeration system, or power generating plant, whether or not the operators are employed on the same shift, the management of the plant shall designate a chief engineer. Chief engineers are not required for low pressure systems.

(b) (No change.)

(c) The engineer designated as chief engineer shall be permitted to serve as chief engineer in one plant location only and must be a full-time employee of the company responsible for the operation of the high pressure boilers, power generating or refrigeration systems. The designation shall be in writing and be on file at the plant location where the chief engineer is employed.

(d)-(j) (No change.)

12:90-3.10 Duties of licensed persons

(a) (No change.)

(b) Licensed persons on watch shall give constant attention to high pressure boilers and refrigeration systems.

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

12:90-3.11 Duties of others involved

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

(c) Users of boilers, pressure vessels, refrigeration systems and other equipment subject to the inspection and licensing acts, shall be guided by their authorized inspectors relative to the jurisdiction of the Office of Boiler and Pressure Vessel Compliance for purposes of registration, certification, licensing, repairs and alterations.

(d) No person shall contract for or purchase new or used boilers or unfired pressure vessels for which does not comply with the applicable ASME Code except as provided for in N.J.A.C. 12:90-5.3 through 5.9. The applicable ASME Code shall be specified in such transactions.

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

12:90-4.2 Compliance with referenced standards

(a) (No change.)

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code—*[1992 edition]* ***current edition*** with addenda are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1.-9. (No change.)

(c) The National Board Inspection Code—*[1989]* ***1992*** is adopted as the safety standard under this subchapter and shall apply according to the provisions thereof, except that the following sections shall not apply:

1. (No change.)

[2. R-301.2.2]

(d) Each person engaged in the design, construction, fabrication, installation, repair and alteration of boilers shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e)-(g) (No change.)

12:90-4.5 Low pressure boilers

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

(e) When low pressure boilers are connected to a common header, the connections from each boiler having a manhole opening shall be fitted with two stop valves having adequate free-blow drains which shall be located between the stop valves.

1.-2. (No change.)

12:90-4.6 Relief device settings

All boilers shall have relief devices set to discharge at the rated relieving capacity and pressure in accordance with the requirement contained in the applicable ASME Code.

12:90-4.7 Steam boiler blowdown tanks and receivers

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

(d) Construction of blowdown tanks:

1. The minimum metal thickness of blowdown tanks, whether of the pressure or atmospheric type, shall be not less than $\frac{5}{16}$ inch.

2.-3. (No change.)

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

(g) Repairs and alterations to blowdown tanks and separators shall be in accordance with N.J.A.C. 12:90-5.12.

12:90-4.8 Welded repairs and alterations to boilers

(a) Welded repairs and alterations to boilers shall comply with:

1.-2. (No change.)

3. The National Board Inspection Code—*[1989]* ***1992*** edition.

(b) (No change.)

(c) The ASME Code validity of piping repairs shall be maintained to the boundaries defined in Section I, Power Boilers for high pressure boilers and to the required stop valve connection for low pressure heating boilers.

(d) All plans for welded repairs to boilers or connected piping shall be approved prior to the start of welded repairs by a National Board commissioned inspector with a valid New Jersey Certificate of Competency who is employed by an authorized insurance company or the State of New Jersey and performed under their guidance and certified at the completion of the welded repairs.

(e) A record of welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance when requested.

LABOR

(f) Alterations to boilers shall be performed by the appropriate Code symbol holder or a National Board Alteration Certificate holder.

(g) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the boiler is not registered with the National Board. Fees for registration of these reports shall be \$2.00 for each boiler and shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.

1. When registered, one copy of the manufacturer's data report shall be returned to the user of the boiler.

2. If reports are not filed, the boiler shall be subject to State inspection and State inspection fees shall be assessed.

12:90-4.9 Qualification of authorized repair firms

(a) This section shall apply to the procedures required to obtain a New Jersey R symbol as a New Jersey authorized welded repair firm for welded repairs.

(b) A letter of application shall be addressed to the Office of Boiler and Pressure Vessel Compliance by a responsible officer of the firm requesting welded repair authorization. The letter of application shall identify the New Jersey address and location of the welded repair firm to be considered for authorization, and shall include evidence that an authorized inspection agency has agreed to provide inspection service as required.

(c) A review of the firm's facilities and quality control system shall be conducted jointly by an inspection specialist of the Office of Boiler and Pressure Vessel Compliance and a supervisory representative of the authorized inspection agency. The assigned shop inspector shall also be present during the review.

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

(f) Welded repairs performed by an authorized welded repair firm shall be deemed to preserve intact the validity of the original construction standard of the boiler upon which the work was performed while the boiler is in the State of New Jersey.

(g) Alterations or modifications altering the original design shall not be performed by the holder of a New Jersey repair certification, but shall be performed by an appropriate, qualified, ASME symbol stamp or National Board Alteration Certificate of Authorization holder.

(h) Welded repair shops shall be located within jurisdictional New Jersey.

(i) Nothing herein shall be intended to prohibit welded repair by an appropriate, qualified, ASME authorized shop or National Board welded repair firm or to require additional qualification of such shops under these rules.

12:90-4.10 Inspection of boilers

(a) All steam or hot water boilers or similar equipment potentially capable of generating steam as described in (b) below shall be inspected and be subjected to a hydrostatic test, if necessary, at least once each year at 12-month intervals. This inspection shall be a complete internal and external inspection as construction conditions will permit. All hot water heating boilers shall be inspected internally at 24-month intervals and shall be inspected externally every 12 months.

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

12:90-4.11 Ultrasonic testing

(a) (No change.)

(b) Ultrasonic testing shall be considered under the following circumstances:

1.-2. (No change.)

3. Ultrasonic inspection, in-lieu-of the annual out-of-service and open internal and external inspection, shall be accepted only when it is made within a 12-month period following the internal and external inspection ***or for a continuous processing operation when it is made within a 12-month period of the previous OB&PVC approved boiler inspection extension. The maximum period between out-of-service and open internal and external inspections shall not exceed 5 years***;

4.-5. (No change.)

6. The owner/user shall have a documented in-service inspection, operation and maintenance program. At the discretion of the OB&PVC, this program shall be subject to field audit prior to approval of the boiler inspection extension.

12:90-4.12 Fee and visit charge for shop inspection

(a) The fee for a shop inspection shall be the higher of either (a)1 or 2 below:

1. A fee of \$25.00 for each boiler inspected; or

2. A daily visit charge of \$160.00 for any shop inspection of four hours or less and \$300.00 for any shop inspection exceeding four hours.

(b) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-5.2 Compliance with referenced standards

(a) (No change.)

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code—*[1992]* ***current*** edition with addenda are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1.-7. (No change.)

(c) The National Board Inspection Code—*[1989]* ***1992*** is adopted as a safety standard under this subchapter and shall apply according to the provisions thereof, except that the following sections shall not apply:

1. (No change.)

[2. R-301.2.2]

(d) Each person engaged in the design, construction, fabrication, installation, repair or alteration of unfired pressure vessels shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e)-(g) (No change.)

12:90-5.4 Class I unfired pressure vessels

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

(d) Class I unfired pressure vessels shall also be stamped and registered with the National Board except as stipulated in N.J.A.C. 12:90-5.13(d).

12:90-5.9 Class III unfired pressure vessels—New Jersey Approved

(a) (No change.)

(b) The application for a New Jersey Approved unfired pressure vessel shall meet the following requirements:

1.-3. (No change.)

4. All letters of application shall be accompanied by payment of \$1,500 for each non-code design. Additional fees shall be required for designs submitted for a single project and shall be repetitive for each user-application of the design;

5. Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey Certificate of Competency license number; and

6. (No change.)

(c)-(g) (No change.)

(h) Full computations shall be provided, using appropriate formulae as required, by the applicable code section. All computations shall be labeled and ASME Code reference given. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated. Finite Element Analysis is an acceptable alternative method to demonstrate design rationale.

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

(l) All of the foregoing documentation shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user of the vessel with a letter requesting that New Jersey Approved classification be assigned, if warranted.

(m) (No change.)

ADOPTIONS

ADOPTIONS

LABOR

12:90-5.12 Welded repairs and alterations to unfired pressure vessels

(a) Welded repairs and alterations to unfired pressure vessels shall comply with:

1.-2. (No change.)

3. The National Board Inspection Code—*[1989]* ***1992*** edition.

(b) (No change.)

(c) A record of welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance when requested.

(d) Alterations to unfired pressure vessels shall be performed by the appropriate Code symbol holder and/or National Board Alteration Certificate Holder..

(e) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the unfired pressure vessel is not registered with the National Board. The fees for registration shall be in accordance with N.J.A.C. 12:90-5.15(d).

12:90-5.14 Fee and visit charge for shop inspection

(a) The fee for a shop inspection shall be the higher of either 1 or 2 below:

1. A fee of \$25.00 for each boiler inspected; or

2. A daily visit charge of \$160.00 for any shop inspection of four hours or less, and \$300.00 for any shop inspection exceeding four hours.

(b) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-7.18 Suspension or revocation of license

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

(f) A licensee whose license is suspended or revoked has the right to request a hearing conducted in accordance with N.J.S.A. 34:7-3.

12:90-7.20 Employment of unlicensed person in emergency

(a) (No change.)

(b) The Commissioner may extend the time period under (a) above provided that a written extension request is received by the Office of Boiler and Pressure Vessel Compliance prior to the expiration of the 15 day period in (a) above. Such request shall contain:

1. The reason for the emergency condition;

2. A date certain when a licensed person will be employed;

3. The method used and efforts made in searching for a licensed person;

4. The name of the unlicensed person currently employed and if the unlicensed person has made an application for examination with the Office of Boiler and Pressure Vessel Compliance; and

5. Such other information as the Commissioner shall direct.

(c) Late requests for extension are subject to penalties which must be satisfied prior to permission being granted.

(d) If an unlicensed person in (b)4 above who has filed an application with the Office of Boiler and Pressure Vessel Compliance fails to appear for an examination as notified or a licensed person is not hired within the extension period set by the Commissioner, the Commissioner may at his or her discretion refer a licensed

person from an employment agency or other appropriate source to the employer.

(e) The Office of Boiler and Pressure Vessel Compliance shall again be notified when a licensed person is employed, giving the name, address, and license classification, grade and number of such employee.

12:90-8.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. ASME—*[1992]* ***current*** edition and addenda, Boiler and Pressure Vessel Code

Section I, Power Boilers

Section II, Material Specifications

Part A—Ferrous Material Specifications

Part B—Nonferrous Material Specifications

Part C—Specifications for Welding Rods, Electrodes and Filler Metals

Part D—Properties

Section III, Nuclear Power Plant Components

Subsection NCA—General Requirements for Division 1 and Division 2

Division 1—Subsection NB—Class 1 Components

Division 1—Subsection NC—Class 2 Components

Division 1—Subsection ND—Class 3 Components

Division 1—Subsection NE—Class MC Components

Division 1—Subsection NF—Component Supports

Division 1—Subsection NG—Core Support Structures

Division 1—Appendices

Division 2—Code for Concrete Reactor Vessels and Containments

Section IV, Heating Boilers

Section V, Nondestructive Examination

Section VI, Recommended Rules for the Care and Operation of Heating Boilers

Section VII, Recommended Guidelines for the Care of Power Boilers

Section VIII, Pressure Vessels

Division 1

Division 2—Alternative Rules

Section IX, Welding and Brazing Qualifications

Section X, Fiber-Reinforced Plastic Pressure Vessels

Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components—Division I

All Cases, Interpretations and Addenda

2. BOCA—1987, Basic National Mechanical Code.

3. NBBPV1—*[1989]* ***1992***, National Board Inspection Code.

4. N.J.S.A. 34:7-1 et seq., Operating Engineers and Firemen Licensing Act.

5. N.J.S.A. 34:7-14 et seq., Boiler, Pressure Vessel and Refrigeration Act.

6. New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.20, Mechanical Subcode.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Opportunity for Comment on Preliminary Report to the Governor and the Legislature Concerning the Implementation of the Solid Waste Collection Regulatory Reform Act

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

Authority: N.J.S.A. 48:13A-7.14.

Take notice that the Department of Environmental Protection (Department) has prepared a preliminary report concerning the effective implementation of the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq. (Reform Act) for submittal to the Governor and the Legislature.

The Reform Act, effective April 14, 1992, calls for the general deregulation of the solid waste collection industry by providing for the phase-out of traditional rate regulation over the course of four years. At the end of the four year transition period, state regulation will be replaced by whatever restraints exist in the marketplace. However, the Legislature realized that for the marketplace to work effectively, there must be an adequate level of competition among collectors. In order to ensure competition, the Reform Act grants the Department the authority to monitor the marketplace and to take remedial steps in the event that effective competition is not present. In accordance with this mandate, the Department has taken a number of steps in preparation for deregulation in 1996. To determine the extent of effective competition and to monitor the Department's implementation of the economic deregulation strategy, the Legislature directed the Department to file two separate reports with the Governor and the Legislature. The first of the two reports, the "preliminary" report was submitted to the Governor and the Legislature in October, 1994. The report briefly outlines the Department's planned implementation of the partial deregulation of the solid waste collection industry.

Copies of the preliminary report will be available for review and comment in November, 1994. To obtain a copy of the preliminary report interested persons may write to:

Jacqueline Chanudet, Chief
Office of Economic Regulation
Division of Solid Waste Management
CN 414
Trenton, New Jersey 08625-0414

Written comments on the preliminary report may be submitted to the above address through January 30, 1995.

The final report to the Governor and the Legislature will be published in the New Jersey Register in May 1995.

(b)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Public Meeting on Approval of Annual Budget for Fiscal Year 1996

Take notice that, pursuant to N.J.A.C. 7:60-1.4(b), the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board will hold its annual meeting to approve the budget for Fiscal Year 1996, July 1, 1995, through June 30, 1996. The public meeting will be held on Thursday, January 5, 1995, in the Tenth Floor Conference Room at Station Plaza III, 44 South Clinton Avenue, Trenton, New Jersey. The public meeting will begin at 9:30 A.M. At the public meeting, the Board will take comments on the proposed budget. A copy of the proposed budget may be obtained from the NJ Low-Level Radioactive Waste Disposal Facility Siting Board, CN-410, Trenton, NJ 08625-0410, or call (609) 777-4247.

(c)

PINELANDS COMMISSION

Notice of Action on Petition for Rulemaking Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioner: Avalon Golf & Development, Inc.

Authority: N.J.S.A. 13:18A-65.

Take notice that on September 6, 1994, a notice was published in the New Jersey Register (26 N.J.R. 3752(a)) regarding a completed petition for rulemaking filed with the Pinelands Commission on July 25, 1994. The September 6, 1994 notice stated that the above-noted petitioner requested an amendment to the Pinelands Comprehensive Management Plan. This amendment would result in a revision to the Pinelands Area Jurisdiction Boundaries Map, adopted in N.J.A.C. 7:50-5.3(a)1, and the Official Map of the Pinelands, adopted by the Pinelands Commission pursuant to N.J.S.A. 18A-11.c., to exclude approximately 173.32 acres of land in Middle Township, Cape May County from the Pinelands National Reserve. If approved, this amendment would also result in a revision to N.J.A.C. 7:50-5.3(a)24 to exclude the above referenced property from the Pinelands Land Capability Map.

The lands subject to the petition are currently located within the Pinelands National Reserve, but outside of the State Pinelands Area. The properties subject to the petition total approximately 173.32 acres and are generally located in the north easterly section of Middle Township. Included are: Block 114, Lots 6.02, 7, 8, 9, 10.01, 10.02, 10.03, 10.04, 11.01, 12, and 13. The properties are bounded to the east by the Garden State Parkway, to the West by U.S. Highway Route 9, to the north by the State of New Jersey, Department of Agriculture, Plant Materials Center (known as Block 114, Lot 5.01), and to the south by a line drawn approximately 530 linear feet south of the intersection of U.S. Highway Route 9 and Siegtown Road (that is, the lot line separating Lot 14 from Lot 13 of Block 114). The properties generally comprise the Avalon Country Club.

The petitioner requested that the above noted Pinelands Commission maps be amended to conform with the petitioner's interpretation of the Pinelands National Reserve Boundary Map which was adopted by Congress in P.L. 95-625 (November 10, 1978).

The Executive Director of the Pinelands Commission established a public comment period from September 6, 1994 to October 14, 1994 and conducted a public meeting on October 4, 1994 for the purpose of accepting public comment on the petition. Notice of the public meeting was provided to newspapers serving the Pinelands. Additional public notice was provided as described in the September 6, 1994 New Jersey Register. Four comments were received from the public in support of the petition. No comments were received from the public opposing the petition.

The Executive Director thereafter recommended to the Pinelands Commission that the Commission grant the petition, with modifications, and proceed with a formal rulemaking proposal to amend the Pinelands Comprehensive Management Plan. A copy of the Executive Director's report was forwarded to the petitioner and is on file at the offices of the Pinelands Commission. At its November 4, 1994 meeting, the Pinelands Commission accepted the recommendation of the Executive Director and approved the petition with modifications. A rule proposal will be submitted to the Office of Administrative Law by the Pinelands Commission by March 6, 1995.

(d)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Ocean County Water Quality Management Plan Public Notice

Take notice that on October 28, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C.

7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department of Environmental Protection (Department). This amendment, submitted on behalf of the Jackson Township Municipal Utilities Authority, modifies the sewer service area of the Ocean County Utilities Authority's (Authority) Northern Water Pollution Control Facility to serve an area within the central portion of the Authority's district. To be served by a force main, the sewer service area has been expanded from the existing sewer service area of the adopted October 28, 1987 (amended June 28, 1990, May 18, 1992, and August 19, 1992) Jackson Township Wastewater Management Plan, to include the service areas of existing treatment facilities at the Carl Goetz School and Six Flags Great Adventure Park only.

The force main will run from the Jackson Mills area westerly along Trenton-Lakewood Road (Route #526), then along Patterson Road to Anderson Road, then to Burke Tavern Road and finally southerly, on Burke Tavern Road, to the Six Flags Great Adventure Park property. The existing sewage treatment plant located within the Six Flags Great Adventure Park property will be abandoned and replaced with a pump station.

The Carl Goetz School and Six Flags Great Adventure Park, located in the central portion of the Ocean County Utilities Authority's district (but now served by the Authority's Northern Water Pollution Control Facility located in the northern portion of their district), are the only two properties (as specifically identified below) able to utilize the force main and associated sewage infrastructure. Properties outside of the expanded sewer service area, but within the planning area for the Jackson Township Wastewater Management Plan, and the Central Water Pollution Control Facility may not connect to the force main regardless of proximity to the force main, unless a) a Water Quality Management Plan amendment is approved by the Department; b) there is a documented failing on-site septic system where repair or replacement is infeasible or impracticable; or c) a Department Administrative Consent Order is being enforced specifically directing the flow to the Northern Water Pollution Control Facility to remediate a public health problem.

Five existing New Jersey Pollutant Discharge Elimination System (NJPDES) facilities are to be abandoned when the force main becomes available: Fountain Head Mobile Home Park (NJPDES #NJ0035653) and Oak Tree Mobile Home Park (NJPDES #NJ0031267) are located within the current existing sewer service area of the Northern Pollution Control Facility; and, the Carl Goetz School (NJPDES #NJ0069663) and Six Flags Great Adventure Park (NJPDES #NJ0026263-sewage treatment plant and #NJ0052345-spray irrigation field) located in the expanded sewer service area of the Northern Water Pollution Control Facility being addressed in this amendment.

The sewer service area expansion of the Northern Water Pollution Control Facility is solely limited to the following blocks, lots, and flow: Block 1, lots 2, 3.01, 3.02, 3.03, 3.04, 4, 5, 6, 7, 8, 9, 10.01, 10.04, 10.05, 11.02, 11.03, 11.04, 12, 21.02, 27.01, 51.01, 51.02, 51.03, 52.02, 58.01, 58.02, 58.04, 58.09, 59, 61, 76, 77, and 80; Block 3.01, lot 20.02; Block 5.01, lot 2; Block 6, lot 5; and Block 7, lot 11.04 (Six Flags Great Adventure Park, discharging a wastewater flow of 1.50 MGD); Block 1, lots 27.02 and 27.04 (Jackson Township Municipal Utilities Authority within the Six Flags Great Adventure Park property); and Block 96.01, lots 41, 46, 47, 48, 49, 54.02, and 55 (Carl Goetz School, discharging a wastewater flow of 0.03 MGD).

Adoption of this amendment in no way guarantees the identified blocks and lots the ability to connect to the force main without providing consistency with other regulations under federal or State statutes or rules.

Further major expansions to the sewer service area within the Jackson Township wastewater management planning area, other than for the purpose of connecting properties with failing on-site septic systems as noted above, will be approved by the Department only upon completion of a Watershed Management Plan for the portion of the Jackson Township wastewater management planning area that includes the Toms River and Metedeconk River. The overall Watershed Management Plan will provide guidance on the protection of the Toms River, Metedeconk River, and other relevant water bodies from water quality impairment generated by new development in the area as required by the Surface Water Quality Standards and other relevant regulations of the Department. The Department anticipates that the watershed management planning process will take no less than three years and no more than five, starting during the State Fiscal Year 1995. Recognizing the potential impact on landowners, the Department may decide to allow amendments once planning has progressed far enough to provide clear guidance, but before adoption of the Watershed Management Plan. Minor amend-

ments will be considered on a case-by-case basis. This requirement does not modify or annul the currently approved sewer service area for Jackson Township. This watershed management planning venture shall provide extensive opportunities for involvement of the Jackson Township Municipal Utilities Authority, Ocean County Utilities Authority, Ocean County Planning Board, and others, to promote responsible planning for future wastewater and water resource management in Ocean County.

This amendment proposal was noticed in the New Jersey Register on September 6, 1994. A comment on this amendment was received during the public comment period and is summarized below with the Department's response.

COMMENT: A request was received from the Township of Jackson Environmental Commission (Commission) asking for a 30 day extension of the comment period so that the Commission can obtain the available documentation and perform a detailed review to assess the environmental impacts associated with this amendment.

RESPONSE: The Department has not granted a 30 day extension to the comment period. Since the proposed amendment was submitted in June, 1993, the amendment had undergone an extensive review at the Department, utilizing considerable technical assistance, and was reviewed and approved by the Delaware River Basin Commission. Potential negative impacts to the Toms River and Metedeconk River watersheds, water supply for downstream townships, and the overall environmental effect of the amendment were evaluated.

Also, the Jackson Township Municipal Utilities Authority sewer service expansion proposal was discussed by the Township of Jackson governing body on August 23, 1993 and opened up for public discussion. On September 13, 1993, two members of the Commission commented in regard to the proposal. The Jackson Township governing body addressed their concerns and after no further public discussions were requested, Resolution #352R-93 was adopted by the Township of Jackson in support of the amendment. The Commission has had ample time to request information for review and assessment of the environmental impacts.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future outfalls, wastewater treatment plant; and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of the Evesham Municipal Utilities Authority (MUA). The amendment would change the Evesham MUA Wastewater Management Plan (WMP) by identifying a proposed wastewater planning flow expansion for the Elmwood Sewage Treatment Plant (STP) from 2.3 million gallons per day (MGD) to 2.978 MGD. The reason for this projected expansion is increased development and zoning changes within the Elmwood STP sewer service area. A sewer service area expansion to serve a portion of the Barton Run Planned Urban Development has also been proposed.

The Elmwood STP discharges into the Southwest Branch of Rancocas Creek which is classified as FW2-NT waters. Downstream of the Elmwood STP discharge, the Southwest Branch of Rancocas Creek designation changes from FW2-NT to Pinelands waters. The Pinelands Commission has reviewed this proposal, both the STP expansion and the sewer service area expansion, for consistency with the Pinelands Comprehensive Management Plan (CMP). Based on the proposed permit limits to be set by the NJDEP and minor sewer service area boundary corrections for the Elmwood STP, the Pinelands has determined that this proposal appears to be consistent with the Pinelands CMP.

This amendment proposal would also serve to update the Evesham MUA WMP documents adopted by the NJDEP on September 16, 1985 and August 26, 1986, including the Evesham WMP Sewer Service Area Map. Minor sewer service area boundary modifications have been shown which more accurately reflect the actual existing sewer service area boundaries of all three municipal sewage treatment plants.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEP address cited above with a copy sent to Mr. Scott T. Taylor, Omni Environmental Corporation, 211 College Road East, Princeton, New Jersey 08540-6623. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Public Notice

List of Accredited Reinsurers

Take notice that, pursuant to N.J.A.C. 11:2-28.4(h), the following is the list of accredited reinsurers as of October 31, 1994:

17410 Abeille Reassurances (US Branch)	Paris, France
10103 American Agricultural Insurance Company	Indianapolis, IN
32220 American International Insurance Company	New York, NY
61395 Beneficial Life Insurance Company	Salt Lake City, UT
33596 Centre Reinsurance Company of New York	New York, NY
27812 Columbia Insurance Company	Omaha, NE
26271 Erie Insurance Exchange	Erie, PA
35378 Evanston Insurance Company	Evanston, IL
32018 First Excess and Reinsurance Corporation	Jefferson City, MO
32089 Medmarc Insurance Company Incorporated	Williston, VT
20087 National Indemnity Company	Omaha, NE
29807 PXRE Reinsurance Company	Greenwich, CT
88340 Reassurance Company of Hannover	Orlando, FL
44520 Transnational Reinsurance Company	Greenwich, CT
29548 Western Indemnity Insurance Company	Houston, TX
13269 Zenith Insurance Company	Woodland Hills, CA

LAW AND PUBLIC SAFETY

(b)

DIVISION OF STATE POLICE

OFFICE OF EMERGENCY MANAGEMENT

Notice of Grant Availability to County and Municipal Local Emergency Planning Committees for Projects Implementing the USDOT Hazardous Materials Transportation Uniform Safety Act

Take notice that on September 9, 1992, the United States Department of Transportation, Research and Special Programs Administration released its final rule, 49-CFR-Part 110, the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) regulations. Under these rules a single agency for each of the 50 states is designated to be the coordinator of grant funds for hazardous materials transportation related planning and training activities. For New Jersey, the HMTUSA grant coordinator is the New Jersey State Police Office of Emergency Management (NJOEM).

As begun in 1994, states apply for grant funds every year. State funding is broken down into separate planning and training grants. Under the Planning Grant, the NJOEM is required to ensure that 75 percent of the Grant goes towards activities which result in direct benefit to Local Emergency Planning Committees (LEPCs) in New Jersey. One of the ways in which this will be accomplished is by providing Pass-Through grants to county and municipal LEPCs for the purposes of conducting specific projects related to hazardous material transportation emergency planning. The primary objective of these grants will be to improve the implementation of LEPC emergency planning efforts. The HMTUSA goes beyond traditional emergency planning by encouraging transportation specific activities. While existing Federal and State law requires planning around fixed chemical handling facilities, HMTUSA extends into planning and training activities which address the transportation of hazardous materials and the emergency response associated with it. Transportation includes the storage of hazardous materials incidental to its movement (that is, it includes all handling from the point of origin through the point of destination).

The possibility of a hazardous materials transportation incident varies greatly in New Jersey. Some local areas are at risk from air, rail, roadway, and waterway incidents. Other areas may be at relatively low risk. Further differences may exist due to the location of nearby transportation dependant populations such as hospitals, schools, and nursing homes, as well as the proximity to industrial zones, terminals, ports, railyards, and pipelines. For these reasons, the NJOEM has chosen to make a portion of the State's HMTUSA grant available directly to LEPCs for the purpose of developing projects to address the unique circumstances of the transportation of hazardous materials at the local level. For 1995, \$36,000 will be made available by the NJOEM. Funding will be limited to a cap of \$6,000 per grant, and will be made on a reimbursement basis only. The grant program is open only to the 21 county and 567 municipal LEPCs in New Jersey. Only one application may be submitted and approved for each LEPC in a given grant year. LEPCs must have a State approved Emergency Operations Plan in order to be eligible to apply. A letter of EOP approval from the NJOEM is required. LEPCs must also provide proof that they are a viable LEPC, having membership from the appropriate agencies according to the requirements of SARA Title-III. A copy of the current ledger of LEPC members is required.

All applications must include the following information:

1. Cover letter;
2. An HMTUSA Pass-Through Grant Program Project Application;
3. An LEPC Applicant Certification form;
4. Proof of approval of the LEPCs Emergency Operations Plan;
5. Proof of a viable LEPC. A copy of the jurisdictions current LEPC ledger will suffice for this purpose;
6. A project narrative; and
7. Other supporting documentation, at the discretion of the applicant.

Project applications and all supporting documentation will be forwarded to the following address:

Major James W. Momm
HMTUSA Pass-Through Grant Program
NJSP Office of Emergency Management
Hazardous Materials Emergency Response Planning Unit
Box 7068 River Road
West Trenton, NJ 08628-0068

PUBLIC NOTICES

All applications must be postmarked no later than January 17, 1995. Applicants which have been selected for funding under this program will be notified in writing by the NJOEM no later than February 21, 1995.

A complete information and application kit for the 1995 HMTUSA Pass-Through Grant Program has been sent to all 21 county and 567 municipal emergency management coordinators. Additional copies for LEPCs may be requested in writing from the NJOEM at the address provided in this notice.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sanitary Landfill Taxes

Notice of 1995 Tax Rate Changes

Take notice that the owners and operators of all sanitary landfill facilities in New Jersey that accept solid waste for disposal are required to file Consolidated Sanitary Landfill Tax Returns (Form SLT-5) on a monthly basis. The five sanitary landfill taxes—the Solid Waste Recycling Tax, the Landfill Closure and Contingency Tax, the Solid Waste Service Tax, the Resource Recovery Investment Tax, and the Solid Waste Importation Tax—are reportable on this consolidated return.

TREASURY-TAXATION

This notice is to advise sanitary landfill taxpayers of the tax rate changes provided for by law effective January 1, 1995 for the sanitary landfill taxes.

Please take notice that effective January 1, 1995:

1. The Solid Waste Services Tax increases from \$0.95 per ton or \$0.285 per cubic yard to \$1.00 per ton or \$0.30 per cubic yard;
2. The Solid Waste Importation Tax increases from \$16.00 per ton or \$4.80 per cubic yard to \$18.00 per ton or \$5.40 per cubic yard;
3. The Landfill Closure and Contingency Tax remains unchanged at \$0.50 per ton or \$0.15 per cubic yard;
4. The Solid Waste Recycling Tax remains unchanged at \$1.50 per ton or \$0.45 per cubic yard; and
5. The Resource Recovery Investment Tax remains unchanged at \$4.00 per ton or \$1.20 per cubic yard.

The tax rates for all solid waste in liquid form, reportable in gallons, remain the same for all sanitary landfill taxes. Any taxpayer who fails to comply with the new rates will be assessed tax, penalty and interest on any calculated balance of tax due.

Return packages containing the 1995 Consolidated Sanitary Landfill Tax Returns (Form SLT-5) with accompanying schedules and Instructions (Form SLT-5A) will be mailed to all taxpayers after January 1, 1995. Any inquiries regarding the sanitary landfill taxes may be directed to: Special Audit Section, Division of Taxation, 50 Barrack Street, Trenton, NJ 08646, Telephone (609) 292-5300.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	3/19/95
1:7	4/21/97
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:12	8/1/99
1:12A	8/1/99
1:13	4/21/97
1:13A	2/3/99
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:1-4	Exempt (28 C.F.R. Part 35)
2:2	3/7/99
2:3	7/7/99
2:5	EXPIRED RULES
2:6	EXPIRED RULES
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	6/26/97
2:23	5/28/98
2:24	4/2/95
2:32	5/13/97
2:33	EXPIRED RULES
2:34	1/2/95
2:48	10/25/95
2:50	5/1/97
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq., 7 C.F.R. 1004)
2:68	10/29/98
2:69	12/20/98
2:70	8/20/95
2:71	7/2/98
2:72	7/2/98
2:74	7/2/98
2:76	6/28/99
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:4	8/17/97
3:6	3/1/96
3:7	9/12/95
3:11	7/18/99
3:12	6/15/97
3:13	1/21/97
3:14	3/7/99
3:16	6/18/95
3:17	6/13/96
3:18	12/24/97
3:19	3/15/96
3:21	1/24/97
3:22	11/7/99
3:23	7/6/97
3:24	8/18/94
3:25	7/23/97
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	11/1/98
3:33	11/7/99
3:38	9/11/97
3:40	11/21/99
3:41	10/11/95
3:42	3/10/98

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	9/22/97
4A:1-5	Exempt (28 C.F.R. Part 35)
4A:2	9/22/97
4A:3	8/5/98
4A:4	5/12/98
4A:5	9/22/97
4A:6	12/22/97
4A:7	9/22/97
4A:8	1/16/95
4A:9	9/22/97
4A:10	9/22/97

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	EXPIRED RULES
5:3	7/30/98
5:4	9/1/97
5:5	Exempt (28 C.F.R. Part 35)
5:10	8/26/98
5:11	3/9/99
5:12	12/27/94
5:13	6/22/97
5:14	11/9/95
5:15	7/5/99
5:18	1/4/95
5:18A	1/4/95

N.J.A.C.

	Expiration Date
5:18B	1/4/95
5:18C	2/5/95
5:19	1/15/98
5:20	9/3/96
5:22	2/5/95
5:23	2/3/98
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	5/27/98
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	11/21/99
5:50	9/17/98
5:51	8/11/98
5:52	1/2/95
5:60	6/20/99
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	12/7/97
5:92	2/7/96
5:93	6/6/99
5:100	6/18/95

**DEPARTMENT OF MILITARY AND
VETERANS' AFFAIRS—TITLE 5A****N.J.A.C.**

	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97
5A:6	6/20/99
5A:7	Exempt (28 C.F.R. Part 35)

EDUCATION—TITLE 6**N.J.A.C.**

	Expiration Date
6:1	7/11/97
6:2	6/8/00
6:3	12/7/99
6:5	4/22/97
6:7	7/2/96
6:8	6/11/98
6:9	11/3/99
6:11	3/21/97
6:12	9/8/97
6:20	1/16/97
6:21	1/11/01
6:22	1/16/97
6:22A	4/8/00
6:24	7/11/97
6:26	2/1/01
6:28	8/10/00
6:29	8/8/96
6:30	12/6/00
6:31	5/16/96
6:39	12/9/00
6:43	2/10/97
6:46	10/10/98
6:51	2/5/98
6:53	10/10/98
6:64	3/14/99
6:68	8/26/96
6:70	2/5/01
6:78	4/8/00

ENVIRONMENTAL PROTECTION—TITLE 7**N.J.A.C.**

	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95
7:1D	9/13/98
7:1E	9/3/96
7:1F	4/16/97
7:1G	6/16/99
7:1H	7/13/95
7:1I	2/22/99
7:1J	1/4/98
7:1K	3/1/98
7:2	10/7/96
7:3	6/21/98
7:4	8/17/97
7:4A	9/16/99
7:4B	12/6/98
7:4C	11/7/99
7:5	11/19/95
7:5A	6/17/98
7:5B	6/24/98
7:5C	1/16/95
7:7	6/24/99
7:7A	3/16/97
7:7E	7/24/95
7:8	2/5/98
7:9	1/18/96
7:9A	8/19/99
7:9B	1/18/96
7:10	12/31/95
7:11	5/3/98
7:12	11/24/97
7:13	6/10/99
7:14	4/27/99
7:14A	6/2/95
7:14B	11/18/97
7:15	9/22/99
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/8/98
7:22	12/27/96
7:22A	2/5/95
7:23	5/27/99
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

HEALTH—TITLE 8**N.J.A.C.**

	Expiration Date
8:2	8/16/98
8:2A	12/20/98

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
8:7	9/14/95	9:7	11/6/97
8:8	4/12/99	9:8	10/15/95
8:9	2/14/96	9:9	8/16/98
8:13	9/8/97	9:11	4/11/99
8:18	10/21/99	9:12	4/11/99
8:19	5/11/95	9:14	4/11/95
8:20	3/2/95	9:15	EXPIRED RULES
8:21	10/23/95	9:16	1/19/98
8:21A	8/3/97	9:17	2/22/99
8:22	7/11/96	9:18	6/20/99
8:23	12/13/94		
8:24	4/14/98		
8:25	5/11/98		
8:26	4/12/96		
8:31	1/16/95		

8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	11/25/97
8:33B	7/27/95
8:33C	9/8/97
8:33E	12/20/95
8:33F	EXPIRED RULES
8:33H	9/8/97
8:33I	2/16/95
8:33J	EXPIRED RULES
8:33L	6/6/96
8:33M	EXPIRED RULES
8:33P	3/19/95
8:33Q	11/19/95
8:33R	12/11/94
8:33S	10/4/98
8:34	11/1/98
8:35A	9/8/97
8:36	12/20/98
8:38	7/18/97
8:39	11/21/99
8:40	12/6/96
8:41	6/21/98
8:41A	2/18/97
8:42	8/17/97
8:42A	6/17/99
8:42B	6/14/98
8:43	10/4/98
8:43A	8/16/98
8:43F	2/20/95
8:43G	2/5/95
8:43H	6/17/99
8:44	4/20/95
8:45	2/7/95
8:51	9/17/95
8:52	12/11/96
8:57	4/20/95
8:57A	4/20/95
8:59	9/28/99
8:60	5/3/95
8:61	10/4/96
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	6/14/98
8:71	5/16/99
8:80	4/6/97
8:91	9/19/99
8:100	7/20/97

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	9/30/98
9:2	5/4/95
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	3/15/98

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1A	5/12/98
10:2	12/11/96
10:3	10/22/98
10:4	Exempt (28 C.F.R. Part 35)
10:6	1/7/96
10:7	1/21/97
10:8	1/3/99
10:11	1/16/95
10:12	12/23/96
10:14	5/7/98
10:15	1/1/95
10:15A	1/1/95
10:15B	1/1/95
10:15C	1/1/95
10:16	12/21/97
10:18	7/18/99
10:31	5/13/99
10:35	9/21/97
10:36	12/29/97
10:37	11/2/95
10:37A	6/6/99
10:37B	5/2/99
10:37C	7/18/99
10:37D	9/6/99
10:38	4/29/96
10:38A	7/19/98
10:40	4/25/99
10:41	4/18/99
10:42	8/19/96
10:43	12/19/99
10:44A	11/8/98
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	9/7/98
10:52	2/8/95
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	1/3/99
10:63	11/28/94
10:64	2/22/96
10:65	2/19/96
10:66	12/6/98
10:67	2/19/96
10:68	6/28/96
10:69	5/14/98
10:69A	3/26/98
10:69B	10/21/98
10:70	6/7/96
10:71	12/24/95

N.J.A.C.	Expiration Date
10:72	8/24/97
10:73	7/15/96
10:80	9/27/98
10:81	7/25/99
10:82	7/25/99
10:83	11/2/97
10:84	1/18/99
10:85	11/4/99
10:86	9/21/97
10:87	12/21/98
10:89	5/24/95
10:91	9/4/95
10:95	11/7/99
10:97	4/15/99
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	11/25/97
10:122	5/16/99
10:122A	Exempt
10:122B	1/4/98
10:122C	1/4/98
10:122D	1/4/98
10:122E	1/4/98
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	6/4/95
10:126	10/6/98
10:126A	5/7/95
10:127	8/16/98
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:133	1/4/98
10:133A	1/4/98
10:133B	1/4/98
10:133C	1/4/98
10:133D	11/1/98
10:133H	10/17/99
10:150	10/22/97

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	6/1/97
10A:1-3	Exempt (28 C.F.R. Part 35)
10A:2	2/5/95
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	4/25/99
10A:20	2/18/97
10A:21	2/4/96
10A:22	3/7/99
10A:23	7/6/97
10A:31	3/5/95
10A:32	4/16/95
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:1-3	Exempt (28 C.F.R. Part 35)
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/15/98
11:6	7/6/98
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/17/99
11:16	1/31/96
11:17	4/15/98
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94
11:19	2/1/98
11:20	8/13/98
11:21	10/15/98

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	11/24/98
12:5	10/18/98
12:6	9/24/98
12:7	Exempt (28 C.F.R. Part 35)
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/5/98
12:19	7/2/95
12:20	7/18/99
12:23	4/4/99
12:35	7/16/95
12:40	2/5/95
12:41	1/14/99
12:45	12/29/98
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/19/98
12:61	12/16/96
12:90	11/9/99
12:100	8/26/99
12:102	5/21/95
12:105	1/11/96
12:110	1/8/98
12:112	8/27/98
12:120	5/3/95
12:175	11/10/98
12:190	2/1/98
12:195	6/14/98
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:1	Exempt (28 C.F.R. Part 35)
12A:9	5/28/98
12A:10	3/31/95
12A:11	4/30/98
12A:31	7/16/95
12A:80	7/2/95

N.J.A.C.	Expiration Date
12A:100	7/17/96
12A:120	7/27/98
12A:121	11/15/98

N.J.A.C.	Expiration Date
13:78	11/24/98
13:79	10/22/98
13:80	9/17/95
13:81	8/6/95
13:82	4/18/99

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	6/9/98
13:1C	Exempt (28 C.F.R. Part 35)
13:1D	4/18/99
13:2	7/24/95
13:3	5/17/98
13:4	1/17/96
13:10	3/25/99
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/17/99 (except 13:19-10, 12 and 13, for which expiration was waived)
13:20	12/13/95
13:21	12/13/95
13:23	5/19/99
13:24	9/26/99
13:25	3/16/95
13:26	7/29/98
13:27	2/20/95
13:28	5/14/98
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/21/97
13:33	3/12/95
13:34	10/22/98
13:35	9/19/99
13:36	9/19/99
13:37	1/23/95
13:38	8/27/95
13:39	6/16/99
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	11/1/98
13:43	8/26/98
13:44	8/4/99
13:44B	11/2/97
13:44C	7/8/98
13:44D	6/30/99
13:44E	7/1/96
13:44F	6/15/97
13:44G	1/4/98
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/10/99
13:47C	6/6/99
13:47K	9/17/95
13:48	9/19/99
13:49	12/16/98
13:51	9/16/96
13:54	11/18/96
13:57	5/16/99
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/95
13:71	1/25/95
13:72	1/19/98
13:75	7/5/99
13:76	4/16/98
13:77	1/22/98

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:5A	1/4/98
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	3/1/98
14:12	11/4/96
14:17	3/21/99
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:14	1/28/99

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:1	Exempt (28 C.F.R. Part 35)
15:2	4/12/98
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/13/99
16:1B	Exempt (28 C.F.R. Part 35)
16:4	9/16/96
16:5	EXPIRED RULES
16:6	7/8/99
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	10/14/99
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/9/98
16:25A	5/13/98
16:26	7/8/99
16:27	4/8/96
16:28	5/7/98
16:28A	5/7/98
16:29	5/7/98
16:30	5/7/98
16:31	5/7/98

N.J.A.C.	Expiration Date
16:31A	5/7/98
16:32	2/8/95
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97
16:41D	3/21/99
16:43	5/10/95
16:44	3/24/99
16:45	8/12/99
16:46	3/24/99
16:47	4/20/97
16:49	2/8/95
16:50	12/6/98
16:51	2/14/97
16:53	2/14/97
16:53B	4/15/99
16:53C	5/13/98
16:53D	4/8/99
16:54	7/6/98
16:55	5/13/98
16:56	6/22/99
16:60	5/13/98
16:61	5/13/98
16:62	2/26/95
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:77	3/5/95
16:78	12/17/95
16:79	9/12/96
16:80	10/5/98
16:81	10/5/98
16:82	10/17/99
16:83	1/19/98
16:84	11/1/98
16:85	11/1/98

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/1/98
17:2	EXPIRED RULES
17:3	12/20/98
17:4	6/8/95
17:5	11/30/95
17:6	12/20/98
17:8	10/15/95
17:9	8/23/98
17:10	5/1/98
17:12	2/28/95
17:13	3/31/95
17:14	3/31/95
17:16	5/2/96
17:19	3/8/95
17:20	6/1/98
17:27	10/6/98
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/19/98
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	10/3/99
18:2	11/1/98
18:3	3/14/99

N.J.A.C.	Expiration Date
18:5	3/14/99
18:6	3/14/99
18:7	3/14/99
18:8	2/24/99
18:9	6/4/98
18:12	10/4/98
18:12A	10/4/98
18:14	10/4/98
18:15	10/4/98
18:16	10/4/98
18:17	10/4/98
18:18	3/14/99
18:18A	2/3/97
18:19	3/14/99
18:21	2/19/96
18:22	2/24/99
18:23	2/24/99
18:23A	9/4/95
18:24	6/4/98
18:25	2/19/96
18:26	6/4/98
18:35	6/4/98
18:36	3/19/95
18:37	7/23/95
18:38	2/1/98

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:2	8/15/99
19:3	3/29/98
19:3A	11/4/96
19:3A-3	Exempt (28 C.F.R. Part 35)
19:3B	3/29/98
19:4	3/29/98
19:4A	3/29/98
19:5	11/7/99
19:6	5/6/96
19:8	5/17/98
19:9	9/13/98
19:10	7/28/99
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/7/98
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:30-7	Exempt (28 C.F.R. Part 35)
19:31	8/20/95
19:40	8/15/99
19:40-6	Exempt (28 C.F.R. Part 35)
19:41	4/15/95
19:42	8/15/95
19:43	12/21/97
19:44	12/15/96
19:45	8/15/97
19:46	4/15/98
19:47	4/15/96
19:48	8/15/98
19:49	9/18/97
19:50	12/15/98
19:51	8/15/96
19:53	12/15/95
19:54	12/15/94
19:55	1/19/98
19:61	3/2/97
19:65	10/5/97
19:75	1/11/99

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 October 3, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT SEPTEMBER 19, 1994

NEXT UPDATE: SUPPLEMENT OCTOBER 17, 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. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
26 N.J.R. 1417 and 1554	April 4, 1994	26 N.J.R. 4121 and 4244	October 17, 1994
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
26 N.J.R. 1739 and 1904	May 2, 1994	26 N.J.R. 4471 and 4720	November 21, 1994
26 N.J.R. 1905 and 2166	May 16, 1994	26 N.J.R. 4721 and 4856	December 5, 1994
26 N.J.R. 2167 and 2510	June 6, 1994		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:7A	Department of Environmental Protection cases
1:14-10	BRC ratemaking hearings: discovery
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process

PROPOSAL NOTICE (N.J.R. CITATION)

26 N.J.R. 4124(a)
26 N.J.R. 3(a)
26 N.J.R. 883(a)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

Most recent update to Title 1: TRANSMITTAL 1994-5 (supplement September 19, 1994)

AGRICULTURE—TITLE 2

2:5	Quarantines and embargoes on animals
2:6	Animal health: biological products for diagnostic or therapeutic purposes
2:33	Agricultural fairs
2:34	Equine Advisory Board rules

26 N.J.R. 1908(b)
26 N.J.R. 3784(a)
26 N.J.R. 285(a)
26 N.J.R. 3919(a)

Most recent update to Title 2: TRANSMITTAL 1994-6 (supplement September 19, 1994)

BANKING—TITLE 3

3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds
3:1-6.6	Department examination charges
3:1-16.2, 16.5	Mortgage commitments, lender advertising and licensure, surety bond amounts
3:2-1.4	Mortgage commitments, lender advertising and licensure, surety bond amounts
3:4-3	Banking institutions: sale of alternative investments
3:18-1.1, 1.3, 3.2, 7.4, 8.1, 8.2, 12	Secondary Mortgage Loan Act rules
3:22	Insurance premium finance companies
3:33	Acquisitions by out-of-State entities: application requirements
3:38-1.1, 1.10, 5.3	Net worth of mortgage lenders
3:38-5.3	Mortgage referrals by real estate agents
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period
3:40-1.9	New Jersey Cemetery Board: organizational meetings
3:40-6	New Jersey Cemetery Board: applications
3:41-12	Cemetery Board: service contractors and service contracts
3:41-13.8-3.10	New Jersey Cemetery Board: applications

26 N.J.R. 2832(a)	R.1994 d.558	26 N.J.R. 4347(a)
26 N.J.R. 1560(b)		
26 N.J.R. 3234(a)	R.1994 d.559	26 N.J.R. 4347(b)
26 N.J.R. 3234(a)	R.1994 d.559	26 N.J.R. 4347(b)
25 N.J.R. 5733(a)		
26 N.J.R. 3920(a)		
26 N.J.R. 2697(a)	R.1994 d.562	26 N.J.R. 4348(a)
26 N.J.R. 3235(a)	R.1994 d.560	26 N.J.R. 4349(a)
26 N.J.R. 4124(b)		
26 N.J.R. 6(a)		
26 N.J.R. 884(a)		
26 N.J.R. 4475(a)		
26 N.J.R. 3785(a)	R.1994 d.579	26 N.J.R. 4597(a)
26 N.J.R. 6(b)		
26 N.J.R. 3785(a)	R.1994 d.579	26 N.J.R. 4597(a)

Most recent update to Title 3: TRANSMITTAL 1994-6 (supplement August 15, 1994)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

PERSONNEL—TITLE 4A

4A:1-2.3	Department use of Social Security numbers
4A:2-2.3	Sexual harassment
4A:2-3.1	Department use of Social Security numbers
4A:2-3.1	Performance evaluations
4A:3-3.1	Department use of Social Security numbers

26 N.J.R. 287(a)
26 N.J.R. 3507(a)
26 N.J.R. 287(a)
26 N.J.R. 3509(a)
26 N.J.R. 287(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:3-4.6	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:4-1.10	Personnel action freezes	26 N.J.R. 3510(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.15, 5.2	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)	R.1994 d.507	26 N.J.R. 3941(a)
4A:6-1.1, 1.3, 1.6, 1.8, 1.10, 1.21, 1.21B, App.	Family and medical leave	26 N.J.R. 3511(a)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:7-1.3, 3.3, 3.4	Sexual harassment	26 N.J.R. 3507(a)		
4A:8	Layoffs	26 N.J.R. 3518(a)		
4A:8-2.4	Voluntary furlough program	26 N.J.R. 4126(a)		
4A:8-2.4	Family and medical leave	26 N.J.R. 3511(a)		

Most recent update to Title 4A: TRANSMITTAL 1994-5 (supplement September 19, 1994)

COMMUNITY AFFAIRS—TITLE 5

5:12	Homelessness Prevention Program	26 N.J.R. 4248(a)		
5:18	Uniform Fire Code	26 N.J.R. 4258(a)		
5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13	Uniform Fire Code requirements	26 N.J.R. 4249(a)		
5:18-2.4A	Uniform Fire Code: overnight camps life hazard use category	26 N.J.R. 4254(a)		
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:18A	Fire Code Enforcement	26 N.J.R. 4258(a)		
5:18B	High Level Alarms	26 N.J.R. 4258(a)		
5:18C	Standards for Fire Service Training and Certification	26 N.J.R. 4258(a)		
5:18C-2.4	Fire service training facilities	26 N.J.R. 4249(a)		
5:23-2.9, 2.34–2.37, 4.40	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-8.11	Asbestos safety control monitor: administrative correction			26 N.J.R. 4760(a)
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)	R.1994 d.506	26 N.J.R. 3941(b)
5:26-8.2	Planned real estate developments: community association meeting location	26 N.J.R. 4277(a)		
5:31	Local authorities	26 N.J.R. 4128(a)		
5:34-7.2, 7.5, 7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 2707(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)	R.1994 d.578	26 N.J.R. 4600(a)
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)	R.1994 d.563	26 N.J.R. 4349(a)

Most recent update to Title 5: TRANSMITTAL 1994-8 (supplement September 19, 1994)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)

EDUCATION—TITLE 6

6:1 et seq.	Extension of Executive Order No. 66(1978) expiration dates			26 N.J.R. 3942(a)
6:7	State-operated school districts	26 N.J.R. 3524(b)		

Most recent update to Title 6: TRANSMITTAL 1994-7 (supplement September 19, 1994)

ENVIRONMENTAL PROTECTION—TITLE 7

7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.5	Payment schedule for permit application fees	26 N.J.R. 3922(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)	R.1994 d.576	26 N.J.R. 4606(a)
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:4A	Historic Preservation Grant Program	26 N.J.R. 3105(a)	R.1994 d.521	26 N.J.R. 4182(a)
7:4A-2.3	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:4B-3.1	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:4C	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:5C	Endangered Plant Species Program	26 N.J.R. 3790(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:7E-5.5	Coastal zone management: administrative correction regarding development potential	_____	_____	26 N.J.R. 3943(a)
7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:12-1.2, 2.1, 3.2, 4.1, 4.2, 9.1	Shellfish growing water classifications	26 N.J.R. 4475(b)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:14A-2.15	NJPDES program: administrative correction regarding permit-by-rule authorization	_____	_____	26 N.J. 4182(b)
7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	Statewide water quality management planning	26 N.J.R. 3106(a)	R.1994 d.525	26 N.J.R. 4182(c)
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:22A	Sewage Infrastructure Improvement Act grants	26 N.J.R. 3793(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)	R.1994 d.577	26 N.J.R. 4611(a)
7:25-6.9	1995-96 Fish Code: administrative correction	26 N.J.R. 3258(a)		
7:25-18.1, 18.4, 18.5, 18.13-18.15	Marine fisheries management: winter flounder, bluefish, weakfish, Atlantic sturgeon, American lobster	26 N.J.R. 4277(b)		
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-3A.1, 4.1, 4A.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:26A-2.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)	R.1994 d.502	26 N.J.R. 3943(b)
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-8.2	Air pollution control: administrative change regarding applicability of operating permits	_____	_____	26 N.J.R. 4184(a)
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)	Expired	
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)		
7:27-16.3, 16.7, 16.13, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds: administrative corrections	_____	_____	26 N.J.R. 4793(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-21.1-21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-26	Low Emission Vehicles Program: extension of comment period	26 N.J.R. 4482(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)	R.1994 d.537	26 N.J.R. 4355(a)
7:27A	Air pollution control: civil administrative penalties	26 N.J.R. 3566(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)	R.1994 d.501	26 N.J.R. 4030(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)	R.1994 d.500	26 N.J.R. 4026(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)	Expired	
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)	Expired	
7:28-3.12	Ionizing radiation-producing machines: application and annual registration renewal fees	26 N.J.R. 3797(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)	R.1994 d.590	26 N.J.R. 4795(a)

Most recent update to Title 7: TRANSMITTAL 1994-9 (supplement September 19, 1994)

HEALTH—TITLE 8

8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8-8.3, 8.5, 8.8	Collection of human blood	26 N.J.R. 3141(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	26 N.J.R. 3573(a)	R.1994 d.572	26 N.J.R. 4380(a)
8:18	Catastrophic Illness in Children Relief Fund Program: corrections to proposal statements	26 N.J.R. 3805(a)		
8:23	Veterinary public health	26 N.J.R. 4129(a)		
8:23A	Veterinary public health	26 N.J.R. 4129(a)		
8:31	Health facilities construction plan review fee	26 N.J.R. 4135(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)	R.1994 d.496	26 N.J.R. 4046(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)	R.1994 d.582	26 N.J.R. 4641(a)
8:39-2.2, 2.12	Long-term care facilities: application for licensure; add-a-bed	26 N.J.R. 4641(a)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)	R.1994 d.497	26 N.J.R. 4046(b)
8:43E	Health care facilities: enforcement of licensure standards	26 N.J.R. 4527(a)		
8:43F	Adult day health care facilities: standards for licensure	26 N.J.R. 4532(a)		
8:43G	Hospital licensing standards	26 N.J.R. 4537(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)	R.1994 d.535	26 N.J.R. 4380(b)
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:62	Certification of lead abatement workers, supervisors, inspectors, project designers	26 N.J.R. 3575(a)		
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b), 2095(a))	25 N.J.R. 4844(a)	R.1994 d.457	26 N.J.R. 3717(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b))	26 N.J.R. 1190(b)	R.1994 d.546	26 N.J.R. 4387(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a))	26 N.J.R. 1821(a)	R.1994 d.547	26 N.J.R. 4388(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b))	26 N.J.R. 1822(a)	R.1994 d.548	26 N.J.R. 4388(b)
8:71	Interchangeable drug products (see 26 N.J.R. 3720(a))	26 N.J.R. 2723(a)	R.1994 d.545	26 N.J.R. 4386(a)
8:71	Interchangeable drug products	26 N.J.R. 3583(a)	R.1994 d.549	26 N.J.R. 4390(a)
8:71	Interchangeable drug products	26 N.J.R. 4288(a)		
8:71	Interchangeable drug products	26 N.J.R. 4293(a)		
8:71	Interchangeable drug products	26 N.J.R. 4294(a)		

Most recent update to Title 8: TRANSMITTAL 1994-7 (supplement September 19, 1994)

HIGHER EDUCATION—TITLE 9

9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:9-7.1, 7.2, 7.3	Eligibility criteria for NJCLASS loans	26 N.J.R. 3242(a)		
9:11-1.2, 1.7, 1.8, 1.19, 1.20, 1.22, 1.23	Educational Opportunity Fund Program	26 N.J.R. 3586(a)	R.1994 d.596	26 N.J.R. 4760(b)
9:12-1.1, 1.4, 1.6-1.9, 1.16-1.21, 1.23, 2.5, 2.7, 2.8, 2.10	Educational Opportunity Fund Program	26 N.J.R. 3586(a)	R.1994 d.596	26 N.J.R. 4760(b)

Most recent update to Title 9: TRANSMITTAL 1994-5 (supplement September 19, 1994)

HUMAN SERVICES—TITLE 10

10:11	Department instructional staff: tenure status	26 N.J.R. 4297(a)		
10:15	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15A	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15B	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15C	Child Care Services Manual	26 N.J.R. 3327(a)		
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:37-5.28-5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-5.46-5.51	Repeal (see 10:37F)	26 N.J.R. 4547(a)		
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:37F	Adult Partial Care Services for individuals with severe and persistent mental illness	26 N.J.R. 4547(a)		
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
10:46A	Family Support Service System	26 N.J.R. 3341(b)		
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46B	Division of Developmental Disabilities: placement of eligible persons	26 N.J.R. 3611(a)		
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-5.2, 5.3, 5.4	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)	R.1994 d.524	26 N.J.R. 4184(b)
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:50-2.2	Transportation services for Medicaid recipients: provider reimbursement	26 N.J.R. 3929(a)		
10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E	Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing	26 N.J.R. 4136(a)		
10:51-1.12	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52	Manual for Hospital Services	26 N.J.R. 4551(a)		
10:52-1.3, 1.7, 1.8	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:52-8.2	Charity care component of Health Care Subsidy Fund	26 N.J.R. 3485(a)	R.1994 d.536	26 N.J.R. 4392(a)
10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)	R.1994 d.508	26 N.J.R. 4185(a)
10:54-1.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:58-1.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.3	Home Care Services: accreditation of private duty nursing agencies	26 N.J.R. 2840(a)		
10:61-1.3, 3.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:63	Long-Term Care Services	26 N.J.R. 3614(a)		
10:66-2.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994. d.600	26 N.J.R. 4762(a)
10:69A-5.3, 5.6, 6.2, 6.12	Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria	26 N.J.R. 3142(a)		
10:73-1.1, 1.2, 2.1, 2.6, 2.8-2.12, 3.1, 3.2	Medicaid program: case management services billing	26 N.J.R. 3350(a)	R.1994 d.585	26 N.J.R. 4614(a)
10:81-2.6, 3.9, 3.10, 13.3	Public Assistance Manual: AFDC-N segment eligibility of aliens	26 N.J.R. 3930(a)		
10:81-11.6A, 11.6B, 11.15	Child Support Hotline; locator processing fees	26 N.J.R. 3353(a)	R.1994 d.566	26 N.J.R. 4616(a)
10:81-11.9	Public Assistance Manual: \$50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82-2.3	Assistance Standards Handbook: administrative correction regarding income from noneligible individual	_____	_____	26 N.J.R. 4047(a)
10:82-2.3	Assistance Standards Handbook: AFDC-N segment eligibility of aliens	26 N.J.R. 3932(a)		
10:82-3.14	Assistant Standards Handbook: administrative correction regarding guardians of adolescent parents	_____	_____	26 N.J.R. 4765(a)
10:85	General Assistance Manual	26 N.J.R. 2757(b)	R.1994 d.591	26 N.J.R. 4765(b)
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:87-2.31	Food Stamp Program: applications in pending status	26 N.J.R. 4298(a)		
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)	R.1994 d.561	26 N.J.R. 4394(a)
10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1-9.5	Manual of Requirements for Child Care Centers	26 N.J.R. 4139(a)		
10:126-1.2, 1.4, 2.2-2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1-5.4, 5.6-5.10, 6.1-6.6, 6.8, 6.9, 6.13, 6.18, 6.20	Manual of Requirements for Family Day Care Registration	26 N.J.R. 3144(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)	R.1994 d.531	26 N.J.R. 4186(a)
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial response	26 N.J.R. 3355(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)	R.1994 d.530	26 N.J.R. 4186(b)
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)	R.1994 d.532	26 N.J.R. 4188(a)

Most recent update to Title 10: TRANSMITTAL 1994-9 (supplement September 19, 1994)

CORRECTIONS—TITLE 10A

10A:2	Fiscal management of inmate accounts, welfare funds, claims, and other financial matters	26 N.J.R. 4299(a)		
10A:26	Bureau of Parole: policies and procedures	26 N.J.R. 4143(a)		
10A:71	State Parole Board rules	26 N.J.R. 4150(a)		
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)	R.1994 d.510	26 N.J.R. 4190(a)
10A:71-7.16	State Parole Board: administrative correction regarding board panel action	_____	_____	26 N.J.R. 4771(a)
10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)	R.1994 d.511	26 N.J.R. 4191(a)

Most recent update to Title 10A: TRANSMITTAL 1994-8 (supplement September 19, 1994)

INSURANCE—TITLE 11

11:1-1.1	Organization of the Department of Insurance	Exempt	R.1994 d.557	26 N.J.R. 4405(a)
11:1-20.1, 20.3, 22.1	Cancellation and nonrenewal of homeowners' policies	26 N.J.R. 4303(a)		
11:2-1	Admission requirements for foreign and alien life and health insurers	26 N.J.R. 4586(a)		
11:2-27.3	Determination of insurers in a hazardous financial condition	26 N.J.R. 3589(a)	R.1994 d.550	26 N.J.R. 4407(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:2-41	Windstorm Market Assistance Program for voluntary market homeowners' coverage	26 N.J.R. 4304(a)		
11:3-2B	Market Transition Facility of New Jersey: payment prioritization and claims payment deferral	26 N.J.R. 4590(a)		
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-28.2, 28.14-28.17	Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures	26 N.J.R. 2190(a)	R.1994 d.597	26 N.J.R. 4772(a)
11:3-28.13, 28.16	Unsatisfied Claim and Judgment Fund: insurer's obligation to obtain recovery of paid medical expense benefit claims and paid benefits (UCJ claims)	26 N.J.R. 4595(a)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)	R.1994 d.564	26 N.J.R. 4616(b)
11:3-33.2, 44.3, 44.4	Automobile insurance: provision of coverage to all eligible persons	26 N.J.R. 3591(a)	R.1994 d.598	26 N.J.R. 4777(a)
11:5-1.2, 1.4, 1.5, 1.19, 1.29	Real Estate Commission: licensing requirements	26 N.J.R. 3111(a)		
11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
11:5-1.43	Real Estate Commission: consumer information statement	26 N.J.R. 3113(a)		
11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
11:15	Group self-insurance	26 N.J.R. 2518(a)	R.1994 d.551	26 N.J.R. 4407(b)
11:15	Group self-insurance: extension of comment period	26 N.J.R. 3356(a)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		
11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
11:17A	Insurance producers and limited insurance representatives: marketing conduct standards	26 N.J.R. 4307(a)		
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all eligible persons	26 N.J.R. 3591(a)	R.1994 d.598	26 N.J.R. 4777(a)
11:17B	Insurance producers and limited insurance representatives: commissions and fees	26 N.J.R. 4307(a)		
11:17C	Insurance producer standards of conduct: management of funds	26 N.J.R. 4307(a)		
11:17D	Insurance producers and limited insurance representatives: administrative procedures and penalties	26 N.J.R. 4307(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-9.6	Individual Health Coverage Program: good faith marketing report	26 N.J.R. 3809(a)	R.1994 d.509	26 N.J.R. 4193(a)
11:20-App. Exh. A-F, M, N, O, P	Individual Health Coverage Program: policy forms, PPO and POS standard plan provisions, schedule of benefits	26 N.J.R. 3356(b)		
11:21-1.2, 1.3, 2.2, 3A, 7.1, 7.2, 7.3, 7.5-7.9, 7.12, 7.13, 7A, App. Exh. N, O, Q, R, S, T	Small Employer Health Benefits Program: standard and non-standard plans	26 N.J.R. 3421(a)	R.1994 d.499	26 N.J.R. 4047(b)
11:21-1.2, 7.4, 8.3	Small Employer Health Benefits Program: stop loss and excess risk insurance; non-member status	26 N.J.R. 4308(a)	R.1994 d.583	26 N.J.R. 4629(a)
11:21-2.1, 2.5	Small Employer Health Benefits Program: Board membership	26 N.J.R. 4310(a)		
11:21-2.5	Small Employer Health Benefits Program: public hearing regarding Board membership	26 N.J.R. 4311(a)		
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-9.1-9.4, 11, 14.2, 14.4, 14.5, 16.2, 16.3, 16.4, 16.7, Exh. BB, U	Small Employer Health Benefits Program: plan filings; informational rate filings; declaration and approval of carrier status; withdrawals of carriers from plan market	26 N.J.R. 3118(a)	R.1994 d.580	26 N.J.R. 4620(a)
11:11-Exh. A-AA	Small Employer Health Benefits Program: plan exhibits	26 N.J.R. 2843(a)	R.1994 d.498	26 N.J.R. 4066(a)

Most recent update to Title 11: TRANSMITTAL 1994-9 (supplement September 19, 1994)

LABOR—TITLE 12

12:15-1.3-1.7	Unemployment compensation and temporary disability: 1995 maximum weekly benefit rates, contribution levels, and eligibility tests	26 N.J.R. 3592(b)	R.1994 d.552	26 N.J.R. 4410(a)
12:16-13.7	Unemployment Insurance and Disability Insurance Financing: magnetic media wage reporting	26 N.J.R. 2863(a)	R.1994 d.527	26 N.J.R. 4194(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:40	Worker Adjustment and Retraining Notification (WARN) procedures	26 N.J.R. 4311(b)		
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:90	Division of Workplace Standards: boilers, pressure vessels, refrigeration	26 N.J.R. 3810(a)	R.1994 d.599	26 N.J.R. 4828(a)
12:100-10.10	Safety and health standards for public employees: respiratory protection devices	26 N.J.R. 4313(a)		
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
12:195-1.9	Carnival-amusement rides: inspection and permit fees	26 N.J.R. 3594(a)	R.1994 d.581	26 N.J.R. 4630(a)
12:235-1.6	Workers' Compensation: 1995 maximum benefit rate	26 N.J.R. 3594(b)	R.1994 d.553	26 N.J.R. 4410(b)
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		
12:235-14.7	Uninsured Employer's Fund: withdrawal of proposal regarding attorney fees	26 N.J.R. 4313(b)		

Most recent update to Title 12: TRANSMITTAL 1994-5 (supplement September 19, 1994)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10	Small businesses: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 4411(a)
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)	R.1994 d.565	26 N.J.R. 4631(a)
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		

Most recent update to Title 12A: TRANSMITTAL 1994-2 (supplement May 16, 1994)

LAW AND PUBLIC SAFETY—TITLE 13

13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-1.5-1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)		
13:24	Division of Motor Vehicles: equipment for emergency and other specified vehicles	26 N.J.R. 2865(a)	R.1994 d.533	26 N.J.R. 4631(b)
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.11, 1.16	Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined	26 N.J.R. 2742(a)	R.1994 d.594	26 N.J.R. 4780(a)
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)	R.1994 d.522	26 N.J.R. 4195(a)
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)	R.1994 d.538	26 N.J.R. 4411(b)
13:35-3.12	Board of Medical Examiners: licensure of physicians with post-secondary educational deficiencies	26 N.J.R. 2742(b)	R.1994 d.539	26 N.J.R. 4418(a)
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Board of Medical Examiners: withdrawal of stay of operative date for hair replacement techniques	_____	_____	26 N.J.R. 4083(a)
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)	R.1994 d.595	26 N.J.R. 4780(b)
13:36	Board of Mortuary Science rules	26 N.J.R. 2536(a)	R.1994 d.523	26 N.J.R. 4201(a)
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:40-6.1, 11	Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors	26 N.J.R. 4314(a)		
13:44D-2.2, 2.6	Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business	26 N.J.R. 2745(a)	R.1994 d.540	26 N.J.R. 4419(a)
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	26 N.J.R. 3932(b)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		
13:45B-1.2, 2, 3.1, 4, 5, 6.4, 6.6, 7.1, 8.2, 9, 10.1, 11.1, 12.1, 14, 15	Health care service firms: registration requirements and standards for placement of health care practitioners	26 N.J.R. 4316(a)		
13:47-1-4, 6-9, 13-16	Legalized games of chance	26 N.J.R. 4326(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: rules of practice	26 N.J.R. 3814(a)		
13:47A-1.10A, 2.6A, 13, 14	Bureau of Securities: extension of comment period concerning rules of practice	26 N.J.R. 4337(a)		
13:49-1.1, 1.5	State Medical Examiner: death investigations and potential organ donations	Emergency (expires 12-20-94)	R.1994 d.571	26 N.J.R. 4447(a)
13:59	State Police: criminal history background checks for non-criminal justice purposes	26 N.J.R. 3595(a)	R.1995 d.601	26 N.J.R. 4782(a)
13:70-8.18	Thoroughbred racing: items included in jockey's weight	26 N.J.R. 3130(a)	R.1994 d.554	26 N.J.R. 4420(a)
13:70-8.28	Thoroughbred racing: overweight of jockey after race	26 N.J.R. 3130(b)	R.1994 d.555	26 N.J.R. 4420(b)
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)	Expired	
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)	Expired	
13:71-19.6	Harness racing: safety vests	26 N.J.R. 4482(b)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)	R.1994 d.556	26 N.J.R. 4420(c)

Most recent update to Title 13: TRANSMITTAL 1994-9 (supplement September 19, 1994)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:12-5.3	Demand Side Management Resource Plan: administrative correction regarding public notice and hearing	_____	_____	26 N.J.R. 4786(a)
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
14:31	Business Energy Improvement Program	26 N.J.R. 4482(c)		
14:33	Energy Facility Review Board	26 N.J.R. 4484(a)		
14:34	Periodic reporting of energy information by energy industries	26 N.J.R. 4484(c)		

Most recent update to Title 14: TRANSMITTAL 1994-3 (supplement May 16, 1994)

ENERGY—TITLE 14A

14A:6	Business Energy Improvement Program: recodify as 14:31	26 N.J.R. 4482(c)		
14A:8	Energy Facility Review Board: recodify as 14:33	26 N.J.R. 4484(a)		
14A:11	Periodic reporting by energy industries: recodify as 14:34	26 N.J.R. 4484(c)		

Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:20A	Federal Aid Urban System Substitution Program: county and municipal aid	26 N.J.R. 4485(a)		
16:20B	Transportation Trust Fund Authority Act: municipal fund for road and bridge improvement projects	26 N.J.R. 4486(a)		
16:21A	Bridge Rehabilitation and Improvement Fund: State aid to counties and municipalities	26 N.J.R. 3246(a)	R.1994 d.544	26 N.J.R. 4421(a)
16:24	Public utility rearrangement agreements	26 N.J.R. 4160(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.6	School zone along U.S. 40 in Woodstown Borough, Salem County	26 N.J.R. 3131(a)	R.1994 d.513	26 N.J.R. 4206(a)
16:28-1.6	Administrative correction regarding street name change in Woodstown Borough, Salem County	_____	_____	26 N.J.R. 4633(a)
16:28-1.10	Speed limits along entire length of U.S. 46, including U.S. 1, 9 and 46	26 N.J.R. 3600(a)	R.1994 d.567	26 N.J.R. 4634(a)
16:28-1.18	Speed limit zones along Rising Sun Square Road-Old York Road in Bordentown Township	26 N.J.R. 3934(a)		
16:28-1.41	Speed limit zones along U.S. 9 in Galloway Township, Atlantic County	26 N.J.R. 3132(a)	R.1994 d.512	26 N.J.R. 4207(a)
16:28-1.53	Speed limit zone along Route 165 in Lambertville	26 N.J.R. 3602(a)	R.1994 d.570	26 N.J.R. 4636(a)
16:28-1.158	Speed limit zones along Route 179 in West Amwell Township	26 N.J.R. 4486(b)		
16:28-1.61	Speed limit zones along Collins Avenue-Nixon Drive under State jurisdiction in Burlington County	26 N.J.R. 4337(b)		
16:28-1.77	Speed limits along Route 29 in Mercer and Hunterdon counties	26 N.J.R. 3821(a)	R.1994 d.586	26 N.J.R. 4786(a)
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.79	Speed limits along Route 94 in Warren and Sussex counties	26 N.J.R. 3603(a)	R.1994 d.569	26 N.J.R. 4636(b)
16:28-1.158	Speed limits along Route 179 in Lambertville	26 N.J.R. 3820(b)	R.1994 d.587	26 N.J.R. 4787(a)
16:28A-1.7	Restricted parking along U.S. 9 in Middle Township, Cape May	26 N.J.R. 3935(a)		
16:28A-1.19	Handicapped parking along Route 28 in Elizabeth	26 N.J.R. 3605(a)	R.1994 d.568	26 N.J.R. 4637(a)
16:28A-1.28	No stopping or standing zones along U.S. 40 in Pilesgrove Township, Salem County	26 N.J.R. 3936(a)		
16:28A-1.33	No stopping or standing zone along Route 47 in Middle Township, Cape May	26 N.J.R. 3936(b)		
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	26 N.J.R. 4160(b)		
16:28A-1.37	No stopping or standing zones along Route 70 in Cherry Hill and Pennsauken	26 N.J.R. 4338(a)		
16:28A-1.38	No stopping or standing along Route 71 in Bradley Beach Borough	26 N.J.R. 4161(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood Township, Ocean County	26 N.J.R. 3135(a)	R.1994 d.514	26 N.J.R. 4207(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)	R.1994 d.588	26 N.J.R. 4787(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period	26 N.J.R. 4487(a)		
16:28A-1.98	No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County	26 N.J.R. 3136(a)	R.1994 d.515	26 N.J.R. 4208(a)
16:30-3.9	Truck lane-usage restriction along Route I-80 in Morris County	26 N.J.R. 4162(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-3.12	Left turn center lane along Rising Sun Road, Bordentown	26 N.J.R. 3247(a)	R.1994 d.529	26 N.J.R. 4208(b)
16:30-7.4	Interstate highways: classes of traffic	26 N.J.R. 4162(b)		
16:30-9.14	Bidwells Creek bridge restrictions, Route 47 in Middle Township, Cape May	26 N.J.R. 3937(a)		
16:30-9.23	Drawbridge usage along Route 152 in Atlantic County	26 N.J.R. 4487(b)		
16:31-1.8	Left turn prohibitions along Route 47 in Vineland	26 N.J.R. 3822(a)	R.1994 d.589	26 N.J.R. 4787(c)
16:31-1.8	Turn prohibitions along Route 47 in Middle Township, Cape May	26 N.J.R. 3937(b)		
16:31-1.17	Left turn prohibition along Route 73 in Berlin Township, Camden County	26 N.J.R. 3137(a)	R.1994 d.516	26 N.J.R. 4208(c)
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington City	26 N.J.R. 3938(a)		
16:31-1.26	Left turn prohibitions along Route 27 in Metuchen and Highland Park	26 N.J.R. 4488(a)		
16:31-1.29	Left turn prohibitions along U.S. 9 in Lakewood Township, Ocean County	26 N.J.R. 3137(b)	R.1994 d.517	26 N.J.R. 4209(a)
16:32	Truck operations within State	26 N.J.R. 4163(a)		
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		
16:49	Transportation of hazardous materials	26 N.J.R. 4488(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D-1.1	Autobus carrier Zone of Rate Freedom	26 N.J.R. 3247(b)	R.1994 d.526	26 N.J.R. 4209(b)
16:62	Air safety and hazardous zoning	26 N.J.R. 4502(a)		
16:82	Examination and duplication of NJ TRANSIT records	26 N.J.R. 2871(b)	R.1994 d.534	26 N.J.R. 4210(a)

Most recent update to Title 16: TRANSMITTAL 1994-9 (supplement September 19, 1994)

TREASURY-GENERAL—TITLE 17

17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 3823(a)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)		
17:4-1.4	Police and Firemen's Retirement System: election of member-trustee	26 N.J.R. 3938(b)		
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:12	Purchase Bureau	26 N.J.R. 3248(a)		
17:12	Purchase Bureau rules: extension of comment period	26 N.J.R. 4166(a)		
17:12	Purchase Bureau rules: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 4421(b)
17:13	Goods and services contracts for small businesses, urban development enterprises, and micro businesses: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 4411(a)
17:14	Minority and female subcontractor participation in State construction contracts: waiver of Executive Order No. 66(1978) expiration date	_____	_____	26 N.J.R. 4411(a)

Most recent update to Title 17: TRANSMITTAL 1994-7 (supplement September 19, 1994)

TREASURY-TAXATION—TITLE 18

18:1	Organization of Division of Taxation	26 N.J.R. 2752(a)	R.1994 d.503	26 N.J.R. 4087(a)
18:18	Motor fuels taxes	26 N.J.R. 4512(a)		
18:19-1.1, 2.1, 2.2, 2.7, 3.1, 3.2, 4.1, 4.2, 5.5, 5.6, 6.1	Retail sales of motor fuels	26 N.J.R. 4512(a)		
18:24-28.2	Sales of horses in claiming races	26 N.J.R. 4166(b)		
18:26-1.1, 2.2, 2.5, 2.9, 2.12, 2.15, 3.2, 3.7-3.10, 6.3, 6.6, 7.7, 7.12, 8.5-8.8, 8.17, 8.18, 8.22, 9.7, 9.13, 9.15, 10.5, 10.7, 10.13, 11.1, 11.31, 12.2, 12.3-12.6, 12.9, 12.10, 12.12	Transfer inheritance and estate tax: application of Taxpayer Bill of Rights	26 N.J.R. 4166(c)		
18:35-1.28	Gross income tax: commuter transportation benefits reporting by employer	26 N.J.R. 4173(a)		

Most recent update to Title 18: TRANSMITTAL 1994-5 (supplement August 15, 1994)

TITLE 19—OTHER AGENCIES

19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)	R.1994 d.543	26 N.J.R. 4421(c)
19:8-1.1, 1.12, 2.1, 2.13, 2.14, 2.15	Garden State Parkway: transporting of hazardous materials	26 N.J.R. 3249(a)	R.1994 d.519	26 N.J.R. 4211(a)
19:8-1.8	Garden State Parkway: prohibited parking, stopping or standing	26 N.J.R. 3251(a)	R.1994 d.518	26 N.J.R. 4210(b)
19:8-13	Garden State Parkway: fees for construction and utility installation permits	26 N.J.R. 3252(a)	R.1994 d.520	26 N.J.R. 4213(a)
19:25-1.7, 6.5-6.9	ELEC: permissible uses of candidate funds	26 N.J.R. 2753(a)	R.1994 d.528	26 N.J.R. 4214(a)
19:25-9, 10	Reporting by continuing political committees, political party committees, and legislative leadership committees	26 N.J.R. 3138(a)	R.1994 d.573	26 N.J.R. 4638(a)
19:61-2.2	Executive Commission on Ethical Standards: State agency codes of ethics	26 N.J.R. 3141(a)	R.1994 d.584	26 N.J.R. 4640(b)

Most recent update to Title 19: TRANSMITTAL 1994-9 (supplement September 19, 1994)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:40-1.6, 4.1	General provisions: administrative corrections			26 N.J.R. 4788(a)
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.1, 1.1A, 1.2, 1.2A, 1.3, 1.6, 1.8	Casino employee licensure and registration	26 N.J.R. 4338(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.13	Key Standard Qualifier Renewal Form	26 N.J.R. 3824(a)	R.1994 d.592	26 N.J.R. 4789(a)
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:43-2.7A	Key Standard Qualifier Renewal Form	26 N.J.R. 3824(a)	R.1994 d.592	26 N.J.R. 4789(a)
19:44	Gaming schools	26 N.J.R. 4174(b)		
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.11, 1.12, 1.15, 1.25, 1.47, 1.48	Double Down Stud: temporary adoption			26 N.J.R. 4445(a)
19:45-1.1, 1.18, 1.36, 1.40B, 1.44	Accounting and internal controls: administrative corrections			26 N.J.R. 4788(a)
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.26, 1.26A	Substitution and redemption of patron checks	26 N.J.R. 3825(a)		
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.9	Cash compliments based upon patron's actual loss	26 N.J.R. 4173(b)		
19:45-1.12	Supervision of gaming tables	26 N.J.R. 4174(a)		
19:45-1.12	Casino employee licensure and registration	26 N.J.R. 4338(a)		
19:45-1.17, 1.42	Storage of empty drop boxes and slot cash storage boxes	26 N.J.R. 3606(b)	R.1994 d.574	26 N.J.R. 4639(a)
19:45-1.24A	Release of wire transfer funds: patron identification procedure	26 N.J.R. 3140(a)	R.1994 d.542	26 N.J.R. 4445(b)
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)		
19:45-1.25	Exchange of patron checks: administrative correction			26 N.J.R. 4216(a)
19:45-1.46	Inventory of coin coupons	26 N.J.R. 1322(a)	R.1994 d.575	26 N.J.R. 4640(a)
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:46-1.5, 1.6, 1.20, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)		
19:46-1.13B	Additional wager in pai gow poker	26 N.J.R. 4343(a)		
19:46-1.13F, 1.17, 1.19	Double Down Stud	26 N.J.R. 1323(a)	R.1994 d.593	26 N.J.R. 4790(a)
19:46-1.13F, 1.17, 1.19	Double Down Stud: temporary adoption			26 N.J.R. 4445(a)
19:46-1.15, 1.33	Gaming equipment: administrative corrections			26 N.J.R. 4788(a)
19:47-1.5, 2.15	Rules of the games: administrative corrections			26 N.J.R. 4788(a)
19:47-11.8, 11.8A, 11.8B, 11.13	Additional wager in pai gow poker	26 N.J.R. 4343(a)		
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-17	Double Down Stud	26 N.J.R. 1323(a)	R.1994 d.593	26 N.J.R. 4790(a)
19:47-17	Double Down Stud: temporary adoption			26 N.J.R. 4445(a)
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:51-1.1, 1.2	Gaming-related casino service industry licensure	26 N.J.R. 4344(a)		
19:51-1.3A, 1.3B	Application for initial casino service industry license and license renewal	26 N.J.R. 2886(a)	R.1994 d.505	26 N.J.R. 4100(a)
19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers	26 N.J.R. 785(a)		
19:54	Gross revenue tax rules	26 N.J.R. 4181(a)		
19:54-1.6	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)	R.1994 d.504	26 N.J.R. 4089(a)
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions	26 N.J.R. 1994(a)		
19:55-2.11, 4.10	Simulcasting of horse races: cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2566(a)	R.1994 d.446	26 N.J.R. 4446(a)
19:65-2.5	Approval criteria for hotel development projects	25 N.J.R. 5455(a)		

Most recent update to Title 19K: TRANSMITTAL 1994-9 (supplement September 19, 1994)