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## THE JOURNAL OF STATE AGENCY RULEMAKING

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# EXECUTIVE ORDERS

(a)

**OFFICE OF THE GOVERNOR**  
**Governor James J. Florio**  
**Executive Order No. 16(1990)**  
**Governor's Study Commission on Discrimination in Public**  
**Works Procurement and Construction Contracts**  
**Extension of Final Report Due Date; Membership**  
**Increase; Adoption of Report and Actions—Vote**  
**Requirements**

Issued: September 28, 1990.  
 Effective: September 28, 1990.  
 Expiration: Indefinite.

WHEREAS, the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (hereinafter "Study Commission") was created by Executive Order to investigate, research and report on the nature and scope of any discrimination in public works procurement and construction contracts awarded by the State and to recommend remedies for any discrimination; and

WHEREAS, the final report of the Study Commission is now due on February 9, 1991 by virtue of Executive Order No. 5; and

WHEREAS, the Study Commission is continuing to investigate and research discrimination in public works procurement and construction contracts awarded by the State, but does not anticipate that it will be able to complete its final report by February 9, 1991; and

WHEREAS, the mission of the Study Commission would also be aided by the inclusion of a representative of New Jersey Transit on the Study Commission and by the streamlining of the procedures governing its operations prior to the adoption of a final report;

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

1. The Study Commission shall report its findings and recommendations concerning past and present discriminatory practices in public works procurement and construction contracts no later than August 14, 1991.

2. The membership of the Study Commission shall be increased to include the Executive Director of New Jersey Transit or her designee.

3. Except for the purpose of adopting a final report to the Governor, one-third of the members of the Study Commission shall constitute a quorum at any meeting of the Study Commission.

4. Except for the purpose of adopting a final report, actions may be taken and motions and resolutions adopted by the Study Commission at any meeting thereof by the affirmative vote of the majority of the

quorum or of seven members of the Study Commission, whichever is greater.

5. Except for the purpose of adopting a final report, the Study Commission may solicit the vote of the full membership by written ballot on such matters, under such circumstances and in such manner as the Chair deems appropriate.

6. Except as provided in sections 1 through 5 of this Executive Order, all other terms of Executive Order No. 5 shall remain in force and effect.

7. This Order shall take effect immediately.

(b)

**OFFICE OF THE GOVERNOR**  
**Governor James J. Florio**  
**Executive Order No. 17(1990)**  
**Tribute to Barbara Boggs Sigmund**

Issued: October 10, 1990.  
 Effective: October 10, 1990.  
 Expiration: Indefinite.

WHEREAS, Barbara Boggs Sigmund has selflessly served the citizens of Mercer County as the first woman on the County Board of Freeholders and has similarly served the people of Princeton Borough on its Council and as its Mayor; and

WHEREAS, she has been an active, prominent participant in the political arena of the State of New Jersey; and

WHEREAS, she has faced great personal adversity with abundant grace, good humor, dignity and immeasurable courage and has inspired others through her determination; and

WHEREAS, her public dedication and accomplishment have never detracted from her devotion to her family; and

WHEREAS, it is appropriate and fitting for the State of New Jersey to mark the passing of Barbara Boggs Sigmund, a valiant, committed public servant;

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Thursday, October 11, 1990, through and including Saturday, October 13, 1990 in recognition and mourning of the passing of a distinguished New Jersey citizen, Barbara Boggs Sigmund.

2. This Order shall take effect immediately.

# RULE PROPOSALS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules Jurisdiction of the Office of Administrative Law; Interlocutory Review

#### Proposed Amendments: N.J.A.C. 1:1-3.2 and 1:1-14.10

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

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

Proposal Number: PRN 1990-547.

Submit comments by December 5, 1990 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
Quakerbridge Road, CN 049  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The proposed amendments establish the appropriate interlocutory appeal route for a party seeking review of a determination which establishes a hearing location (N.J.A.C. 1:1-9.1(b)). Pursuant to the proposed amendments, applications to review an administrative law judge's decision establishing a hearing location should be made to the Director of the Office of Administrative Law.

The Supreme Court has recognized that it is within the authority and competence of the Office of Administrative Law (OAL) to determine certain issues relating to the orderly and expeditious hearing of contested cases. *In re Onorevole*, 103 N.J. 548 (1986). The scheduling of proceedings for suitable locations is explicitly within the authority of the Director of the OAL. N.J.S.A. 52:14F-5n. Obviously, the OAL could not function if another agency were able to specify where the OAL had to send its judge to conduct a hearing. The selection of a hearing location is therefore very important to the OAL, within the OAL Director's specific statutory authority, and has no direct relationship to the merits of the case.

The proposed amendments also provide that a party who disagrees with the selection of a hearing location may seek review of the decision only interlocutorily in that it would be impractical to review that decision after the case has concluded.

#### Social Impact

The proposed amendments clarify existing confusion over the appropriate interlocutory appeal route for a party who wishes to seek review of an administrative law judge's determination of a hearing location.

#### Economic Impact

No major economic impact is foreseen from the application of the proposed amendments. Some minimal savings by eliminating existing confusion may result to parties who wish to interlocutorily appeal these decisions; the proposed amendments will make the appropriate procedure clear to those parties and allow for efficient processing.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect the interlocutory appeal process when a party is seeking review of a hearing location determination made by an administrative law judge.

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

1:1-3.2 Jurisdiction of the Office of Administrative Law

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

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the

Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for the purposes of review:

1.-3. (No change.)

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses; [and]

5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3 [.] and

6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b).

1:1-14.10 Interlocutory review

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

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1.-3. (No change.)

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses; [and]

5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3 [.] and

6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b).

(l) (No change.)

(m) Orders or rulings issued under (k) 1, 2, 3, [and] 5 and 6 above may only be appealed interlocutorily; a party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case.

### (b)

#### OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Special Hearing Rules

#### Return of Cases; Failure to Appear; Sanctions; Adjournments; Motions; Conclusion of Hearing; Exceptions; Withdrawals

#### Proposed Amendments: N.J.A.C. 1:1-3.3, 9.6, 12.1, 14.4, 14.7, 18.4 and 19.2; 1:10-18.2; 1:10B-18.2; 1:13-14.4; and 1:13A-14.1

#### Proposed New Rule: N.J.A.C. 1:1-14.14

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

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

Proposal Number: PRN 1990-555.

Submit comments by December 5, 1990 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
CN 049  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Office of Administrative Law's (OAL) decision to propose this group of amendments results in part from changes which will be implemented within the OAL that affect the way it processes contested cases that have been transmitted for hearing. The major change is the decentralization of the OAL Clerk's office, which, in the past, has been located in Newark. Beginning fall 1990, the majority of cases will be assigned to judges and scheduled through separate scheduling units located in Trenton and Newark. Some types of cases—including Division of Economic Assistance, Motor Vehicle, Lemon Law and early settlement program cases—will be scheduled through the central Clerk's office, which will remain based in Newark. It is hoped that this reform will make the processing of cases more efficient and, at the same time, address some

existing difficulties associated with the assignment and scheduling of cases. While planning these changes, the OAL reviewed its rules and determined that several should be amended to conform to the new procedures or to contribute to increased efficiency. Several of these amendments have been combined in this proposal for the convenience of persons interested in OAL rule amendments. The proposed changes are described separately below.

**N.J.A.C. 1:1-3.3, 1:1-14.4 (Failure to Appear).** The OAL has decided to change its procedure when parties fail to appear at a hearing so that the matter is automatically and immediately returned to the transmitting agency for an appropriate disposition. Under the current rule, a judge must hold the matter for 10 days, permit the non-appearing party to submit an explanation and then re-schedule the proceeding if an explanation is received. If no explanation is received, the judge issues an initial decision dismissing the matter or granting the relief. This formal procedure involves the time and efforts of judges and staff that could be better spent on active cases. Under the proposed amendment, the OAL will informally handle situations where a party fails to appear by administratively returning the case to the transmitting agency. The agency may, under the proposed amendment to N.J.A.C. 1:1-3.3, consider any explanations for the non-appearance and re-transmit the case to the OAL for a hearing if that is deemed appropriate. No effort has been made to specify a standard to guide an agency's re-transmission determination and, therefore, this decision is left to the sound discretion of each agency. The proposed amendment will enable the OAL to focus its resources on matters that are capable of being resolved because the parties are prepared and willing to proceed.

The proposed amendment to N.J.A.C. 1:1-14.4 recodifies subsection (c) to a separate rule, which is re-numbered N.J.A.C. 1:1-14.14, dealing solely with sanctions. This recodification was done for purposes of clarity because the proposed amendment, in effect, removes failure to appear situations from those offenses that merit sanctions.

**N.J.A.C. 1:1-9.6 (Adjournments).** Under the proposed amendment, in cases that will continue to be scheduled by the central Clerk's office, requests for adjournment must be made to the Clerk until such time as the parties appear before a judge. This is necessary because these cases are rapidly scheduled and almost always involve more than one case per hearing day. Consequently, it was deemed necessary to retain central adjournment authority over these cases. For all other cases that will be scheduled by the local units, adjournment requests may be made directly to the assigned judge. Since these cases tend to be longer, more complicated and more vigorously contested than those that will be scheduled by the Central office, the OAL wished to have a judge promptly attend to any adjournment requests. Additionally, under the proposed amendment, the OAL will no longer confirm adjournments by issuing Adjournment Notices since these notices are unnecessary, possibly confusing and costly.

**N.J.A.C. 1:1-12.1 (Motions).** The proposed amendment provides that motions shall be filed with the judge, rather than the Clerk, except that motions may be filed with the Clerk if a judge has not yet been assigned. The current rule requires filing all motions with the Clerk and the OAL has decided to eliminate that requirement.

**N.J.A.C. 1:1-14.7 (Conclusion of hearing).** The proposed amendment to subsection (h) provides that the hearing is concluded after the final argument or, if post-hearing submissions are permitted, when the time for filing such submissions has expired. The proposed amendment eliminates the provision that the hearing may be deemed concluded earlier if post-hearing submissions are filed before they are due. The reason for this change is that the OAL prefers to have a time certain for the conclusion of the hearing so that the time for issuance of initial decisions will be easier to track.

**N.J.A.C. 1:1-18.4 (Exceptions.)** The proposed amendment eliminates the requirement that exceptions and replies be filed with the Clerk. Instead, copies of exceptions and replies are to be served on the parties and the judge who issued the initial decision. Under the current rule, the Clerk would forward exceptions and replies to the judge. The Clerk's office itself did not need to review exceptions or replies.

**N.J.A.C. 1:1-19.2 (Withdrawals).** The proposed amendment eliminates the requirement that withdrawals be confirmed in writing. In practice, most withdrawals are communicated verbally to the judge. It is often difficult to obtain a written confirmation and waiting for the confirmation delays concluding the matter. The proposed amendment recognizes this fact and permits the judge to immediately discontinue the matter upon notification that a party does not wish to proceed with the hearing. The case can then be returned to the transmitting agency.

**N.J.A.C. 1:10-18.2 and 1:10B-18.2 (Exceptions—Special Hearing Rules).** These proposed amendments conform the Special Hearing Rules with the amendments proposed to the exceptions rule, N.J.A.C. 1:1-18.4.

**N.J.A.C. 1:13-14.4 and 1:13A-14.1 (Failure to Appear—Special Hearing Rules).** These proposed amendments conform the Special Hearing Rules with the amendments proposed for the failure to appear rule, N.J.A.C. 1:1-14.4.

#### Social Impact

The proposed amendments permit the OAL to achieve internal changes in procedures that are designed to process and conclude cases more efficiently. One goal is to quickly remove cases from the OAL docket when hearings are not actively pursued, such as when a party fails to appear or notifies the judge that a hearing is no longer desired. By providing for immediate return of these matters to the transmitting agency, judicial time and staff time can be devoted to hearings in which all parties are actively participating. Additionally, with respect to the proposed change in the hearing close date, the time period for writing initial decisions is calculated from the day the hearing concludes. Having a date certain for calculating when the hearing was concluded will facilitate tracking due dates for issuance of initial decisions. In practice, the proposed change will not be a detriment for any litigant. The change does not reduce the amount of time allowed for post-hearing submissions where permitted by the judge and the OAL does not anticipate any undue lengthening of the hearing process.

Another goal of the proposed amendments is to remove time-consuming requirements which have not achieved their original purpose or which are not effective because parties do not comply. In practice, for example, most motions are filed directly with the judge. Therefore, the proposed amendment conforms this rule to existing practice. With exceptions, the proposed amendment simply recognizes that it is the judge rather than the Clerk who should receive exceptions and replies. Additionally, adjournment notices will no longer be issued by the OAL because the parties should already know of the adjournment by the time the written notice is issued and therefore the document does not provide useful and timely notice of the adjournment and is a cost which the OAL can do without. Also, a new hearing notice will soon issue for any new hearing dates.

Finally, some of the changes grew out of the plan to decentralize the Clerk's office. Under the proposed amendments, for example, more adjournment requests will be made to judges. This is necessary because one of the cornerstones of the reform effort is to enhance the judge's control over case management.

None of the proposed amendments is expected to disadvantage parties in any way or affect their hearings. In fact, there should be very little change to existing practice. The primary benefit will be to enable the OAL to process cases more efficiently and expeditiously. This is an overall benefit to the State and all parties to OAL hearings.

#### Economic Impact

The proposed amendments are not expected to have any economic impact on parties to contested cases. There should be some cost savings to the OAL, especially as a result of eliminating Adjournment Notices and the need for written confirmation of withdrawals. Agencies may be required to expend additional resources considering excuses by parties who failed to appear at OAL hearings. Under the existing practice, however, not many excuses were submitted during the 10 days when the OAL withheld action after a failure to appear. Consequently, it is not expected that the additional agency expenditures would be significant. In conclusion, on balance the OAL believes that the proposed amendments will not cause anyone economic disadvantage but will enable the OAL to more efficiently utilize judicial and staff time thereby resulting in an overall benefit for the State and all parties to OAL hearings.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments make adjustments in the way the OAL processes cases which have been transmitted for hearing and eliminate some rule provisions which have not been effective.

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

1:1-3.3 Return of transmitted cases

(a) A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the trans-

mitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

(b) **A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at any proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear shall be addressed to the transmitting agency head after the case is returned. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.**

#### 1:1-9.6 Adjournments

(a) **In Human Services (except Medical Assistance provider and rate); Motor Vehicle; Consumer Affairs Lemon Law; and Alcoholic Beverage Control, Civil Service and Community Affairs settlement conferences, [Applications] applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing. Thereafter, applications for adjournments shall be made to the judge.**

(b) **In all cases other than those specified in (a) above, applications for adjournments shall be made to the Clerk until such time as a judge has been assigned. Thereafter, applications for adjournments shall be made to the judge.**

(c) Applications may be made in writing or by telephone; telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

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

[(g)](i) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date. [The Clerk shall confirm the new date with a subsequent notice mailed to the parties.]

[(h)](j) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. [1:1-14.4(a)1] **1:1-14.14(a)4 and 5.**

#### 1:1-12.1 When and how made; generally; limitation in conference hearings

(a) (No change.)

(b) A party shall file each motion with the judge. [Clerk, except for motions made during a hearing, other motions permitted by a judge to be made orally, and emergency motions. Upon filing, the Clerk shall transmit the motion to the judge assigned to the case. When a motion is filed in a case which has not yet been assigned to a judge, the Clerk shall immediately assign the case and shall transmit the motion to the judge along with the case file.] **If a case has not yet been assigned to a judge, motions may be filed with the Clerk.**

(c)-(d) (No change.)

#### 1:1-14.4 [Sanctions: failure] **Failure to appear**; failure to comply with orders or requirements of this chapter

[(a)] **If, after appropriate notice, neither a party [or] nor a representative of the party [fails to] appears at any proceeding scheduled by the Clerk or judge, the judge shall, pursuant to N.J.A.C. 1:1-3.3(b), direct the Clerk to return the matter to the transmitting agency for appropriate disposition. If the judge deems it advisable to state the circumstances of the failure to appear on the record, the judge may enter an initial decision memorializing the failure to appear and returning the matter to the transmitting agency for appropriate disposition.** [shall hold the matter for 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge may dismiss the matter or grant the requested relief. The initial decision shall note that the dismissal or relief is granted because the party failed to appear. If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall grant the requested relief or dismiss the claim.

(b) If the judge dismisses the matter or grants the requested relief, the party who failed to appear at the hearing may request a remand in an exception to the initial decision.

(c) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Continue the proceeding and consider sanctions under (a)li or ii above; or

5. Take other appropriate case-related action.]

#### 1:1-14.7 Conduct of conference hearings, plenary hearings and telephone hearings

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

(h) The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired[, or when the last such item has been received by the judge, whichever is earlier].

(i) (No change.)

#### 1:1-14.14 **Sanctions; failure to comply with orders or requirements of this chapter**

(a) **For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:**

1. **Dismiss or grant the motion or application;**

2. **Suppress a defense or claim;**

3. **Exclude evidence;**

4. **Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or**

5. **Take other appropriate case-related action.**

#### 1:1-18.4 Exceptions; replies

(a) Within 13 days from the date the judge's initial decision was mailed to the parties, any party may file written exceptions with the agency head [and with the clerk]. A copy of the exceptions shall be served on all other parties **and the judge**. Exceptions to orders issued under N.J.A.C. 1:1-3.2(c)4 shall be filed with the Director of the Office of Administrative Law.

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

(d) Within five days from receipt of exceptions, any party may file a reply with the agency head [and with the Clerk], serving a copy thereof on all other parties **and the judge**. Such replies may include cross-exceptions or submissions in support of the initial decision.

(e) (No change.)

#### 1:1-19.2 Withdrawals

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties [in writing]. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.

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

## 1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to [the Clerk of the Office of Administrative Law,] the Director of the DEA [and to all parties]. **Copies of the exception shall be served on all other parties and the judge.** The exceptions must be received by the DEA no later than seven days after the date the initial decision was mailed to the parties. No replies or cross-exceptions shall be permitted.

## 1:10B-18.2 Exceptions

(a) If the parties wish to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Medical Assistance and Health Services[.]. **Copies of the exception shall be served on all other parties and the judge.** [the OAL Clerk and to all parties.]

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

## 1:13-14.4 Failure to appear

If the licensee fails to appear at the hearing and fails to submit the certification required by N.J.A.C. 1:13-14.2, the judge shall [hold the matter 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall impose the full penalty proposed by DMV in the notice of proposed suspension.], **pursuant to N.J.A.C. 1:1-3.3(b), direct the Clerk to return the matter to the transmitting agency for appropriate disposition. If the judge deems it advisable to state the circumstances of the failure to appear on the record, the judge may enter an initial decision memorializing the failure to appear and returning the matter to the transmitting agency for appropriate disposition.**

## 1:13A-14.1 Failure to appear

(a) If a party fails to appear at any proceeding scheduled by the Clerk or judge, the judge shall [hold the matter for 10 days before taking action. If the judge does not receive an explanation for the non-appearance within 10 days, the judge may take any of the following actions depending on the circumstances:

1. If the consumer failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.

2. If both parties failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.

3. If the manufacturer failed to appear, the judge shall issue an initial decision granting appropriate relief after reviewing the documents and, if necessary, requiring further proof to determine the amount due.

(b) If the judge receives an explanation for either party's non-appearance, the provisions of N.J.A.C. 1:1-14.4(a) shall apply[.], **pursuant to N.J.A.C. 1:1-3.3(b), direct the Clerk to return the matter to the transmitting agency for appropriate disposition. If the judge deems it advisable to state the circumstances of the failure to appear on the record, the judge may enter an initial decision memorializing the failure to appear and returning the matter to the transmitting agency for appropriate disposition.**

(a)

## OFFICE OF ADMINISTRATIVE LAW

## Rules for Agency Rulemaking

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

1:30

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

Authority: N.J.S.A. 52:14B-4, 52:14B-7 and 52:14F-5(f), (h) and (i).

Proposal Number: PRN 1990-567.

Submit comments by December 5, 1990 to:

Steven L. Lefelt  
Deputy Director  
Office of Administrative Law  
9 Quakerbridge Road/Plaza  
CN 049  
Trenton, NJ 08625

The agency proposal follows:

## Summary

Pursuant to the requirements of Executive Order No. 66(1978), the Office of Administrative Law (OAL) proposes to readopt the current OAL Rules for Agency Rulemaking found at N.J.A.C. 1:30, which would otherwise expire on February 14, 1991. These rules were initially adopted in 1981 and subsequently readopted in 1986 (see 18 N.J.R. 3(a) and 18 N.J.R. 469(a)).

In compliance with the intent of Executive Order No. 66(1978), the OAL has reviewed the current chapter and has determined that it remains adequate, reasonable and necessary for the purposes for which it was originally promulgated, that is, the implementation and coordination of uniform rules for agency rulemaking. As a result of this review and the experience gained since the rules were last readopted in 1986, the OAL also proposes several changes to the rulemaking rules.

The following summarizes the current rules and the proposed changes, if any, to particular sections.

Subchapter 1 contains General Provisions.

N.J.A.C. 1:30-1.1 states the title of the rules.

N.J.A.C. 1:30-1.2 is the definition section. The following new definitions are proposed: "administrative correction or change"; "emergency adoption"; "Executive Order No. 66(1978)"; "intra-agency statement"; "inter-agency statement"; "public hearing" and "regulatory".

N.J.A.C. 1:30-1.3 states the Division's address and hours of operation. The rule is amended to specify telephone numbers for particular information inquiries.

N.J.A.C. 1:30-1.4, 1.5 and 1.6 specify how the Code, Register and statutes should be cited, respectively.

N.J.A.C. 1:30-1.7 discusses the use of rule headings.

N.J.A.C. 1:30-1.8 states the public has access to rulemaking documents and is amended to clarify that the documents may be reviewed during business hours.

N.J.A.C. 1:30-1.9 states that copies of rules are available for a fee and the rule is amended to specify the statutory per page charges.

N.J.A.C. 1:30-1.10 states that the OAL may prescribe forms and formats for use in rule submissions.

N.J.A.C. 1:30-1.11 explains how to compute periods of time fixed by rule or judicial order.

N.J.A.C. 1:30-1.12 outlines rulemaking compliance requirements.

N.J.A.C. 1:30-1.13 describes the noticing of an invalidated rule and is amended to clarify that the OAL will prepare and publish the notice upon learning of the invalidation.

N.J.A.C. 1:30-1.14 explains the procedure for receiving and filing a rulemaking document and is amended for technical reasons.

Subchapter 2 contains rules on Rulemaking Generally.

N.J.A.C. 1:30-2.1 states that rules must be written clearly in order to be accepted for filing.

N.J.A.C. 1:30-2.2 explains how source documents are incorporated by reference. The rule is amended to clarify that regulatory documents produced by an agency to regulate may not be incorporated by reference.

N.J.A.C. 1:30-2.3 requires that each section of a rule embrace a single subject.

N.J.A.C. 1:30-2.4 specifies the proper authorization for rule activity.

N.J.A.C. 1:30-2.5 specifies the effect of statements which accompany notices of proposal and adoption.

N.J.A.C. 1:30-2.6 states that the Register constitutes the authoritative text of any rule printed therein.

The current N.J.A.C. 1:30-2.7 is proposed for repeal and a new rule concerning administrative corrections and changes is proposed which clarifies how a rule may be amended administratively.

N.J.A.C. 1:30-2.8 outlines the use of appendices in rules.

Subchapter 3 contains rules which regulate the proposal process.

N.J.A.C. 1:30-3.1 specifies the requirements that must be included as part of a notice of proposed rule. The section is amended to clarify that oral comments are also permitted and that the name, address and telephone number of the person who is to receive written and oral comments must be stated in the proposal notice. The section is also amended to clarify that the additional notice of proposed rule must be distributed no later than the publication date of the proposal notice.

N.J.A.C. 1:30-3.2 specifies the requirements when an agency wishes to "pre-propose" a rule. This section is amended to clarify that an agency may seek the assistance of the regulated or interested public in formulating rule proposals. The amendment attempts to encourage agency and public cooperation prior to the initiation of formal rulemaking. Subsection (b) essentially remains the "pre-proposal" process.

N.J.A.C. 1:30-3.3 states the requirements for providing public opportunity to be heard on a proposed rulemaking. Subsection (a) is amended to clarify that oral comments must also be accepted. Subsections (b), (c) and (d) are deleted since proposed new rule N.J.A.C. 1:30-3.3A now contains public hearing requirements. Subsection (c) requires that the 30-day public comment period be extended to the close of the public hearing.

N.J.A.C. 1:30-3.3A is a proposed new rule concerning public hearings. Subsection (a) clarifies what entities qualify as governmental subdivisions under N.J.S.A. 52:14B-4(a)(3). Subsection (b) specifies the noticing and publication of the public hearing. Subsection (c) requires that the public hearing be held pursuant to N.J.S.A. 52:14B-4(g). Subsection (d) outlines the requirements to publish the outcome of the public hearing. Subsection (e) requires the recordation of the public hearing and the availability of transcripts.

N.J.A.C. 1:30-3.4 explains the record of public comment which must be compiled as part of a proposed rulemaking. Amendments are proposed to delete the requirement that a record be maintained for pre-proposal rulemaking activity. The amendment permits the agency to maintain the pre-proposal record if it chooses to do so. If, however, such pre-proposal activity results in a formal rulemaking the agency is required to discuss such activity in the proposal Summary. Additional amendments will clarify that oral and written comments, including those received at a public hearing, must be kept as part of the rulemaking record. The rule is also amended to clarify that if the rule is adopted the rulemaking record must be maintained for three years.

N.J.A.C. 1:30-3.5 outlines the requirements for negotiating a rule.

N.J.A.C. 1:30-3.6 outlines the requirements an agency must follow upon receipt of a petition for a rule. Subsection (a) is amended to clarify that the agency must file a notice of receipt with the OAL within 15 days of the petition's receipt. Subsection (c) is amended to clarify that if a petition is denied the agency must provide a written statement of its reasons to the petitioner and include those reasons in the notice of action. The subsection is also amended to require that if a petition is referred for further deliberations, it must be concluded within three months of the petition's receipt. If the matter is not concluded within three months and further deliberations are necessary, the agency may extend the deliberation time an additional three months and must mail to the petitioner and file with the OAL a notice of such extension.

N.J.A.C. 1:30-3.7 describes a Federally required rule.

Subchapter 4 contains rules which regulate the adoption procedure.

N.J.A.C. 1:30-4.1 has been re-written to outline and clarify the requirements for filing a notice of adopted rule.

N.J.A.C. 1:30-4.2 outlines the time requirements for filing an adopted rule.

N.J.A.C. 1:30-4.3 discusses how to treat changes to rules upon adoption.

N.J.A.C. 1:30-4.4 outlines Executive Order No. 66(1978) rule expiration requirements.

N.J.A.C. 1:30-4.5 outlines the procedure for filing an emergency adoption.

N.J.A.C. 1:30-4.6 specifies when adopted rules become effective.

#### Social Impact

The re-adoption of N.J.A.C. 1:30, Rules for Agency Rulemaking, primarily affects all State agencies which are required by law to promulgate rules necessary to implement their respective statutory responsibilities. These rules provide uniform application and administration of the rule promulgation process and ensure that the public is afforded notice of an agency's proposed rulemaking action and the opportunity to comment on that proposed action.

The amendments proposed as part of this re-adoption are intended to clarify several regulatory provisions of the rulemaking process. Many of these amendments address questions which have arisen during the course of applying these rules and it is believed the amendments will clarify the rulemaking responsibilities of State agencies in the various rulemaking situations noted.

#### Economic Impact

Although primarily procedural rules, N.J.A.C. 1:30 may have an economic impact on State agencies in that both administrative and professional staffs may be required to comply with the procedural requirements of the rulemaking rules. There may be an economic impact, for example, in that agency staff is required to draft summaries, social, economic and regulatory impact statements for proposals and prepare summaries of public comments and agency responses, along with the

compilation and retention of the rulemaking record. The OAL does not anticipate that the current economic impact on State agencies in complying with these rules will change as a result of the proposed re-adoption or amendments.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed re-adoption of the rulemaking rules primarily affects State agencies in regulating the rule promulgation process and as such does not impose reporting, recordkeeping or other compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:30.

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

#### 1:30-1.2 Definitions

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

...  
**"Administrative correction or change"** means to correct or change the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30-2.7).

...  
**"Emergency adoption"** means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.5).

...  
**"Executive Order No. 66(1978)"** means the 66th executive order issued by Governor Byrne in 1978, which requires the expiration of a promulgated rule within five years of its effective date. Commonly referred to as the "Sunset" executive order.

...  
**"Intra-agency statement"** means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.

...  
**"Inter-agency statement"** means a communication between separate agencies that does not substantially impact upon the rights or legitimate interests of the regulated public.

...  
**"Organizational rule"** means a rule promulgated pursuant to N.J.S.A. 52:14B-3(1), including a description of the structure of the agency; the persons from whom and places from which information, applications and other forms may be obtained; and the persons to whom and places to which applications, requests and other submissions may be made.

...  
**"Public hearing"** means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking which affords the public an opportunity to present to the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

...  
**"Regulatory material"** means an agency document which substantially meets the following features:

1. Is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group;

2. Is intended to be applied generally and uniformly to all similarly situated persons;

3. Is designed to operate only in future cases, that is prospectively;

4. Prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization;

5. Reflects an administrative policy that:

i. Was not previously expressed in any official and explicit agency determination, adjudication, or rule; or

ii. Constitutes a material and significant change from a clear, past agency position on the identical subject matter; and

6. Reflects a decision on administrative policy in the nature of the interpretation of law or general policy.

## 1:30-1.3 Offices

(a) Division of Administrative Rules and Publications, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, CN-049, Quakerbridge Road, Trenton, New Jersey 08625.

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

(c) Information may be obtained by telephoning the following for:

1. Rule inquiries (609) 588-6543;
2. Customer services (609) 588-6606; and
3. Billing inquiries (609) 588-6517.

## 1:30-1.8 Access to documents

(a) (No change.)

(b) Any person shall, upon request, be afforded an opportunity to examine any document [so] maintained by the Division of Administrative Rules and Publications during business hours 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

## 1:30-1.9 Copies of documents; fees

(a) Any person [shall be provided] may obtain copies of filed documents pursuant to the provisions [and fee schedules] of N.J.S.A.

47:1A-2 upon payment of a fee as follows:

1. First page to 10th page: \$.50 per page;
2. Eleventh page to 20th page: \$.25 per page;
3. All pages over 20: \$.10 per page.

(b) [The original of a] Original filed documents shall not be released from the custody of the Office of Administrative Law.

## 1:30-1.13 Invalidation of rule

In the event that a proposed or adopted rule is suspended or otherwise rendered inoperative or ineffective by Court rule or ruling, by legislative action or by Executive Order, the Office of Administrative Law shall, upon receipt of notice of the event [file the notice and publish the notice] prepare and publish a notice in the Register and the Code, as appropriate.

## 1:30-1.14 Filing of a document

(a) Upon receipt of a document for filing, there shall be stamped on its face the following:

1. The hour and date of receipt; and
2. The word "received" [and].
- [3. The facsimile signature of the Director.]

(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.

[(b)](c) All proposals shall be assigned a proposed rule number (PRN) by Administrative Rules and Publications. All adoptions shall be assigned a rule document number (R.d.) by Administrative Rules and Publications.

[(c) Upon acceptance for publication, the document shall be deemed filed as of the date of receipt.]

## 1:30-2.2 Incorporation by reference

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

(f) Agency produced documents which are regulatory may not be incorporated by reference.

## [1:30-2.7 Administrative correction

(a) Upon agreement between the adopting agency and the Office of Administrative Law, the Office of Administrative Law may administratively correct a published document. An administrative correction may contain:

1. A correction of spelling, grammar, or punctuation which does not change the meaning or substance of a rule;
2. A correction of codification; or
3. An addition or subtraction of a word or phrase which does not change the substance of a rule and which could be implied from the text and context of the notice of proposed rule or notice of adopted rule.

(b) An administrative correction shall be made by inserting the correction on the official copy of the rule contained on file at the Office of Administrative Law. The OAL employee authorized to make an administrative correction shall date and initial any correction.

(c) An administrative correction shall be effective upon filing.

(d) A notice of any correction of codification or addition of a missing word or phrase shall be published in the Register.]

## 1:30-2.7 Administrative corrections and changes

(a) Upon being advised in writing by an agency or upon its own initiative, the OAL may make an administrative correction or change to any rule published in the New Jersey Register or New Jersey Administrative Code. An administrative correction or change shall be effective upon filing with the OAL.

(b) An administrative correction may be to correct an error which is obvious, easily recognizable, or apparent to the promulgating agency and the regulated public. An administrative correction may be made to conform a proposed or adopted rule to the intent of the agency as expressed in the proposal or adoption statements. Administrative corrections may be made to correct any part of a rule including, but not limited to, its text, spelling, grammar, punctuation, codification, and cross-references.

(c) An administrative change may be made to recodify a rule. Administrative changes may also be made to amend a rule to provide the public with notice of nonregulatory changes that have occurred since the rule was adopted. Administrative changes may include, but are not limited to, changes in:

1. Names of departments, agencies, divisions and bureaus;
2. Titles of specific individuals; and
3. Addresses, phone numbers and business hours.

(d) An administrative correction or change shall not be used to adjust the text of a rule to subsequent changes in circumstance or policy decisions.

(e) Notice of administrative correction or change shall be published in the New Jersey Register. The administrative correction or change with appropriate annotation shall be included in a subsequent supplement to the New Jersey Administrative Code.

## 1:30-3.1 Notice of proposed rule

(a) (No change.)

(b) The notice of proposed rule shall include a [proposed] suggested N.J.A.C. citation [of the] for any proposed new rule and shall include the existing citation for any amendment, repeal or readoption.

(c)-(d) (No change.)

(e) The notice of proposed rule shall include an announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:

1. When, where, and how persons may present their views orally [or] and in writing; [and]
2. When and where persons may attend any formal rule adoption proceeding[.]; and
3. The name, address and telephone number of the person(s) to receive written and oral comments.

(f)-(g) (No change.)

(h) Upon receipt of the proposal notice which conforms to these requirements:

1.-3. (No change.)

4. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule:

i.-ii. (No change.)

iii. The additional method of publicity shall be provided at least 30 days prior to the close of the public comment period.]

iii. The additional method of publicity shall be provided no later than the Register publication date for the notice of proposal.

(i) (No change.)

## 1:30-3.2 Informal public input; [Notice] notice of pre-proposal for a rule

(a) Where, prior to the initiation of a formal rulemaking proceeding, an agency seeks assistance in formulating a rule or wishes comments on a preliminary rule draft, it may solicit public input regarding the rulemaking. An agency may use any reasonable informal procedures and means of notice to solicit participation from the regulated or interested public.

[(a)](b) Where, pursuant to N.J.S.A. 52:14B-4(e), an agency determines to conduct a [preliminary,] deliberative proceeding with respect to a contemplated rulemaking [proceeding], the agency shall submit a "notice of pre-proposal for a rule" to the OAL for publi-

cation in the New Jersey Register at least 30 days prior to submission of any formal notice of proposed rule on the same subject.

[(b)](c) The notice of pre-proposal for a rule shall include:

1.-3. (No change.)

4. An announcement of the public's opportunity to be heard regarding the contemplated action, which shall include:

i. Where, when and how persons may present their comments orally [or] and in writing (see N.J.A.C. 1:30-3.3, Opportunity to be heard); and

ii. When and where persons may attend an informal conference or consultation.

5. (No change.)

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

#### 1:30-3.3 Opportunity to be heard

(a) As part of any proceeding for a pre-proposal[, ] under N.J.A.C. 1:30-3.2, or for a proposed rule[, ] under N.J.A.C. 1:30-3.1, the agency shall accept written [submissions] and oral comments, arguments, data and views for at least 30 days following publication in the Register of the notice of pre-proposal or proposed rule.

[(b) Where a public hearing is held as part of a proceeding for a pre-proposal or a proposed rule, the agency shall provide at least 15 days notice thereof. Wherever possible, notice of the public hearing shall be contained in the notice of pre-proposal or proposed rule. Otherwise, notice of the public hearing shall be published in the New Jersey Register or given in another manner reasonably calculated to reach the interested public.

(c) Where a public hearing is requested pursuant to N.J.S.A. 52:14B(a)(3), the party making the request shall submit a copy of the request to the Office of Administrative Law for inclusion in the record of the proposed rule.

(d) Any public hearing held in connection with a pre-proposal or a proposed rule shall be conducted according to the procedures outlined in N.J.S.A. 52:14B-4(g).]

[(e)](b) Where an agency permits any other method of public comment on a pre-proposal or a proposed rule, the agency shall provide timely notice of that opportunity in a manner reasonably calculated to reach the interested public.

(c) When a public hearing on a pre-proposal or on a proposed rule is scheduled for a time after the 30-day public comment period, the comment period shall be extended in the public hearing notice until the close of the public hearing proceedings. The hearing officer may recommend to the agency head that the comment period be further extended to foster receipt of comments by persons attending the public hearing.

(d) The agency shall consider fully all written and oral submissions concerning the pre-proposal or proposed rule.

#### 1:30-3.3A Public hearings

(a) A Legislative Committee, a State agency, or a county, local or municipal governmental entity may request that an agency conduct a public hearing on a proposed rulemaking. The party requesting the public hearing shall submit the request to the agency within 15 days following publication of the proposed rule in the Register. The party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposed rule, the agency shall provide at least 15 days notice of the public hearing.

1. When a public hearing is scheduled as part of a proceeding for a pre-proposal or a proposed rule, notice of the public hearing shall be contained in the notice of pre-proposal or proposed rule published in the New Jersey Register.

2. When a public hearing is scheduled after the notice of pre-proposal or proposed rule has been published, notice of the public hearing shall be published in the New Jersey Register, if such publication provides 15 days notice of the hearing. If timely Register publication is not feasible, notice of the public hearing may be published in the Register with less than 15 days notice as long as 15 days notice of the public hearing is given in another manner reasonably calculated to reach the interested public. A copy of such notice shall be filed with OAL.

(c) Any public hearing held pursuant to this section shall be conducted according to the procedures outlined in N.J.S.A. 52:14B-4(g).

(d) In addition to any other publication of results, the recommendations of the hearing officer, and the agency's response either accepting or rejecting the recommendations, shall be summarized and published in the New Jersey Register as set out in (e)1 through 4 below. The notice shall also state where a copy of the public hearing record may be reviewed or obtained.

1. When no proposed rulemaking results from the public hearing, the summary shall be published as a public notice.

2. When a proposed rulemaking results from the public hearing, the summary shall be published as part of the proposal notice.

3. When a public hearing is held as part of a proposed rulemaking and the proposed rule is adopted, the summary shall be published in the notice of adoption.

4. When a public hearing is held as part of a proposed rulemaking but the proposed rule is withdrawn or not adopted, the summary shall be published as a notice of agency action.

(e) The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes or other untranscribed record of the proceeding shall be maintained by the agency. If a transcript is requested by any interested person, the agency shall arrange for the production of the transcript and one copy. After the requester pays for the transcript and copy, the original shall be delivered to the requester and the transcript copy filed with the agency.

#### 1:30-3.4 [Record of the public comment] Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a [pre-proposal (N.J.A.C. 1:30-3.2) or, a] proposal (N.J.A.C. 1:30-3.1) or a public hearing (N.J.A.C. 1:30-3.3A)[, ] for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance and a copy of any notices concerning the rule activity, including any notice mailed to interested persons pursuant to N.J.A.C. 1:30-3.1(b)3 and any additional publicity pursuant to N.J.A.C. 1:30-4.1(b)4.

2. A description of the public comments on the notice of proposed rule [or pre-proposal for a rule];

i. The names of the persons commenting on the notice of proposed rule [or pre-proposal for a rule];

ii. The name of any trade, craft or professional organization or association making written or oral submissions;

iii. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposed rule [or pre-proposal for a rule], and any written answer of the agency;

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given their merits prior to adoption of the proposed rule;

v. A description of the principal points of controversy revealed during the proceeding; and

vi. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the [pre-proposal or] proposed [ruling] rule (see N.J.A.C. 1:30-3.3A), including:

i. The date, time and place;

ii. The name and title or position of the presiding person;

iii. The nature of the proceeding; and

iv. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-3.2. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-3.2 result in a formal proposed rulemaking, the agency shall discuss in the proposal summary such preliminary proceedings and the public's participation therein.

[(b)](c) [The agency shall retain for each rule adopted by it the record of the public comment] If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the [subject] adopted rule.

[(c)](d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the

legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

#### 1:30-3.6 Notice of petition for a rule

(a) When a person petitions an agency to begin a rulemaking proceeding[,] pursuant to N.J.S.A. 52:14B-4(f), [the agency shall file a notice of the petition with the Office of Administrative Law within 15 days of receipt of the petition] **the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt.** The notice of petition shall include:

1. The name of the petitioner;
  2. The substance or nature of the rulemaking action which is requested;
  3. The problem or purpose which is the subject of the request; and
  4. The date the petition was received.
- [5. The OAL shall publish the notice in the next available Register.]

(b) (No change.)

(c) Agency action on a petition may include:

1. Denying the petition, **in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;**
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude [upon a specified date.] **within three months from the initial receipt of the petition. If the matter is not concluded within three months and further deliberations are necessary, the agency may extend the deliberation time an additional three months and shall mail to the petitioner and file with the Office of Administrative Law for publication in the Register a notice of such extension.** The results of these further deliberations shall be mailed to the petitioner and submitted to the OAL for publication in the Register.

(d) Each agency shall prescribe by rule the form of a petition and the procedures for its submission, **consideration and disposition.**

#### [1:30-4.1 Requirements for filing an adopted rule

(a) With each adopted rule submitted for filing the adopting agency shall include:

1. A Certificate of Proposal, Adoption and Promulgation (form OAL/ARP-1) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter;
2. Where the notice of proposed rule contained the full text of the proposed rule, the text of any changes between the rule as proposed and adopted, specifically indicating insertions and deletions;
3. Where the notice of proposed rule did not contain the full text of the proposed rule, the text of the rule, including the text of any existing rule that is being amended, specifically indicating additions and deletions, and the identity of any existing rule being repealed or renumbered;
4. The operative date of the rule, if later than the date of promulgation in the Register;
5. A summary of any changes between the rule as proposed and as adopted, and the reasons for the changes;
6. A brief description of the public's opportunity to be heard, including:
  - i. The type of opportunity to be heard afforded the public;
  - ii. The type of notice afforded the public;
  - iii. Where and how the record of public comments can be inspected: a summary of the principal comments and points of controversy developed during the rulemaking proceeding including comments received from State, local or other governmental agencies which are not subject to attorney-client or other legal privilege; the reasons for adoption of the public views accepted; and reason for rejection of the public views rejected;
7. The date and occasion of adoption;
8. The expiration date, pursuant to Executive Order No. 66(1978), or exemption therefrom and reasons therefor.])

#### 1:30-4.1 Notice of adopted rule

(a) When an agency adopts a proposed rule, the agency shall prepare a "notice of adopted rule" and submit the notice to the OAL. The notice of adopted rule shall comply with the requirements of this section.

(b) The agency shall complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form OAL/ARP-1) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter.

(c) The notice of adopted rule shall also contain:

1. The publication date of the notice of proposed rule;
2. The date of adoption, the name of the agency and the name and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;
3. The date the notice of adopted rule is filed with the OAL;
4. The effective date of the rule;
5. The operative date of the rule if later than the date of Register promulgation;
6. The expiration date of the rule pursuant to Executive Order No. 66(1978) or an exemption from the Order with reasons for the exemption;
7. A summary of any changes between the rule as proposed and adopted, and the reasons for the changes;
8. A list of all persons who submitted oral or written comments, arguments, data and views concerning the proposed rule;
9. A summary of the comments, arguments, data and views received and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected;
10. The text of any changes between the rule as proposed and as adopted, specifically indicating additions and deletions.

## AGRICULTURE

### (a)

#### DIVISION OF PLANT INDUSTRY Certification

##### Proposed New Rules: N.J.A.C. 2:16

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-21.7.

Proposal Number: PRN 1990-265.

Submit comments by December 5, 1990 to:

William W. Metterhouse  
New Jersey Department of Agriculture  
Division of Plant Industry  
CN 330  
Trenton, NJ 08625  
Telephone: (609) 292-5441

The agency proposal follows:

#### Summary

N.J.A.C. 2:16, Certification, expired on May 7, 1990 pursuant to the requirements and criteria of Executive Order No. 66(1978). The purpose of certification is to maintain and make available to the public high quality seed and plants of superior varieties grown and distributed to ensure genetic identity, genetical and mechanical purity, and a minimum of seed-borne and plant diseases.

The Department of Agriculture proposes to adopt these rules as new. The rules will differ from the recently expired rules in the following ways. Seven subchapters are being allowed to expire and are not now being proposed, as they are inactive programs. These subchapters include three dealing with the certification of field and sweet corn hybrid seed: subchapter 4, Corn, Field (Commercial Hybrids); subchapter 5, Sweet Corn (Inbred Lines); and subchapter 6, Sweet Corn (Single Cross Hybrids). No corn is now being grown for certified seed in New Jersey. Subchapter 9, dealing with the certification of Asparagus seed, and subchapter 10, Asparagus crowns, are not being proposed since the pro-

gram is not active and no certified asparagus is being grown. Subchapter 14, Orchids, was concerned with the growing of certified disease-free orchid plants and flowers. There are no active participants in this program. Subchapter 19, Flatpea Certification Standards, was concerned with the production of certified flatpea seed, a conservation species, this was a cooperative program with the U.S. Department of Agriculture and is no longer active.

Five subchapters from the expired chapter, 3, 8, 11, 12, and 18, all of which were in reserved status, are deleted from the new rules, and are recodified.

Subchapter 1, Blueberry Plants, is concerned with the certification of blueberry plants. These rules as proposed differ from the expired rules in the clarification of the requirements for handling diseased plants, an address correction, and amplification of the procedures for cutting beds.

Subchapter 2, Seed, General Certification Standards, describes the standards and procedures for growing certified crop seed. Differences from the expired rule include several application dates, clarification of billing procedures, a name correction, clarification of the purpose of a requirement, correction of a testing method, and removal of a section referring to the Foundation Seed Committee, which no longer exists. In addition, all sections having reference to interagency certification have been placed in a new subchapter, 3. The list of definitions have been revised, with some definitions pertaining only to corn removed and new ones added.

A new subchapter 3, Interagency Certification, is being introduced dealing with the certification of turfgrass seed mixtures made from certified seed grown in other states.

Subchapter 4, Small Grains (Wheat, Rye, Barley, Oats), (subchapter 7 of the expired rules) is concerned with the growing of these crops for certified seed. Differences in the new rules from the expired rules include the correction of vague wording in field standards and the coordination of field and seed standards.

Subchapter 5, Soybeans, (subchapter 9 of the expired rules) is concerned with the production of certified soybean seed. Field standards differ from the expired rules in that they are in line with nationally accepted standards of the Association of Official Seed Certifying Agencies (AOSCA); an unnecessary allowance for corn in soybean seed is removed; and the list of objectionable seed is updated.

Subchapter 6, Vegetables (subchapter 10 of the expired rules), is concerned with the growing of certified seed of vegetable crops. The method of application for participation in the program has been clarified from the expired subchapter.

Subchapter 7, Turfgrass Sod, (subchapter 13 of the expired rules) deals with the seed requirements and field standards for growing certified sod. The date for filing applications differs from the expired rules; vague wording in field standards is corrected; new field standards are added; seed standards are clarified; standards for new kinds are added; and an inaccurate testing procedure is corrected.

Subchapter 8, Vegetatively Propagated Grasses, (subchapter 15 of the expired rules) is concerned with the certification of grass species primarily for conservation purposes. There are no changes to the expired rule being proposed.

A new subchapter 9, Certification Fees, is being introduced, incorporating into the rules the charges made by the Department for certification services including entry fees, field inspection charges, supervision of mixing and label charges.

#### Social Impact

In the past, the rules have assured growers and users of certified seed and plants of high quality products of known variety, conforming to the standard established by the rules. Inspection procedures have been established which monitor the planting, growing and packaging of certified products.

Procedures and requirements conform to the U.S.D.A. Marketing Service Part 201, Federal Seed Act Regulation 7 CFR 201.67 to 201.78 and with the procedures and general standards established by the Association of Official Seed Certifying Agencies to promote the orderly marketing of seed. False labeling of products as certified is prohibited. The public benefits from the availability and reliability of high quality products. Growers of certified seed and plants must comply with certification standards, and those who plant the seed and plants will be assured of crops of known variety.

#### Economic Impact

Consumers of certified seed, sod and plants will continue to be provided economic savings through correct labeling. Conditioners of seed profit by the orderly marketing of certified seed which is promoted by adherence

to uniform standards among states. Growers and conditioners of seed and plants incur expenses in order to comply with certification standards; they receive higher prices for growing certified than for uncertified crops. Those who plant the certified products will pay a higher price for these products, but are assured of high quality seed and plants of known variety. The Department incurs expenses for inspecting and testing the products to monitor variety and quality. No estimate of the cost to the Department is available.

#### Regulatory Flexibility Analysis

The majority of the participants in the voluntary certification program of the New Jersey Department of Agriculture are farmers and growers, small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because the effectiveness and integrity of the program depend on adherence to the standards and requirements of the rules, no exemptions from compliance with rules concerned with production and conditioning can be provided small businesses and still maintain the program's viability and efficiency.

No special professional services are required to assist in complying with these rules. The records required to be kept for this program beyond those normally required for producing and marketing seed, and general good business practices, include completing application forms listing the varieties to be grown and the number of acres and locations of each, rough mapping of certified fields for inspection, filing of milling reports on the number of bushels or other units certified and the amount of screenings remaining, and the recording of serial certification tag numbers and the disposition of lots bearing these tags.

Growing certified crops requires farming practices such as soil preparation, fertilization and weed control similar to those of other crops. Special requirements for growing certified crops include use of the class of certified seed specified in the rules to produce the crop and certain field isolation and land requirements specific to each kind. Equipment needed for conditioning of certified seed is the same as that required for other seed. Special care and effort are required for both farming and conditioning processes to prevent and control contamination by other varieties, crops, weeds and diseases, but no special investment in equipment or supplies is needed.

Fees charged by the Department for services to the farmers and growers (less than 50) are nominal, varying according to the number of acres grown, and are offset by the added value of the product. Fees for the interagency certification of turfgrass mixtures which are charged by the Department to the larger businesses which are seed conditioners and distributors of turfgrass (4), approximate the cost of the services of testing the seed and supervising the operations provided by the Department, and depend on the amount of service requested.

Full text of the proposed new rules follows:

### CHAPTER 16 CERTIFICATION

#### SUBCHAPTER 1. BLUEBERRY PLANTS

##### 2:16-1.1 Certification of blueberry plants

All blueberry growers selling propagating wood, rooted cuttings or plants must be certified. Certification shall be based on the inspection of all nursery plants, cutting beds and of enough mother plants to ensure adequate supplies of cutting wood for sale and for own propagation. The rules shall be as set forth in this subchapter.

##### 2:16-1.2 Application for participation

Application for the program shall be made by one year preceding the establishment of the cutting bed to the Supervisor of Nursery Inspection, Division of Plant Industry, New Jersey Department of Agriculture, CN 330, Trenton, N.J. 08625.

##### 2:16-1.3 Qualifications for mother plants; removal of diseased or infested plants

(a) Mother plants shall be clearly marked for variety.

(b) A row, partial row or rows of established plants of each variety to be propagated are to be cut to a maximum of 24 inches from the ground annually to provide propagating wood.

(c) Mother plants, to qualify, shall not have more than a total of one-half of one percent stunt disease for the season.

(d) Plants showing symptoms of blueberry stunt disease or virus diseases such as shoestring, mosaic and ringspot are to be tagged by the inspectors and removed by the grower within 24 hours after

notification. Plants showing symptoms of blueberry stunt are to be sprayed by the grower to control sharpnosed leafhoppers prior to removal.

(e) Plants found infested with injurious insects shall not be certified until infested plants are removed or the infestation controlled.

(f) If mother plants are bordered on one side or on both sides by field bushes, five rows on either side of the mother row or rows will be inspected.

#### 2:16-1.4 Qualification for nursery plants; removal of diseased plants

(a) Nursery plants, to qualify as certified, shall not have more than three-quarters of one per cent stunt for the season.

(b) Where varieties within the nursery field show different percentages of stunt, the tolerances in (a) above are nevertheless applicable to each variety.

(c) Plants infected with stunt and other virus diseases shall be tagged and removed by the grower within 24 hours after notification.

#### 2:16-1.5 Time of inspection and insecticide application

(a) All mother plants, rooted cuttings and nursery plants shall be sprayed or dusted twice a year to control the sharp-nosed leafhopper, the carrier of stunt disease. The timing of these applications and the material to be used shall be recommended by the New Jersey Agricultural Experiment Station. The grower shall notify the Division of Plant Industry, New Jersey Department of Agriculture, CN 330, Health-Agriculture Bldg., John Fitch Plaza, Trenton, 08625, the same day spray or dust application is made.

(b) The times of inspections are as follows:

1. First inspection during May and June;
2. Second inspection during August, September and October; and
3. Additional inspections as deemed necessary by the Department.

#### 2:16-1.6 Procedure for handling cuttings, cutting beds and plant nurseries

(a) Cuttings shall be clearly marked for variety.

(b) A record of the number of cuttings set in the cutting beds by varieties shall be kept by the grower.

(c) Propagators whose plantings have not been certified the preceding year or those who buy additional cutting wood shall procure the same from fields approved for certification. A bill of sale shall be presented on demand showing the source and quantity of said purchase.

(d) Cutting beds shall be isolated 50 feet from uncertifiable plants unless prior arrangement has been made with the Department to alter that standard.

#### 2:16-1.7 Procedure for handling nursery rows

(a) The same provisions that apply to the cutting bed, apply to the nursery rows (see N.J.A.C. 2:16-1.6).

(b) An inventory of the plants by varieties remaining unsold in the nursery rows at the end of the shipping year shall be kept by the grower.

#### 2:16-1.8 Issuance of inspection certificates

Upon fulfillment of the requirements of this subchapter, the grower is entitled to the certificate of inspection of the New Jersey Department of Agriculture.

### SUBCHAPTER 2. SEED, GENERAL CERTIFICATION STANDARDS

#### 2:16-2.1 Applicability of certification standards

The standards set forth in this subchapter are applicable to all crops eligible for certification for genetic purity and identity, and, in conjunction with the standards for the individual crops found in the subchapters applying to those crops, shall constitute the standards for the certification of crops in New Jersey.

#### 2:16-2.2 Certifying organizations from New Jersey

(a) The New Jersey Department of Agriculture is the official seed certification agency in the state of New Jersey.

(b) Cook College, Rutgers—The State University is the agricultural research and extension agency for seed certification.

(c) These two organizations independently cooperate in the certification program.

#### 2:16-2.3 Purpose of certification

The purpose of certification is to maintain and make available to the public, high quality seed and propagating material of superior crop varieties so grown and distributed as to insure genetic identity, genetic and mechanical purity and a minimum of seed-borne diseases.

#### 2:16-2.4 Classes and sources of certified seed

(a) Four classes of seed are recognized in seed certification, namely breeder, foundation, registered and certified. These classes are defined as follows:

1. Breeder seed is seed of vegetative material directly controlled by the originating or the sponsoring plant breeder or institution and which provides the source for the initial and recurring increase of foundation seed.

2. Foundation seed is the progeny of breeders or foundation seed so handled as to maintain specific genetic identity and purity. Foundation seed may be the progeny of foundation seed only after approval has been granted by the Department.

3. Registered seed is the progeny of foundation seed that is so handled as to maintain genetic identity and purity, and that has been approved and certified by the Department. This class of seed shall be of a quality suitable for the production of certified seed.

4. Certified seed is the progeny of foundation or registered seed that is so handled as to maintain genetic identity and purity and that has been approved and certified by the Department.

(b) The Department may permit a grower to grow certified seed from lots of foundation, registered or certified seed which were fully inspected but rejected for certification because of factors such as germination or weed contamination which do not involve genetic identity and purity of germ plasm.

(c) In cases where seed planted for the production of foundation, registered or certified seed is obtained from another person, documentary evidence, such as the certification tags, the number of bushels planted, the invoice or sales record, and any other data shall be submitted to the Department to establish the source of seed.

#### 2:16-2.5 Limitation of generations

(a) The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of the variety, and shall not exceed two generations beyond the foundation seed class with the following exceptions:

1. Recertification of the certified class shall be permitted for older varieties where foundation seed is not maintained.

2. The production of an additional generation of the certified class only shall be permitted on a one-year basis, when an emergency is declared prior to the planting season by the Department stating that the foundation and registered seed supplies are not adequate to plant the needed certified acreage of the variety. The permission of the originating or sponsoring plant breeder, institution, firm or owner of the variety, if existent, shall be obtained. The additional generation of certified seed to meet the emergency need is ineligible for recertification.

#### 2:16-2.6 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following definitions apply to all crops:

"Association of Official Seed Certifying Agencies" is the national association of certifying agencies.

"Certifying agency" means an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.

"Conditioner" means any person or organization who has requested the Department to collect samples, perform tests, and make inspections in order to have seed labeled as certified or interagency certified.

"Conditioning" means the mechanical handling of the seed from harvest until marketing, and includes cleaning, sizing, applying a seed treatment, bagging or any other operation in the handling of the seed before marketing.

"Contaminant" means any seed or plant not of the kind or variety being considered.

"Department" means the New Jersey Department of Agriculture, Bureau of Seed Certification and Control.

"Grower" means any person or organization who applies for the inspection of a crop entered for certification, produces the crop in accordance with the certification regulations for that crop, and who accepts the responsibility for the production and management of the seed crop as well as all related financial obligations.

"Kind" means one or more related species which singularly or collectively is known by one common name.

"Lot" means a definite quantity of seed identified by a lot number, each portion or bag of which is uniform within recognized tolerance for the factor appearing in the labeling. For certified small grains and soybeans, the size of the lot shall be limited to 1,000 bushels.

"Noxious weeds" means the list of weeds found and defined in the Rules of the New Jersey State Seed Law at N.J.A.C. 2:21, Noxious Weed Seeds, pursuant to N.J.S.A. 4:8-17.24, and include:

1. "Prohibited noxious weeds": bindweed, hedge bindweed, quackgrass, Canada thistle, and horsetail.

2. "Restricted noxious weeds": dodder, corn cockle, wild onion, wild garlic, cheat, Bermuda grass, and Johnsongrass and other perennial sweet sorghum spp.

"Official sample" means a sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

"Off-type" means plants or seeds which do not conform to the description of the characteristics of the variety as supplied by the breeder or sponsoring institutions or organizations.

"Other varieties" means plants and seed of the same kind that can be differentiated from the variety that is being certified, but shall not include variations which are characteristic of the variety as described by the breeder or which are caused by environmental conditions.

"Plant breeder" means a person or organization actively engaged in the breeding or maintenance of varieties of plants.

"Protected variety" means one for which the breeder or sponsoring organization has filed application with the United States Plant Variety Protection Office.

"Roguing" means the pulling out or otherwise removing unwanted plants or weeds from a field planted for seed.

"Seed" as used in these rules and standards shall be understood to include all propagating materials.

"Variant" means seeds or plants which are distinct within the variety but occur naturally in the variety, are stable and predictable, and were originally a part of the variety as released. They are not considered as off-types.

"Variety" or "Cultivar" means an assemblage of cultivated individuals which are distinguished by any characters (morphological, cytological, chemical, or others) significant for the purpose of agriculture, forestry or horticulture and which, when reproduced (sexually or asexually) or reconstituted, retain their distinguishing features.

2:16-2.7 Eligibility requirements for certification of crop varieties

(a) All varieties that are approved by the Department are eligible for certification.

(b) All varieties that are certified by any other agency which is a member of, or recognized by, the Association of Official Seed Certifying Agencies may be considered for certification at the request of a grower.

(c) For varieties not approved by other certifying agencies, the breeder or sponsoring institution or organization shall describe and document in the application for certification submitted to the Department those characteristics of the variety which give it distinctness and merit by supplying the following information:

1. The name of the variety;
2. A statement concerning the variety's origin and the breeding procedure used in its development;
3. A detailed description of the morphological, physiological and other characteristics of the plants and seed that distinguish it from other varieties;
4. Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety;

5. A statement delineating the geographic area or areas of adaptation of the variety;

6. A statement of the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;

7. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;

8. Any additional restrictions on the variety specified by the breeder with respect to geographic area of seed production, age of stand or other factors affecting genetic purity; and

9. A sample of the variety as marked.

(d) The information required in (c) above shall be submitted to the Bureau of Seed Certification and Control for consideration. Upon the approval of the Department, the variety shall be accepted for certification.

(e) At the time a variety is accepted for certification, a sample of seed of the generation or generations requested by the Department shall be submitted by the sponsor. These samples shall be retained to provide appropriate control samples against which all future releases of stock seed will be tested to establish varietal characteristics.

2:16-2.8 Qualification for inspectors

Inspection work shall be performed only by persons who have been trained and approved by the Department.

2:16-2.9 Handling crop prior to inspection: field boundaries

(a) Roguing of off-type plants, objectionable crop plants and weeds whose seed are inseparable is required prior to field inspection.

(b) Field boundaries shall also be designated prior to field inspection.

2:16-2.10 Restriction on number of varieties

Only one variety of the same crop shall be grown for seed production on a farm except upon prior approval of the Department.

2:16-2.11 Harvested fields ineligible for certification

If a field is harvested before inspection, that crop automatically becomes ineligible for certification.

2:16-2.12 Seed house or bin inspection of seed

One or more inspections of harvested lots of seed from inspected fields shall be made at any time by representatives of the Department who shall have the authority to reject from certification any lot not protected from mixture or which is not identified.

2:16-2.13 Seed testing results basis for certification

(a) Analyses and tests of official samples of seed and definitions of analytical terms shall be in accordance with the Rules for Testing Seed of the Association of Official Seed Analysts. A copy of these rules is on file at the office of the Bureau of Seed Certification and Control, Division of Plant Industry, New Jersey Department of Agriculture, CN 330, Trenton, NJ 08625.

(b) The seed analyses from the official laboratory of the Bureau of Seed Certification and Control shall be the basis for certification.

2:16-2.14 Tags, seals, and bags for seed stocks

(a) All stocks when sold as certified seed shall have an official tag properly affixed, according to the type of tag, to each container. Sealing requirements will depend upon the crop and methods of handling.

(b) Tags shall identify the certifying agency, show a lot number, the variety name, and the kind and class of seed.

(c) The certification label or tag which is attached to the bag serves as evidence of the genetic identity and purity of the seed contained therein.

1. A blue tag shall be used to designate certified class seed.

2. A purple tag shall be used for registered class seed.

3. A white tag shall be used for foundation class seed and breeders seed.

(d) All official certification tags and seals shall be affixed to seed containers under the supervision of, or by a representative of the Department.

(e) All certified classes of seed shall be packaged in new bags approved by the Department.

## 2:16-2.15 Substandard seed in emergencies

(a) The Department recognizes that in an emergency, such as unfavorable weather conditions, seed necessary for the production of a crop could be lost if regular certification standards were strictly enforced. Therefore, under such circumstances, seed failing to meet certification standards other than those affecting genetic purity may be certified, provided there is no injury to the reputation of certified seed.

(b) The certification tags or labels attached to such seed in (a) above shall show clearly the respects in which the seed does not meet the regular certification standards.

## 2:16-2.16 Seed appearance

Seed having met the specific field and bin requirements can still be rejected from certification if the appearance of the seed is such as to give discredit to the certified seed program, for example, discoloration or non-uniformity.

## 2:16-2.17 Contaminating crops and weeds shall be controlled

Every field for which certification is requested shall show that precaution has been taken to control contaminating crops, varieties, noxious weeds, and other plants whose seeds are indistinguishable or inseparable with available cleaning equipment from seed of the particular crop being inspected.

## 2:16-2.18 Difficulty of inspection may cause certification rejection

Fields with excessive lodging or other conditions which make it difficult to perform complete and thorough field inspections may be rejected from certification.

## 2:16-2.19 Seed treatment

If certified seed is treated with a pesticide, or if treatment is required to meet certification germination standards, the substances used shall be those registered for seed treatment use by the New Jersey Department of Environmental Protection under the Pesticide Control Code, N.J.A.C. 7:30.

## 2:16-2.20 Precautions taken to control seed-borne diseases

(a) Every field for which certification is requested shall show evidence that precaution has been taken to control seed-borne diseases.

(b) The field at the time of inspection shall not contain seed-borne diseases beyond the tolerances established in the field standards for the individual crops.

(c) The representative sample of the finished seed lot, at the discretion of the Department, may be subjected to laboratory examination for disease.

## 2:16-2.21 Complying with Federal and state seed laws

The grower or conditioner who makes the initial sale of the finished lot of certified seed shall be responsible for complying with all seed laws and any other applicable laws of the states to which he ships the seed and the Federal Seed Act (7 U.S.C. 1551-1611) if he ships the seed interstate.

## 2:16-2.22 Failure to comply with the certification rules

(a) A grower willfully failing to comply with the certification rules covering the production of New Jersey certified products may forfeit the right to produce certified products in the future.

(b) In cases of forfeiture as mentioned in (a) above, the grower may file a notice of appeal with the New Jersey Secretary of Agriculture. The Secretary may hold hearings upon the violation pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1.

## 2:16-2.23 Application for certification

(a) Certification application forms may be obtained from the Bureau of Seed Certification and Control of the New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.

(b) Separate application forms shall be filed for each class of a particular variety and crop.

## 2:16-2.24 Dates for filing application

Dates of application for participation in the certification programs shall be those found in the standards for the kind of crop to be certified.

## 2:16-2.25 Maps of farms

To facilitate the work of the Department, maps giving field location, isolation distances and any other important facts that would be helpful to the inspector shall accompany the application.

## 2:16-2.26 General requirements for seed conditioners

(a) Only commercial or custom seed conditioning plants approved by the Department are eligible to condition certified seed.

(b) All conditioning plants shall have the equipment and facilities necessary to perform the cleaning or mixing operations requested without introducing admixtures or contaminants.

(c) All conditioners of certified seed shall request an inspection of the cleaning equipment when changing from one variety to another.

## 2:16-2.27 Transfer of uncleaned seed

(a) Provision has been made for the transfer of uncleaned seed in bulk for certification if necessary, provided the following procedures are used:

1. It is the responsibility of the grower to notify the Department to be at the grower's farm before or at the time the seed is to be moved from the farm.

2. The grower shall supply the Department with the name of the purchaser, the exact amount of seed and the date of delivery to the purchaser.

3. The purchaser shall notify the Department when he expects to receive the seed into his warehouse so the Department inspector can be on hand to inspect the seed as it is received.

4. The purchaser shall supply a copy of the official weight receiving form and a report of the cleaning waste weight.

5. The seed shall be tagged by the Department inspector or under his or her supervision when certification is completed. Analysis tags shall include the producer's number. Seed shall be identified with the producer at all times.

(b) The rules regarding seed moved in bulk apply to the first buyer only. No further transfer in bulk is permitted. If the first buyer does not complete certification, the seed becomes ineligible for certification.

(c) Seed is not recognized as certified until it is cleaned and tagged.

## 2:16-2.28 Reinspection of carry-over seed; one-year limitation

(a) In order to maintain its certified status, certified seed that is carried over from the previous year shall be resampled and tested for germination by the Department. The germination test results shall meet the minimum requirements for the kind of seed in question.

(b) For carry over seed meeting the above requirements, a new analysis tag shall be affixed.

(c) Certified seed shall be eligible for recertification for one year, only, after the year of production.

## 2:16-2.29 Grower's or vendor's guarantee

The grower or vendor guarantees to the first buyer that the seed to which the certification tag is attached is a part of the lot of seed designated on the analysis tag, and inspected in the field by a representative of the Department and found to conform to the standards published in this chapter.

## 2:16-2.30 Certification fees

(a) Certification fees are determined by the Secretary of the New Jersey Department of Agriculture.

(b) The schedule of fees is found at N.J.A.C. 2:16-9.

(c) Charges for certification will be billed at the end of the calendar year.

## SUBCHAPTER 3. INTERAGENCY TURFGRASS CERTIFICATION

## 2:16-3.1 Application and amplification of general certification standards

The rules contained in this subchapter supplement the general certification seed standards N.J.A.C. 2:16-2, established by the State Board of Agriculture, and apply specifically to the interagency certification of seed.

2:16-3.2 Purpose

(a) The purpose of interagency certification is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds or varieties.

(b) The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

2:16-3.3 Definition

In addition to the definitions found at N.J.A.C. 2:16-2.6, the following definitions shall apply to interagency certification.

“Component” means a specific lot of a single variety that is used in a mixture.

“Interagency certified mixture” or “mixture” in this subchapter means different kinds of varieties of seed certified by the state of origin that have been:

1. Mixed under the Department’s supervision, and
2. Found by the Department to have met the specific minimum seed standards set forth in this subchapter.

“Mixing Report” means a form used by the Department to list each component of a specific mixture and the lots and amounts used in the mixture.

“Official sample” means a sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

“Sod quality” means seed which has met the quality standards established by the state of origin for use in cultivated sod and has been so labeled by the state of origin.

2:16-3.4 Interagency standards and procedures

(a) Varieties eligible for interagency certification shall be those approved by a member of the Association of Official Seed Certifying Agencies.

(b) Only seed certified by member agencies of the Association of Official Seed Certifying Agencies or agencies recognized by it may be used in the interagency certification program.

(c) The seed certification standards as adopted by the New Jersey Department of Agriculture for the kinds to be certified shall be applied to interagency certified seed. These standards are found in the subchapters of this chapter which relate to the kind of seed in question. In the absence of New Jersey standards, the seed standards of the state in which the seed was grown and certified shall be applied.

(d) Seed shall not be recognized for final certification by the Department unless it is received in containers carrying documentary evidence of its eligibility supplied by another certifying agency, including:

1. Variety and kind;
2. Amount of seed;
3. Class of seed; and
4. Inspection or lot number traceable to the previous certifying agency’s records.

2:16-3.5 Prior approval of cooperating certification agencies not required

The Department shall not require advance approval of another certifying agency to engage in interagency certification activities unless the original certifying agency prohibits or limits such certification by a statement on its tag.

2:16-3.6 Conditioners’ application and requirements for certification

(a) Conditioners desiring interagency certification of seed shall apply annually to the New Jersey Department of Agriculture and shall meet the requirements of this subchapter.

(b) Conditioners shall notify the Department far enough in advance of the date of mixing to allow for sampling and testing of component lots by the Department.

(c) The identity of the seed shall be maintained at all times.

2:16-3.7 Conditioners’ facilities

(a) Facilities shall be available to perform the function requested without introducing contaminants or admixtures.

(b) Equipment used for making mixtures of turfgrasses shall have all areas which come into direct contact with the seed accessible for

thorough cleaning by the conditioner and inspection by the Department.

2:16-3.8 Conditioners required records

(a) Records of all movement of seed and procedures shall be adequate to account for all incoming and finally certified seed. The records to be included are:

1. Receiving records of:
  - i. The variety and kind;
  - ii. The name and address of shipper;
  - iii. The shipper’s lot number or inspection number;
  - iv. The date of shipment;
  - v. The date received;
  - vi. The weight received;
  - vii. The receiving lot number assigned by consignee; and
  - viii. The name and address of delivering carrier.
2. Record of mixing or rebagging, which shall include:
  - i. The variety and kind of each component;
  - ii. The lot number of each component;
  - iii. The lot number and name assigned to each mixture;
  - iv. The weight of each bag and number of bags used of each component;
  - v. The weight of each bag and number of bags in completed lot; and
  - vi. The date of mixing or rebagging.
3. Disposition of stock record of completed lot, which shall include:
  - i. The name of mixture and lot number;
  - ii. The weight of bags and number of bags in final lot;
  - iii. The invoice number and weight of each shipment made from the lot; and
  - iv. The balance of lot remaining after each shipment; and
4. Invoice or other sales record, which shall include:
  - i. The name of mixture and lot number;
  - ii. The name and address of the buyer or consignee;
  - iii. The date sold or shipped; and
  - iv. The number of bags and weight of bags sold or shipped.

(b) Conditioners shall permit inspection by the Department of all records of all lots of the kind of seed certified, including both certified and non-certified lots.

1. The name of mixture and lot number;
2. The weight of bags and number of bags in final lot;
3. The invoice number and weight of each shipment made from the lot; and
4. The balance of lot remaining after each shipment; and

(b) Conditioners shall permit inspection by the Department of all records of all lots of the kind of seed certified, including both certified and non-certified lots.

2:16-3.9 Inspection of conditioning operations and records

The New Jersey Department of Agriculture shall make as many inspections of both seed and records as may be required to ascertain that only seed meeting the requirements of this subchapter is labeled with interagency certification tags.

2:16-3.10 Appointment of responsible individual

Approved conditioners who have met the requirements in N.J.A.C. 2:16-3.7 through 3.9 shall designate an individual who shall be responsible to the New Jersey Department of Agriculture for performing such duties as may be required.

2:16-3.11 Sampling and testing by the Department

(a) When mixing lots of seed for certification, the conditioner shall use only lots of seed pre-approved by the Department. Before approving of a lot, the Department shall:

1. Take an official sample of each component; and
2. Perform tests necessary to verify the eligibility of each component lot.

(b) After the different components have been mixed under the supervision of the Department, the conditioner shall permit the Department to take an official sample of each mixture to retain for reference.

(c) Samples of component lots to be certified as well as samples of finally certified lots shall be retained by the Department for three years.

2:16-3.12 Mixing procedures for certified turfgrass

(a) Before mixing, the conditioner shall ensure that:

1. All mixing equipment, pallets, scales and floor areas adjacent to and around the mixing area are clean and free from seed and foreign material.

2. Sufficient quantities of new containers are marked with the name of the mixture.
3. Sufficient quantities of properly completed analysis tags are prepared.
4. Analysis test reports for purity, germination, and sod quality, if applicable, from the state of origin shall be supplied for the Department's records for each lot of each component used in the mixture.
5. A mixing report shall be completed for the Department with the following information:
  - i. The business name, address and phone number of the conditioner;
  - ii. The lot number, state of origin and percentage of each component used;
  - iii. The name, lot number and date of the mixture;
  - iv. The weight of each package of the mixture and the total number of packages in the mixture;
  - v. The starting and ending numbers of the certification labels used and the total number of certification labels issued;
  - vi. A copy of the analysis label either printed on or attached to the report; and
  - vii. The signature of the designated representative of the conditioner and the signature of the Department's representative at the completion of the mixing and packaging process.
6. Each component used is assembled in close proximity to the mixing area.
7. Each container of each component is clean and sealed, with a certification tag attached. No damaged containers shall be accepted.
8. Sufficient personnel are available to complete the mixing process.
  - (b) Before mixing, the Department representative shall:
    1. Inspect all equipment for cleanliness;
    2. Inspect the mixing area for cleanliness;
    3. Inspect the new containers provided for the mixture to ensure that they are appropriate;

4. Inspect the analysis tags for completeness and accuracy; and
  5. Inspect each component to ensure that the correct lots are present in the proper amounts, and that all containers of seed to be used in certified mixtures bear a certification tag.
    - (c) The Department representative shall be present during the mixing process and shall supervise the loading and bagging of the mixed lot after the components have been thoroughly mixed for the appropriate length of time.
    - (d) The Department representative shall have the sole responsibility to:
      1. Draw an official sample of the completed mixture; and
      2. Determine whether the mixer should be cleaned before the next seed mixture is made.
- 2:16-3.13 Minimum seed standards for Interagency Certification of turfgrass seed
- (a) For turfgrass mixtures intended for use in New Jersey certified sod, the following shall apply:
    1. Component lots shall be those designated as Sod Quality by the state of origin; the minimum seed standards for the components shall be those found in N.J.A.C. 2:16-7.24(a).
    2. Varieties and mixtures of varieties shall be approved by Cook College, Rutgers, the State University as stated in N.J.A.C. 2:16-7.23(a).
    3. It is the responsibility of the conditioner to inform the Department that the mixture is to comply with the New Jersey certified sod standards.
    4. The seed analysis tag shall bear the statement "Eligible for New Jersey Certified Sod."
  - (b) For certified mixtures made for sod growers, other than those in (a) above, the components used shall be sod quality.
  - (c) The components for all other mixtures shall comply with the following seed standards:

Kind	Min. Pur.	Max. Oth. Var.	Min. Germ	Max.† Other Crop	Max Weed	Noxious Weed Seed
Kentucky Bluegrass	96%	2%	80%	.25%	.2%	None
Red Fescues (F. rubra vars.)	97%	2%	85%	.25%	.2%	None
Hard Fescues	97%	2%	85%	.25%	.2%	None
Tall Fescue	97%	2%	85%	.25%	.2%	None
Perennial Ryegrass	97%	2%	85%	.50%	.2%	None
Bentgrass††	98%	3%	85%	.25%	.2%	None
Rough Bluegrass	96%	2%	80%	.25%	.2%	None

†Up to 18 seeds per pound is the maximum amount of the following species: Annual bluegrass (*Poa annua*), big bluegrass (*Poa ampla*), Rough bluegrass (*Poa trivialis*), Meadow fescue (*Festuca elatior*), Tall fescue (*F. arundinacea*—except in lots containing tall fescue), Ryegrass (*Lolium* spp.—except in lots containing ryegrass), Bentgrass (*Agrostis* spp.—except in lots containing bentgrass), Timothy (*Phleum pratense*), Smooth Brome (*Bromus inermis*), Wild oat (*Avena fatua*) Foxtail (*Setaria* spp.), Panicum spp., Nutsedge (*Cyperus* spp.), Bermudagrass (*Cynodon dactylon*), Velvetgrass (*Holcus lanatus*).

Up to 90 seeds per pound is the maximum amount permitted of the following objectionable weed seeds: Dock and Sorrel (*Rumex* spp.), Plantain (*Plantago* spp.), Black medic (*Medicago lupulina*), Chickweeds (*Cerastium* spp. and *Stellaria* spp.), Field Pennycress (*Thlaspi arvense*), Wild carrot (*Daucus carota*), Speedwell (*Veronica* spp.), Spurge (*Euphorbia* spp.), Wood sorrel (*Oxalis stricta*), Yarrow (*Achillea millefolium*), Clover (*Trifolium* spp.)

††Bentgrass purity and germination standards may be 96 percent minimum pure seed and 80 percent germination for specific varieties as determined by the certifying agency of the state of origin.

(d) In an emergency, and at the discretion of the Department, seed lots failing to meet these standards for other than genetic reasons may be used for interagency certified mixtures. Use of such lots shall be made only when the Department determines that there exists a serious shortage of seed meeting these standards.

2:16-3.14 Interagency certification tags and tagging

(a) Certification tags issued by the Department for interagency certified seed shall be serially numbered and shall show the class of seed.

(b) The analysis tags supplied by the conditioner shall carry the name of the mixture and the number of the lot, shall show clearly the certifying agencies involved and the kinds and varieties of seed, as well as conform to the labeling requirements of the New Jersey State Seed Law as found at N.J.S.A. 4:8-17.13 et seq.

2:16-3.15 Rejection of interagency certification component seed lots

(a) The Department shall reject any certified component seed lot for interagency certification that fails to meet the seed standards as described in this subchapter or that exhibits seed damage or contamination. This damage or contamination may include, but is not limited to:

1. Rodent or insect damage;
2. Moisture damage;
3. Disease;
4. Weed seeds;
5. Other crop seeds;
6. Inert matter; and
7. Any factor which may affect the performance or quality of the seed.

2:16-3.16 Charges for interagency certification

Charges for interagency certification services of the Department are found at N.J.A.C. 2:16-9.4.

SUBCHAPTER 4. SMALL GRAINS (WHEAT, RYE, BARLEY, OATS)

2:16-4.1 Application and amplification of general certification standards

The rules in this subchapter supplement the general certification seed standards, N.J.A.C. 2:16-2, established by the State Board of Agriculture and apply specifically to the certification of small grain seeds.

2:16-4.2 Dates for application

(a) The latest dates on which applications may be filed at the Department for small grains are as follows:

1. Winter wheat, April 1;
2. Winter barley, April 1;
3. Winter rye, April 1; and
4. Winter oats, April 1.

(b) Applications should be filed as far in advance of the deadline as possible.

2:16-4.3 Seed requirements

(a) Foundation seed of wheat and barley shall be treated for the control of loose smut.

(b) Registered seed shall be the progeny of foundation seed.

(c) Certified seed shall be the progeny of foundation or registered seed.

2:16-4.4 Land requirements

(a) A crop of small grain shall not be eligible for certification if planted on land on which the same kind of crop was grown the year

previous, unless the previous crop was grown from certified seed of the same variety.

(b) No manure or contaminating material shall be applied one year preceding or during the establishment and productive period of the stand.

2:16-4.5 Field inspection by the Department

(a) A field inspection shall be made each year that a certified seed crop is produced.

(b) The field inspection shall be made after the crop is fully headed when varietal crop mixtures and other factors can be determined.

(c) A field harvested before inspection shall not be eligible for certification.

2:16-4.6 Field standards; general requirements

(a) The field shall be considered the unit of certification and a field cannot be divided for the purpose of certification. A strip of ground at least 10 feet in width and which is either mowed, uncropped or planted to some crop other than the one being inspected shall constitute a field boundary for the purpose of these standards. All grain from rejected fields or portions of fields shall be disposed of so that it cannot be used as certified seed.

(b) All rye fields producing certified seed shall be isolated by at least 660 feet from rye fields of any other variety or fields of the same variety that do not meet the purity requirements for certification.

1. All fields used for the production of registered seed shall be isolated by at least 660 feet from fields of like grains.

2. No field of wheat or barley shall be eligible for certification within 660 feet of an adjacent field which contains one percent or more infection of loose smut.

(c) The field shall be clean of plants that produce objectionable weed seed, varietal mixtures and mixtures of other crops before the inspector arrives.

2:16-4.7 Field standards; specific requirements

The following table sets forth the maximum field standards for contamination by other varieties, crops, weeds and diseases:

Factor	Foundation	Registered	Certified
Other Varieties <sup>1</sup>	.01% (1 in 10,000)	.02% (1 in 5,000)	.05% (1 in 2,000)
Inseparable other crops <sup>2</sup>	None	5 heads per acre	14 heads per acre
Objectionable weeds whose seeds are inseparable <sup>3</sup>	None	None	None
Diseases:			
Loose smut	None	500 heads per acre	1,000 heads per acre
Smuts controllable with chemicals	.1% (1 in 1,000)	.1% (1 in 1,000)	.2% (2 in 1,000)
Other seed-borne diseases <sup>4</sup>			

<sup>1</sup>Other varieties shall be considered to include off-type plants and plants that can be differentiated from the variety that is being inspected.

<sup>2</sup>Inseparable other crops shall include crop plants, the seed of which cannot be adequately removed by the usual method of cleaning. Rye in wheat and barley must be no more than five heads per acre in certified.

<sup>3</sup>Objectionable weeds include radish, mustard, wild onion, Canada thistle, quackgrass, vetch, corn cockle and wild garlic.

<sup>4</sup>In the event a seed-borne disease is judged to be detrimental to the seed quality, the inspector shall have the power to reject the field from certification.

2:16-4.8 Samples and sampling of seed

An official sample of each lot of seed, representative of the entire lot, shall be taken for laboratory analysis by a representative of the Department prior to being offered for sale as certified seed and shall meet the seed standards as found in N.J.A.C. 2:16-4.9.

2:16-4.9 Seed standards

The following table sets forth the seed standards for certified small grains.

Factor		Standards		
		Foundation	Registered	Certified
Pure Seed	minimum	—	98.00%	98.00%
Other varieties	maximum	1 seed per 1,000 grms.	1 seed per 500 grms.	5 seeds per 500 grms.
Other small grain crops	maximum	1 seed per 500 grams. <sup>1</sup>	1 seed per 500 grms. <sup>1</sup>	2 seeds per 500 grms. <sup>1</sup>
Inert matter	maximum	2.00%	2.00%	2.00%
Restricted noxious weed seeds <sup>2</sup>	maximum	None	None	None
Prohibited noxious weed seeds <sup>3</sup>	maximum	None	None	None
Moisture	maximum	14.00%	14.00%	14.00%
Germination	minimum	90.00%	90.00%	90.00%

<sup>1</sup>No rye seed will be permitted in lots of barley, wheat or oats tested for certification.

<sup>2</sup>Restricted noxious weed shall include those listed at N.J.A.C. 2:21-4, Noxious Weed Seeds pursuant to N.J.S.A. 4:8-17.13 et seq. plus radish, mustard, vetch and curled dock.

<sup>3</sup>Prohibited noxious weed seeds are those listed at N.J.A.C. 2:21-4, noxious weed seeds pursuant to N.J.S.A. 4:8-17.13 et seq. and can be found in N.J.A.C. 2:16-2.6.

SUBCHAPTER 5. SOYBEANS

2:16-5.1 Application and amplification of general certification standards

The rules in this subchapter supplement the general certification seed standards, N.J.A.C. 2:16-2 established by the State Board of Agriculture and apply specifically to the certification of soybean seed.

2:16-5.2 Restrictions on number of varieties

Two varieties of similar appearance shall not be grown in the same field nor binned in the same seed house.

2:16-5.3 Date of application

Application for growing certified soybeans shall be filed no later than July 1.

2:16-5.4 Land requirements

Soybeans shall be grown on land on which the previous crop was of another kind, or planted with a class of certified seed of the same variety or with a variety of a contrasting pubescence, flower or hilum color.

2:16-5.5 Field inspections by the Department

(a) Fields planted and entered for production of certified seed shall be inspected at least once, at a time when varietal purity can be determined.

(b) Fields harvested prior to field inspection shall not be eligible for certification.

2:16-5.6 Field standards: general requirements

(a) The field shall be considered the unit for certification, and a field cannot be divided for the purpose of certification.

(b) A strip of ground at least 10 feet in width and which is either mowed, uncropped or planted to some crop other than soybeans shall constitute a field boundary for the purpose of these standards.

(c) All grain from rejected fields or portions of fields shall be disposed of so that it cannot be used as certified seed.

2:16-5.7 Field standards: specific requirements

The following table sets forth the field standards for certified soybeans:

Factor		Standards	
		Registered	Certified
Other Varieties <sup>1</sup>	maximum	.05% (1 in 2,000)	.10% (1 in 1,000)
Corn plants with developed seed	maximum	None	None
Objectionable weeds <sup>2</sup>	maximum	None	None
Diseases	maximum	3	3

<sup>1</sup>Other varieties shall be considered to include off-type plants, and plants that can be differentiated from the variety that is being inspected.

<sup>2</sup>Objectionable weeds shall include all weed seeds which cannot be readily separated from soybeans.

<sup>3</sup>In the event a seed-borne disease is judged to be detrimental to the seed quality, the inspector shall have the power to reject the field from certification.

2:16-5.8 Samples and sampling of seed

An official sample of each lot of seed, representative of the lot, shall be taken for laboratory analysis by a representative of the Department prior to being offered for sale as certified seed, and shall meet the seed standards as found in N.J.A.C. 2:16-5.9.

2:16-5.9 Seed standards

The following table sets forth the seed standards for certified soybeans:

Factor		Standards	
		Registered	Certified
Pure seed	minimum	98.00%	98.00%
Other Varieties <sup>1</sup>	maximum	0.10% (1 in 1,000)	0.25% (2 in 1,000)
Inert matter	maximum	2.00%	2.00%
Other crops	maximum	None	1 seed per 500 grms.
Corn	maximum	None	None
Weed seed	maximum	1 seed per 500 grms.	2 seeds per 500 grms.
Objectionable weed seed <sup>2</sup>	maximum	None	None
Moisture	maximum	14.00%	14.00%
Germination	minimum	80.00%	80.00%

<sup>1</sup>Off-colored beans due to environmental factors shall not be considered other varieties.

<sup>2</sup>Objectionable weeds shall include morning glory, bur-cucumber, spurred anoda, cocklebur, Jimson weed and all prohibited and restricted noxious weed seeds under the New Jersey State Seed Law (N.J.S.A. 4:8-17.24) as delineated at N.J.A.C. 2:21-4.1 and 4.2.

SUBCHAPTER 6. VEGETABLES

2:16-6.1 Application and amplification of general standards

Rules in this subchapter supplement the general certification seed standards, N.J.A.C. 2:16-2, established by the State Board of Agriculture and apply specifically to vegetable seeds.

2:16-6.2 Eligibility requirements

(a) The seed of a crop shall be submitted one year in advance of planting a crop for certification to the Department of Vegetable Crops of the New Jersey Agricultural Experiment Station at Cook College to be included in the Experiment Station varietal trials.

(b) A description shall be submitted to the New Jersey Department of Agriculture not later than May 1 of the year in which seed certification is requested of each variety, specifically setting forth its distinctiveness whereby a claim to the classification of a new variety is supported.

2:16-6.3 Application for certification

A grower desiring to produce certified vegetable seed shall contact the Bureau of Seed Certification and Control prior to the planting of the crop in order to determine the eligibility of the variety, the seed and the field for certification.

2:16-6.4 Seed house or bin inspection

Inspection of harvested lots of seed from inspected fields may be made at any time by a representative of the Department who shall have the authority to revoke from certification any lot not protected from mixture or which is not identified.

2:16-6.5 Samples and sampling of seed

(a) A representative sample of each lot of seed or propagating material as it is offered for sale shall be obtained by the Department for future quality reference.

(b) The seed samples shall be maintained by the Department for a period of one year.

2:16-6.6 Seed appearance

Seed having met the requirements of N.J.A.C. 2:16-2 and this subchapter may still be rejected from certification if the appearance of the seed is a discredit to the certified seed program, for example discoloration or non-uniformity of seed.

2:16-6.7 Tags and seals

(a) All seed stocks when sold as certified shall have an official tag properly affixed to each container.

1. Containers of certified seed shall be sealed.

2. All official certification tags shall be secured from the Department and shall be affixed to seed containers, either by the grower or a representative of the Department, depending on circumstances involved.

(b) The certification tag which is attached to the bag serves as evidence of the genetic identity and genetic purity of the seed contained therein.

(c) Certified seed tags shall be white for foundation and breeder seed if tagged, purple for registered seed, and blue for the certified class.

2:16-6.8 Field and seed standards

(a) Field and seed standards for certified vegetable crops shall be those established by the Association of Official Seed Certifying Agencies.

(b) Copies of the standards for the kind to be certified may be obtained from the Bureau of Seed Certification and Control of the New Jersey Department of Agriculture, CN 330, Trenton, NJ 08625.

2:16-6.9 Sub-standard seed

(a) The Department recognizes that certain lots of seed that may be desirable for the advancement of a particular variety would be lost if regular certification standards were adhered to; therefore, under such circumstances seed failing to meet certain standards other than those affecting genetic purity may be certified by the Department provided there is no adverse effect to the reputation of certified seed.

(b) The certification tag attached to such seed shall clearly show the respects in which the seed does not meet the regular certification standards.

2:16-6.10 Seed conditioning

(a) Seed eligible for final certification shall be conditioned by equipment approved by the Department.

(b) Minimum equipment shall include a cleaner with self-cleaning screens, and facilities for cleaning elevator legs, boots and other parts coming into direct contact with the seed.

SUBCHAPTER 7. TURFGRASS SOD

2:16-7.1 Application and amplification of general standards

The rules in this subchapter supplement the general certification standards found at N.J.A.C. 2:16-2, and are applicable to all species of turfgrass sod that are eligible for certification. They shall constitute the standards for certification of sod in New Jersey.

2:16-7.2 Type of certifying organization

(a) Cook College of Rutgers, The State University is the agricultural research and extension agency for turf certification.

(b) The New Jersey Department of Agriculture is the official certification agency and assumes the regulatory or enforcement work in turf production.

2:16-7.3 Purpose of certification

The purpose of sod certification shall be to maintain and make available to the public, through certification, high quality sod of superior types of turfgrasses so grown and distributed as to insure genetic identity and purity and high degree of freedom from weeds, injurious insects, disease, nematodes and other pests.

2:16-7.4 Eligibility requirements for certification

(a) Only those species, varieties and mixtures that are approved by the Turfgrass Extension Specialist, Cook College, Rutgers, the State University shall be eligible for certification.

(b) A list of eligible species, varieties and mixtures for sod produced from seed shall be established and maintained by the Turfgrass Extension Specialist and shall be revised as needed to include newly approved varieties.

(c) The list in (b) above shall be available from the Bureau of Seed Certification and Control of the New Jersey Department of Agriculture, CN 330, Trenton, NJ 08625.

2:16-7.5 Sources of certified turfgrass sod

(a) The only recognized class of certified sod shall be Certified (Blue tag). Seed or other propagating material used for the establishment of certified turfgrass sod shall be in accordance with the following specified sources.

(b) For turfgrass sod established from seed, certified shall be the progeny of sod quality foundation, registered or certified seed lots that have been approved by the Department and that have been so handled by the sod grower as to maintain genetic identity and purity.

(c) For turfgrass sod established from vegetative material, certified shall be the progeny of foundation of registered stock that has been approved and certified by the Department and that has been so handled by the sod grower as to maintain genetic identity and purity. Certified shall be the progeny of certified stock only after approval has been granted by the Turfgrass Extension Specialist of Cook College and the Bureau of Seed Certification and Control.

2:16-7.6 Establishing the source of seed or propagating material

In those cases where the seed or propagating material planted for production of certified sod is obtained from another person, documentary evidence, such as a certification tag, sales record, and other written memoranda shall be submitted to the Department to establish the source.

2:16-7.7 Qualifications for inspectors

Inspection work shall be performed only by inspectors who have been trained and approved by the Department.

**2:16-7.8 Handling of crop prior to inspection**

- (a) Roguing of off-type plants, objectionable crop plants and weeds is required prior to field inspection.
- (b) Field boundaries shall be designated prior to field inspection.

**2:16-7.9 Harvesting shall prevent certification**

If a field is harvested before inspection, that crop automatically becomes ineligible for certification.

**2:16-7.10 Labels for certified stock; evidence of identity**

- (a) All stocks, when sold as certified, shall have an official certification tag properly affixed to the invoices.
- (b) The certification label which is attached serves as evidence of the genetic identity and purity contained therein. The blue label will be used to designate certified.

**2:16-7.11 Appearance of sod**

Sod having met the specific field requirements can still be rejected from certification if the appearance is such as to give discredit to the certified reputation.

**2:16-7.12 Contaminating crops and weeds**

- (a) To qualify for certification each field shall be under such management as to be free of contamination from other turfgrass species, crops and weeds.
- (b) Fields with conditions which make it difficult to perform complete and thorough field inspections may be rejected from certification.

**2:16-7.13 Pest control required**

- (a) Every field within the certifying program shall be maintained free of diseases, nematodes and other pests.
- (b) Fields to qualify for certification shall be free from injurious turfgrass insects.

**2:16-7.14 Complying with Federal and State laws**

Responsibility for any obligations, other than those concerned with certification, arising from the sale or shipment of sod which has been certified, rests with the grower or subsequent handler making the sale or shipment.

**2:16-7.15 Application for certification**

- (a) Application forms for the production of certified sod may be obtained by the sod grower from the Bureau of Seed Certification and Control.
- (b) The completed application form shall be sent to the Bureau of Seed Certification and Control, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.

**2:16-7.16 Dates for filing application**

Applications shall be filed at the office of the certifying agency no later than March 1, and should be filed as far in advance of the deadline as possible.

**2:16-7.17 Maps of production areas**

To facilitate the work of the Department, it is suggested that maps accompany the application form giving field locations, isolation distances and any other important facts that would be helpful to the inspector.

**2:16-7.18 Land requirements**

- (a) A field to be eligible for the production of certified sod shall have been inspected prior to planting and found free of all other perennial grasses.
- (b) In all cases, a field found eligible for the production of certified sod shall be free of injurious insects, unacceptable weeds as found in N.J.A.C. 2:16-7.21, and volunteer plants of other varieties or species of turfgrass.

**2:16-7.19 Sod Inspections**

- (a) Inspections during the growing season shall be made by the Department for genetic purity and identity, the presence of other perennial grasses, noxious, unacceptable and other objectionable weeds as found in N.J.A.C. 2:16-7.21, and insects and diseases.
- (b) After fields have met the requirements for certification, inspection by the Department at approximately monthly intervals shall be made to maintain certification eligibility. Certification shall be withdrawn at any time the quality of the sod is found not to meet the standards in N.J.A.C. 2:16-7.21 and N.J.A.C. 2:16-7.22.
- (c) To be sold as certified, all sod shall be field inspected by the Department within 30 days of the date of harvest, and found to meet the field standards listed in this subchapter.

**2:16-7.20 Field standards; general requirements**

- (a) A field or blocks within a field shall be considered the unit for certification. If for any reason sections of a field do not meet certification requirements, the portion or portions of the field meeting certification requirements may be certified.
- (b) A field or block of sod to be eligible for certification shall be isolated from adjacent fields with a 10-foot barrier. The barrier shall be fallowed or seeded to the same variety of the turfgrass species considered for certification in order to prevent contamination of grasses at the margins.
- (c) No animal manures or other contaminating material shall be applied two years preceding or during the establishment and production of the stand.

**2:16-7.21 Specific field standards and requirements**

- (a) The production of certified sod shall be limited to fields having stands not more than three years old from date of planting.
- (b) Maximum field tolerance standards for other varieties or off-type plants of the same species, other turfgrass species, and other crops and weeds when recognizable are as indicated in the following table.

**AGRICULTURE**

**PROPOSALS**

Factor	Kentucky Bluegrass	Hard and Red Fescues	Kentucky Bluegrass Red Fescue Mixture	Bentgrass	Zoysia	Kentucky Bluegrass Tall Fescue Mixture
Other turfgrasses <sup>1</sup> —(Percent of total turfgrass population)						
1. Kentucky bluegrass	3	1	3	1	1	3
2. Red fescue	1	3	3	1	1	1
3. Poa trivialis	0	0	0	0	0	0
4. Bentgrass	0	0	0	2	0	0
5. Tall fescue	0	0	0	0	0	0
6. Ryegrass	0	0	0	0	0	0
7. Zoysia	0	0	0	0	0	0
8. Bermudagrass	0	0	0	0	0	0
Other crops	0	0	0	0	0	0
Weeds—(Plants per 1,000 square feet of sod area)						
Unacceptable <sup>2</sup>	0	0	0	0	0	0
Objectionable <sup>3</sup>	2	2	2	2	2	2

<sup>1</sup>Other turfgrasses shall include:

- (1) Varieties or off-type plants of the same species being inspected for certification.
- (2) Species of turfgrasses other than the one being inspected for certification.

<sup>2</sup>Unacceptable weeds shall include primary and secondary noxious weeds in accordance with the provisions of the New Jersey State Seed Law and other weeds difficult to control selectively through cultural or chemical methods.

Noxious weeds specified by the New Jersey State Seed Law include:

nutgrass (*Cyperus esculentus*), goosegrass (*Eleusine indica*), annual bluegrass (*Poa annua*), and any other variety or species of perennial grass. nutgrass (*Cyperus esculentus*), hedge bindweed (*Convolvulus spium*), quackgrass (*Agropyron repens*), Canada thistle (*Cirsium arvense*) and horse nettle (*Solanum carolinense*) as primary, and dodder (*Cuscuta spp.*), corn cockle (*Agrostemma githago*), wild garlic (*Allium canadense*), cheat (*Bromus secalinus*), and Bermudagrass (*Cynodon dactylon*) as secondary.

Other unacceptable weeds shall include:

Crabgrass (*Digitaria spp.*), dandelion (*Taraxacum officinale*), plantain (*Plantago spp.*), sheep sorrel (*Rumex acetosella*), wood sorrel (*Oxalis europeaea*), ground ivy (*Glechoma hederacea*), yarrow (*Achillea millefolium*), annual chickweed (*Stellaria media*), mouse-ear chickweed (*Cerastium vulgatum*), field chickweed (*Cerastium arvense*), speedwell (*Veronica spp.*), spurge (*Euphorbia spp.*), knotweed (*Polygonum oleracea*), heal-all (*Prunella vulgaris*), knawel (*Scleranthus annuus*), black medic (*Medicago iupulina*), white clover (*Trifolium repens L.*) and any other broadleaf or grassy weed which may detract from sod quality.

(c) If at any time the field shows evidence of excessive weed growth, it may be rejected by the inspector.

**2:16-7.22 Sod quality**

(a) The marketable product shall be of uniform density, color and texture.

(b) Certified sod shall be free of thatch, insect, disease, nematode or weed problems.

**2:16-7.23 Seed requirements for New Jersey certified sod production**

(a) All species, varieties and mixtures of varieties to be used for New Jersey certified sod shall be those approved by Cook College, Rutgers, the State University as stated in N.J.A.C. 2:16-7.4.

(b) All lots of seed used in the production of New Jersey certified sod shall be approved by the Department. The grower shall submit to the Department the following:

- 1. An official seed analysis report from the state of origin including an examination for sod quality; and
- 2. All labeling information including the lot number and the number of pounds involved.

(c) For sod seeded from single, unmixed kinds and varieties, the seed shall be certified, designated as Sod Quality by the state of origin, meet the minimum seed standards found in N.J.A.C. 2:16-7.24 and shall comply with the sod mixture eligibility requirements at N.J.A.C. 2:16-7.4(b).

(d) For sod produced from mixtures of species or varieties, the component seed lots shall be certified, designated as Sod Quality by the state of origin and shall meet the minimum seed standards found in N.J.A.C. 2:16-7.24, and the mixtures shall be certified using the procedures and standards found at N.J.A.C. 2:16-3.

**2:16-7.24 Seed standards for sod quality grass seed**

(a) The seed standards for sod quality grass seed are as follows:

Variety	Minimum Purity	Minimum Germination	Maximum <sup>1</sup> Other Crop	Maximum <sup>1</sup> Weed
Kentucky Bluegrass	97%	80%	0.1% <sup>2</sup>	0.02%
Red Fescue	98%	90%	0.1%	0.02%
Chewings Fescue	98%	90%	0.1%	0.02%
Hard Fescue	98%	90%	0.1%	0.02%
Tall Fescue	98%	90%	0.1%	0.02%
Perennial Ryegrass	98%	90%	0.1%	0.02%

<sup>1</sup>Must be free of ryegrass (except for lots containing ryegrass as a component), orchardgrass, timothy, bentgrass, big bluegrass, *Poa trivialis*, smooth bromegrass, reed canary grass, tall fescue (except for lots containing tall fescue as a component) and clover.

Canada Bluegrass in Kentucky Bluegrass varieties, maximum 0.02 percent.

Red Fescue and Chewings Fescue must be free of Canada Bluegrass.

<sup>2</sup>Other Kentucky Bluegrass—Maximum 2 percent

<sup>3</sup>Must be free of dock, chickweed, crabgrass, plantain, black medic, annual bluegrass, velvetgrass and noxious weed seeds.

**SUBCHAPTER 8. VEGETATIVELY PROPAGATED GRASSES**

**2:16-8.1 Application and amplification of general certification standards**

(a) Rules in this subchapter supplement the general certification seed standards at N.J.A.C. 2:16-2, established by the State Board of Agriculture and apply specifically to vegetatively propagated grasses.

(b) The following terms apply specifically to vegetatively propagated grasses:

1. Breeder culms, are those produced by the U.S.D.A. Plant Materials Center (Cape May, New Jersey);

2. Foundation culms, are first year propagations from breeder culms.

3. Registered culms, are first year propagations from foundation culms.

4. Certified culms, are those produced from either foundation or registered culms.

2:16-8.2 Handling of crop prior to inspection

A field shall be rogued sufficiently during the growing season to remove any other varieties of the crop being certified or other undesirable plant mixture that cannot be separated during the packing operations.

2:16-8.3 Date of application

Application for growing certified vegetatively propagated grasses shall be filed with the Bureau of Seed Certification and Control no later than June 1.

2:16-8.4 Land requirements

(a) A field to be eligible for the production of foundation, registered or certified culms, shall have been free of other strains of the same species for two consecutive years preceding the year that it is to be planted.

(b) The fields shall be inspected by the Department prior to planting and shall have been found to be free of noxious weeds as defined in N.J.A.C. 2:16-2 and free of objectionable weeds as listed in N.J.A.C. 2:16-8.9.

2:16-8.5 Field inspection

Field inspections by the Department shall be made at various times during the growing season to determine accurately the amount of varietal mixture present.

2:16-8.6 Field standards

The entire acreage standing at the time of inspection shall be subjected to inspection as a unit.

2:16-8.7 Isolation

A field to be eligible for certification shall be isolated from any other perennial grasses by a barrier that will prevent encroachment or mechanical mixing during harvest.

2:16-8.8 Field standards; specific requirements

(a) No other varieties are permitted in foundation or registered fields.

(b) For certified class fields, one plant of another variety in 1,000 square feet is the maximum permitted.

2:16-8.9 Planting stock standards for all classes

(a) A sample of at least 100 culms shall be drawn by the Department inspector during spring and fall pulling and tested by the inspector.

(b) The following table sets forth the standards for planting stock:

Pure living culms, minimum	90.0%
Other living plants, minimum	2.0%
Total objectionable weeds, maximum <sup>1</sup>	0.0%

<sup>1</sup>Objectionable weeds shall include the following species: Canada thistle, dodder, horse nettle, johnsongrass, leafy spurge, nut grass, quackgrass, wild onion or garlic, wild radish, field bindweed and hedge bindweed.

SUBCHAPTER 9. CERTIFICATION FEE SCHEDULE

2:16-9.1 General purpose and provisions

Fees are charged by the Department for certification services, including field inspections, supervision of cleaning and mixing equipment and operations, tags supplied by the Department and seed testing. The Department shall bill the users of certification services annually, at the end of the calendar year; fees shall be paid to:

New Jersey Department of Agriculture  
 Division of Plant Industry  
 Bureau of Seed Certification and Control  
 CN 330  
 Trenton, NJ 08625

2:16-9.2 Small grains, soybeans, vegetables

(a) The following fees shall be charged for participation in the program for certifying small grains, soybeans and vegetable crops:

1. An entrance fee of \$20.00 for each grower.
2. An inspection fee of \$1.50 for each acre entered.
3. Labels, if purchased from Department, \$.03 each.

2:16-9.3 Cultivated sod, vegetatively propagated grasses  
 (a) The following fees shall be charged for participation in the program for certifying sod:

1. An entrance fee of \$20.00 for each grower.
2. An inspection fee of \$1.00 for each acre entered.
3. Labels, if purchased from Department, \$.03 each.

2:16-9.4 Interagency certified turfgrass

(a) The following fees shall be charged for participation in the program for certifying mixtures of turfgrasses seed:

1. Entrance fee of \$20.00 for each participating mixer.
2. Sampling and testing for each component of mixture, \$25.00.
3. For every 1,000 pounds of seed mixed there shall be a charge of \$20.00, with a minimum charge of \$75.00 for each mixing day.
4. There shall be a charge of \$10.00 when sampling only is requested.
5. Labels, if purchased from Department, \$.03 each.

2:16-9.5 Fee waived for participating government agencies

No fees shall be charged to Federal or state agencies which participate in the certification program.

**ENVIRONMENTAL PROTECTION**

**(a)**

**DIVISION OF WATER RESOURCES**

**Water Pollution Control**

**Proposed Readoption: N.J.A.C. 7:9**

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 58:4A-4.1 et seq., 58:10A-1 et seq., 58:11A-1 et seq.

DEP Docket Number: 034-90-10.

Proposal Number: PRN 1990-553.

Submit comments by December 5, 1990 to:

Samuel A. Wolfe  
 Administrative Practice Officer  
 Office of Policy and Planning  
 Department of Environmental Protection  
 CN 402  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 7:9, entitled "Water Pollution Control", expires on January 21, 1991. The Department of Environmental Protection ("Department") has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The Department proposes to readopt these rules without change. The Department is presently preparing major amendments to all of the subchapters within N.J.A.C. 7:9 with the exception of N.J.A.C. 7:9-15, entitled "Grants for Restoring Publicly Owned Freshwater Lakes".

The purpose of N.J.A.C. 7:9-1, entitled "Sewer Systems and Wastewater Treatment Plants", is to provide the minimum acceptable standards for the engineering documentation such as plans, profiles, specifications, reports and design, for sewer systems and wastewater treatment plants. Design criteria included in this subchapter address areas concerning capacity, materials, inverted siphons, joints, manholes, outfalls, pump stations, pumps, dry/wet wells, pertinent electrical equipment, as well as general provisions for treatment plants, screening, grit removal, settling tanks, sludge digestion and disposal, trickling filters, activated sludge, intermittent sand filters, disinfection, sewage treatment processes, package treatment plants and laboratory equipment.

Both N.J.A.C. 7:9-2 and N.J.A.C. 7:9-3 were previously reserved by the Department.

N.J.A.C. 7:9-4, entitled "Surface Water Quality Standards", constitutes the Department's rules concerning the protection and enhancement of

the State's surface water resources. This subchapter establishes use designations and water quality criteria for the surface waters of the State, procedures for establishing water quality based effluent limitations, procedures for modifying water quality based effluent limitations, and procedures for reclassifying specific segments for more and less restrictive uses.

N.J.A.C. 7:9-5, entitled "Wastewater Discharge Requirements", constitutes the Department's rules concerning the protection and enhancement of the waters of the State, the disinfection and minimum treatment requirements as applicable to effluent limitations, and other requirements pertinent to discharges to surface waters.

N.J.A.C. 7:9-6, entitled "Ground Water Quality Standards", constitutes the Department's rules concerning the protection and enhancement of the State's ground water resources. This subchapter establishes the use classification and the water quality criteria for the ground waters of the State, the procedures for establishing effluent standards, the procedures for modifying ground water quality based effluent limitations, and the procedures for establishing less restrictive uses.

Both N.J.A.C. 7:9-7 and 7:9-8 were previously reserved by the Department.

N.J.A.C. 7:9-9, entitled "Sealing of Abandoned Wells", addresses the technical requirements and procedures for the sealing of abandoned wells for all New Jersey licensed well drillers and well owners, pursuant to N.J.S.A. 58:4A-1 et seq., the Subsurface and Percolating Waters Act. This subchapter sets forth requirements for the sealing of rock wells, sand wells, gravel wells, and test wells.

N.J.A.C. 7:9-10, 7:9-11, 7:9-12, 7:9-13, and 7:9-14 were previously reserved by the Department.

N.J.A.C. 7:9-15, entitled "Grants for Restoring Publicly Owned Freshwater Lakes", implements Section 314 of the Federal Clean Water Act, 33 U.S.C. 1324, wherein financial assistance is provided to the State for the restoration of publicly owned lakes. Federal grants are available for a wide range of activities which include dredging, shoreline stabilization and stormwater management. The New Jersey Legislature has provided funds in recent years to supplement Federal funding. N.J.A.C. 7:9-15 sets forth criteria for grant eligibility and establishes policies and procedures for the distribution of funds to local governments for studies and implementation of activities to improve water quality in freshwater lakes.

#### Social Impact

The proposed readoption of N.J.A.C. 7:9-1 will assure the continuation of a beneficial social impact by maintaining a uniform design and construction system for sewer systems and wastewater treatment plants. This will insure that sewers and treatment plants are constructed in a manner which protects the public health, safety and environment.

N.J.A.C. 7:9-4, 5, and 6 provide a positive social impact since they are designed to protect the public health, safety and environment by the establishment of effluent limitations and water quality standards for both ground and surface waters of the State.

N.J.A.C. 7:9-9 provides a positive social impact by protecting the public health and safety as well as ground water quality with the establishment of specific procedures for the sealing of abandoned wells.

N.J.A.C. 7:9-15 provides a positive social impact in that improved water quality in freshwater lakes is expected under the administration of these regulations which in turn leads to enhanced recreational opportunities, wildlife habitat, public health, and aesthetic values.

#### Economic Impact

The proposed readoption of these rules will not increase or decrease the cost of regulatory compliance. The maintenance of high quality water resources is important to all, particularly to the many communities that are supported by such industries as water supply, recreation, tourism, fishing, and shell fishing. Inadequately treated water could have a severe impact on these industries and thus the economy of the communities, as well as endanger the public health.

The economic impact of N.J.A.C. 7:9-1 will be borne by those public entities, individuals, and companies applying for applicable construction permits, not necessarily the public at large. However, it is reasonable to assume that for municipal projects, these costs as well as actual construction costs may be passed on to the public in the form of sewer taxes by the serving sewerage authority.

N.J.A.C. 7:9-4 will continue to have an economic impact on those permittees discharging to the surface waters of the State. Particular pollution prevention measures may be required in permits based on the surface water quality standards in order to prevent further degradation of the surface water quality. Prevention of further degradation of the

surface waters is one step toward improving the quality of the surface water which will provide positive economic benefits to the public health and ecological values, as well as recreational, industrial, and agricultural uses of the State's waters.

N.J.A.C. 7:9-5 requires minimum levels of treatment prior to the discharge of effluents. Costs incurred by a discharger would be dependent upon the nature and intensity of specific types of treatment required for identified pollutants contained in the discharged effluent as well as the waterbody to which it was being discharged. Prevention of further degradation of the waters of the State will provide positive economic benefits to the public health and ecological values, as well as recreational, industrial, and agricultural uses of the State's waters.

N.J.A.C. 7:9-6 will continue to have an economic impact on those permittees discharging to the ground waters of the State. Particular pollution prevention measures may be required to prevent further degradation of the ground water quality. Prevention of further degradation of the ground waters is one step toward improving the quality of the ground water which will benefit all concerned with the public health and ecological values.

N.J.A.C. 7:9-9 will continue to have an economic impact on individuals/companies in that the filling and sealing of abandoned wells is not only required, but required to be accomplished through the use of a qualified individual or contractor performing under the immediate supervision of a New Jersey licensed well driller. Associated documentation is also necessary both before and after the filling and sealing of a well. These rules will also provide positive economic benefits to the public health and the various uses of the State's ground water resources.

N.J.A.C. 7:9-15 will continue to provide a positive economic impact in that it provides a funding process for the restoration of degraded waterbodies to a more acceptable condition which in turn adds to property values in the affected communities.

#### Environmental Impact

The proposed readoption of this chapter is intended to improve the environmental quality of the State's waterbodies. N.J.A.C. 7:9-1 will continue to provide a positive environmental impact to the water quality of the State by providing minimum acceptable design standards for sewer systems and wastewater treatment plants.

N.J.A.C. 7:9-4 is designed to restore, maintain and enhance the chemical, physical and biological integrity of the State surface waters. These rules will provide a positive environmental impact through the protection of the public health, scenic and ecological values, the safeguarding of the aquatic biota, and the enhancement of the domestic, municipal, recreational, industrial, agricultural, and other reasonable uses of the State's surface waters.

N.J.A.C. 7:9-5 will provide a positive environmental impact through the protection and enhancement of the quality and function of the waters of the State into which effluents are discharged. The protection of these resources is of principal concern to the Department when considering the approval of permits to discharge wastewater or the approval of the design of proposed facilities for the collection, treatment, or discharge of pollutants.

N.J.A.C. 7:9-6 will provide a positive environmental impact since it is designed to prevent the discharge of any pollutant into the ground waters of the State except in conformity with a valid permit issued by the Department. The protection and enhancement of the quality and function of the ground waters of this State into which effluents are discharged is a principal concern of the Department.

N.J.A.C. 7:9-9 will provide a positive environmental impact since it sets forth the particular procedures for the filling and sealing of abandoned wells for the purpose of protecting the State's aquifers. Protection of the aquifers is critical to that portion of the public dependent upon ground water for their drinking water supply and agricultural and industrial uses dependent upon ground water supplies.

N.J.A.C. 7:9-15 will provide a positive environmental impact since it sets forth the policies and procedures for grants to assist local governments in carrying out the restoration of publicly owned freshwater lakes. The restoration and improvement of the quality of the State's freshwater lakes is environmentally beneficial to the general public for aesthetic and recreational purposes and to the habitat of aquatic life.

#### Regulatory Flexibility Analysis

The proposed readoption of N.J.A.C. 7:9-1 applies to all businesses, as well as all public entities, which own or operate sewer systems or wastewater treatment plants. The overwhelming majority of sewage systems and wastewater treatment plants are owned and operated by municipalities or municipal authorities. The Department estimates that there are

approximately 100 permitted individuals or facilities which are considered to be "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this subchapter, the small businesses will be required to comply with the design and construction standards for sewer systems and wastewater treatment plants. The professional services which may be needed in order to comply with N.J.A.C. 7:9-1 would include, but would not be limited to, licensed professional engineers and licensed surveyors. The initial capital costs for compliance with these rules could vary from approximately \$100.00 to several thousand dollars, depending on the required professional services. The Department has balanced the need to protect the environment against the economic impact upon small businesses and has determined not to provide exemptions for small businesses. To prescribe a separate set of design and construction standards for sewer systems and wastewater treatment plants based upon the nature of the owning entity would defeat the standardization purpose of these rules, which is to protect both the public health and the environment.

The proposed readoption of N.J.A.C. 7:9-4 and 7:9-5 applies to all businesses which discharge wastewater into the surface waters of the State. Of the estimated 1500 dischargers, approximately 250 are "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These businesses will need professional services such as licensed professional engineers to design treatment facilities. The capital costs and annual compliance cost in order to comply with this rule could vary from approximately several thousand dollars to several million dollars, depending on the existing level of treatment and the required level of treatment. The Department has balanced the need to protect the environment against the economic impact upon small businesses and has determined not to provide exemptions for small businesses, since minimizing this impact would endanger the environment and public health and safety. Neither water quality standards nor wastewater discharge requirements are raised or lowered due to the size of the owning entity.

The readoption of N.J.A.C. 7:9-6 applies to all businesses which discharge or have discharged wastewater into the ground waters of the State. Of the estimated 1000 existing permitted dischargers, approximately 200 are "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In addition to the permitted facilities, these rules will potentially apply to thousands of other facilities if ground water pollution occurs or is detected. The actual number of facilities which may be subject to these rules is impossible to estimate because of the indeterminate number of undetected ground water pollution incidents and the large number of potential ground water pollution sources such as underground storage tanks. These businesses will need professional services such as licensed professional engineers, hydrogeologists, and other specialists to determine the extent of ground water discharges and to design treatment facilities. The capital costs and annual compliance cost in order to comply with this rule could vary from approximately several thousand dollars to several million dollars, depending on the amount of ground water pollution and the required level of treatment. The Department has balanced the need to protect the environment against the economic impact upon small businesses. The Department has determined not to provide exemptions for small businesses, since such exemptions would endanger the environment and public health and safety.

The readoption of N.J.A.C. 7:9-9 applies to all businesses which are required to seal abandoned wells. The actual number of businesses which may be subject to this subchapter is impossible to estimate because of the large number of existing wells in New Jersey and the inability to determine how many of these wells meet the criteria of an abandoned well. These businesses will need professional services such as licensed well drillers to properly comply with the requirements. Of the businesses subject to these requirements, many of the businesses, such as the licensed well drillers, will be "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The capital costs associated with compliance with this subchapter could vary from approximately several hundred dollars to several thousand dollars depending on the depth, diameter, and construction of the well. There are no annual compliance costs associated with this subchapter. The Department has balanced the need to protect the environment against the economic impact upon small businesses. The Department has determined not to provide exemptions for small businesses, since such exemptions would endanger the environment and public health and safety.

The readoption of N.J.A.C. 7:9-15 concerns the administration of grants to assist local governments in carrying out the restoration of publicly owned freshwater lakes. Since this subchapter pertains to local

governments, the Department has determined that these rules do not impose reporting, record keeping or other compliance requirements on small business and thus a regulatory flexibility analysis is not required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:9.

## (a)

### DIVISION OF HAZARDOUS WASTE MANAGEMENT Incorporation by Reference

#### Proposed Amendment: N.J.A.C. 7:26-8.19

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 036-90-10.

Proposal Number: PRN 1990-558.

Submit comments, identified by the Docket Number above, by December 5, 1990 to:

Samuel A. Wolfe  
Administrative Practice Officer  
Office of Policy and Planning  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Department of Environmental Protection is proposing to amend N.J.A.C. 7:26-8.19 to add subsection (d), whereby the Department will incorporate by reference 40 C.F.R. Part 261, Appendix VII as the basis for the listings of hazardous waste at N.J.A.C. 7:26-8.13 and 8.14. The Department is also correcting at N.J.A.C. 7:26-8.19(b)4 the entity to contact for EPA publication number SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" and updating the documents associated with this publication.

This amendment is only informational in nature. However, the amendment is necessary for the Department to remain equivalent with the Federal regulations implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., and to retain authorization to implement RCRA for the State of New Jersey.

#### Social Impact

The amendments provide the basis for the listing of hazardous wastes at N.J.A.C. 7:26-8.13 and 8.14 and update the address of an EPA publication. Since the amendments provide useful information to the public, the amendments will have a positive social impact.

#### Economic Impact

The Department anticipates the amendments will not have an economic impact on the regulated community since the amendments will not place any new or revised requirements on the hazardous waste industry.

#### Environmental Impact

Although the amendments will not have a direct environmental impact because they are only informational in nature, the amendments will have a positive indirect impact by providing the basis for listing wastes as hazardous and updating the address for an EPA publication which is an integral part of the RCRA hazardous waste management program.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the amendment is only informational in nature and will not impact the current hazardous waste management scheme in this State. Therefore, a regulatory flexibility analysis is not required.

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

7:26-8.19 Incorporation by reference

(a) (No change.)

(b) The most current versions of the following publications are incorporated by reference into this chapter whenever or wherever mentioned herein:

1.-3. (No change.)

4. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. The [second] latest edition and updates of SW-846 [and Update I] are available from the [Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238 on a subscription basis] National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600, as document number PB 87-120-291.

(c) (No change.)

(d) For hazardous wastes listed at N.J.A.C. 7:26-8.13 and 8.14, the Department incorporates by reference the basis for those listings at 40 C.F.R. Part 261, Appendix VII.

## (a)

### DIVISION OF ENVIRONMENTAL QUALITY

#### Fees for Licensing of Naturally Occurring and Accelerator Produced Radioactive Materials Fees for Registration of By-Product, Source, and Special Nuclear Materials

#### Proposed New Rule: N.J.A.C. 7:28-3.13

#### Proposed Amendments: N.J.A.C. 7:28-3.5 and 4.19

Authorized By: Judith Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 26:2D-1 et seq., particularly, N.J.S.A. 26:2D-9.

DEP Docket Number: 033-90-09.

Proposal Number: PRN 1990-542.

A public hearing concerning this proposal will be held on:

Wednesday, November 21, 1990 at 10:30 A.M.

Large Conference Room

New Jersey Department of Environmental Protection

729 Alexander Road

Princeton, New Jersey 08540-0415

Submit written comments by December 5, 1990 to:

Samuel A. Wolfe, Esq.

Administrative Practice Officer

New Jersey Department of Environmental Protection

CN 402

Trenton, NJ 08625

The agency proposal follows:

#### Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., (hereinafter the "Act") was enacted. The Act regulates the possession, handling, transportation, and use of sources of radiation within the State of New Jersey. Pursuant to the Act, New Jersey's Radiological Health Program, now known as the Radiation Protection Program (the "program"), was established in the Department of Environmental Protection (the "Department"). The Act also created the Commission on Radiation Protection (hereinafter "CORP") in the Department and vested in that body the authority to promulgate rules and regulations, as may be necessary to prohibit and prevent unnecessary radiation. Additionally, the Act empowers the Department to administer the rules promulgated by CORP and, at N.J.S.A. 26:2D-9(1), authorizes the Department to establish and charge fees for the services it performs under the Act.

In this proposal, the Department is proposing to amend certain of its fee rules. Specifically, the proposed amendments will: (1) expand the categories of State radioactive material licenses, and increase fees for most user categories; and (2) establish a new fee of \$150.00 for each initial registration for possession of radioactive byproduct material, radioactive source material or special nuclear materials; create an annual registration renewal fee of \$100.00 for each registration; and create a fee of \$100.00 for each registration amendment. The registration year for radioactive materials in N.J.A.C. 7:28-3.5 and 3.13 is based on the State Fiscal Year (July 1 to June 30). All current Federal licenses will, for Fiscal Year 1991, pay the initial registration fee; thereafter, they will pay the annual registration fee. The initial fees for Fiscal Year 1991 will commence the date

the rule amendment is promulgated and will be prorated for the period between the date of promulgation and the end of the Fiscal Year (June 30, 1991). The licensing year for State licensees for naturally occurring or accelerator produced radioactive materials in N.J.A.C. 7:28-4.19 is also based on the State fiscal year. These State licensees will, for fiscal year 1991, be billed on a prorated basis at the existing rate through the date the rule amendment is promulgated; for the period between the date of promulgation through the end of the Fiscal Year (June 30, 1991), the new fees will be charged on a prorated basis.

The categories of radioactive materials licenses set forth in N.J.A.C. 7:28-4.19 have been expanded to enable distribution of fees based on the nature of the radionuclide, and the volume and activity of radioactive materials possessed and actually utilized by licensees. The Department believes that equity can be best achieved for Human Use Group license categories by basing fees on the number of diagnostic and therapeutic doses administered annually.

Fees collected through the implementation of amended N.J.A.C. 7:28-3.5 and new rule N.J.A.C. 7:28-3.13 will be used to cover the costs associated with the collection and management of registration applications and registration amendments related to Nuclear Regulatory Commission (NRC) license holders, responses to inquiries received from the public regarding radioactive by-product material, radioactive source material and special nuclear materials and coordination with the Nuclear Regulatory Commission for responses to incidents regarding radioactive materials.

The revenue derived from the proposed fee amendment will enable the Department to continue to maintain its current level of inspection, registration, and licensing services. Additionally, the increased fees will enable the program to acquire new computer technology to facilitate the more timely and effective processing of licenses, registrations and certificates of handling and will permit the program to fund one additional position. The one additional position will allow the program to: (1) increase the frequency of inspections of licensees to one inspection annually, and (2) develop and/or amend radiation protection regulations and/or standards to ensure that the program meets applicable present and future guidance/regulations of the International Council on Radiation Protection, the National Council on Radiation Protection, the United States Environmental Protection Agency, the Nuclear Regulatory Commission, and the Conference of Radiation Control Program Directors.

#### Social Impact

A positive social impact will result from the adoption of the proposed fee schedules. The proposed fee increases and new fees will enable the Department to continue to: (1) license the possession and use of naturally occurring and accelerator produced radioactive materials, and (2) register radioactive by-product material, radioactive source material and special nuclear material. The proposed fees will, additionally, improve the processing of such licenses and registrations by providing funds for the acquisition and implementation of new computer technology. The program will also be able to obtain the personnel necessary to increase the frequency of essential inspections of facilities processing, using or handling regulated materials. The additional personnel will allow the program to develop and/or amend important radiation protection regulations. The amendments and new rule will, therefore, enhance the Department's ability to protect workers and the public from exposure to harmful radiation and will reduce the risks posed by the improper possession, use, or handling of radioactive materials.

#### Economic Impact

If the proposed new fees and fee increases are adopted, the Department will be able to maintain essential radiation protection services. New and increased fees are necessary because the current fees cover only a part of the expenses incurred by the Department in connection with the licensing of naturally occurring and accelerator produced radioactive materials and the registration of radioactive by-product material, radioactive source material, or special nuclear material. If the new fees and fee increases are not adopted, the program will lose four of the five positions currently assigned to its Bureau of Environmental Radiation for these functions, in addition to operating funds, because of a project deficit of \$357,490. This deficit exists because of shortfalls resulting from budget reductions in the State appropriation account, cost of living increases, inflation and increased administrative costs. The deficit makes it impossible for the program to meet even its most important commitments. As a result, there could be an increase in the number of persons who are unnecessarily exposed to harmful radiation from regulated materials which are illegally or improperly possessed, used or handled. The increased health care costs resulting from such exposure would have a

**PROPOSALS**

Interested Persons see Inside Front Cover

**ENVIRONMENTAL PROTECTION**

negative economic impact on the citizens of the State of New Jersey. Conversely, the fully functional environmental radiation protection program that would be afforded by the proposed amendments would have a positive economic impact by reducing health problems associated with unnecessary exposure to radiation and the costs attendant thereto.

Overall, the income generated by the proposed fees will increase from \$65,000 to approximately \$431,000 being available for the program when they are fully implemented. The new fees and fee increases will enable the Department to maintain present services and allow important additional services to be performed. These fees take into account rising administrative costs over the next few years, including cost of living adjustment and inflation. The Department has evaluated these expenses and has determined that persons who possess, use or handle radioactive materials or who otherwise derive monetary benefit from radiologic activities should bear the costs of ensuring that their activities are safe to workers and the general public.

The fee revenue affected by the proposed amendments and new rule will be collected as follows:

1. The new license fee for naturally occurring or accelerator produced radioactive material embodied in the proposed amendment of N.J.A.C. 7:28-4.19 will be collected from approximately 240 licensees and will result in approximately \$331,000 becoming available to the program. Although most of the proposed fees for radioactive materials licensees will increase, the Department has designed the fee schedule to minimize the economic impact of the fees on small users of radioactive materials. Specifically, the proposed fees for a licensee possessing naturally occurring or accelerator produced radioactive material are commensurate with the maximum possession limit for such materials and the fees for a human use group licensee are based upon the number of doses administered annually by the licensee.

2. The new fees for the registration and registration amendment of radioactive by-product material, radioactive source material, or special nuclear material specified in proposed N.J.A.C. 7:28-3.13 will be collected from approximately 780 registrants of such material and will result in approximately \$100,000 becoming available to the program. The Department believes that the economic impact of these fees will be minimal.

Of the approximately \$431,000 in proposed fees, approximately \$323,250 will be used to fund the five current positions and related operating costs. Of this sum, \$31,710 will be used to offset salary and fringe benefit adjustments mandated by collective bargaining agreements and expected increases in operating costs. If the proposed amendments and new rule are not adopted, the Department will be forced to eliminate four of the five existing positions in the Radioactive Materials Section within the Bureau of Environmental Radiation, as funding for these positions is unavailable due to State budget cuts. The balance of the fee revenue, \$107,750, will be used to fund one additional position and related operating costs. Of this sum, \$10,570 will be used to offset salary and fringe benefit adjustments mandated by collective bargaining agreements and expected increases in operating costs. The additional position will enhance the performance of the Department's current services by providing the personnel necessary to perform essential rulemaking activities and inspection of regulated facilities. The positions and associated costs are as follows:

Radioactive Materials Section Licensing Staff

Radiation Physicist I	
Radiation Physicist II (2)	
Research Scientist II	
Principal Radiologic Technologist	
Head Clerk	
Estimated Salaries .....	\$194,000.00
Fringe Benefits .....	\$ 53,640.00
Indirect Costs .....	\$ 80,980.00

Operating Costs

Printing and office supplies .....	\$ 2,000.00
Vehicular (gas and oil) .....	\$ 1,500.00
Maintenance of Vehicles .....	\$ 500.00
Vehicle Rent .....	\$ 10,000.00
Scientific/Engineering Supplies .....	\$ 2,000.00
Scientific Equipment .....	\$ 2,500.00
Equipment Maintenance .....	\$ 1,000.00
Travel .....	\$ 3,200.00
Training, Other Services .....	\$ 3,000.00
Telephone .....	\$ 2,500.00
Postage .....	\$ 3,000.00
Data Processing Supplies .....	\$ 2,000.00
Data Processing Equipment .....	\$ 15,000.00
Office Rent .....	\$ 11,900.00
Total Operating Costs .....	\$ 60,100.00

Estimated Totals

Salaries .....	\$194,000.00
Fringe Benefits and Indirect Costs .....	\$134,620.00
Operating Costs .....	\$ 60,100.00
Total Annual Cost (Current) .....	\$387,720.00

Salary and fringe benefit adjustments mandated by collective bargaining agreements and expected increases in operating costs .....	\$ 42,280.00
Total Budget .....	\$431,000.00

Program Costs Breakdown, Five Existing Positions

Radiation Physicist I	
Radiation Physicist II (2)	
Principal Radiologic Technologist	
Head Clerk	
Estimated Salaries .....	\$145,500.00
Fringe Benefits .....	\$ 40,230.00
Indirect Costs .....	\$ 60,735.00
Operating Costs .....	\$ 45,075.00

Salary and fringe benefit adjustments mandated by collective bargaining agreements and expected increases in operating costs .....	\$ 31,710.00
Total .....	\$323,250.00

Program Costs Breakdown, One Additional Position

Estimated Salaries .....	\$ 48,500.00
Fringe Benefits .....	\$ 13,410.00
Indirect Costs .....	\$ 20,245.00
Operating Costs .....	\$ 15,025.00

Salary and fringe benefit adjustments mandated by collective bargaining agreements and expected increases in operating costs .....	\$ 10,570.00
Total .....	\$107,750.00

Program Costs Attributed to Five Existing Positions	\$323,250.00
Program Costs Attributed to One Additional Position	\$107,750.00
Total Budget	\$431,000.00

These resources will be used to maintain and enhance current services performed by the Department.

**Environmental Impact**

The proposed new and increased fees will have a positive environmental impact by reducing the exposure risks to workers and the public associated with the illegal or improper possession, use or handling of radioactive materials. The fees set forth in the amendments and new rules will serve to reduce such risks by allowing the Department to continue and enhance the essential licensing and registration services related to possession, use, handling of radioactive materials. These services ensure compliance with rules designed to prohibit and prevent unnecessary worker and public exposure to harmful radiation.

**Regulatory Flexibility Analysis**

At the present time, 240 users of naturally occurring and accelerator produced radioactive materials are licensed by the Department, and 780 facilities using or possessing radioactive by-product material, radioactive

source material, or special nuclear material are registered with the Department. Approximately 30 percent of these entities employ less than 100 employees and, therefore, are defined as a "small business" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with proposed amendments and new rule, these small businesses will have to pay new and/or increased fees. The Department has evaluated the impact of the rules and has determined that to minimize the impact of the rules would endanger the environment, public health and public safety. Therefore, no exception from coverage is provided.

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

7:28-3.5 Registration of radioactive by-product material, source material and special nuclear material

(a) Any person having within his possession, custody or control any radioactive by-product material, source material or special nuclear material pursuant to a specific license issued by the United States Nuclear Regulatory Commission shall apply for and obtain a registration for possession, custody or control of the specified type(s) and amount(s) of such material as authorized by the license issued by the Nuclear Regulatory Commission. Application forms for the registration of radioactive material are available from the Department. When submitting an application, the applicant shall attach to the application a copy of the license issued by the Nuclear Regulatory Commission.

(b) (No change.)

(c) [Fees will not be charged for registration of radioactive by-product material, source material and special nuclear material.] Fees in the amounts indicated in N.J.A.C. 7:28-3.13 shall be paid for each initial registration application, each registration amendment and each annual registration renewal.

(d) (No change.)

7:28-3.13 Fees for registration of radioactive by-product material, source material and special nuclear material

(a) Fees for initial registration, annual registration renewal and each registration amendment for possession of radioactive by-product material, source material and special nuclear material as provided below shall be paid in full by the applicant/registrant.

- 1. Initial Registration Fee: \$150.00;
- 2. Annual Registration Renewal: \$100.00;
- 3. Each Amendment to Registration: \$100.00.

(b) Payment for each initial registration shall be made only by check or money order payable to "Treasurer, State of New Jersey" and shall be submitted with each initial registration application to the Department.

(c) Annual registration renewal fees payable to "Treasurer, State of New Jersey" shall be submitted to the Department annually no later than August 1 of each year.

(d) In the event that registration renewal fees are paid later than 30 days after August 1, a delinquency fee equal to one-half of the annual license fee will be imposed. Failure to pay a registration renewal fee, including any accrued delinquency fees for longer than 90 days after August 1 shall constitute grounds for suspension or revocation of the registration pursuant to N.J.A.C. 7:28-3.10.

(e) Registration amendment fees shall be submitted with the amended registration.

(f) The initial registration fee, the annual renewal fee and registration amendment fee shall be mailed to:

State of New Jersey  
 Department of Environmental Protection  
 Bureau of Revenue  
 428 East State Street  
 Trenton, New Jersey 08625-0402

(g) The registration year shall be July 1 of each year to June 30 of the following year.

7:28-4.19 Specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive material

(a) The specific State license fee schedule for the production, trans-

fer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive materials is as follows:

Category	Annual License Fee
1. Radioactive materials license for [one] Human Use Group I:	
i. Possession of material only;	\$300.00
ii. Administration of less than 10 doses per year;	\$200.00
iii. Administration of 10 through 49 doses per year;	\$300.00
iv. Administration of 50 or more doses per year.	\$400.00
2. Radioactive materials license for [two] Human Use Group[s] II:	
i. Possession of material only;	\$340.00
ii. Administration of less than 200 doses per year;	\$200.00
iii. Administration of between 200 and 1,499 doses per year;	\$400.00
iv. Administration of 1,500 or more doses per year.	\$800.00
3. Radioactive materials license for [three or more] Human Use Group[s] III:	
i. Possession of material only;	\$400.00
ii. Administration of less than 200 doses per year;	\$200.00
iii. Administration of 200 through 999 doses per year;	\$400.00
iv. Administration of 1,000 or more doses per year.	\$500.00
4. [Commercial manufacture, processing and/or distribution of radioactive material or items containing radioactive material] Radioactive materials license for Human Use Group IV:	\$420.00
i. Possession of material only;	\$200.00
ii. Administration of less than 10 doses per year;	\$300.00
iii. Administration of 10 through 49 doses per year;	\$400.00
iv. Administration of 50 or more doses per year.	\$500.00
5. [Radioactive materials license for non-human use of sealed source with possession limit of 300 mCi or less] Radioactive materials license for Human Use Group V:	\$420.00
i. Possession of material only;	\$200.00
ii. Administration of less than 10 doses per year;	\$300.00
iii. Administration of 10 through 49 doses per year;	\$400.00
iv. Administration of 50 or more doses per year.	\$500.00
6. [Radioactive materials license for non-human use possession of limit of 500 mCi or less] Radioactive materials license for Human Use Group VI:	\$170.00
i. Possession of material only;	\$500.00
ii. Administration of less than 10 doses per year;	\$600.00
iii. Administration of 10 through 49 doses per year;	\$700.00
iv. Administration of 50 or more doses per year.	\$800.00
7. [Radioactive materials license for non-human use possession limit of greater than 500 mCi] Radioactive material license for commercial manufacture, processing and/or distribution of radioactive materials for Human Use.	\$420.00
i. Possession of material only;	\$3,000.00
ii. Administration of less than 10 doses per year;	
iii. Administration of 10 through 49 doses per year;	
iv. Administration of 50 or more doses per year.	
8. [Radioactive materials license for Non-Medical Industrial Radiography] Radioactive materials license for commercial manufacture, processing and/or distribution of radioactive materials.	\$320.00
i. Possession of material only;	\$3,000.00
ii. Administration of less than 10 doses per year;	
iii. Administration of 10 through 49 doses per year;	
iv. Administration of 50 or more doses per year.	

- 9. Radioactive materials license for radioactive materials as sealed sources used for calibration and quality control purposes with a possession limit of 10 mCi or less. \$600.00
- 10. Radioactive materials license for radioactive materials, as sealed sources used for calibration and quality control purposes with a possession limit greater than 10 mCi. \$1,000.00
- 11. Radioactive materials license for radioactive materials as sealed sources contained in devices used for analytical purposes with a possession limit of one mCi or less. \$500.00
- 12. Radioactive materials license for radioactive materials, except radium-226, as sealed sources, contained in devices used for analytical purposes with a possession limit greater than one mCi but less than or equal to 300 mCi. \$750.00
- 13. Radioactive materials license for radioactive materials, except radium-226, as sealed sources, contained in devices used for analytical purposes with a possession limit of greater than 300 mCi. \$1,000.00
- 14. Radioactive materials license for radioactive radium-226, as sealed sources, contained in devices used for analytical purposes with possession limit greater than one mCi but less than or equal to 50 mCi. \$1,000.00
- 15. Radioactive materials license for radioactive radium-226, as sealed sources, contained in devices used for analytical purposes with a possession limit greater than 50 mCi. \$1,500.00
- 16. Radioactive materials license for radioactive materials as sealed sources for Non-Medical Industrial Radiography. \$2,000.00
- 17. Radioactive materials license for radioactive materials not as sealed sources with a possession limit of 500 mCi or less. \$1,500.00
- 18. Radioactive materials license for radioactive materials not as sealed sources with a possession limit of greater than 500 mCi. \$2,000.00

[(b) All licensees shall pay the fees set forth in (a) above by check payable to "Treasurer, State of New Jersey" no later than 60 days after the payment invoice date. In the event that the fees are paid later than 60 days after the payment invoice date, a delinquency fee equal to one-half of the annual license fee will be imposed for each year that a license fee is delinquent and will appear on the next annual invoice. Failure to pay an annual license fee including any accrued delinquency fees for longer than 18 months shall constitute grounds for suspension or revocation of the license pursuant to N.J.A.C. 7:28-4.16.]

(b) All licensees shall pay the fees set forth in (a) above by check payable to "Treasurer, State of New Jersey" prior to August 1 of each year.

1. In the event that the fees are paid after August 1, a delinquency fee equal to one-half of the annual license fee will be imposed. Failure to pay an annual license fee including any accrued delinquency fees for longer than 90 days after August 1 shall constitute grounds for suspension or revocation of the license pursuant to N.J.A.C. 7:28-4.16.

2. The annual license fee shall be mailed to:

State of New Jersey  
 Department of Environmental Protection  
 Bureau of Revenue  
 428 East State Street  
 Trenton, New Jersey 08625-0402

(c) Facilities for which multiple license categories apply shall be charged the sum of the fees for each of the applicable categories.

(d) The term "doses per year" when used in (a) above means the number of doses of radioactive materials within a category that are administered during the period July 1 to June 30.

(e) The term "human use group" when used in (a) above includes the use of radioactive material for calibration and quality control procedures as well as the administration of radioactive materials to humans.

**(a)**

**COMMISSION ON RADIATION PROTECTION  
 Dental Radiographic Installations  
 Definition of Qualified Individual  
 Proposed Amendment: N.J.A.C. 7:28-16.2**

Authorized By: Commission on Radiation Protection,  
 Max M. Weiss, Chairman.  
 Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A.  
 26:2D-7.  
 DEP Docket Number: 035-90-10.  
 Proposal Number: PRN 1990-554.

Submit comments by December 15, 1990 to:  
 Administrative Practice Officer  
 Office of Policy and Planning  
 Department of Environmental Protection  
 CN 402  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., (hereinafter the "Act") was enacted. This Act provides authority to set standards for the possession, handling, transportation and use of sources of ionizing radiation within the State of New Jersey. The Act created the New Jersey Commission on Radiation Protection (CORP) and vested in that body the authority to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary exposure to radiation.

Pursuant to the Act, CORP proposes to amend N.J.A.C. 7:28-16.2, adopted elsewhere in this issue of the New Jersey Register, to add the definition of "qualified individual". This definition lists the specific education and experience requirements that an individual must meet in order to be considered qualified to perform dependable radiation surveys.

**Social Impact**

The use of ionizing radiation-producing machines in the practice of dentistry is an established procedure. The goal of this radiation protection program is to eliminate unnecessary exposure to radiation and to keep necessary radiation dose levels as low as reasonably achievable.

In order to keep exposure to radiation as low as possible, the individual performing shielding design evaluations and radiation surveys must be knowledgeable in radiation protection principles and procedures. The proposed definition establishes specific minimum standards for this individual, the result of which will protect the citizens of the State from unnecessary exposure to radiation from the use of dental radiographic equipment.

**Economic Impact**

Dentists subject to regulation by N.J.A.C. 7:28-16 currently must hire a qualified individual to perform radiation surveys on their dental radiographic equipment upon initial installation and upon relocation of the equipment. The proposed rule clarifies specific standards for the individual who is qualified to perform reliable radiation surveys. These standards will not require regulated dentists to expend more funds on radiation surveys than is currently the case. Therefore, there is no additional economic impact to the regulated dental community from this rule.

**Environmental Impact**

The proposed rule amendment will protect the operators, the public and the environment from unnecessary exposure to radiation by ensuring that the individual who determines and evaluates radiation shielding for dental x-ray equipment meets minimum standards. Therefore, a positive impact on the environment will result.

**Regulatory Flexibility Analysis**

There are approximately 10,900 dental units registered with the Department located in 4,350 private offices which are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq.,

and will be impacted by the rules. An additional 100 dental units are registered to hospitals, educational institutions and industrial facilities.

In order to comply with the proposed new definition, the small businesses will have to secure the services of an individual who meets the criteria for a qualified individual who will perform all radiation surveys as required by N.J.A.C. 7:28-16. The cost of these services will be significant for small businesses. Because it is anticipated that small businesses will not need to expend more funds than are currently spent to have a qualified individual perform these surveys, however, there will be no additional impact on small businesses.

In developing this proposed new definition, CORP has balanced the need to protect the public from unnecessary exposure to radiation against the economic impact of the proposal. The CORP has determined that minimizing this impact by exempting small businesses would increase the risk of public exposure to unnecessary radiation. Therefore, no exemption from the criteria of the proposed new definition is provided.

**Full text** of the proposal follows (additions indicated in boldface thus):

#### 7:28-16.2 Definitions

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

...  
**"Qualified individual"** means an individual who meets at least one of the following criteria for diagnostic x-ray equipment:

1. Certification by one of the following agencies in the specialty listed:

i. The American Board of Radiology in Diagnostic Radiological Physics or Radiological Physics;

ii. The American Board of Health Physics in Comprehensive Health Physics;

iii. The American Board of Medical Physics in Diagnostic Imaging Physics or Medical Health Physics;

iv. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1.i or iii above; or

v. Certification by other national certifying boards which may be recognized by the Commission on Radiation Protection where the person seeking recognition as a qualified individual has petitioned the CORP in writing and where the CORP has issued a written determination that the certification in question meets the criteria of a qualified individual pursuant to this subchapter;

2. A bachelor's degree from an accredited college in biology, chemistry, radiation sciences, physics, engineering, or mathematics and at least five years of professional technical experience in the field of radiological physics or in the use of medical or dental ionizing radiation-producing equipment;

3. A master's or doctorate degree in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least two years of professional technical experience in the field of radiological physics or in the use of medical or dental ionizing radiation-producing equipment; or

4. Ten years of professional technical experience in the field of radiological physics or in a radiation protection activity. At least five years of the required health physics experience shall have been with medical or dental ionizing radiation-producing equipment.

## CORRECTIONS

(a)

### THE COMMISSIONER

#### Reports

#### Reports of Unusual Incidents or Events

#### Proposed New Rules: N.J.A.C. 10A:21-5

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

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

Proposal Number: PRN 1990-556.

Submit comments by December 5, 1990 to:

Elaine W. Ballai, Esq.

Supervisor, Standards Development Unit

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed new rules establish the policies and procedures to be followed by correctional facility staff for providing telephone and written reports to persons within the Department of Corrections and, when necessary, to outside law enforcement agencies following the occurrence of unusual incidents or events within correctional facilities or community based facilities of the New Jersey Department of Corrections. It is important that information concerning such incidents or events reach the appropriate levels of authority in a timely fashion to facilitate decisionmaking and the appropriate dissemination of information.

The rules include procedures for preliminary inquiries and the contacting of the Internal Affairs Unit, telephone reporting within the Department, examples of reportable events or incidents, telephone reporting to judges in the event of an escape, telephone reporting to outside law enforcement agencies, observers from law enforcement agencies, facility cooperation with investigations, written reports and dissemination of reporting procedures.

#### Social Impact

The proposed new rules will provide an established process and the procedures necessary to expedite the dissemination of information to persons within the Department of Corrections and, when necessary, to outside law enforcement agencies when unusual incidents or events occur within a correctional facility or community based facility of the New Jersey Department of Corrections. The rules are designed to aid in both prompt and appropriate decisionmaking at the level of authority at which unusual events and incidents must be handled.

#### Economic Impact

The proposed new rules will have no economic impact because no additional financial resources are necessary to implement or maintain these rules.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, record keeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates, the New Jersey Department of Corrections and outside law enforcement agencies and have no significant affect on small businesses.

Full text of the proposal follows:

### CHAPTER 21 REPORTS

#### SUBCHAPTERS 1-4. (RESERVED)

#### SUBCHAPTER 5. REPORTS OF UNUSUAL INCIDENTS OR EVENTS

##### 10A:21-5.1 Preliminary inquiry

(a) When a Superintendent or his or her designee becomes aware of the occurrence of an unusual incident or event, he or she shall notify the Internal Affairs Unit which shall make an immediate preliminary inquiry to determine the facts in the case.

(b) If there is a delay in the arrival of a staff member from the Internal Affairs Unit, the Superintendent shall assign a custody supervisor with a rank not lower than sergeant to secure and/or cordon off the location of the incident or event, when appropriate.

(c) No one, including non-custody staff and custody staff, shall be permitted access to the secured area and nothing shall be touched, moved or destroyed until the staff from the Internal Affairs Unit has completed the examination of the secured area.

10A:21-5.2 Telephone reports within the Department of Corrections; reportable unusual incidents or events

(a) If after the preliminary inquiry, it is the determination of the Superintendent or his or her designee that the incident or event is of such significance that the incident or event has the potential for disrupting the orderly operation of the correctional facility, or if the orderly operation of the correctional facility has been disrupted because of the incident or event, the Superintendent or his or her designee shall promptly contact the Assistant Commissioner of the appropriate Division or his or her designee and the Public Information Officer, New Jersey Department of Corrections, by telephone and give them a summary of:

1. What happened;
2. Persons involved;
3. The action taken; and
4. The current assessment of the situation.

(b) The unusual incidents and events which shall be reported by telephone to the Assistant Commissioner or his or her designee and the Public Information Officer shall include, but are not limited to:

1. A homicide;
2. A suspicious death;
3. A suicide or serious suicide attempt;
4. A disturbance involving a considerable number of inmates or employees which threatens the maintenance of security or the orderly operation of the correctional facility, for example:
  - i. A riot;
  - ii. A work stoppage; or
  - iii. A melee.
5. A medical emergency;
6. A medical problem requiring expeditious handling because of its special nature;
7. An escape or walkaway in which:
  - i. Force was used;
  - ii. A weapon was used;
  - iii. An injury to an inmate(s) or a staff member resulted;
  - iv. A crime was committed;
  - v. The inmate(s) escaped from a secure or self contained unit;
  - vi. The inmate(s) involved is widely and/or unfavorably known by virtue of his or her offense history; and/or
  - vii. The inmate(s) involved is considered capable of committing violent acts;
8. The taking of a hostage(s);
9. A serious injury to an inmate(s) or staff member(s);
10. Suspected introduction of drugs, narcotics or intoxicants into the correctional facility by staff;
11. Suspected drug, narcotic or intoxicant abuse by staff on correctional facility grounds;
12. A serious mechanical or engineering difficulty which could result in the loss of steam, electric power, sanitary facilities;
13. A natural disaster such as a flood, tornado, earthquake or cyclone and the extent of damage that resulted;
14. A fire which resulted in considerable damage or in which there is the potential for extensive property damage and/or loss of lives; and
15. A situation involving an inmate(s) in which the life of an inmate or a group of inmates is in danger and an immediate transfer is needed to provide safety for the inmate(s) involved.

10A:21-5.3 Telephone reports to judges in the event of an escape

(a) All escapes from medium and maximum security correctional facilities shall be reported by telephone to the sentencing judge as soon as possible after the escape.

(b) If an escape from a medium or maximum security correctional facility occurs during the evening, weekend or on a holiday, the

Superintendent or his or her designee shall notify the appropriate Assistant Commissioner. The Assistant Commissioner shall be responsible for notifying the sentencing judge at his or her home. In cases when contact cannot be made with the appropriate Assistant Commissioner, attempts shall then be made to contact the Deputy Director or the Deputy Commissioner if the Deputy Director is also unavailable.

(c) The sentencing judge, who has been notified of an escape from a medium or maximum security correctional facility, shall also be notified of the capture and/or return of the escapee(s).

10A:21-5.4 Correctional facility liaison to outside law enforcement agencies

(a) At the direction of the Superintendent, the Internal Affairs Unit assigned to a correctional facility shall serve as the liaison to all outside law enforcement agencies.

(b) The liaison shall have the general responsibility of effecting a cooperative relationship with outside law enforcement agencies during investigations conducted and/or associated with a correctional facility. These outside law enforcement agencies shall include, but are not limited to:

1. County prosecutors;
2. State and local police agencies;
3. The New Jersey Division of Criminal Justice;
4. The Federal Bureau of Investigations; and
5. The United States Department of Treasury.

10A:21-5.5 Telephone reports to outside law enforcement agencies; reportable unusual incidents and events

(a) At the direction of the Superintendent, an investigator from the Internal Affairs Unit shall promptly report, by telephone, the following unusual incidents or events to the county prosecutor of the county in which the correctional facility is located, the local State Police Commander, and/or the local police agency having primary jurisdiction:

1. A homicide;
2. A serious injury to an inmate(s) or staff member(s);
3. A suspicious death;
4. A suicide;
5. The taking of a hostage(s);
6. A disturbance involving a considerable number of inmates or employees wherein the security or the orderly operation of the correctional facility is threatened, for example:
  - i. A riot; or
  - ii. A work stoppage;
7. An escape or walkaway in which:
  - i. Force was used;
  - ii. A weapon was used;
  - iii. An injury to an inmate(s) or staff member(s) resulted;
  - iv. A crime was committed;
  - v. The inmate(s) involved escaped from a secure or self-contained unit;
  - vi. The inmate(s) involved is widely and/or unfavorably known by the virtue of his or her offense history; and/or
  - vii. The inmate(s) involved is considered capable of committing violent acts;
8. An indictable drug offense involving a staff member(s) or visitor(s);
9. A serious mechanical or engineering difficulty, the occurrence of which threatens the security of the correctional facility;
10. A natural disaster such as a flood, tornado, earthquake or cyclone, whereby the security of the correctional facility is threatened; and
11. A fire which resulted in considerable damage or in which there is the potential for extensive property damage and/or loss of lives.

(b) For all incidents and events cited in (a) 1 through 6 above, the Superintendent or his or her designee shall contact one of the following persons in the Division of Criminal Justice:

1. The Director, whose office telephone number is (609) 984-0027; or
2. The Deputy Director, whose office telephone number is (609) 984-0029 in the Director's absence; or

3. The Chief, Special Prosecutions Section, whose office telephone number is (609) 984-7596 in the absence of the Deputy Director.

(c) In the event that the unusual incident or event occurs after working hours, on weekends or on holidays and one of the above named persons must be contacted, a telephone call shall be made to the Division of Criminal Justice's 24 hour Control Number, (609) 984-6122, to be provided with a telephone number at which these persons can be reached.

#### 10A:21-5.6 Observers from law enforcement agencies

If based upon information received in the telephone account of the unusual incident or event, the county prosecutor, State Police Commander and/or the Division Criminal Justice liaison decide to send an observer to the correctional facility, the Superintendent shall have the observer met by an investigator from the Internal Affairs Unit for a briefing of the situation.

#### 10A:21-5.7 Correctional facility cooperation with investigation

(a) Determinations regarding assistance in investigations by outside law enforcement agencies shall be made by the Commissioner, New Jersey Department of Corrections, or his or her designee.

(b) If it is determined that an investigation is warranted, the Superintendent of the correctional facility or his or her designee shall be responsible for ensuring that all involved parties to an incident or event including corrections officers, non-custody staff members and inmates are available for interviews, if so requested, by representatives of the Internal Affairs Unit, the New Jersey State Police, the Division of Criminal Justice or the county prosecutor's office until such time as the investigation is completed.

(c) All information relative to the incident or event shall be shared with outside law enforcement agencies in order to facilitate an accurate, timely and complete investigation.

#### 10A:21-5.8 Written reports

(a) Within 10 working days following the occurrence of an unusual incident or event, the Superintendent or his or her designee shall always prepare and submit Form 844-I INCIDENT REPORT to the Deputy Commissioner, New Jersey Department of Corrections, with copies to:

1. The Commissioner;
2. The appropriate Assistant Commissioner; and
3. The Chief Investigator of the Internal Affairs Unit.

(b) A follow-up report may be submitted following the completion of the investigation.

(c) In addition to preparing and submitting Form 844-I INCIDENT REPORT upon the occurrence of incidents and events listed in N.J.A.C. 10A:21-5.2, Form 844-I shall also be prepared and submitted to the Deputy Commissioner when the following types of incidents or events occur:

1. Homosexual incidents between inmates in which force was used;
2. Undue familiarity between staff and inmates if there is evidence of a sexual relationship;
3. The introduction of contraband into the correctional facility, such as:
  - i. Firearms;
  - ii. Narcotics;
  - iii. Dangerous drugs; and
  - iv. Money in excess of 20 dollars;
4. Disturbances or breaches of good order involving four or more inmates or any incident symptomatic of possible general disturbance or unrest;
5. Instances where an employee or an inmate has been injured during an act of physically restraining an inmate;
6. Serious injuries to inmates or employees requiring medical or surgical treatment;
7. Allegations of theft made against staff members;
8. Suspicions of theft by staff members;
9. Investigations of allegations or suspicions of theft by staff members;
10. Arrests of employees; and
11. Incidents involving assaults on officers.

#### 10A:21-5.9 Dissemination of reporting procedures

(a) Each correctional facility shall be responsible for developing written procedures and post orders that are consistent with this subchapter.

(b) Copies of the written procedures and/or post orders regarding the reporting of unusual incidents or events shall be disseminated to all supervisory custody personnel.

(c) Copies of the procedures and post orders shall be maintained at the Center Control.

#### 10A:21-5.10 Forms

Form 844-I INCIDENT REPORT may be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections.

## LABOR

### (a)

#### DIVISION OF WORKPLACE STANDARDS

##### Signs

##### **Proposed Amendment: N.J.A.C. 12:196-1.10**

Authorized By: Raymond L. Bramucci, Commissioner,  
Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:3A-4 et seq.,  
specifically 34:3A-11.

Proposal Number: PRN 1990-557.

Submit comments by December 5, 1990 to:

Linda Flores  
Special Assistant for External and Regulatory Affairs  
Office of the Commissioner  
Department of Labor  
CN 110  
Trenton, New Jersey 08625-0110

The agency proposal follows:

##### Summary

The Department of Labor recently adopted rules concerning the safe dispensing of retail gasoline, N.J.A.C. 12:196 (see 22 N.J.R. 2329(a)). The Department is proposing to amend one section of the new rules in an effort to delete language which is erroneous.

Specifically, N.J.A.C. 12:196-1.10 concerns signs which must be posted by fuel dispensing establishments, and is being amended to delete the words "or combustible." This change is necessary because combustible fuel cannot be dispensed into the same type of containers as flammable liquids, pursuant to the Uniform Fire Code. The amendment will clarify any confusion as to inconsistent container usage.

##### Social Impact

The proposed amendment will ensure the safety and health of the public by not permitting flammable and combustible liquids to be dispensed into the same type of containers. The proposed amendment will also bring the existing rule into compliance with the Uniform Fire Code requirements.

##### Economic Impact

The proposed amendment will have no economic impact upon the public, businesses, or the Department, as the change in language merely clarifies the language to be used in the sign which tells attendants the type of container into which flammable liquid can be dispensed.

##### Regulatory Flexibility Analysis

The proposed amendment imposes minor compliance requirements on gasoline station businesses, some of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirement is to have exact wording in the signs posted at dispensing areas, and must be applied to all businesses regardless of size, to ensure the safety and health of the public. There is no cost associated with the compliance requirement, and the proposed amendment imposes no reporting or recordkeeping requirement on small businesses.

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

12:196-1.10 Signs

(a)1. (No change.)

2. WARNING—It is unlawful and dangerous to dispense gasoline or other flammable [or combustible] liquid into any portable container unless the container is constructed of metal or is approved and is red in color;

3.-4. (No change.)

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF MOTOR VEHICLES

##### Enforcement Service

##### Proposed Readoption: N.J.A.C. 13:20

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-10, 39:3-11, 39:3-27.14, 39:3-27.39, 39:3-33.3, 39:3-33.7, 39:3-33.9, 39:3-43, 39:3-75, 39:3-77, 39:3-81, 39:3-84a(10), 39:4-208, 39:5-30, 39:8-1, 39:8-2, 39:8-4, 39:8-4.1, 39:8-23 and 39:10-4.

Proposal Number: PRN 1990-561.

Submit comments by December 5, 1990 to:

Col. Clinton L. Pagano, Director  
Division of Motor Vehicles, 7th Floor  
25 South Montgomery Street  
Trenton, New Jersey 08666

The agency proposal follows:

##### Summary

The Division of Motor Vehicles (Division) proposes to readopt the provisions of N.J.A.C. 13:20-1 to N.J.A.C. 13:20-40, inclusive, concerning enforcement service in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on December 18, 1990.

The rules contained in N.J.A.C. 13:20 implement various provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:1-1 et seq.) pertaining to motor vehicle equipment, motor vehicle inspection, driver reexamination, driver improvement schools, special registration plates and reflectorized registration plates. The Division has reviewed N.J.A.C. 13:20-1 to N.J.A.C. 13:20-40 in accordance with Executive Order No. 66 (1978) and has determined that said rules are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated." Many of these rules implement the public policy of this State as set forth in the Motor Vehicle and Traffic Law; namely, to foster highway safety by providing standards for motor vehicle equipment and motor vehicle inspection.

A summary of each subchapter and important sections in N.J.A.C. 13:20 follows:

Subchapter 1, Enforcement Officer, was repealed effective October 2, 1989, and is reserved for Division use.

Subchapter 2, Vehicle Construction, establishes guidelines requiring a vehicle or combination of vehicles, which is constructed, loaded or capable of being loaded so as to prevent hand and arm signals from being visible, to be equipped with direction signals of a type approved by the Director.

Subchapter 3, Identification Lights, was repealed effective October 16, 1989.

Subchapter 4, Power Steering Installation, requires power steering equipment installed in motor vehicles which are offered for sale, sold or registered in New Jersey to be approved by the Director. In order to qualify for approval, a power steering mechanism must be designed to permit manual control of the vehicle upon failure of the power steering unit.

Subchapter 5, Manual Door Equipment, requires that all vehicles registered in New Jersey be equipped with door handles or equivalent devices which permit the doors to be opened manually from inside and outside the vehicle.

Subchapter 6, Muffler Devices, expressly prohibits the use of straight exhaust pipes or mufflers without interior baffle plates on motor vehicles.

Subchapter 7, Vehicle Inspection, sets forth time frames in which an owner of a vehicle which has been rejected at inspection must make necessary repairs. N.J.A.C. 13:20-7.4 establishes the expiration date of the inspection sticker as the last day of the month in which the vehicle registration expires. N.J.A.C. 13:20-7.5 provides a 14-day period from the date a new or used motor vehicle is initially registered in New Jersey in which an owner must present said vehicle for inspection. N.J.A.C. 13:20-7.13 provides for the issuance of extension letters to registered owners who are unable to complete the vehicle inspection prior to the expiration date on the current inspection sticker.

Subchapter 8, Motor Vehicles Transporting Flammable Liquids, sets forth minimum standards for the design, construction and operation of tank motor vehicles and their appurtenances that are used to transport chemically stable flammable liquids or asphalt. A tank vehicle may not be operated unless the owner thereof secures a safety permit from the Director.

Subchapter 9, Special Vehicle Identification Card, establishes administrative procedures for the issuance of special identification cards for the handicapped so that they may exercise special parking privileges provided by State law.

Subchapter 10, Automatic Vehicle Identification System, sets forth the application process which must be followed by a person (such as a toll authority or agency organized under the laws of this State or any other state) seeking approval to utilize an automatic vehicle identification system on a vehicle, motor vehicle or motor-drawn vehicle registered in this State. The rules also require the owner or operator of a motor vehicle registered in this State who participates in a testing program of an automatic vehicle identification system operated by a toll authority or agency organized under the laws of this State or any other state to have a transponder attached to inside the motor vehicle on the left-most side of the windshield as viewed from inside the motor vehicle or at such other location on the motor vehicle as the Director deems appropriate. The rules also provide that the transponder shall not cover the inspection decal and shall be located in a position on the windshield that will not unduly restrict the vision of the driver. The rules also specify that the placement of an automatic vehicle identification system on vehicles or motor-drawn vehicles registered in this State shall be determined by the Director based upon the size and configuration of the vehicle or motor-drawn vehicle. The rules also define various terms which are used in the rules, and also specify that no more than one transponder shall be attached to the windshield of a motor vehicle.

Subchapter 11, School Bus Warning Lights, sets forth design and construction standards for school bus warning lamps. The rules also establish the Director's approval procedure for school bus warning lamps for use in New Jersey.

Subchapter 12, Accident Prevention Clinic, implements those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:3-10 and 39:5-30) pertaining to driver licensing and the suspension of license privileges of those who are not proper persons to hold such privileges.

N.J.A.C. 13:20-12.1 sets forth definitions of terms used in the subchapter. N.J.A.C. 13:20-12.2 sets forth the criterion for driver reexamination. Driver reexamination may be required of persons in the following categories: (1) persons having mental or physical disorders which may affect their ability to safely operate a motor vehicle, (2) persons involved in a fatal accident resulting from their violation of the Motor Vehicle and Traffic Law, (3) persons who have accumulated 12 or more points under the Point System Regulation and (4) persons convicted of violating any provision of the Motor Vehicle and Traffic Law where the offense was of a careless, reckless or indifferent nature. N.J.A.C. 13:20-12.3 provides that a vision examination may be required of drivers involved in a traffic accident if the driver's vision has not been checked by the Division of Motor Vehicles within the 10-year period preceding the date of the accident.

Subchapter 13 is reserved for Division use.

Subchapter 14, Parking On State Property, establishes guidelines for parking in parking areas under the jurisdiction of the Division of Motor Vehicles. The rules also provide procedures for the issuance and suspension of parking permits for parking areas maintained by the Division.

Subchapter 15, Stud Tires, sets forth design and construction standards for stud tires to be sold and/or used in New Jersey. The rules also establish the Director's approval procedure for stud tires and limits the use of stud tires on the public highways from November 15 to April 1 of any winter season.

Subchapter 16, Concrete Ready-Mix Transit Vehicles, exempts concrete ready-mix transit vehicles from compliance with the rear identification lamp and rear clearance lamp requirements of N.J.S.A. 39:3-61.

Subchapter 17, Driver Improvement Schools, provides for the attendance and successful completion of the Division's Driver Improvement School Course as a condition to restoration of driving privileges or as satisfaction of all or part of a period of suspension. The rules prescribe an attendance fee of \$40.00. The rules also provide for suspension of driving privileges for the term specified by the Division in its notice of proposed suspension if a driver fails to pay the \$40.00 fee for the Driver Improvement School.

Subchapter 18, Flashing Warning Signals, sets forth design and construction standards for vehicle flashing hazard warning signals and switches to be sold and/or used in New Jersey. The rules also establish the Director's approval procedure for hazard warning signals and switches.

Subchapter 19, Seat Belts, sets forth design and construction standards for seat belts and anchorages to be sold and/or used in New Jersey. The rules also provide the Director's approval procedure for seat belts and anchorages.

Subchapter 20, New Tires, sets forth design, construction and test standards for new tires offered for sale, sold and/or used on passenger cars and station wagons in New Jersey. The rules also provide the Director's approval procedure for new tires.

Subchapter 21, Retread Tires, sets forth design and construction standards for regrooved, recut and retread tires offered for sale, sold and/or used on passenger cars and station wagons in New Jersey. The rules also provide the Director's approval procedure for tires which have been retreaded.

Subchapter 22, Brake Linings, sets forth design and construction standards for brake linings offered for sale, sold and/or used on motor vehicles in New Jersey. The rules also establish the Director's approval procedure for brake linings.

Subchapter 23, Fastening Loads on Commercial Flat Bed Vehicles, sets forth requirements for securing cargo transported on flat-bed vehicles to insure that the cargo does not shift during transit. The rules also provide that cargo must be loaded with the center of gravity as low as possible. Large and heavy materials must be loaded with their largest surface area on the floor of the vehicle.

Subchapter 24, Motorcycles, sets forth design, construction and label standards for goggles, face shields, windscreens, and protective helmets offered for sale, sold and/or used by operators and passengers of motorcycles. The rules also establish testing and approval procedures for such devices.

Subchapter 25, Safety Glazing Material; Other Equipment, implements those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:3-43 and 39:3-75) pertaining to the approval of motor vehicle equipment generally and safety glazing material specifically and the procedure to be followed in submitting motor vehicle equipment and safety glazing material for approval by the Division of Motor Vehicles.

N.J.A.C. 13:20-25.1, Letters requesting approval, provides that a manufacturer of safety glazing material, motor vehicle equipment or motor vehicle device shall submit a letter requesting approval of the safety glazing material, equipment or device to the Director of the Division of Motor Vehicles. N.J.A.C. 13:20-25.2, Application requesting approval; report, directs that an application for approval have attached thereto a report from a recognized independent testing laboratory indicating that the safety glazing material, motor vehicle equipment or motor vehicle device for which approval is requested meets or exceeds the specifications and standards established by the Society of Automotive Engineers, the American Standards Association, the Director of Motor Vehicles or the American Association of Motor Vehicle Administrators. N.J.A.C. 13:20-25.3, Samples, provides that a properly identified sample of a safety glazing material, motor vehicle equipment or a motor vehicle device shall be submitted to the Director for test and record purposes. N.J.A.C. 13:20-25.4, Determination of approval, provides that the Director shall determine from review of the report of the testing laboratory and examination of the sample whether the safety glazing material, motor vehicle equipment or motor vehicle device meets the established specifications and standards. The Director shall inform the manufacturer of his determination by letter. N.J.A.C. 13:20-25.5, Safety glazing material approval procedure, establishes the approval procedure for safety glazing material. This section adopts the standards and specifications established by the American National Standard "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," Z26.1-1966, July 15, 1966, as supplemented by Z26.1a-1969, March 7,

1969. These standards and specifications comport with Federal Motor Vehicle Safety Standard No. 205 (49 CFR §571.205).

Subchapter 26, Self-Inspection of Certain Classes of Motor Vehicles, establishes a system for periodic self-inspection and maintenance for trucks, registered at a gross weight in excess of 6,000 pounds, truck-tractors, trailers, semitrailers, and vehicles registered in New Jersey which engage in interstate commerce and which are subject to regulation and license by the Interstate Commerce Commission and/or the Federal Highway Administration. Owners or lessees are required to maintain records relating to the periodic inspection and maintenance of their vehicles which are registered in New Jersey. The periodic inspection and maintenance requirements supplement the annual State inspection that is conducted at a State inspection station or at an inspection center licensed by the Director. The rules authorize police and Division examiners to inspect vehicles on the highways or at the owner's or lessor's terminal. A vehicle may be marked "out-of-service" or "out-of-service limited movement authorized" if inspection discloses equipment defects. A person who has repaired a vehicle which has been designated "out-of-service" or "out-of-service limited movement authorized" is required to submit a certification to the Director specifying the date and time that the required repairs were completed. A driver of a vehicle which has been designated "out-of-service" is required to deliver the notice of inspection to the owner or lessee of the vehicle. The owner or lessee is required to notify the Division within 15 days of the inspection of action taken to correct equipment deficiencies. An owner or lessee must require each driver to submit a daily report in writing listing any defect or deficiency of the vehicle which was found by him or reported to him if said defect or deficiency is likely to affect the safety of the vehicle. N.J.A.C. 13:20-26.11 provides that the equipment designated therein be inspected and maintained at least once every three months. The equipment required to be inspected and maintained every three months includes brake lines and linings, drive lines, coupling devices, tires, wheels, flaps, springs, emergency devices, fuel system, cooling system, lights, reflectors, horns, mirrors, transmission system, steering mechanism, axles, tie-rod assemblies, clutch, exhaust system, exhaust emissions, glazing and wipers. Devices and equipment which are subject to periodic inspection and maintenance must conform to standards prescribed by statute, regulation of the Director and regulation adopted by the Federal Highway Administration. An owner or lessee is required to annually certify to the Director that the periodic inspection and maintenance have been completed. An owner or lessee who violates the Subchapter is subject to the suspension of his New Jersey registration, license and self-inspection privileges.

Subchapter 27 is reserved for Division use.

Subchapter 28, Inspection of New Motor Vehicles, implements those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:8-2) pertaining to the character and frequency of inspections of new motor vehicles.

N.J.A.C. 13:20-28.1 sets forth the twofold purpose of the subchapter as (1) the effectuation of increased motor vehicle safety through the requirement that new motor vehicle dealers inspect new motor vehicles prior to delivery to ultimate purchasers in New Jersey and (2) that inspection performed in conformity with the subchapter satisfy the inspection requirement of N.J.S.A. 39:8-1 et seq. N.J.A.C. 13:20-28.2 applies the subchapter to all new motor vehicle dealers licensed by the Director. N.J.A.C. 13:20-28.3 sets forth the definition of terms used in the subchapter.

N.J.A.C. 13:20-28.4 provides that dealers shall inspect and service the safety devices on new motor vehicles to bring them into conformity with specifications established by the manufacturer and contained on the manufacturer's pre-delivery check list. Subsection (c) of this section requires new motorcycle dealers who inspect new motorcycles under this subchapter to be licensed as motorcycle reinspection centers pursuant to N.J.A.C. 13:20-32.

N.J.A.C. 13:20-28.5 provides that new motor vehicles shall comply with the standards prescribed by the manufacturer, the United States Department of Transportation, statute or regulation adopted by the Director. Standards prescribed by the Department of Transportation, statute or regulation supersede manufacturers' standards that are in conflict therewith.

N.J.A.C. 13:20-28.6 provides for the affixation of an inspection decal on a new motor vehicle upon the completion of the dealer's inspection. A new motor vehicle is required to be next inspected one year from the date of initial registration or one year from the date of expiration of the transferred registration.

N.J.A.C. 13:20-28.7 prohibits a dealer from delivering a new motor vehicle to an ultimate purchaser until the vehicle is determined to be in

safe operating condition in accordance with the inspection standards established in this subchapter.

N.J.A.C. 13:20-28.8 provides that the dealer's completion of a manufacturer's pre-delivery check list is deemed to be evidence of compliance with the subchapter. The pre-delivery check list is required to be retained by the dealer for at least three years from the date of inspection. N.J.A.C. 13:20-28.9 requires that the pre-delivery check list specify the place and the date of inspection, the person(s) performing the inspection and compliance with the inspection standards.

N.J.A.C. 13:20-28.10 provides that the subchapter shall not be construed to limit the Director's authority to require additional inspections of new motor vehicles nor to abridge any regulation adopted pursuant to the "Air Pollution Control Act of 1954". N.J.A.C. 13:20-28.11 provides that the Director or his designee may enter upon the premises of a dealer to determine compliance with the subchapter. N.J.A.C. 13:20-28.12 provides that a dealer who violates any provision of the subchapter shall be subject to the suspension or revocation of his dealer license.

Subchapter 29, Mobile Inspection Unit, established the Mobile Inspection Unit in the Bureau of Vehicle Inspection to conduct random roadside inspections of vehicles registered in this State.

Subchapter 30, Supplemental Inspection of School Buses, provides for the periodic inspection and maintenance of school buses registered in New Jersey. Owners, including local boards of education, are required to maintain an inspection record for all vehicles. The inspection record must include the date and nature of inspection and repairs, a lubrication record, a system for indicating the nature and due date of inspections and maintenance action to be performed, and a driver daily vehicle condition report. Inspection reports must be maintained for the life of the vehicle. School buses are subject to inspection by Division employees and State police officers. Reports of inspections conducted by Division employees and State police officers must be submitted to the Director and to the Bureau of Pupil Transportation in the Department of Education. A school bus may be designated "out-of-service" by reason of its mechanical condition. A school bus which has been marked "out-of-service" may not be operated until all necessary repairs have been completed by the owner. The person performing the necessary repair is required to provide a certification to the Director denoting the date and time that the repairs were completed. Passengers may not be transported in a school bus that has been declared "out-of-service" until all repairs have been completed. The driver of a school bus which has been declared "out-of-service" is required to deliver the appropriate notice to the owner or lessee of the vehicle. The owner or lessee is required to file a certification of repair to the Director within 15 days following the date of the inspection. An owner or lessee must require its drivers to prepare a written daily report listing any defects or deficiencies, if any, which adversely affect safe operation. Daily reports must be maintained for the life of the vehicle. The following devices and equipment must be inspected and maintained at least once every three months: brake lines and linings, drive lines, doors, aisles, seats, tires, wheels, flaps, springs, emergency equipment, fuel system, cooling system, lights, reflectors, horns, mirrors, transmission system, steering mechanism, axles, tie rod assemblies, clutch, exhaust system, window glazing, wipers, and all safety equipment required by the Department of Education. All devices and equipment must comply with the standards prescribed by statute, Division of Motor Vehicles regulations and Department of Education regulations. Owners or lessees must submit a yearly certification to the Director that the required inspections and maintenance operations have been performed. Owners and lessees who violate the provisions of this subchapter are subject to the suspension of their New Jersey registration privileges.

Subchapter 31, Alcohol Countermeasures Regulations, was recodified to N.J.A.C. 8:66-1 upon the transfer of the Bureau of Alcohol Countermeasures from the Division of Motor Vehicles to the Department of Health. See P.L. 1984, c.243 (N.J.S.A. 26:2B-9.1).

Subchapter 32, Motor Vehicle Reinspection Centers, provides for the licensing of privately-operated inspection centers. These rules establish facility and equipment requirements which an applicant for license must meet. Additionally, the rules specify applicant, insurance, and mechanic qualifications which a licensee must comply with. Records, including State inspection rejection cards, repair orders and invoices, are required to be maintained by a private inspection center. Said records are required to be maintained by a licensee for two years from the date of the licensee's issuance of a valid inspection sticker for a vehicle. A licensee is authorized to reinspect vehicles that have been rejected by State inspection. Private inspection centers must comply with the technical standards set forth in the "Manual on Procedures and Standards for Use by Licensed Reinspec-

tion Centers" in performing their reinspection function. A licensee is authorized to charge a fee of \$1.50 for affixing an approval to a motor vehicle. A licensee is also authorized to charge a fee, as specified in the "Manual" for reinspection of items which have not been repaired by the licensee. The fee cannot exceed the licensee's established hourly labor rate as applied to the average time required to reinspect a particular rejected item as determined in the "Manual". The Director may deny, suspend or revoke a license or refuse to renew a license for cause, including, but not limited to, violation of the Motor Vehicle inspection law and regulations, fraud or misrepresentation in securing the license or in the conduct of the business, conviction of crimes, or violation of the Consumer Fraud Act.

Subchapter 33, Standards and Procedures To Be Used By Licensed Reinspection Centers, implements the provisions of the Motor Vehicle Inspection Law (N.J.S.A. 39:8-11, 39:8-13 and P.L. 1983, c.236) pertaining to equipment standards which must be complied with by licensed inspection centers in repairing and certifying vehicles which have been initially rejected at State inspection stations and in conducting initial inspections. Licensed centers are divided into three classes (Class I centers inspect automobiles, trucks registered for not more than 10,000 pounds and buses except school buses and buses subject to the jurisdiction of the Department of Public Utilities; Class II centers are fleet owners of 10 or more vehicles except school buses and buses subject to the jurisdiction of the Department of Public Utilities; Class III centers inspect motorcycles only.) The rules set forth the general inspection and reinspection procedures for licensed centers on an item by item basis. The rules establish the average length of time required to reinspect specific safety equipment which is the maximum time for which the licensed center may charge for reinspecting said equipment. The rules also provide that the fee which a licensed center may charge for an initial inspection may not exceed one-half of the center's hourly labor charge for motor vehicles (other than for certain commercial motor vehicles as noted below), and may not exceed one-quarter of the center's hourly labor charge for motorcycles. The fee which a licensed center may charge for an initial inspection of a commercial motor vehicle registered in excess of 6,000 pounds may not exceed the center's hourly labor charge and is limited to a charge for one hour of labor.

Subchapter 34, Identifying Marks, provides standards for the issuance of special courtesy and personalized plates. The rules also set forth those series of registration plates that are reserved for issuance to specified individuals or entities.

Subchapter 35, Inspection of State-Owned Vehicles By The Central Motor Pool, provides for the inspection of State-owned vehicles by Department of Treasury personnel. State-owned motor vehicles must fully comply with State law and rules pertaining to motor vehicle equipment standards and frequency of inspections.

Subchapter 36, Special National Guard Plates, implements those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:3-27.13 et seq.) pertaining to the issuance of special National Guard plates to active members and former active members of the New Jersey National Guard. N.J.A.C. 13:20-36.1, Application; certification; fees, provides for the application for not more than two sets of special National Guard plates by any person who is an active member of the New Jersey National Guard or a former active member who has been honorably separated under normal conditions from the New Jersey National Guard. Active members of the National Guard must obtain applications from the Commander of their National Guard Unit. Retired members must obtain applications from the Department of Defense. The Commander certifies that the applicant is an active or separated member of the New Jersey National Guard and forwards the completed application and a \$15.00 fee to the Division of Motor Vehicles. The Division of Motor Vehicles notifies the Department of Defense when the special National Guard plates have been issued to an applicant. A fee of \$15.00 is payable to Division of Motor Vehicles for each set of special plates. A \$5.00 fee is payable to the Division of Motor Vehicles for replacement plates. N.J.A.C. 13:20-36.2, Surrender of special plates, provides for the surrender of the National Guard plates to the Department of Defense whenever the holder thereof ceases to be an active member of the New Jersey National Guard for reasons other than honorable separation or for honorable separation under abnormal conditions. Regular replacement plates must be obtained from the Division of Motor Vehicles within five days of separation from the New Jersey National Guard. The Department of Defense is required to notify the Division of Motor Vehicles if the special National Guard plates are not surrendered within five days of separation.

Subchapter 37, Standards For Motor Vehicles With Modified Chassis Height, prohibits the operation of a vehicle which has been modified as to height unless prior approval of the Director of the Division of Motor Vehicles has been granted. The rules specify equipment standards relating to suspension modifications, tires, steering, exhaust and engine protection, light standards, bumpers and lights, among others, which the motor vehicle must comply with in order for approval to be granted. The rules also establish approval requirements which include the submission of the vehicle to a test to determine whether the vehicle shows a tendency to roll over. This "Geometric Stability" test determines, based on the vehicle's width, weight and height, whether an unacceptable center of gravity shift has occurred by modifying the vehicle's suspension. This center of gravity shift could result in a vehicle rolling over. Raised vehicles pose a greater risk since they have a center of gravity higher than stock vehicles.

If it is determined that a vehicle conforms to the regulation, the Division issues a certificate of approval stating that the vehicle may be operated on the highways of the State.

The testing is conducted by the Division of Motor Vehicles at sites throughout the State.

Subchapter 38, Dimensional Standards For Automobile Transporters, establishes the maximum length dimension for any vehicle or combination of vehicles built and used solely to transport automobiles. Pursuant to N.J.S.A. 39:3-84a(10) (P.L. 1983, c.349, §5), the Director of the Division of Motor Vehicles may adopt rules and regulations specifying the maximum length of vehicles used to transport other vehicles.

The maximum overall length of the vehicle is established to be 65 feet. A three-foot overhang is permitted at the front and a four-foot overhang is permitted at the rear. In establishing these dimensions, the Director has used the minimum length standards set by the Federal government for use on interstate highways. These dimensions are the minimum that can be established by the states.

A separate section exempts automobile transporters from the overhang standards found at N.J.A.C. 13:18-8.1.

Subchapter 39, Special Registration Plates For Non-Profit Organizations, implements P.L. 1987, c.374 (N.J.S.A. 39:3-27.35 et seq.). The rules permit the Director of the Division of Motor Vehicles to issue special motor vehicle registration plates to members of non-profit community, alumni or service organizations in this State which have been approved by the Director.

The rules establish procedures to enable non-profit community, alumni and service organizations to seek approval from the Division to have special registration plates prepared for their members. The rules also establish procedures for approved non-profit organizations to order special plates, bearing the emblems and names of those organizations, on behalf of their members in good standing who apply for such plates. The rules also establish fees for such plates. The rules also set forth when the Division may refuse to issue such plates to an individual, as well as the circumstances under which the Division may suspend or revoke such special plates.

Subchapter 40, Reflectorized Registration Plates, establishes that for purposes of P.L. 1989, c.202, §2, in addition to an annual motor vehicle registration fee, the Division of Motor Vehicles shall charge an additional annual fee of \$0.40. P.L. 1989, c.202, §2 mandates that the Division of Motor Vehicles undertake a phase-in program for the issuance of reflectorized motor vehicle registration plates in New Jersey. That statutory provision also provides that the Division may charge in addition to an annual motor vehicle registration fee, an additional annual fee not to exceed \$0.40 for the costs of the issuance of reflectorized motor vehicle registration plates in this State. The rule specifies \$0.40 as the additional annual fee to be charged by the Division.

#### Social Impact

The re-adoption of N.J.A.C. 13:20 will have a beneficial social impact in that the rules contained therein enhance highway safety. Manufacturers, dealers, owners and drivers of motor vehicles must comply with the various provisions of chapter 20 which are designed to ensure that all motor vehicles are properly equipped and inspected so that they may be operated on the public highways in a safe manner. The various provisions of the chapter establish engineering standards for safety equipment used in motor vehicles. The standards adopted by the Division are those that have been established by the scientific community. The rules also promote highway safety by providing objective standards for driver reexamination. Persons whose physical or mental disorders may adversely impact on their ability to safely operate motor vehicles may be retested by the Division. Also, drivers whose driving records reflect the need for

improvement may be required to attend and complete the Division's Driver Improvement Program.

#### Economic Impact

There is an economic impact on the State in funding the Division of Motor Vehicles which is charged with the administration of these rules. The economic impact on the State is partially defrayed by the driver improvement, registration and licensing fees which are collected by the Division. There is also an economic impact on the Department of Treasury which is responsible for the inspection of State-owned motor vehicles to the extent that employees on its payroll perform said inspections. The economic impact to the Department of Treasury is partially offset because State-owned vehicles are not required to be presented to a motor vehicle facility for State inspection. This represents a savings to the Department of Treasury in man-hours expended in inspecting motor vehicles.

There is an economic impact on those entities subject to the licensing provisions of the various subchapters since they must remit the licensing fees to the Division when same is due. Also, manufacturers, dealers and owners of motor vehicles must bear the cost incurred in submitting safety equipment to the Division for product approval and in maintaining their vehicles in a state of repair that is consistent with the statutes and regulations of this State pertaining to vehicle inspection.

#### Regulatory Flexibility Analysis

The rules proposed for re-adoption have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re-adoption impose reporting, recordkeeping and compliance requirements on motor vehicle manufacturers, dealers, owners and manufacturers of motor vehicle equipment, most of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirements include the following: (1) various subchapters require manufacturers of certain motor vehicle equipment to submit samples of their products to the Director for approval for sale and use on motor vehicles registered in New Jersey. In this regard, manufacturers are sometimes required to submit reports from independent testing laboratories confirming that the motor vehicle devices comply with standards which have been established for such devices by the scientific community; (2) various subchapters require owners of certain classes of motor vehicles to supplement State inspection by periodically inspecting and maintaining their vehicles in accordance with equipment standards established by statute and regulation; and (3) subchapter 28 requires new motor vehicle dealers to inspect new motor vehicles prior to delivery to an ultimate purchaser. The recordkeeping requirements pertain to the preparation and retention of inspection records by owners, employees and drivers of motor vehicles which are subject to dealer and supplemental self-inspection. Pursuant to subchapters 32 and 33, recordkeeping requirements are also imposed on privately owned inspection centers which are licensed by the Division to conduct inspections of motor vehicles registered in this State. The records required to be produced and retained by private inspection centers form the basis for the Division's administration and enforcement of the inspection laws pertaining to licensed inspection centers. See N.J.S.A. 39:8-17. The reporting requirements include (1) yearly owner certification to the Director that the supplemental self-inspection and maintenance rules have been complied with and (2) owner certification to the Director that "out-of-service" vehicles have been repaired so as to bring said vehicles into compliance with statutory and regulatory inspection standards.

The rules proposed for re-adoption do not require small businesses to engage additional professional services. The compliance, recordkeeping and reporting requirements have been accepted over time as standard industry practices and are therefore not viewed as overly burdensome. The rules do not necessitate significant capital and annual expenditures for compliance by small businesses.

These requirements are intended to set standards for motor vehicle equipment, inspection and driver improvement in order to advance overall highway safety. It is for these reasons that no differentiation in compliance, based on business size, is provided.

Full text of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:20, as amended in the New Jersey Register.

**(a)****DIVISION OF MOTOR VEHICLES****Licensing Service****Proposed Readoption with Amendments: N.J.A.C. 13:21**

Authorizing By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles, and, as to N.J.A.C. 13:21-19, the Motor Vehicle Franchise Committee, Col. Clinton L. Pagano, Chairman.

Authority: N.J.S.A. 39:2-3, 39:3-4, 39:3-5, 39:3-5.1, 39:3-8, 39:3-10, 39:3-10a, 39:3-10.1, 39:3-11.1, 39:3-13, 39:3-13a, 39:3-13.1, 39:3-15.1, 39:3-20, 39:3-24, 39:3-26.1, 39:3-30, 39:3-33, 39:3-43, 39:3-84, 39:3C-1 et seq., 39:5-30, 39:5-32, 39:10-4, 39:10-19, 39:10-20, 39:10-37, 39:10A-6, 39:13-7, 56:10-25 and 42 U.S.C. §405(c)(2)(C).

Proposal Number: PRN 1990-562.

Submit comments by December 5, 1990 to:

Col. Clinton L. Pagano, Director  
Division of Motor Vehicles  
25 South Montgomery Street  
7th Floor  
Trenton, New Jersey 08666

The agency proposal follows:

**Summary**

The Division of Motor Vehicles proposes to readopt with amendments the provisions of N.J.A.C. 13:21, Licensing Service in accordance with the "sunset" and other provisions of Executive Order No. 66 (1978). These rules expire on December 16, 1990. The Division of Motor Vehicles has reviewed these rules pursuant to the Executive Order and has found them to be necessary and required for the purpose for which they were promulgated. Given the impending expiration of these rules, the Division has refrained from proposing extensive changes to these rules at this time (with the exception of the proposed amendment of N.J.A.C. 13:21-21.15 as noted below) to facilitate their timely readoption. However, the Division intends to propose additional revisions to these rules in the near future.

The substantive change to N.J.A.C. 13:21 which is part of this proposal is the proposed amendment of N.J.A.C. 13:21-21.15, a rule which pertains to various grounds upon which the Director of the Division of Motor Vehicles may impose a civil penalty or deny, suspend or revoke an auto body repair facility license. The proposed amendment of N.J.A.C. 13:21-21.15 specifies as a ground for license suspension or revocation an auto body repair facility's failure to pay any fee required by law or regulation. The proposed amendment thus serves to set forth an auto body repair facility's nonpayment of any fee required by law or regulation as a specific ground for the Division to commence administrative suspension action against such licensee.

N.J.A.C. 13:21 contains 22 subchapters which are briefly summarized below:

Subchapter 1 sets forth rules pertaining to the use of a person's legal name on motor vehicle documents and proof of legal name. This subchapter also contains provisions pertaining to the mandatory submission of social security numbers by applicants for driving permits, driver licenses, commercial driver licenses and motor vehicle registrations; the restricted use of such social security numbers; and establishing that such social security numbers are not public records and are not available for public examination pursuant to the "Right to Know Law" (N.J.S.A. 47:1A-1 et seq.).

Subchapter 2 sets forth rules regarding the Division's interpretation of statutory language contained in N.J.S.A. 39:3-13 (examination permits) and N.J.S.A. 39:10-2 (nonconventional type motor vehicles). Included in this subchapter are provisions which explain the basis for the Division's statutory language interpretation; define the term "accompanied" with regard to motor vehicles and motorcycles; and pertain to nonconventional type motor vehicles.

Subchapter 3 was repealed effective January 16, 1981. This subchapter contained rules concerning the issuance of temporary certificates by motor vehicle dealers.

Subchapter 4 sets forth rules pertaining to motor vehicle titles. The rules implement those provisions of the "Motor Vehicle Certificate of Ownership Law" (N.J.S.A. 39:10-1 et seq.) pertaining to certificates of

origin and certificates of ownership. Included in this subchapter are provisions concerning the model year designation on certificates of origin, modification of the model year designation and application for certificates of ownership for homemade vehicles.

Subchapter 5 sets forth rules pertaining to motor vehicle registrations and is primarily concerned with that subject (although it also touches on the subject of the titling of motor vehicles). The provisions of this subchapter are intended to implement various provisions of the Motor Vehicle and Traffic Law (including N.J.S.A. 39:3-4, 39:3-5.1, 39:3-8, 39:3-30, 39:3-33 and 39:10-1 et seq.) regarding motor vehicle registration and titling. Included in this subchapter are rules pertaining to determination and certification of vehicle weight class; registration fees; registration of flood-damaged vehicles; notification of flood damage; recordation of vehicle mileage at time of change of vehicle ownership; surrender of registration plates; and Division refusal to issue vehicle registration if the applicant fails to furnish proof that the Federal Heavy Vehicle Use Tax has been paid.

Subchapter 6 sets forth the requirements which must be met by an applicant over 17 years of age who is seeking to obtain a driver examination permit which is validated for practice driving.

Subchapter 7 sets forth rules pertaining to special permits issued pursuant to N.J.S.A. 39:3-13.1 to persons over 16 years of age who are enrolled in a course of behind-the-wheel automobile driving education approved by the State Department of Education or who are taking a course of behind-the-wheel automobile driving instruction conducted by a drivers' school licensed by the Division of Motor Vehicles. Included in this subchapter are provisions which set forth definitions; driving test appointment requirements; method of securing appointment; and validation of permits.

Subchapter 8 sets forth rules pertaining to driver licensing in the State of New Jersey. The rules are intended to implement various provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:3-10, 39:3-11.1, 39:3-13, 39:3-13a and 39:3-13.1) which pertain to driver licensing. Included in this subchapter are rules pertaining to definitions; age requirements; proof of identity and date of birth; permits; physical and mental qualifications; driving privilege status; written and oral law-knowledge tests in English or a foreign language; special hearing-impaired examinations; visual acuity test standards; color perception check standards; behind-the-wheel driving test maneuvers; vehicles used in driving test; failure of behind-the-wheel driving test; waiver of behind-the-wheel driving test; code charts; license surrender; and license suspension for failure to notify the Division of a change of address.

Subchapter 9 sets forth rules pertaining to driver license and motor vehicle registration renewals. This subchapter also contains a rule which mandates the payment of a \$30.00 license restoration fee to the Division of Motor Vehicles for the restoration of any license which has been suspended or revoked by reason of the licensee's violation of any of the provisions of Title 39 or any regulation adopted pursuant thereto. This subchapter also contains a rule which establishes that every suspension of driving privileges in this State shall continue and remain in force and effect until those driving privileges are restored by the Director of the Division of Motor Vehicles.

Subchapter 10 sets forth a rule pertaining to Junk Title Certificates. The rule describes such a certificate as a terminal certificate.

Subchapter 11 contains provisions pertaining to motor vehicle titling and registration. Included in this subchapter are rules concerning the issuance and period of validity of temporary registrations issued by motor vehicle dealers, and other rules affecting such dealers pertaining to subjects such as collection of fees and completion of forms. The Division intends to promulgate extensive amendments to this subchapter in the near future.

Subchapter 12 sets forth rules pertaining to various farm vehicles which are registered in this State. Included in this subchapter are provisions concerning the hours of travel of such vehicles; visibility requirements; speed limitations; and certain equipment requirements.

Subchapter 13 sets forth the requirements for the vehicular transportation of migrant farm workers in New Jersey. Included in this subchapter are definitions, basic driver qualifications, vehicular equipment and insurance requirements and penalties for noncompliance.

Subchapter 14 sets forth rules pertaining to the licensing of bus drivers and thereby implements those provisions of the Motor Vehicle and Traffic Law (particularly N.J.S.A. 39:3-10.1) which are concerned with that subject. Included in this subchapter are definitions of words and terms, bus driver license qualifications and various grounds upon which the Director of the Division of Motor Vehicles may deny, revoke or suspend a person's bus operating privilege. This subchapter also contains

provisions regarding the release of application information and drivers of empty buses.

Subchapter 15 sets forth rules pertaining to the licensing of motor vehicle dealers in the State of New Jersey. These rules thus implement N.J.S.A. 39:10-19 and 39:10-20, provisions of the Motor Vehicle and Traffic Law which subchapter are general dealer license application provisions; provisions detailing what constitutes a "proper person" for purposes of licensure and requiring an established place of business; the various grounds upon which the Director of the Division of Motor Vehicles may deny, revoke or suspend a motor vehicle dealer license; the opportunity for a hearing by a licensee confronted by a proposed revocation or suspension; and a provision prohibiting any licensed motor vehicle dealer from presenting an altered title document to the Division and providing for suspension of the dealer license for such an offense. The Division anticipates proposing amendments to this subchapter in the near future.

Subchapter 16 was repealed effective September 4, 1990 (see 22 N.J.R. 1325(a) and 22 N.J.R. 2747(a)). This subchapter contained rules concerning counterpart fees.

Subchapter 17 sets forth rules pertaining to special road crossing permits issued by the Division of Motor Vehicles in accordance with N.J.S.A. 39:3-26.1. Included in this subchapter are provisions concerning permit applications, period of validity, fees, restrictions, warning signs, crossing zone width, speed of vehicles utilizing such permit, applicability of other laws and rules and penalties.

Subchapter 18 sets forth rules pertaining to snowmobile registration in accordance with N.J.S.A. 39:3C-1 et seq. Included in this subchapter are rules concerning proof of ownership, proof of insurance, registration certificates, registration numbers, transfer of ownership and renewal of registration certificates.

Subchapter 19 contains Motor Vehicle Franchise Committee rules which have been promulgated by the Committee in accordance with N.J.S.A. 56:10-25. The Director of the Division of Motor Vehicles is the Chairman of the Motor Vehicle Franchise Committee pursuant to N.J.S.A. 56:10-17; the other members of the Committee are the Commissioner of the Department of Commerce, Energy and Economic Development and the Director of the Division of Consumer Affairs. Included in this subchapter are rules concerning service of the notice of intent by a motor vehicle franchisor; failure of a franchisor to provide actual notice; service of a protest by a protesting franchisee; service of responsive pleadings to a protest; the filing of required papers; and denial, suspension or revocation of a motor vehicle dealer license due to failure to comply with a final determination issued by the Motor Vehicle Franchise Committee.

Subchapter 20 sets forth rules pertaining to motor home title certificates. The rules implement the provisions of the "Motor Vehicle Certificate of Ownership Law" (N.J.S.A. 39:10-1 et seq.) with regard to the issuance of certificates of origin and certificates of ownership for motor homes. Included in this subchapter are provisions pertaining to definitions; the assignment and affixation of a vehicle identification number; certificates of origin; the transfer of ownership of new motor homes; and certificates of ownership for used motor vehicles converted into motor homes.

Subchapter 21 sets forth rules pertaining to the licensing and regulation of auto body repair facilities pursuant to N.J.S.A. 39:13-7. As noted above, the Division has proposed to amend N.J.A.C. 13:21-21.15 as part of this proposal to include as a specific ground for license suspension or revocation an auto body repair facility's failure to pay any fee required by law or regulation. Included in subchapter 21 and proposed for re-adoption are provisions which set forth the purpose and scope of these rules; definitions; license applicant qualifications; application procedures; application and license fees; license renewals; license surrender; responsibility of licensees; estimate and repair requirements; repair authorization requirements; notice and recordkeeping requirements; advertising requirements; storage rates; the various grounds upon which the Director of the Division of Motor Vehicles may impose a civil penalty or deny, suspend or revoke an auto body repair facility license; additional penalties; investigations; notice of proposed license suspension or revocation; hearing requests by licensees; hearing procedures; and collection of a \$30 license restoration fee by the Division as a prerequisite to restoration of a suspended license.

Subchapter 22 sets forth rules pertaining to the issuance of salvage certificates of title by the Division pursuant to N.J.S.A. 39:10-31 et seq. Included in this subchapter are rules concerning the purpose of these provisions; definitions; issuance of salvage titles; salvage title fees; subsequent transfer of salvage motor vehicles; salvage motor vehicle regis-

tration preclusion; inspection of salvage motor vehicles which are subsequently reconstructed, rebuilt or repaired; inspection of stolen motor vehicles recovered with damaged or missing vehicle identification numbers; inspection of stolen motor vehicles recovered without damaged or missing vehicle identification numbers and without damage sufficient to be rendered economically impractical to repair; inspection appointments and fees; temporary registration for salvage motor vehicles; grounds for failing inspection; seizure of salvage motor vehicles; issuance of titles without a salvage designation; issuance of titles with a salvage designation; penalties; notice of proposed license suspension or revocation; hearing requests; and hearing procedures.

#### Social Impact

The re-adoption of N.J.A.C. 13:21 will have a beneficial social impact upon the public, since many of the rules proposed for re-adoption enhance highway safety. The submission of social security numbers by applicants for driving permits, driver licenses and registrations enhances the accuracy and integrity of this State's driver license and motor vehicle registration system. The regulation of motor vehicle titles assists in preventing the sale, purchase, possession or use of stolen motor vehicles, or motor vehicles with fraudulent titles, in this State. The rules regulate the titling and registration of flood-damaged motor vehicles and restrict the misuse of registration plates. The rules provide objective standards for driver testing and promote highway safety by assuring that all licensed drivers in New Jersey have met certain minimal driver licensing standards prior to licensure. The rules provide that the Director may refuse to restore a suspended driver if he determines that the driver is incapable of safely operating a motor vehicle. Persons who are deemed unable to safely operate buses due to a poor driving record, medical condition or criminal record may be denied bus driving privileges or may have their bus driving privileges suspended by the Division of Motor Vehicles, thus protecting bus passengers (including school children) and persons utilizing the roadways of this State. The rules provide significant standards for those seeking to be licensed as motor vehicle dealers to assure that only those applicants who meet the licensing standards and qualify as proper persons are licensed as motor vehicle dealers. The regulation of auto body repair facilities protects the public from dishonest, fraudulent or deceptive practices in the repair of automobiles damaged by collision by imposing licensing standards upon those seeking to engage in such business; by providing for license denial, suspension or revocation by the Director for statutory or regulatory violations set forth in the rules; and by imposing certain recordkeeping and notice requirements upon such licensees. The rules protect the public from fraud by setting forth standards and procedures to prevent certificates of ownership for salvage motor vehicles from being used to register stolen motor vehicles and by providing for the seizure of salvage motor vehicles which are stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles. The proposed amendment of N.J.A.C. 13:21-21.15, which provides as a specific ground for license suspension an auto body repair facility's failure to pay any fee required by law or regulation, has a beneficial social impact since it is in the public interest that fees required by law or regulation be paid. The rules proposed for re-adoption have no social impact on the Division of Motor Vehicles.

#### Economic Impact

There is an economic impact on the State of New Jersey in funding the Division of Motor Vehicles, which is responsible for the administration of the rules which are the subject of the proposed re-adoption. The economic impact on the State is partially defrayed by the Division's collection of statutorily mandated fees for examination permits, special learner's permits, driver licenses, motor vehicle titles, motor vehicle registrations, special road crossing permits, motor vehicle dealer licenses and auto body repair facility licenses, as well as by the collection of license restoration and salvage vehicle inspection fees.

There is an economic impact upon the general public. As noted above, a person applying for an examination permit, special learner's permit, driver license, motor vehicle title, motor vehicle registration or special road crossing permit must pay the respective statutorily mandated fees for those documents to the Division. An applicant for driver license restoration must pay a \$30.00 restoration fee as set forth in N.J.A.C. 13:21-9.3. Various salvage inspection fees are set forth for certain vehicles in N.J.A.C. 13:21-22.10.

There is an economic impact upon those business entities which are subject to the rules proposed for re-adoption. Motor vehicle dealers and auto body repair facilities are specifically subject to these rules. An applicant for a motor vehicle dealer license must pay the statutorily mandated fee for that license to the Division. The \$100.00 fee collected

by the Division for initial issuance of a motor vehicle dealer license, and for each annual renewal thereof, is mandated by N.J.S.A. 39:10-19. An applicant for an auto body repair facility license must pay the statutorily mandated fee for that license to the Division. The license fee collected by the Division for initial issuance of an auto body repair facility license, and for each biennial renewal thereof, is assessed pursuant to N.J.S.A. 39:13-2 and N.J.A.C. 13:21-21. A \$20.00 application fee is also set forth in N.J.A.C. 13:21-21.6. A \$30.00 fee is assessed by the Division for the restoration of a suspended auto body repair facility license pursuant to N.J.A.C. 13:21-21.22.

The proposed amendment of N.J.A.C. 13:21-21.15 does not impose additional fees upon auto body repair facilities. Rather, it simply sets forth as a specific ground for suspension or revocation of an auto body repair facility license the nonpayment of any fee required by law or regulation.

#### Regulatory Flexibility Analysis

The Division estimates that most, if not all, of the business entities which are the subject of regulation by the rules proposed for re-adoption are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., such as motor vehicle dealers, auto body repair facilities and members of the salvage industry.

Approximately 4,277 business entities are presently licensed as motor vehicle dealers in the State of New Jersey. The general licensing provisions set forth in N.J.A.C. 13:21-15 have uniform application to those entities. It is not feasible to exempt small businesses from these requirements merely because of their size given the statutory motor vehicle dealer licensing requirement set forth in N.J.S.A. 39:10-19. The regulation of such businesses protects the public from dishonest practices in the sale of motor vehicles by setting forth licensing standards designed to insure that only properly qualified persons are licensed as motor vehicle dealers and by providing for license denial, suspension or revocation by the Director for statutory or regulatory violations set forth in the rules. An exemption from these requirements for small businesses is not warranted since it would diminish the consumer protection aspect of these rules. It is not anticipated that motor vehicle dealers would require professional services to assist in the completion of the license application form. The Division is uncertain as to the initial capital cost and annual compliance cost to such small businesses of maintaining required books, records and files. The \$100.00 fee collected by the Division for initial issuance of a motor vehicle dealer license, and for each annual renewal thereof, is mandated by N.J.S.A. 39:10-19.

Approximately 2,319 business entities are presently licensed as auto body repair facilities in the State of New Jersey. The licensing, recordkeeping, advertising and other compliance requirements imposed pursuant to N.J.A.C. 13:21-21 have uniform application to those entities. It is not feasible to exempt small businesses from these requirements merely because of their size in light of the statutory auto body repair facility licensing requirement set forth in N.J.S.A. 39:13-2. The regulation of such facilities protects the public from dishonest, fraudulent or deceptive practices in the repair of automobiles damaged by collision by imposing licensing standards upon those seeking to engage in such business; by providing for license denial, suspension or revocation by the Director for statutory or regulatory violations set forth in the rules; and by imposing certain recordkeeping and notice requirements upon such licensees. An exemption from these requirements for small businesses is not warranted since it would dilute the consumer protection aspect of these rules. It is not anticipated that auto body repair facilities would require professional services to assist in the completion of the license application form. The Division is uncertain as to the initial capital cost and annual compliance cost to such small businesses of maintaining required records. The license fee collected by the Division for initial issuance of an auto body repair facility license, and for each biennial renewal thereof, is assessed pursuant to N.J.S.A. 39:13-2 and N.J.A.C. 13:21-21. A \$20.00 application fee is also set forth in N.J.A.C. 13:21-21.6. A \$30.00 fee is assessed by the Division for the restoration of a suspended auto body repair facility license pursuant to N.J.A.C. 13:21-21.22.

The Division perceives that among those persons subject to the salvage title rules set forth in N.J.A.C. 13:21-22 are auto body repair facilities and members of the salvage industry. However, no special recordkeeping system or professional service is required by such a small business in order to comply with the requirements imposed by those rules. The salvage title rules basically govern the issuance of salvage certificates of title, the inspection of salvage motor vehicles and the issuance of certificates of ownership after the motor vehicle has successfully passed a salvage inspection. The salvage title rules place reasonable responsibilities on the auto

salvage industry and auto body repair facilities with regard to salvage titles and inspections relative thereto. Given that the purpose of those rules is to protect the public from fraud by establishing standards and procedures to prevent certificates of ownership for salvage motor vehicles from being used to register stolen motor vehicles and by providing for the seizure of salvage motor vehicles which are stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles, no exemption for small businesses from the requirements of those rules is warranted.

Licensed motor vehicle dealers are affected by the rules set forth in N.J.A.C. 13:21-11. Those rules contain requirements regarding subjects such as the issuance and period of validity of temporary registrations issued by motor vehicle dealers, as well as the collection of fees and completion of forms by such dealers. Compliance costs may vary; professional services should not be required. Since the rules assist the State in regulating the issuance and validity of temporary registrations, no exemptions from the requirements of the rules for small businesses is warranted.

Licensed motor vehicle dealers are affected by the Motor Vehicle Franchise Committee rules set forth in N.J.A.C. 13:21-19 only in the event that they wish to file a protest with the Committee (or are responding to a protest which has been filed) pursuant to N.J.S.A. 56:10-16 et seq. The rules in question are primarily procedural in nature, having been promulgated by the Director of Motor Vehicles in his capacity as Chairman of the Motor Vehicle Franchise Committee. The rules establish a procedure by which motor vehicle franchisees who are not notified by motor vehicle franchisors as required by N.J.S.A. 56:10-19 may file a protest with the Committee; establish procedures for the filing of notices of intent, protest letters and responsive pleadings with the Committee and parties; establish procedures for the filing of papers with the Office of Administrative Law; and provide for the denial, suspension or revocation of a motor vehicle dealer license for failure to comply with a final determination issued by the Committee. The rules in question are necessary for the proper administration of N.J.S.A. 56:10-16 et seq. by the Committee, and no exemption from the requirements of the rules for small businesses is warranted. The rules do not impose compliance requirements other than those set forth above, and they do not impose recordkeeping requirements.

The proposed amendment of N.J.A.C. 13:21-21.15 affects auto body repair facilities to the extent that it specifies that nonpayment of any fee required by law or regulation constitutes a specific ground for suspension of an auto body repair facility license. The proposed amendment does not impose additional fees upon auto body repair facilities. The Division does not anticipate that small businesses will require the use of professional services to comply with the rule. The Division perceives no valid reason to exempt any such licensed facility from the purview of the proposed amendment regardless of the size of the business, since it is in the public interest that fees required by law or regulation be paid.

**Full text** of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:21, as amended in the New Jersey Register.

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

#### 13:21-21.15 Additional violations

(a) In addition to any violation of N.J.S.A. 39:13-1 et seq., the Director may impose a civil penalty, refuse to issue a license or a renewal thereof, or suspend or revoke the existing license of any auto body repair facility if he determines that the applicant or licensee:

- 1.-7. (No change.)
8. Fails to maintain an approved place of business in accordance with N.J.A.C. 13:21-21.4(c)1; [or for other good cause.]
9. Fails to pay any fee required by law or regulation; or
10. For other good cause.

(a)

**STATE BOARD OF ARCHITECTS  
Fees; Certificate of Authorization**

**Proposed Amendment: N.J.A.C. 13:27-5.8**

Authorized By: The State Board of Architects, Barbara S. Hall,  
Executive Director.

Authority: N.J.S.A. 45:3-21(a).

Proposal Number: PRN 1990-545.

Submit comments by December 5, 1990 to:

Barbara S. Hall, Executive Director  
State Board of Architects, Room 511  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

Recently enacted statutory changes contained in P.L. 1989, c.27, mandate the issuance of a certificate of authorization to general business corporations that offer to provide architectural services in New Jersey and that meet certain criteria. The State Board of Architects ("Board") therefore proposes to amend its fee schedule to cover the expenses of issuing such certificates. The Board is proposing a one-time, nonrefundable application fee of \$100.00 for a certificate of authorization, as well as a biennial fee for such certificate of \$500.00 or \$250.00 per year.

**Social Impact**

By collecting the proposed fees, the Board will be enabled to fulfill its statutory mandate regarding issuance of certificates of authorization. The fees per se are not expected to create either positive or negative social impact upon any other entity.

**Economic Impact**

Economic impact upon the Board as a result of this proposed amendment will be positive in that the fees will defray costs related to processing the applications and issuing certificates of authorization to certain corporations as required under P.L. 1989, c.275. If the fees were not to be charged, the ability of the Board to carry out the legislative mandate would be seriously impaired. Economic impact upon the affected corporations is relatively minor, as a business expense, and at approximately \$5.00 weekly is not of a dimension that might result in a price increase to consumers of these corporations' services.

**Regulatory Flexibility Analysis**

The Board of Architects licenses approximately 6,000 individual architects but cannot accurately state the number of general business corporations offering architectural services that will be affected by this proposed amendment. An estimated 150 or more corporations are expected to apply for a certificate of authorization; most, if not all of them, will be "small businesses" under the definition in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, P.L. 1989, c.275, the Act authorizing the issuance of the certificates as well as the imposition of fees to cover related administrative expenses, does not provide an exemption for small businesses. Thus, the amendment will not do so.

The initial and biennial fees are the lowest possible amounts that will cover the Board's expenses in administering the statutory requirement. The initial fee, in any case, is a start-up cost that may not be repeated. Any adverse effect of these fees upon a small business is balanced by the advantage of obtaining a certificate of authorization that permits practice in an expanded corporate form. As a business expense, the fees are not believed by the Board to be excessive or a burden upon small businesses.

There are no compliance requirements in this amendment other than payment of the listed fees. No additional professional services are needed, and there are no recordkeeping or reporting requirements in the proposed amendment.

Full text of the proposal follows (additions indicated in boldface thus):

13:27-5.8 Fees

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

(1) Applicants for a Certificate of Authorization issued pursuant to P.L. 1989, c.275, shall pay a one-time, nonrefundable application fee of \$100.00 as well as a biennial fee of \$500.00, or \$250.00 per year.

(b)

**STATE BOARD OF ACCOUNTANCY  
Fees; Sponsors of Continuing Professional  
Education**

**Proposed Amendment: N.J.A.C. 13:29-1.13**

Authorized By: State Board of Accountancy, John J. Meade,  
Executive Director.

Authority: N.J.S.A. 45:2B-9 and 38.

Proposal Number: PRN 1990-543.

Submit comments by December 5, 1990 to:

John J. Meade, Executive Director  
Board of Accountancy, Room 507A  
1100 Raymond Boulevard  
Newark, NJ 07102

The agency proposal follows:

**Summary**

N.J.A.C. 13:29-1.12 assesses fees related to licensing by the Board of Accountancy. The proposed amendment establishes a fee of \$100.00 for the application of entities who wish to be approved by the Board as Sponsors of Continuing Professional Education courses to be given to licensees.

**Social Impact**

The proposed amendment is designed to continue to protect the consumer by funding a necessary activity of the Board in its efforts to ensure that licensees take courses and attend seminars relating to accountancy on a continuing basis in order to be current on laws, regulations and trends in the profession.

**Economic Impact**

The proposed amendment will have no economic impact on the general public since the fee impacts only upon producers of Continuing Professional Education courses and seminars. The economic impact on the profession itself is minimal, affecting only those accounting entities which choose to enter an application. Monies collected pursuant to this amendment are intended to cover administrative expenses for the program.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Only suppliers of continuing education courses, such as professional accounting societies and accredited colleges and universities, will be affected by the amendment.

Full text of the proposal follows (additions indicated in boldface thus):

13:29-1.13 Fees

(a) (No change.)

(b) Entities filing an application to become Sponsors of Continuing Professional Education shall pay a fee of \$100.00 for administrative costs and evaluation of programs submitted.

1. Sponsor fees shall be charged on a biennial basis on the first business day of each even numbered year.

(a)

**BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS****Fees; Certificate of Authorization****Proposed Amendment: N.J.A.C. 13:40-6.1**

Authorized By: The State Board of Professional Engineers and Land Surveyors, William O. Van Blarcom, Acting Executive Director.

Authority: P.L. 1989, c.276, §9(a).

Proposal Number: PRN 1990-544.

Submit comments by December 5, 1990 to:

William O. Van Blarcom, Acting Executive Director  
State Board of Professional Engineers and  
Land Surveyors, Room 317  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

Pursuant to P.L. 1989, c.276, general business corporations offering to provide engineering or land surveying services in New Jersey are required to obtain certificates of authorization from the Board of Professional Engineers and Land Surveyors ("Board"). Professional service corporations established pursuant to the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., are exempt from this requirement.

The certificate designates a New Jersey licensee (or licensees) who is in responsible charge of the engineering or land surveying activities of the corporation, and who signs and seals all final drawings, papers or documents issued by the corporation or filed for public record. In order to implement this statutory requirement, the Board proposes to establish a fee of \$60.00 per year or \$120.00 for a biennial period for the certificate of authorization.

**Social Impact**

Adoption of the proposed rule will benefit the Board by funding an activity mandated by the Legislature, that is, the issuance of certificates of authorization to certain firms. Income generated by the fee will ensure that the Board is financially able to comply with the legislative directive and can continue to act in conformity with the Board's general duty of protecting the public health, safety and welfare as related to engineering and land surveying services.

**Economic Impact**

The proposed amendment will impact positively upon the Board, which must cover expenses created by the application process and the issuance of certificates of authorization. Negative impact on those firms required to obtain such a certificate will be negligible, since the fee amounts to only approximately \$1.00 per week. Because the amount is so low, no economic impact upon the consumer of engineering or land surveying services is anticipated.

**Regulatory Flexibility Analysis**

The Board of Professional Engineers and Land Surveyors licenses 22,229 individuals, but has no way of determining the number of general business corporations affected by the proposed amendment; issuance of the certificates of authorization will eventually provide that figure. It is believed that most, if not all, of the corporations affected will be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. However, the only compliance requirement implicit in the proposed amendment is the payment of a biennial fee; there are no recordkeeping or reporting requirements, and no additional professional services are needed for compliance. Since the authorizing statute, P.L. 1989, c.276, does not differentiate as to size of business, the amendment will not do so either. In order to minimize the effect on small business, however, the Board has set the fee at the lowest amount that will cover the expenses of administering the statutory requirement. Also, any adverse effect is compensated by the advantage of obtaining a certificate of authorization permitting practice in an expanded corporate form. As a business expense, the fees are considered by the Board to be reasonable and not burdensome on small businesses.

**Full text** of the proposal follows (additions indicated in boldface thus):

13:40-6.1 Fee schedule

(a) (No change.)

(b) For a Certificate of Authorization issued pursuant to P.L. 1989, c.276, general business corporations offering to provide engineering or land surveying services in New Jersey shall pay a fee of \$120.00 for a biennial period, or \$60.00 per year.

**PUBLIC UTILITIES**

(b)

**BOARD OF PUBLIC UTILITIES****Energy Conservation****Proposed New Rules: N.J.A.C. 14A:3**

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 52:27F-11(g).

BPU Docket Number: AX90080808.

Proposal Number: PRN 1990-559.

A **public hearing** concerning this proposal will be held on: Tuesday, November 27, 1990 at 10:00 A.M. Board of Public Utilities' Hearing Room Two Gateway Center, 10th Floor Newark, New Jersey 07102

Submit written comments by Friday, December 7, 1990 to: Edward D. Beslow, Esq. Office of the President Two Gateway Center Newark, New Jersey 07102

The agency proposal follows:

**Summary**

On June 15, 1989, then-Governor Thomas A. Kean issued a Reorganization Plan (No. 002-1989) published in the New Jersey Register at 21 N.J.R. 1937 (July 17, 1989), to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation (Division) from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities (Board).

Pursuant to the plan, the Division, together with all its existing functions, powers and duties, was continued and transferred to the Board. Among the functions, powers and duties transferred was the responsibility and authority to design, implement and enforce a program for the conservation of energy in commercial, industrial, and residential facilities which shall provide for the evaluation of energy systems including the annual inspection and adjustment, if necessary, of oil-fired heating systems in residential, commercial and industrial buildings so as to bring such systems into conformity with efficiency standards therefor prescribed by the Board pursuant to N.J.S.A. 52:27F-11(g).

The rules proposed herein closely resemble the rules previously adopted as N.J.A.C. 14A:3, which expired on October 7, 1990. They were first proposed and adopted by the Department of Energy in response to petroleum supply disruptions experienced in the 1970s and in recognition of New Jersey's need to reduce its strong dependence on imported crude oil. Authority for the rules was subsequently transferred to the Department of Commerce and Economic Development pursuant to Reorganization Plan No 001-1986. Efficient energy use and reduction of New Jersey's dependence on imported petroleum are still vital concerns today. Unrest is a part of the world that contains a majority of proven worldwide petroleum reserves again threatens the stability of petroleum supplies to the U.S. and heightens the need to encourage the most efficient use of petroleum possible in New Jersey.

Thus, although this chapter (N.J.A.C. 14A:3) is proposed as a new rulemaking, it continues procedures previously in effect. New language herein reflects the transfer of authority for these procedures from the commerce department to the Board. In addition, the Department of Labor and Industry no longer co-enforces large boiler combustion efficiency standards so reference to this department as a co-enforcer has been removed. In subchapter 3, listing requirements that were originally contained in N.J.A.C. 14A:3.3 but were deleted in 1983 have been restored

with some modification. Prior to its deletion, N.J.A.C. 14A:3.3 required the Department to maintain a list of all fuel oil suppliers, heating contractors and persons who offer maintenance service to customers. The section was deleted in a 1983 re-adoption of subchapter 3 to avoid duplication of work because the Department compiled a similar list under the Home Energy Savings Program (HESP) as set forth in N.J.A.C. 14A:21. However, the Board has since proposed a re-adoption of N.J.A.C. 14A:21 that omits all procedures related to home heating oil suppliers as a component of the HESP program (see 22 N.J.R. 2596(a)).

Subchapter 1 explains the purpose of the chapter and the manner in which variances and exemption from the provision of the chapter may be obtained. It has been modified only to reflect the transfer of rules from the authority of the Department of Commerce and Economic Development to the Board. Therefore maintenance of this list under these energy conservation rules will afford the Board, as the primary agency responsible for integrated energy resource and energy emergency planning as well as utility regulation, its only opportunity in rules to maintain a list of oil-fired heating unit service suppliers and no longer poses a duplication of work.

Subchapter 2 establishes standards for large boiler efficiency and states the manner in which such boilers are to be tested for efficiency. The subchapter also requires (1) that a certificate of compliance be posted and (2) that a boiler compliance form be filed with the Board within 30 days of initial compliance and thereafter only upon request of the Board. Previously, the rules required compliance with these measures on an annual basis.

Subchapter 3 establishes annual test procedures and maintenance standards for oil-fired heating units. The procedures and standards remain unchanged from their previous form except for the restoration of the listing requirement already described.

When the chapter was initially adopted in 1978, it contained 15 subchapters. Subchapter 4 set thermal efficiency standards for new and renovated buildings and formed the core of the energy subcode of New Jersey's Uniform Construction Code (UCC). Reorganization Plan No. 001-1986 transferred all of the functions, powers and duties relating to the adoption, amendment and repeal of the energy subcode from the Department of Energy to the Department of Community Affairs and this subchapter was repealed effective October 5, 1987.

Subchapter 5 previously contained rules concerning "seven-day, seven-night thermostats in public buildings." The energy department repealed this subchapter in 1981 citing difficulty in maintaining the level of staff necessary to ensure compliance with the regulations and lack of convincing evidence that the energy saved through the program continued to justify the expense of the program at 1981 energy price and supply levels.

Subchapter 6 previously required the retrofit of gas pilot lights but was not enforced by the energy department because it was superseded by Federal requirements. This subchapter was repealed in 1983.

Subchapter 7 had required that all newly constructed or renovated buildings be submetered and prohibited the use of master metering. Subchapter 8 set forth lighting efficiency standards for new and renovated buildings and subchapter 9 established lighting efficiency standards for existing buildings. These subchapters were repealed pursuant to Reorganization Plan No. 001-1986 and authority for the substance of these rules was transferred to the Department of Community Affairs for incorporation into the state's UCC.

Subchapter 10 required a certificate of compliance for any building covered by subchapters 5, 8 or 9. Subchapter 10 was allowed to expire in 1985.

Subchapter 11 previously governed the collection, storage, recycling, use and disposal of used oil. Subchapter 15 provided joint rules for the Departments of Energy and Environmental Protection regarding the disposition of grants and loans pursuant to the Recycling Act, P.L. 1981, c.278. Executive order No. 001-1986 transferred the full authority for subchapters 11 and 15 to the Department of Environmental Protection.

Chapters 12 through 14 were reserved throughout the period of time Chapter 3 was in force.

#### Social Impact

The proposed rules will assist the Board in fulfilling its duty to design, implement and enforce a program for the conservation of energy in commercial, industrial and residential facilities which shall provide for the evaluation of energy systems including the annual inspection and adjustment, if necessary, of oil-fired heating systems in residential, commercial and industrial buildings so as to bring such systems into conformity with efficiency standards therefor prescribed by the Board pursuant to N.J.S.A. 52:27F-11(g).

Oil supply disruptions in the 1970s caused sharp increases in the prices paid by the New Jersey consumers for energy. Petroleum product shortages highlighted the need to reduce New Jersey's dependence on foreign energy sources. The draft 1990 New Jersey Energy Master Plan estimates that imported crude oil is the source for more than 75 percent of petroleum products consumed in the Northeast. Petroleum accounts for almost one-third of all energy consumed in the commercial sector—primarily for space heating. Petroleum accounts for more than half of the energy consumed in the industrial sector and is used for feedstock and heating purposes in industries that provide a significant number of jobs throughout the state. Further, more than one million homeowners statewide rely on oil to heat their homes.

Recent events in the Middle East underscore the continuing need for New Jersey to use its energy efficiently. While the State has succeeded in reducing its dependence on petroleum from more than 70 percent of the State's total annual energy consumption before 1970 to approximately half in 1988, further gains are possible and can help insulate New Jersey residents and businesses from the negative impacts of product shortages and price shocks. The safety, welfare and economic well-being of more than 7 million residents depends on the continued and adequate supply of essential energy services at reasonable prices. In addition, maintenance of an up-to-date listing of fuel oil service suppliers increases the Board's ability to respond to energy emergencies.

#### Economic Impact

Improvement of boiler maintenance and operating procedures is a no- or low-cost method of providing the greatest energy savings at the least cost. Continuous boiler maintenance results in the conservation of fossil fuel, savings to industry and a reduction in pollution. Operators of boilers subject to these rules receive a direct economic benefit through fuel savings. When fuel shortages trigger fuel price rises, this benefit increases according to the escalation in avoided costs enabled by efficient boiler operation. Periodic maintenance also increases the likelihood that problems with the systems will be detected and remedied in a timely manner, thus avoiding the need for expensive large scale repairs.

Oil-fired heating unit maintenance rules set a standard for those who provide residential heating unit service to individual homeowners that may lack the technical expertise to evaluate service and efficiency standards. Residential users can reap substantial savings on winter heating bills when furnaces are properly adjusted.

Past experience shows that any economic burdens that may be imposed on regulated groups by each of the sections of chapter 3 are minimal in comparison to the energy and dollar savings that can be realized. Subchapter 1 expressly defines a variance process that can provide relief to any person who can show that compliance with the rules would cause severe financial hardship.

#### Regulatory Flexibility Analysis

The proposed rules in Subchapter 2 do not place any bookkeeping, 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 size of the boilers being regulated are housed only in large business and industrial settings.

The proposed rules in subchapter 3 apply to "all responsible persons who offer maintenance" . . . to boilers and furnaces. Small fuel oil suppliers who provide maintenance service as well as owners and maintainers of apartment buildings are examples of small businesses, so defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which may be effected by the proposed rules in subchapter 3. The proposed rules impose a reporting requirement that an annual listing of customers, in summary form, be provided to the Board of Public Utilities. Compliance requirements include minimum permissible efficiency ratings and maintenance standards.

In subchapter 3, restoration of the listing requirement for maintenance providers requires a minimum of information in summary form and does not ask businesses for specific customer information. In deference to industry concerns over the provision of confidential customer information that could affect competitiveness, and in formulating the rule for ease of compliance, the Board asks only for summary information and purposely times the deadline for submittal of this information so as not to conflict with the peak heating season when heating system service personnel are busiest.

Maintenance of the list required by N.J.A.C. 14A:3-3.3 will also enhance the Board's ability to effectively communicate with this industry and respond to its concerns during any potential energy emergency.

The boiler efficiency and maintenance standards are designed to advance the most efficient use of fossil fuels thereby reducing dependency

on these critical fuels. No differing standards of compliance are offered. However, variance and exemptions are possible if a business can demonstrate undue economic, environmental or technical hardship or if compliance would be determined to public health, safety and welfare (see: N.J.A.C. 14A:3-14).

Full text of the proposal follows:

CHAPTER 3  
ENERGY CONSERVATION

SUBCHAPTER 1. GENERAL PROVISIONS

14A:3-1.1 Purpose and scope

The purpose of these rules is to achieve substantial savings of one or more energy sources in compliance with the provisions of P.L. 1977, c.146, section 9g. These rules shall apply uniformly to each member of the segment of society within the State to whom such rule is directed unless otherwise specified in writing by the Board.

14A:3-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to insure the maximum conservation of energy sources within the State.

(b) These rules may be amended by the Board in accordance with the provisions of N.J.S.A. 52:14B-1 et seq.

14A:3-1.3 Copies

Copies of all reports, correspondence, documents, data, analysis, and whatever other information, as required by the provisions of these rules, shall be filed in original plus three copies, and addressed to the Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

14A:3-1.4 Variances and exemptions

(a) The Board will consider requests for variances or exemptions from any of the provisions of this chapter. Any person requesting a variance should complete an "Application for a Variance or an Exemption", which may be obtained from the:

Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

(b) The completed form should be submitted to the Board. The Board shall review the request and notify the person of its determination and the basis for the determination within 90 days of receipt of the application. This determination should constitute final agency action on the application.

(c) The Board may grant a variance if the person demonstrates to the satisfaction of the Board that compliance with the provisions of this chapter would:

1. Create undue economic, environmental or technical hardship;
2. Increase the amount of energy consumed by a building; or
3. Be detrimental to the public health, safety or welfare.

SUBCHAPTER 2. LARGE BOILER COMBUSTION EFFICIENCY STANDARDS

14A:3-2.1 Scope

Unless otherwise indicated, the provisions of this subchapter shall apply to all fossil fuel-fired large boilers, operated within the State of New Jersey, as defined in N.J.A.C. 14A:3-2.2, except those operated by electric and gas public utilities subject to the jurisdiction of the New Jersey Board of Public Utilities.

14A:3-2.2 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 New Jersey Board of Public Utilities.

"BTU" or "British Thermal Unit" means the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit from the temperature 60 degrees Fahrenheit at standard pressure (14.7 psia) conditions.

"Combustion efficiency" (Ec) means the percentage ratio of heat available minus heat lost in the products of combustion and excess air to heat available, where heat available is the higher heating value of the fuel.

$$Ec = (\text{heat available}) - (\text{heat lost in the products of combustion and excess air}) / (\text{heat available})$$

"High fire" means a condition at which the boiler is operating at its maximum firing rate within its normal operating range, when in service.

"In service" means a condition of the boiler when operating.

"Large boiler" means any fired steam boiler, steam generator, hot water boiler, or hot oil unit whose rated capacity exceeds either 499 square feet of heating surface or 100 boiler horsepower, or four million BTU/hour input, regardless of temperature or pressure conditions.

"Load" means the demand of the boiler in appropriate units per hour at the operating temperature and pressure conditions.

"Low fire" means a condition at which the boiler is operating at its minimum firing rate when in service.

"Optimum percent oxygen" means the lowest percent oxygen content in the flue gas which can be achieved without:

1. Exceeding 220 ppm carbon monoxide for gas fired boilers or the air pollution levels specified by N.J.A.C. 7:27-3 for coal and oil fired boilers; or

2. Causing delayed ignition, visible flame instability, flame carryover, flame impingement, pulsation noise.

"Optimum percent oxygen performance characteristic curve" means a relationship between the optimum percent oxygen in the flue gas and the load.

"Optimum temperature" means the temperature of the flue gas at the condition of optimum percent oxygen for that load condition.

"Optimum temperature performance characteristic curve" means a relationship between the optimum temperature of the flue gas and the load.

"Percent oxygen" means the ratio of the volume of oxygen contained in the sample of flue gas to the total volume of the sample. Percent oxygen may be determined directly from a device which measures oxygen content or equivalent percent oxygen content may be determined indirectly by conversion from devices which measure carbon dioxide.

"Responsible person" means the owner or operator, whoever has control, either directly or indirectly through an agent, over the large boiler.

"Performance characteristic curves" means optimum percent oxygen performance characteristic curve and optimum temperature performance characteristic curve.

"Steady state condition" means equilibrium condition as indicated by a variation in the flue gas temperature of not more than plus or minus 10 degrees Fahrenheit obtained in three consecutive readings taken 10 minutes apart.

14A:3-2.3 Standards

Responsible persons shall operate all large boilers at a combustion efficiency such that neither the percent oxygen shall be higher than 1.25 times the optimum percent oxygen value nor the temperature of the flue gases shall be higher than 1.15 times the optimum temperature value obtained from the performance characteristic curves for that load condition. However, where optimum percent oxygen is below 2.4 percent, the boilers may be operated at a combustion efficiency such that the percent oxygen is not higher than 3.0 percent.

14A:3-2.4 Performance characteristic curves

(a) Responsible persons shall obtain initial performance characteristic curves for every large boiler as soon as practicable following its next annual internal inspection required by N.J.A.C. 12:90-4.10. The initial performance characteristic curves shall be obtained for the type of fuel(s) in use.

(b) Points on the curves shall include low fire, the upper end of the normal operating range, and several intermediate points uniformly spaced. For nonmodulating burners, intermediate points are not required.

(c) Performance characteristic curves for each boiler shall be re-determined every five years, or when the fuel type, or any component of the boiler which could change its combustion efficiency, has

changed, or at the request of the Board. Performance characteristic curves shall be redetermined only after the boiler is made ready in a state similar to that required for annual internal inspection cited in (a) above.

#### 14A:3-2.5 Test requirements

Responsible persons shall test every large boiler in accordance with N.J.A.C. 14A:3-2.6 not less than once during each calendar week when it is in service. Boilers used primarily for heating service shall be tested during the heating season.

#### 14A:3-2.6 Test procedure

(a) The boiler test procedure is as follows:

1. When the boiler is in service, continue operation until a steady state condition is reached at any point within the user's operating range; and

2. Measure and record the percent oxygen present in the flue gases and the temperature of the flue gases utilizing test equipment designed for such purposes. The test equipment shall be used in accordance with the equipment manufacturer's operating instructions.

#### 14A:3-2.7 Records and inspection

(a) Responsible persons shall maintain performance characteristic curves and weekly test results at the plant wherein the boiler is situated for a period of at least five years. Such reports shall be made available, upon request, for inspection by officials of the Board during normal business hours.

(b) Inspection by officials of the Board for the purpose of determining compliance with the provisions of this subchapter shall be made during normal business hours.

#### 14A:3-2.8 Variance

If compliance with the provisions of this subchapter creates undue economic, environmental or technical hardship, a variance of the provisions of this subchapter may be requested from the Board.

#### 14A:3-2.9 Failure to comply

Upon failure to comply with the provisions of this subchapter, the Board may seek an injunction against the user to prevent that user from operating a boiler in violation of this subchapter, pursuant to P.L. 1977, c.146, sec. 19.

#### 14A:3-2.10 Certification of compliance

(a) The responsible person shall complete in accordance with instructions provided by the Board, and post in a prominent location near the boiler, a "Certificate of Boiler Compliance". The responsible person shall certify on the certificate that the boiler is in compliance with this subchapter. The certificate shall set forth all applicable variances and exemptions granted by the Board.

(b) The responsible person shall, within 30 days of the boiler's initial compliance and thereafter only upon request of the Board, submit to the Board in accordance with instructions provided by the Board a "Boiler Compliance Form."

(c) It shall be deemed a violation of this chapter for a responsible person to knowingly provide false, misleading or incomplete information on the "Certificate of Boiler Compliance" or "Boiler Compliance Form."

### SUBCHAPTER 3. ANNUAL OIL FIRED HEATING UNIT MAINTENANCE STANDARDS

#### 14A:3-3.1 Scope

The provisions of this subchapter shall apply to all oil-fired units on which maintenance is performed annually in residential premises, commercial premises and schools. Oil-fired units involving large boilers defined in and covered by N.J.A.C. 14A:3-2 shall not be covered by this subchapter.

#### 14A:3-3.2 Definitions

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

"Boiler" means a device designed to be the primary heating source for a structure which uses water or steam as the heat transfer medium.

"Flue gas analyzer" means a device used to extract a sample of flue gas and measure the percentage of carbon dioxide in the sample or the percentage of oxygen in the sample if the measuring device is so designed.

"Furnace" means a device designed to be the primary heating source for a structure which uses air as the heat transfer medium.

"Maintenance" means any inspection, cleaning, lubrication, adjustment, testing or replacement of parts of a unit or its controls. Maintenance shall not include emergency services.

"Responsible person" means any fuel oil supplier, heating contractor, or any person who provides maintenance on boilers or furnaces.

"Smoke scale" means a photometric scale to which the filter paper stained by the flue gas sample extracted by the smoke tester is compared to determine the smoke condition of the unit. A smoke scale shall be considered approved if it is constructed and operated in accordance with American Society for Testing Materials (ASTM) D 2156-80.

"Smoke tester" means a device used to extract a sample of flue gas. A smoke tester shall be considered approved if it is constructed and operated in accordance with ASTM D 2156-80.

"Steady-state condition" means equilibrium conditions as indicated by changes in the flue gas temperature of not more than plus or minus five degrees Fahrenheit obtained in two consecutive readings taken five minutes apart.

"Unit" means a boiler or furnace.

#### 14A:3-3.3 Listing requirement

(a) The Board shall maintain a list of all responsible persons who offer maintenance service to customers.

(b) All responsible persons who offer maintenance shall furnish the following information to the Board annually by the 30th of June:

1. Name of corporation, partnership or individual and a primary contact;

2. Business address;

3. Business telephone number; and

4. Summary account information, as follows:

i. For fuel oil suppliers, the number of accounts by classification, that is, residential, industrial, and commercial (to include schools, hospitals and government building accounts), and the total number of accounts within each classification that receive maintenance from the fuel oil supplier; and

ii. For all others, the total number of service accounts by classification, that is, residential, industrial, and commercial (to include schools, hospitals and government building accounts).

#### 14A:3-3.4 Standard

All responsible persons shall achieve a minimum permissible efficiency rating, as determined by N.J.A.C. 14A:3-3.5, of 72 percent for all oil-fired units subject to the provisions of this subchapter.

#### 14A:3-3.5 Test procedure

(a) The test procedure to determine compliance with N.J.A.C. 14A:3-3.4 is as follows. The responsible person shall:

1. Initiate operation of unit and continue operation until unit reaches steady-state condition;

2. Upon attaining steady-state conditions, measure and record:

i. Unit intake air temperature ( $T_a$ ), degree Fahrenheit;

ii. Stack gas temperature ( $T_s$ ), degree Fahrenheit;

iii. Percentage of carbon dioxide or percentage of oxygen using a flue gas analyzer;

iv. Smoke number of the flue gas using an approved smoke scale; and

v. Draft measured in inches water gauge; and

3. Adjust the draft to meet manufacturer's specification, if required.

(b) The following calculations shall be used to determine the following efficiency rating:

1. Calculate the difference in temperature ( $T$ ) between the stack gas temperature ( $T_s$ ) obtained in (b)2 and the unit intake air temperature ( $T_a$ ) obtained in (b) as  $T = (T_s - T_a)$ ;

2. Using a stack loss chart and the values obtained in (b)3, and (d)1, compute the stack loss percentage (% SL); and

3. Calculate the percent efficiency using the following: % efficiency = 100%-(%SL).

14A:3-3.6 Maintenance requirements

(a) All responsible persons shall maintain oil-fired units subject to the provisions of this subchapter annually to meet the requirement specified in N.J.A.C. 14A:3-3.4.

1. All oil-fired units shall be adjusted to obtain optimum efficiency consistent with combustion characteristic indicated by a smoke number not in excess of number 1 smoke on an approved smoke scale;

2. Where the oil-fired unit cannot be maintained to meet the minimum efficiency rating as set forth in N.J.A.C. 14A:3-3.4, the responsible person shall notify the owner of the premises that the unit cannot meet the efficiency rating recommended by the Board. A copy of the notice stating the efficiency rating achieved shall be kept on file at his or her place of business. Such notices shall be made available, upon request, for inspection by officials of the Board during normal business hours; and

3. The responsible person shall furnish the owner with conservation information pertaining to fuel savings of energy efficient units. Each responsible person, upon request, shall furnish the Board with a copy of the written material it provides the owner upon failure of the unit to meet the recommended efficiency rating.

14A:3-3.7 Failure to comply

Upon the failure of a responsible person to comply with the provisions of this subchapter, the Board may seek an injunction to prevent such party from offering maintenance service pursuant to P.L. 1977 c.146, sec. 19.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes U.S. 9 in Monmouth County and N.J. 23 in Morris County

Proposed Amendments: N.J.A.C. 16:28A-1.7 and 1.15

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid. Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199. Proposal Number: PRN 1990-540.

Submit comments by December 5, 1990 to: Charles L. Meyers, Administrative Practice Officer, Department of Transportation, Bureau of Policy and Legislative Analysis, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish a "no parking bus stop" zone along Route U.S. 9 in Freehold Township, Monmouth County, and a "no stopping or standing" zone along Route N.J. 23 in Jefferson Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops.

As part of a review of current conditions and upon requests from the local governments, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The investigations and surveys proved that the establishment of a "no parking" bus stop zone along Route U.S. 9 in Freehold Township, Monmouth County and a "no stopping or standing" zone along Route N.J. 23 in Jefferson Township, Morris County were warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.7 and 1.15 based upon the requests from the local governments, the surveys, and the traffic investigations.

Additional changes are being made to conform N.J.A.C. 16:28A-1.15 to current Department rule format, which organizes traffic rules by county and municipality.

Social Impact

The proposed amendments will establish an additional "no parking" bus stop zone along Route U.S. 9 in Freehold Township, Monmouth County and a "no stopping or standing" zone along Route N.J. 23 in Jefferson Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs and the government will bear the costs for "no parking bus stop" zone signs. The costs involved in the installation and procurement of signs vary depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" 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.-3. (No change.)

4. Along the southbound (westerly) side in Freehold Township, Monmouth County:

i. Mid-block bus stops:

(1) (No change.)

(2) Schanck Road: [-Beginning at a point 2,555 feet south of the southerly curb line of Schanck Road and extending 135 feet southerly therefrom.]

(A) Beginning at a point 2,555 feet south of the southerly curb line of Schanck Road and extending 135 feet southerly therefrom;

(B) Beginning 300 feet south of the southerly curb line of Schanck Road and extending 135 feet southerly therefrom;

ii.-iii. (No change.)

5.-39. (No change.)

(c) (No change.)

16:28A-1.15 Route 23 and Route 23 (Temporary)

(a) The certain parts of State highway Route 23 described in this [section] subsection shall be designated and established as "no [parking] stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing [in Franklin Borough, Sussex County:

i. Along both sides from the northerly curb line of Washington Avenue to the southerly curb line of Mitchell Avenue-Rutherford Avenue.

ii. Along both sides from the Hardyston Township Borough Corporate Line to the Franklin Borough-Hamburg corporate line.

iii. Along both sides from the Hardyston Township-Franklin Borough corporate line to the Franklin Borough-Hamburg Borough corporate line.

2. No stopping or standing along both sides within the corporate limits of the Borough of Hamburg, Sussex County, including all

ramps and connections under the jurisdiction of the Commissioner of Transportation.

3. No stopping or standing along both sides in Wantage Township from the Hardyston Township-Wantage Township corporate line to the Borough of Sussex-Wantage Township corporate line.

4. No stopping or standing along the westerly (southbound) side for its entire length within the corporate limits of Hardyston Township, Sussex County, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

5. No stopping or standing in Wayne Township, Passaic County:

i. Along both sides for the entire length in the Township of Wayne, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

6. No stopping or standing in Pequannock Township, Morris County:

i. Along both sides for the entire length in Pequannock Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation.]

i. Along both sides:

(1) In Sussex County:

(A) Franklin Borough:

1. From the northerly curb line of Washington Avenue to the southerly curb line of Mitchell Avenue-Rutherford Avenue.

2. From the Hardyston Township-Franklin Borough Corporate line to the Franklin Borough-Hamburg Corporate line.

(B) Hamburg Borough:

1. Within the corporate limits of the Borough of Hamburg including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(C) Wantage Township:

1. From the Hardyston Township-Wantage Township corporate line to the Borough of Sussex-Wantage Township corporate line.

(2) In Passaic County:

(A) Wayne Township:

1. For the entire length within the corporate limits of Wayne Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(3) In Morris County:

(A) Pequannock Township:

1. For the entire length within the corporate limits of Pequannock Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(B) Jefferson Township:

1. For the entire length within the corporate limits of Jefferson Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation only in areas where signs are posted except in approved Bus Stops and Time Limit parking areas.

ii. Along the westerly (southbound side):

(1) In Sussex County:

(A) Hardyston Township:

1. For the entire length within the corporate limits of Hardyston Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

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

(a)

## DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

### Turn Prohibitions

### Routes U.S. 40 in Atlantic County and U.S. 9 in Ocean County

**Proposed Amendment: N.J.A.C. 16:31-1.5**

**Proposed New Rule: N.J.A.C. 16:31-1.29**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-541.

Submit comments by December 5, 1990 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendment and new rule will establish a "no left turn" provision along Routes U.S. 40 in Hamilton Township, Atlantic County, and U.S. 9 in Dover Township, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and upon requests from the local governments, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The investigations and surveys proved that the establishment of additional left turn prohibitions along Routes U.S. 40 in Atlantic County and U.S. 9 in Ocean County were warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:31-1.5 and to add a new rule, N.J.A.C. 16:31-1.29, based upon the requests from the local governments, the traffic investigations, and surveys. The Department is also amending N.J.A.C. 16:31-1.5 to conform to a reorganization plan which structures traffic rules by municipality within county.

#### Social Impact

The proposed amendment and new rule will establish "no left turn" regulations along Routes U.S. 40 in Hamilton Township, Atlantic County, and U.S. 9 in Dover Township, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" 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 as prescribed by N.J.S.A. 39, and the "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7-3.

#### Regulatory Flexibility Statement

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

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

16:31-1.5 Route [US] U.S. 40

(a) Turning movements of traffic on certain parts of State highway Route [US] U.S. 40 described [herein below] in this subsection are regulated as follows:

1. [No left turn west on Route US 40 to south on Boulevard Avenue, Atlantic City.] **In Atlantic County:**

**i. Atlantic City:**

(1) **No left turn west on Route U.S. 40 to south on Boulevard Avenue.**

**ii. Hamilton Township:**

(1) **No left turn easterly on Route U.S. 40 to northerly into the westerlymost driveway of the Festival Mall.**

**16:31-1.29 Route U.S. 9**

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

**1. In Ocean County:**

**i. Dover Township:**

(1) **No left turn north on Route U.S. 9 onto the driveway located along the westerly side of Route U.S. 9 approximately 730 feet south of the southerly curb line of Indian Head Road.**

**TREASURY-GENERAL**

**(a)**

**DIVISION OF PENSIONS**

**Public Employees' Retirement System  
Retirement Credit; Back Pay Awards**

**Proposed Amendment: N.J.A.C. 17:2-6.6**

Authorized By: The Public Employees' Retirement System,  
Janice Nelson, Secretary.

Authority: N.J.S.A. 43:15A-17 et seq.

Proposal Number: PRN 1990-550.

Submit comments by December 5, 1990 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
CN 295  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment is an attempt to clarify the policies and procedures concerning service credit and the computation of contributions within the Public Employees' Retirement System where the member receives a back pay award for a period of suspension or termination. Similar amendments are concurrently being proposed in this issue of the New Jersey Register for the Teachers' Pension and Annuity Fund and the Police and Firemen's Retirement System. This proposed amendment states that, if the member receives full back pay with normal salary increases, the pension contributions will be computed upon the base salaries that the employee would have earned during the period of suspension or termination. If the award is for less than full back pay, the pension contributions will be based upon the salary that the member was earning prior to the suspension or termination. If the awarded back wages are not sufficient to pay for the pension contributions, the employee will be allowed to make direct payment for them. The certifying officer of the employer will be required to verify the salaries as well as provide the Division of Pensions with the documents or papers setting forth the terms of the settlement.

**Social Impact**

The proposed amendments will affect present and future members of the pension system who are suspended or terminated but are ultimately reinstated and receive a back pay award. The amendments clarify the process whereby members have pension contributions deducted from the back pay award, establishing the amount of deduction, dependent upon specified factors, and assure that all members are treated equally.

**Economic Impact**

The proposed amendments specify the amount of pension contribution to be deducted from a back pay award made to a member of the pension system who has been suspended and subsequently reinstated. Some members may receive less than they would have under the previous rules; however, most members will receive approximately the same amount they would have received previously.

**Regulatory Flexibility Statement**

A Regulatory Flexibility Analysis is not required because the amendments impose no requirements of any kind upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but affect only members of the pension system and their employers, all of whom are employees of governmental entities.

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

17:2-6.6 Retirement credit

(a) (No change.)

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay [award] awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be [based on the salary the member was receiving for pension purposes prior to the suspension or termination of employment] determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

**(b)**

**DIVISION OF PENSIONS**

**Teachers' Pension and Annuity Fund  
Retirement Credit; Back Pay Awards**

**Proposed Amendment: N.J.A.C. 17:3-6.6**

Authorized By: The Teachers' Pension and Annuity Fund,  
J. Michael Weik, Acting Secretary.

Authority: N.J.S.A. 18A:66-56 et seq.

Proposal Number: PRN 1990-549.

Submit comments by December 5, 1990 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
CN 295  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment is an attempt to clarify the policies and procedures concerning service credit and the computation of contributions within the Teachers' Pension and Annuity Fund where the member receives a back pay award for a period of suspension or termination. Similar amendments are concurrently being proposed in this issue of the New Jersey Register for the Public Employees' Retirement System and the Police and Firemen's Retirement System. This proposed amendment states that, if the member receives full back pay with normal salary increases, the pension contributions will be computed upon the base salaries that the employee would have earned during the period of suspension or termination. If the award is for less than full back pay, the pension contributions will be based upon the salary that the member was earning prior to the suspension or termination. If the awarded back wages are not sufficient to pay for the pension contributions, the employee will be allowed to make direct payment for them. The certifying

officer of the employer will be required to verify the salaries as well as provide the Division of Pensions with the documents or papers setting forth the terms of the settlement.

#### Social Impact

The proposed amendments will affect present and future members of the pension system who are suspended or terminated but are ultimately reinstated and receive a back pay award. The amendments clarify the process whereby members have pension contributions deducted from the back pay award, establishing the amount of deduction, dependent upon specified factors, and assure that all members are treated equally.

#### Economic Impact

The proposed amendments specify the amount of pension contribution to be deducted from a back pay award made to a member of the pension system who has been suspended and subsequently reinstated. Some members may receive less than they would have under the previous rules; however, most members will receive approximately the same amount they would have received previously.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the amendments impose no requirements of any kind upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but affect only members of the pension system and their employers, all of whom are employees of governmental entities.

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

17:4-6.6 Retirement credit

(a) (No change.)

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay [awarded] **awarded**, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be [based on the salary the member was receiving for pension purposes prior to the suspension or termination of employment] **determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment.** In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) **It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.**

(a)

## DIVISION OF PENSIONS

### Police and Firemen's Retirement System Retirement Credit; Back Pay Awards Proposed Amendment: N.J.A.C. 17:4-6.6

Authorized By: The Police and Firemen's Retirement System,

Janice Nelson, Acting Secretary.

Authority: N.J.S.A. 43:16A-13(7).

Proposal Number: PRN 1990-548.

Submit comments by December 5, 1990 to:

Peter J. Gorman, Esq.

Administrative Practice Officer

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendment is an attempt to clarify the policies and procedures concerning service credit and the computation of contributions within the Police and Firemen's Retirement System where the member receives a back pay award for a period of suspension or termination. Similar amendments are concurrently being proposed in this issue of the New Jersey Register for the Public Employees' Retirement System and the Teachers' Pension and Annuity Fund. This proposed amendment states that, if the member receives full back pay with normal salary increases, the pension contributions will be computed upon the base salaries that the employee would have earned during the period of suspension or termination. If the award is for less than full back pay, the pension contributions will be based upon the salary that the member was earning prior to the suspension or termination. If the awarded back wages are not sufficient to pay for the pension contributions, the employee will be allowed to make direct payment for them. The certifying officer of the employer will be required to verify the salaries as well as provide the Division of Pensions with the documents or papers setting forth the terms of the settlement.

#### Social Impact

The proposed amendments will affect present and future members of the pension system who are suspended or terminated but are ultimately reinstated and receive a back pay award. The amendments clarify the process whereby members have pension contributions deducted from the back pay award, establishing the amount of deduction, dependent upon specified factors, and assure that all members are treated equally.

#### Economic Impact

The proposed amendments specify the amount of pension contribution to be deducted from a back pay award made to a member of the pension system who has been suspended and subsequently reinstated. Some members may receive less than they would have under the previous rules; however, most members will receive approximately the same amount they would have received previously.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the amendments impose no requirements of any kind upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but affect only members of the pension system and their employers, all of whom are employees of governmental entities.

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

17:4-6.6 Retirement credit

(a) (No change.)

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay [awarded] **awarded**, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be [based on the salary the member was receiving for pension purposes prior to the suspension or termination of employment] **determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment.** In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) **It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.**

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Luxury Tax

#### Proposed Readoption with Amendments: N.J.A.C. 18:25

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-1 et seq., specifically 54:32B-24.

Proposal Number: PRN 1990-534.

Submit comments by December 5, 1990 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, NJ 08646

The agency proposal follows:

#### Summary

Pursuant to Executive Order 66 (1978), this chapter expires January 6, 1991. The Division of Taxation has reviewed the rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

In New Jersey, in 1980, the Director of the Division of Taxation was given the duty and authority of administering the luxury tax, specifically applicable to Atlantic City, by P.L. 1980, c.60, N.J.S.A. 54:32B-24.1, effective July 1, 1980. The luxury tax was the result of a power given to certain municipalities (cities of the fourth class) under P.L. 1947, c.71 (N.J.S.A. 40:48-8.15 et seq.). The preamble to P.L. 1947, c.71 provided that since the Legislature greatly enlarged municipal activities with no consequent revenue power to meet modern and expanding conditions, and, since sources of revenue in municipalities, particularly in cities of this State bordering upon the Atlantic Ocean and being seaside and summer resorts, are inadequate and insufficient to meet existing municipal obligations, any city of the fourth class may enact an ordinance or ordinances for the purpose of levying and collecting tax upon retail sales or a sale at retail as defined in this act. The Director was given all the powers granted in P.L. 1966, c.30, (N.J.S.A. 54:32B-1 et seq.), the New Jersey Sales and Use Tax Act. Section 24 of the Sales and Use Tax Act gave the Director authority to adopt or readopt the rules contained in this proposal. Pursuant to N.J.S.A. 54:32B-8.19, Atlantic City had adopted an ordinance(s) establishing a luxury tax. N.J.S.A. 54:32B-8.19, as amended by P.L. 1990, c.40, applies to Atlantic City's ordinance and sets forth what the combined tax rate may be. The combined rate of taxation imposed under the ordinance and the State Sales and Use Tax Act cannot exceed 13 percent. N.J.A.C. 18:25 sets forth the regulatory provisions of the Luxury Tax Act, specifying the instructions and forms to be used in the administration of the Act. The rules also include definitions of significant terms and specify the tax rates and the exemptions from the luxury tax on room and apartment rentals.

The rules have been amended to include the tax rate changes mandated by P.L. 1990, c.40. The major change delineates the effect of that law on the sale of alcoholic beverages in Atlantic City. Prior to the enactment of P.L. 1990, c.40, alcoholic beverage sales were exempt from the requirements of the State Sale and Use Tax Act. They were, however, subject to taxation by cities of the fourth class under N.J.S.A. 40:48-8.15 to 8.28 (P.L. 1947, c.71). Atlantic City, as a city of the fourth class, had taxed alcoholic beverage sales by the drink at a rate of three percent. The proposed amendment at N.J.A.C. 18:25-1.5(d) clarifies that with the new seven percent sales tax rate for a total of 10 percent, the Atlantic City luxury tax rate remains three percent, but must be combined. Amendments have been made at N.J.A.C. 18:25-1.2 to include the definitions listed in N.J.S.A. 40:48-8.16 of the Luxury Tax Act. N.J.A.C. 18:25-1.4 clarifies that Atlantic City is the "city of the fourth class" currently regulated by this chapter. N.J.A.C. 18:25-1.5 sets forth the combined tax rate for sales subject to both the Atlantic City luxury tax and the New Jersey sales and use tax, indicating a separate rate for the sale of alcoholic beverages. Amendments to N.J.A.C. 18:25-2.3 show the current luxury tax rate for the rental of a room or rooms and apartments as nine percent.

The combined Atlantic City luxury tax and State sales and use tax is now 13 percent.

#### Social Impact

These rules are being readopted to provide taxpayers, businessmen and the public, their attorneys, accountants or other representatives, guidance and assistance in the administration of the luxury tax. The readoption is intended to clarify application of the luxury tax to certain sales at retail or the hiring of property or services at retail, sales of alcoholic beverages, room and apartment rentals, the receipts from which are subject to tax in Atlantic City, and exemptions.

#### Economic Impact

The Atlantic City luxury tax is imposed at a rate of nine percent on the retail sales specified in N.J.S.A. 40:48-8.16 and N.J.A.C. 18:25-1.2, except that a tax of three percent is imposed on sales of alcoholic beverages at bars and restaurants. Under P.L. 1990, c.40, the New Jersey sales and use tax rate is increased to seven percent and the combined rate for sales and use tax is capped at 13 percent. Consumers in Atlantic City will not be subjected to an increase in the luxury tax; however, when they make purchases which are subject to both the State sales and use tax and the luxury tax, they will pay an additional one percent, due to the increase in the sales tax and the increase in the cap to 13 percent.

The exemptions which continue to be provided in the rules benefit those individuals who are long-term residents or whose rental is paid directly by governmental agencies.

Atlantic City luxury tax collections for the past three fiscal years are: \$15,180,131 for 1987; \$16,174,077 for 1988; and \$15,241,639 for 1989. All luxury tax revenues are collected by the Division and are forwarded to the Atlantic County Improvement Authority.

#### Regulatory Flexibility Analysis

The proposed readoption with amendments applies to any person selling or hiring or purchasing property or services to or from another person, which includes businesses and individuals, within Atlantic City. Many of those involved may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules contain form and instruction references and indicate luxury tax collection rates and combined luxury tax and State sales and use tax rate. Small businesses may elect to use the professional services of an accountant, or an attorney specializing in taxation, or other professional services; however, such services are not required by the rules. The costs for such services cannot be reliably determined, due to the individual characteristics of each business. The forms to be used are provided to the seller by the Division of Taxation. The rules contain no exemptions or differential requirements for small businesses, since to do so would not be in compliance with applicable statutes.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:25.

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

#### 18:25-1.2 Definitions

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

"Purchaser" means any person purchasing or hiring property or services from another person, the receipts from which are taxable.

"Retail sale" or "sale at retail" means and includes:

1. Any sale in the ordinary course of business for consumption of whiskey, beer or other alcoholic beverages by the drink in restaurants, cafes, bars, hotels and other similar establishments;
2. Any cover charge, minimum charge, entertainment, or other similar charge made to any patron of any restaurant, cafe, bar, hotel or other similar establishment;
3. The hiring, with or without service, of any room in a hotel, inn, rooming or boarding house;
4. The hiring of any rolling chair, beach chair or cabana; and
5. The granting or sale of any ticket, license or permit for admission to any theatre, moving picture exhibition or show, pier, exhibition, or place of amusement, except charges for admission to boxing, wrestling, kick boxing or combative sports events, matches, or exhibitions, which

charges are taxed pursuant to section 20 of P.L. 1985, c.83 (N.J.S.A. 5:2A-20).

...  
 "Vendor" means any person selling or hiring property or services to another person upon the receipts from which a tax is imposed.

#### 18:25-1.4 Imposition of luxury tax

A luxury tax is imposed by Atlantic City upon retail sales, or sales at retail within the territorial limits of the City of Atlantic City.

#### 18:25-1.5 Tax rates

(a) Luxury tax is imposed at a rate of nine percent except for sales of alcoholic beverages which are taxed at a rate of three percent.

(b) The combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 13 percent (luxury tax at nine percent and sales tax at four percent).

(c) Sales subject only to New Jersey sales and use tax are taxable at a rate of seven percent.

(d) Sales of alcoholic beverages by the drink in Atlantic City are taxable at the combined rate of 10 percent (luxury tax at three percent and sales tax at seven percent). Sales of package goods are subject only to New Jersey sales and use tax at the rate of seven percent.

#### 18:25-2.3 Tax rates for room and apartment rentals

[(a)] Luxury tax shall be imposed on the rental of a room or rooms and apartments at a rate of nine percent. [as follows.

1. From July 1, 1980 through June 30, 1981 at a rate not to exceed four percent.

2. On and after July 1, 1981 at a rate not to exceed three percent.]

## OTHER AGENCIES

### (a)

#### NEW JERSEY TURNPIKE AUTHORITY

#### Application Procedure and Procedure to Resolve Protested Applications for, and Awards of, Licenses to Cross

#### Proposed New Rules: N.J.A.C. 19:9-2.9 and 2.10

Authorized By: New Jersey Turnpike Authority,  
 Donald L. Watson, Executive Director.

Authority: N.J.S.A. 27:23-1 et seq., specifically N.J.S.A. 27:23-29 and 52:24B-4(f).

Proposal Number: PRN 1990-546.

Submit comments by December 5, 1990 to:  
 Donald L. Watson, Executive Director  
 New Jersey Turnpike Authority  
 P.O. Box 1121  
 New Brunswick, New Jersey 08903

The agency proposal follows:

#### Summary

The proposed new rules formalize the mechanism for application for a license to cross Turnpike Authority property and for the resolution of disputes arising from the application for, and award of, licenses to cross. Prior to this time, there was not a specific application or protest procedure for disputes regarding applications. As the Authority handles several applications for licenses to cross annually, it is prudent and efficient to standardize the application mechanism and the method used to resolve disputes arising from same. The application process is a simple one, not requiring the applicant to utilize additional professional services. There is also a mechanism provided to treat a denied application or a protested award as a contested matter so that there will be an appropriate form for aggrieved parties to process same.

#### Social Impact

The proposed new rule will have a positive social impact on the public by establishing a uniform procedure for application and for filing protests based on the application for, or award of, licenses to cross.

#### Economic Impact

The proposed new rules will not have a negative economic impact on the public. There is no application fee or other standard fees involved in this process. The only instances in which expenses may be incurred, specifically attributable to this process, is if the engineering plans submitted do not meet New Jersey Turnpike Authority Standard Specifications. The document containing these standards is available to the public.

In addition, costs may be incurred if, in the resolution of denied application, the aggrieved applicant wishes to retain an attorney for representation. However, this is not required by the rules nor deemed necessary by the Authority.

By providing a standardized procedure, the public will be able to proceed in an efficient manner by following the steps provided in the proposed rules.

#### Regulatory Flexibility Analysis

The proposed new rules will apply to all businesses, regardless of size, as well as to the general public. These rules do not impose any reporting or recordkeeping requirements; however, compliance with brief application and appeal procedures and with the New Jersey Turnpike Authority Standard Specifications is required. The rules encompass both performance and design standards.

In the event that the engineering documents submitted by the applicant are deficient, the applicant may be required to have additional engineering designs completed. While the cost is difficult to estimate, it can be reduced if the applicant follows, from the outset, the guidelines in the New Jersey Turnpike Authority Standard Specifications. This document is available to the public.

The only other professional service of which an applicant may avail itself would be that of an attorney for representation in the resolution process of a denied application. However, this is not required of the Regulations or deemed necessary by the Authority.

The rules do not establish differing compliance requirements for small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since to do so would diminish the standards in the New Jersey Turnpike Authority Specifications, necessary for the protection of public health, safety and welfare.

Full text of the proposal follows:

#### 19:9-2.9 Licenses to cross

(a) A license to cross is a formal agreement with the New Jersey Turnpike Authority granting permission to cross and/or access any Turnpike property of any nature or description. This normally pertains to public and private utilities which must cross the New Jersey Turnpike Roadway in order to provide service to the public. In addition, licenses to cross are utilized by adjacent property owners to the New Jersey Turnpike Roadway that must utilize the New Jersey Turnpike property for drainage and access purposes.

(b) In order to apply for a license to cross, a letter containing the location of the Turnpike property affected, the purpose of the crossing and the engineering plans shall be submitted to:

Herbert I. Olarsch, Director of Law  
 New Jersey Turnpike Authority  
 P.O. Box 1121  
 New Brunswick, New Jersey 08903

(c) A license to cross shall be evaluated based on the following:

1. Adherence to the New Jersey Turnpike Authority Standard Specifications;
2. The impact on the traveling public and Turnpike property;
3. The duration of the request;
4. The criteria contained in N.J.S.A. 27:23-1 et seq., in particular, the provisions of N.J.S.A. 27:23-9, which must be taken into consideration concerning utilization of Turnpike property for certain purposes;
5. The general concern exhibited by the applicant for the public health, safety and welfare;
6. The financial health and stability of the applicant; and
7. The effect of the proposed crossing on the financial, economic or engineering aspects of the activities of the New Jersey Turnpike Authority, the public or neighboring property owners.

(d) Competing applications will be assessed based upon (a) through (c) above. The award will be based on the application which

most closely serves the needs of the New Jersey Turnpike Authority and the public.

(e) An application can be rejected based on a violation of, or non-compliance with, any of the requirements of this rule. Competing applications will be addressed based on the requirements of this rule. Appeals of rejected applications will be addressed using the procedure outlined in N.J.A.C. 19:9-2.10.

19:9-2.10 Procedure to resolve protested applications for, and awards of, licenses to cross

(a) Any actual or prospective applicant for a license to cross on any Turnpike Authority property or facility, who is aggrieved in connection with the application for and/or award of such a license, may protest to the Turnpike Authority. The protest shall be submitted in writing to the Director of Law within 10 days after such aggrieved party knows or should have known of the facts giving rise to the grievance. Failure to file a timely protest shall bar any further action. The written protest shall set forth in detail the facts upon which the protestant bases its protest and shall define, as clearly as the available information permits, those issues or facts in contest.

(b) Upon the filing of a timely protest, the Authority's Executive Director shall have the authority to conduct a hearing, to settle and resolve a protest of an aggrieved applicant, or prospective applicant, concerning the application for, or award of, a license to cross. This authority shall be exercised in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) If the protest is not resolved by mutual agreement, the Executive Director shall promptly issue his or her decision in writing. The Executive Director's decision shall state the determination made and the reasons for the action taken. The Executive Director's decision shall be mailed or furnished promptly to the protestant and any other interested party. The Members of the Authority shall review the decision of the Executive Director and shall adopt, review or modify the decision of the Executive Director no later than 45 days of such decision of the Executive Director.

(d) A decision rendered pursuant to (c) above shall be final and conclusive, unless any person adversely affected by the decision commences an action in court.

(e) In the event of a timely protest under (a) above, the Authority shall not proceed further with the application for, or with the award of, a license to cross in issue until the decision is rendered pursuant to (c) above.

(a)

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls**

**Gaming Equipment**

**Definitions**

**Drop Boxes and Slot Cash Storage Boxes**

**Procedures for Opening, Counting and Recording**

**Contents of Drop Boxes and Slot Cash Storage Boxes**

**Slot Machines and Bill Changers; Coin and Slot**

**Token Containers; Slot Cash Storage Box**

**Compartments; Keys**

**Slot Machines and Bill Changers; Identification;**

**Signs; Meters**

**Slot Machines and Bill Changers; Location;**

**Movements**

**Progressive Slot Machines**

**Jackpot Payouts of Cash**

**Jackpot Payouts of Merchandise or Other Things of Value**

**Procedure for Filling Payout Reserve Containers of Slot Machines**

**Slot Count; Procedure for Counting and Recording Contents of Drop Buckets**

**Slot Machines and Bill Changers; Identification; Signs; Meters; Other Devices**

**Proposed Amendments: N.J.A.C. 19:45-1.1, 1.16, 1.33, 1.36, 1.37, 1.38, 1.39, 1.40, 1.40A, 1.41 and 1.43; 19:46-1.26**

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

Authority: N.J.S.A. 5:12-63(c).

Proposal Number: PRN 1990-538.

Submit comments by December 5, 1990 to:

Deno R. Marino  
Deputy Director—Operations  
Casino Control Commission  
Citicenter Building—4th Floor  
1300 Atlantic Avenue  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

The proposed amendments change all references to "casino number" to "asset number," and further define what an asset number means with regards to slot machines. In addition, the proposed amendments clarify that each slot machine on the casino floor be identified on a floor plan by a location number and define what a location number means with regards to slot machines. Further, the proposed amendments define what a "manufacturer's serial number" is and where said number shall be located on the slot machine. These proposed amendments formalize the current terminology used by the casino industry in Atlantic City.

**Social Impact**

There will be no social impact as a result of the proposed amendment since they only formalize existing terminology.

**Economic Impact**

There will be no economic impact as a result of the proposed amendments since they only formalize existing terminology. There will be no economic impact from the proposed requirement regarding location of manufacturer's serial numbers on slot machines because casinos are, in practice, already in compliance.

**Regulatory Flexibility Statement**

The proposed amendments will only affect the operations of New Jersey casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.1 Definitions

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

"Asset number" means a unique number permanently assigned to a slot machine and a slot cash storage box for purposes of tracking that machine and storage box while owned by a casino licensee.

"Location number" means the number assigned to an area of the casino floor which identifies the site where the slot machine is positioned.

"Manufacturer's serial number" means a unique number permanently assigned to a slot machine manufacturer for identification and control purposes.

19:45-1.16 Drop boxes and slot cash storage boxes

(a) (No change.)

(b) Each bill changer in a casino shall have contained in it a metal container known as a "slot cash storage box" in which shall be deposited all cash inserted into the bill changer. Each slot cash storage box shall have:

1.-3. (No change.)

4. [A casino] **An asset** number at least two inches in height, permanently imprinted, affixed or impressed on the outside of the slot cash storage box which corresponds to the [casino] **asset** number of the slot machine to which the bill changer has been attached, except that emergency slot cash storage boxes may be maintained without such number, provided the word "emergency" is permanently imprinted, affixed or impressed thereon, and when put into use, are temporarily marked with the **asset** number of the slot machine to which the bill changer is attached, and provided further, that the casino obtains the express written approval of a Commission inspector before placing an emergency slot cash storage box into use.

(c)-(d) (No change.)

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

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

(h) Procedures and requirement for conducting the count shall be the following:

1. As each drop box or slot cash storage box is placed on the count table, one count team member shall verbalize, in a tone of voice to be heard by all persons present and to be recorded by the audio recording device, the game, table number, and shift marked thereon for drop boxes, or the [casino] **asset** number marked thereon for slot cash storage boxes;

2.-11. (No change.)

(i)-(j) (No change.)

19:45-1.36 Slot machines and bill changer; coin and slot token containers; slot cash storage box compartments; keys

(a) Each slot machine located in a casino shall have the following coin or slot token containers:

1. (No change.)

2. A container, known as a drop bucket, to collect coins or slot tokens that are retained by the slot machine and not used to make change or automatic jackpot payouts. Each drop bucket shall be identified by a number, corresponding to the [casino] **asset** number of the slot machine, which shall be at least two inches in height, and permanently imprinted, affixed or impressed on the outside of the bucket; and

3. (No change.)

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

(g) Unless a computer which automatically records the information specified in (g)1, 2, and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee:

1. Whenever it is required that a slot machine or any device connected thereto which may affect the operation of the slot machine be opened, with the exception of a bill changer, certain information shall be recorded on a form to be entitled "Machine Entry Authorization Log." The information shall include, at a minimum, the date, time, purpose of opening the machine or device, and signature of authorized employee opening the machine or device. The Machine Entry Authorization Log shall be maintained in the slot machine and shall have recorded thereon a sequential number and a [slot machine] **manufacturer's** serial number or [casino] **asset** number.

2. (No change.)

3. Whenever it is required that a bill changer, other than the slot cash storage box compartment, be opened, the entry shall be made on a form to be entitled "Bill Changer Log". The entry shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and bill changer serial number or [casino] **asset** number.

(h)-(i) (No change.)

19:45-1.37 Slot machines and bill changers; identification; signs; meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1. A manufacturer's serial number [in conformity with regulations on slot machines] **affixed to the outside of the slot machine cabinet in a location as approved by the Commission.**

2. An [casino] **asset** number, at least two inches in height, permanently imprinted, affixed or impressed on the outside of the machine;

3.-4. (No change.)

5. A mechanical, electrical, or electronic device that automatically precludes a player from operating the slot machine after a jackpot requiring a manual payout and requires an attendant to reactivate the machine; [and]

6. A light on a pedestal above the slot machine that automatically illuminates when the door to the slot machine or any device connected thereto which may affect the operation of the slot machine is opened[.]; and

7. A **location number, at least two inches in height, affixed to the outside of the machine and visible to the casino licensee's closed circuit camera coverage system.**

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

19:45-1.38 Slot machines and bill changers; location; movements

(a) Each casino licensee shall file with the Commission a floor plan of the casino which [designates the location and casino number of] **identifies** each slot machine and bill changer [in] **on the casino floor by a location number in accordance with N.J.A.C. 19:45-1.37(a)7.** Any alterations to such floor plan shall not become effective until approved in writing by a Commission inspector. A revised floor plan containing such alterations shall be filed with the Commission within 24 hours of the alteration.

(b) (No change.)

(c) Once a slot machine or bill changer has been placed in the casino, all movements of that machine and/or bill changer from or to its location shall be recorded by a slot department member in a machine movement log which shall include the following:

1. The manufacturer's serial number and the [casino] **asset** number of the moved slot machine and/or bill changer;

2.-6. (No change.)

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

19:45-1.39 Progressive slot machines

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

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

(k) (No change.)

19:45-1.40 Jackpot payouts of cash

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

(e) On originals, duplicates, and triplicates, or in stored data, the preparer shall record, at a minimum, the following information:

1. The [casino] **asset** number of the slot machine on which the jackpot was registered;

2.-6. (No change.)

(f)-(j) (No change.)

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

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

(g) On the original and all copies of the Slip, or in stored data, the preparer shall record, at a minimum, the following information.

1. The [casino] **asset** number of the slot machine on which the jackpot was registered;

2.-7. (No change.)

(h)-(o) (No change.)

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

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

(e) On originals, duplicates, and triplicates or in stored data, the preparer shall record, at a minimum, the following information:

- 1. The [casino] asset number of the slot machine to which the coins are to be distributed;
- 2.-6. (No change.)
- (f)-(k) (No change.)

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

- (a)-(h) (No change.)
- (i) Procedures and requirements for conducting the count shall be the following:

- 1.-4. (No change.)
- 5. As the contents of each drop bucket are counted by the count machine or weighed by the scale, or if currency, by two count team members, one member shall record on the Slot Win Sheet, or supporting document, the [casino] asset number of the slot machine to which the drop bucket content corresponds, if not preprinted thereon and the number of the coin or the weight of the coin and/or the value of the coin and/or currency counted. If the coin value is not converted until after the count is completed the conversion shall be prepared and the dollar value of the drop shall be entered by denomination on the Slot Win Report.

- 6.-7. (No change.)
- (j) (No change.)

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1. A manufacturer's serial number permanently imprinted, impressed, affixed or engraved [on the outside cabinet of the machine and] on the front panel of the frame housing, the reel mechanism or, in the case of a completely electronic machine, on the logic board or boards;

2. [A casino] An asset number, at least two inches in height, permanently imprinted, impressed, engraved or affixed on the outside cabinet of the machine by the casino licensee;

3.-4. (No change.)

5. A display on the front of the slot machine that clearly represents its rules of play, character combinations requiring payouts and the amount of the related payouts. In addition, a casino licensee shall display on the slot machine either:

- i. (No change.)
- ii. The name or a brief description of the merchandise or thing of value offered; provided, however, a sign containing the information specified in (a)5i above shall be displayed in a location approved by the Commission near the slot machine; [and]

6. A light on a pedestal above the slot machine that automatically illuminates when the door to the machine or any device connected thereto which may affect the operation of the slot machine is opened[.];

7. A location number, at least two inches in height affixed to the outside of the machine and visible to the casino licensee's closed circuit camera coverage system; and

8. A manufacturer's serial number affixed to the outside of the slot machine cabinet in a location as approved by the Commission.

- (b)-(l) (No change.)

**(a)**

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls  
Nature and Exchange of Gaming Chips, Slot Tokens  
and Plaques**

**Proposed Amendment: N.J.A.C. 19:46-1.5**

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

Authority: N.J.S.A. 5:12-63(c).

Proposal Number: PRN 1990-537.

Submit comments by December 5, 1990 to:

Deno R. Marino  
Deputy Director—Operations  
Casino Control Commission  
Citicenter Building—4th Floor  
1300 Atlantic Avenue  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 19:46-1.5(c) will permit patrons to redeem slot tokens at a slot booth. This change formalizes an existing practice and corrects an inconsistency between N.J.A.C. 19:45-1.34 and N.J.A.C. 19:46-1.5.

**Social Impact**

There will be no social impact as the amendment will only formalize a current procedure.

**Economic Impact**

There will be no economic impact as the amendment will only formalize a current procedure.

**Regulatory Flexibility Statement**

This proposed amendment will only affect the operation of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

**Full text of the proposed amendment follows (additions indicated in boldface thus).**

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques

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

(c) Slot tokens shall only be issued to a patron from a slot booth, cashiers' cage, bill changer or by a slot change person. Slot tokens shall only be issued upon the request of a patron; provided, however, complimentary slot tokens may be issued by a casino licensee in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46. Slot tokens shall only be redeemed at a coin redemption booth, a slot booth or the cashiers' cage.

- (d)-(k) (No change.)

**HUMAN SERVICES**

**(b)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Medical Day Care Services Manual  
Scope of Services, Provider Participation, Basis of Payment**

**Proposed Repeal and New Rules: N.J.A.C. 10:65**

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(16), 7, 7a, b, and c; 30:4D-12.

Agency Control No.: 90-P-17.

Proposal Number: PRN 1990-551.

Submit comments by December 5, 1990 to:

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

The agency proposal follows:

**Summary**

This proposal is designed to repeal the existing text of the Medical Day Care Manual (N.J.A.C. 10:65), and replace it with the new rule text set forth below. The Manual shall be retitled "Medical Day Care Services Manual." The chapter citation (N.J.A.C. 10:65) remains the same. This

summary shall present an overview of the changes followed by a brief description of the codification changes on a section-by-section basis.

A "Medical Day Care Center" is defined "as an identifiable part of a nursing facility, or a hospital affiliated facility, or a free standing ambulatory care facility, or such other facility which is licensed by the New Jersey State Department of Health in accordance with its Manual for standards for Licensure of Adult Health Care Facilities, N.J.A.C. 8:43F-2, which possesses a valid and current provider agreement from the New Jersey Division of Medical Assistance and Health Services and which provides services as described in this Manual . . ."

The Medical Day Care Program is designed to provide an alternative to total institutionalization. It provides medically supervised, health related services in an ambulatory care setting to persons who do not require 24 hour inpatient institutional care, yet, due to their physical and/or mental impairment, need health maintenance and restorative services to support their living in the community. In order for an individual to qualify for medical day care services, he or she must be financially eligible for Medicaid or for medical day care services under other Division programs.

The references to prior authorization are generally eliminated because the Division is no longer going to require prior approval as a condition for this service. Medical day care centers (centers) who participate as providers (in the Medical Day Care Program) will be able to bill the Medicaid program directly for services provided to recipients without providing evidence of authorization by the New Jersey Medicaid Program. The Division may use prior authorization as indicated in N.J.A.C. 10:65-1.3(c)1 if it determines that a center is providing substandard services and/or inadequate documentation of services, or with new programs.

The Division will continue to conduct on-site visits to evaluate centers. This is a long-standing program requirement. Additional language has been added to N.J.A.C. 10:65-1.3(c) to indicate the corrective action procedures, including the possibility of requiring prior authorization as mentioned previously, imposing a ban on admissions, or termination of the center's provider agreement for continued non-compliance.

The changes in the Manual include appropriate references to the New Jersey Department of Health's Manual for Standards for Licensure of Adult Day Health Care Facilities (N.J.A.C. 8:43F). In order to participate as a center in the Medicaid program, the Center must be licensed by the New Jersey Department of Health in accordance with the regulation cited previously and be approved as a provider by the Division. Providers must complete a Medical Day Care Participant Profile (Form FD-321) and a Quarterly Discharge Form (Form FD-322) on each recipient who attends medical day care for five or more days during the quarter, in order to maintain an up-to-date centralized data base on this service area.

Medical day care center costs must be segregated from other operational costs. With respect to hospital-affiliated medical day care centers, the costs shall be reported separately and shall not be considered as an allowable cost under the Diagnosis Related Group (DRG) program.

The basis of reimbursement for centers shall be a revised methodology based upon a percentage of nursing facility (NF) rates that will conform to the change within the institutional program. The rate of reimbursement depends upon the type of center. In an NF, the medical day care per diem rate will be 45 percent of that NF's per diem rate. The rate prior to October 1, 1990 was 55 percent of the Intermediate Care Facility ICF-B rate. However, the change in reimbursement methodology for long term care facilities removes this level of care effective October 1, 1990. Therefore, a new rate had to be established. In free-standing centers, the medical day care per diem rate is based upon an average of the rates paid to NF medical day care providers or on a percentage of nursing facility rates, in effect as of January 1 and July 1 each year. For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to NF based providers. The medical day care rates established for Medicaid recipients cannot exceed charges for this service to non-Medicaid recipients.

The historical development of the revised reimbursement for medical day care services is as follows: The payment rate for reimbursement of medical day care services was adjusted from 55 percent of the intermediate level B nursing home rate to 43 percent of the NF per diem rate by an emergency rule which was operative October 1, 1990, and appeared at 22 N.J.R. 3253(a). There is a concurrent proposal accompanying the emergency rule. The Division intends to adopt the concurrent proposal upon expiration of the 30-day comment period to insure the rule's continuity. The emergency rule and concurrent proposal amended N.J.A.C. 10:65-2.1, "General Billing Procedures." This proposal amends N.J.A.C.

10:65-1.8, which has been recodified and recaptioned "Basis of Payment." The concept expressed in both the current text (N.J.A.C. 10:65-2.1) and the proposed new rule (N.J.A.C. 10:65-1.8) are basically the same except for the percentages.

It had been the Division's intent to maintain the current level of reimbursement to the industry (insofar as possible) under these rules. At the time the emergency rule and concurrent proposal was processed, final NF per diem rates were not yet available. As a result, the percentage utilized in the emergency rule and concurrent proposal was computed based upon an estimate of the average NF rate. Final NF per diem rates that were implemented October 1, 1990 have recently been calculated. Now that the calculations have been finalized, the percentage utilized must be adjusted from 43 to 45 percent to meet the Division's intent to equalize reimbursement industry-wide.

In addition to the percentage changes, there is an exception contained in the proposed new rule which allows for a one-time retroactive adjustment from the date of the adoption of this proposed new rule back to October 1, 1990. The adjustment will be calculated to reimburse providers for the difference between 43 percent and 45 percent of the NF rate for each day of service paid at 43 percent of the NF rate.

Physical and speech language therapy are not included in the per diem rate and must be billed separately on Form 1500 N.J. If the recipient is covered by both Medicare and Medicaid, the center will bill for these services using Form HCFA-1483 listing both the recipient's Medicare and Medicaid numbers.

The qualifications of the Center's staff are set forth at N.J.A.C. 10:65-1.5 below.

With respect to persons who participate in medical day care programs, these persons are defined as eligible Medicaid recipients, or individuals eligible for services under other Division programs, who have an identifiable medical condition whose needs can be met in a medical day care setting. In general, persons receiving medical day care services also lack sufficient social support impacting upon this medical condition, yet their assessed physical and psychosocial needs do not require 24 hour per day inpatient treatment or NF care, nor can their needs be met in an ambulatory care setting, such as a physician's office or hospital outpatient department.

With respect to recipients who are residents in a residential health care facility (RHCF), medical day care services are not generally provided to this group of people. However, there are certain exceptions. Medical day care services can be provided to a resident of an RHCF for a limited period if the person had previously been receiving such service prior to admission to an RHCF. Other exceptions to the general rule can occur to facilitate transition to a less structured environment, following recent discharge from a hospital, or if a resident of an RHCF shows evidence of an unstable clinical status requiring a short term structured therapeutic environment. Individuals who reside in RHCFs are not eligible for CCPED or HCEP, and therefore, medical day care services are not available to these residents.

As indicated in N.J.A.C. 10:65-1.4, the types of services available in a center include consultative services, dietary services, medical services, nursing services, personal care services, pharmaceutical services, rehabilitative services, social services, and therapeutic activities.

Centers are required to provide for a medical evaluation of all recipients as often as the recipient's condition requires, but there shall be at least one evaluation every six months. Recipients who receive medical day care services are apt to have a chronic illness that is stabilized. If an acute episode develops, then physician intervention is necessary. All recipients shall have an attending physician. If the recipient does not designate an attending physician, the center's medical director shall assist the recipient in obtaining one. The recipient may designate the medical director as the attending physician. If the medical director acts in the capacity of the attending physician, he or she may bill the New Jersey Medicaid Program using Form 1500 N.J. The billing cannot include any services performed (by the physician) in the capacity of medical director.

The medical day care center staff is required to develop a multi-disciplinary individualized plan of care for each patient. This plan of care must be written and updated at least every 90 days pursuant to N.J.A.C. 10:65-1.7(b).

#### Social Impact

The provision of medical day care services has enabled persons to receive health maintenance and restorative services while residing in the community.

The proposed new rules impact on Medicaid recipients who require medically supervised, health-related services in an ambulatory care set-

ting. For the most part, persons requiring these services are residents of the community who do not require 24-hour inpatient institutional care. Persons needing this service may obtain it without the need for prior authorization by the Division.

The proposed new rules also define the limited situations in which persons residing in RHCs can qualify for medical day care.

The proposed new rules also impact upon providers of medical day care services. The rules indicate the conditions of participation, necessary staffing, the need to provide and document the services rendered as part of quality assurance, the methods for claims submission, and the basis of reimbursement. Centers will not have to obtain prior authorization before submitting a claim to the Division for reimbursement.

#### Economic Impact

There is no cost to the Medicaid recipient for this service.

HCEP is a State-funded program and recipients may be required to contribute to the cost of their care.

The proposed new rules do indicate there will be a new reimbursement methodology for providers. The change is necessary because of the change in reimbursement for NFs that became effective on October 1, 1990. The intent is to maintain the current level of reimbursement for medical day care insofar as possible on an industry-wide basis. The actual rate for the various types of centers is discussed in the subject above.

With respect to medical day care centers that are in an NF, these proposed new rules provide for a payment of 45 percent of the NF's per diem rate when the rules are adopted. There is also a provision for a one-time retroactive adjustment for service days commencing October 1, 1990 and expiring when these proposed new rules are adopted. The date of adoption will be the date of publication (of the adoption) in the New Jersey Register. The text of the reimbursement methodology and exception appear at N.J.A.C. 10:65-1.8(a)1 below.

The Division will not reimburse for medical day care services and partial care/partial hospitalization program services provided to a recipient on the same day.

There is no anticipated economic impact on the Division. Expenditures for medical day care centers are included in current appropriations.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because some of the centers might be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rule applies equally to all Medicaid providers of medical day care services. There is no differentiation based upon size. Providers are required to maintain sufficient documentation of the recipient's medical history, and changes in condition if applicable, pursuant to State law (N.J.S.A. 30:4D-12), and to protect the health, safety and welfare of the recipients receiving treatment. In addition, the type of documentation required by Medicaid would normally be maintained by a provider in the normal course of medical practice and also in order to comply with licensure standards issued by the New Jersey Department of Health.

The rule is designed to reduce the adverse economic impact upon small businesses by coordinating the Medicaid record-keeping requirements with those already prescribed by the New Jersey Department of Health. In addition, the requirement for prior authorization for medical day care services has been removed, unless the Center has been evaluated as providing substandard services and/or inadequate documentation of such services, or is newly established.

Medical day care centers are required to provide certain services as specified in N.J.A.C. 10:65-1.4. These services include, but are not limited to, medical and pharmaceutical services, consultative and dietary services, nursing services, social services, etc. The type of staff needed to perform these services is specified in N.J.A.C. 10:65-1.5. Therefore, Centers are required to hire necessary staff with the appropriate qualifications. These requirements are necessary for the health, safety, and welfare of the recipients receiving services. However, the proposed new rules are a reflection of existing program requirements and do not impose any additional requirements for professional services.

There are no capital costs associated with these rules for centers which are Medicaid providers. These centers should already be complying with the regulatory requirements. With respect to newly enrolled providers, the capital costs would depend on whether the center was already established and seeking to participate in Medicaid to treat recipients with this coverage, or whether the center was just being created and would incur "start up" costs.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:65.

Full text of the proposed new rules follows.

## CHAPTER 65 MEDICAL DAY CARE SERVICES MANUAL

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 10:65-1.1 Purpose and scope

The Medical Day Care Program is concerned with the fulfillment of the health needs of medicaid recipients and/or those who are served under the Division's Home Care Expansion Program and who could benefit from a health services alternative to total institutionalization. Medical day care is a program of medically supervised, health related services provided in an ambulatory care setting to persons who are non-residents of the facility, who do not require 24-hour in-patient institutional care and yet, due to their physical and/or mental impairment, need health maintenance and restorative services supportive to their community living.

#### 10:65-1.2 Definitions

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

"Administration-medical day care center" means the medical day care center shall provide an identifiable administrative unit, headed by a Director, responsible for the overall conduct of all day care program activities.

"Division" means the Division of Medical Assistance and Health Services within the New Jersey Department of Human Services.

"Medicaid District Office" means one of the Division's county-based offices located throughout the State administering the New Jersey Medicaid Program. See MDO Directory at the end of N.J.A.C. 10:49, Administration.

"Medicaid Eligibility" means, for the purpose of this manual, that in order to obtain Medical Day Care Services, the recipient shall be determined eligible to receive Medicaid services in the community under the existing programs of Aid to Families with Dependent Children, Supplemental Security Income, Medicaid Only, certain Home Care Programs, for example, Community Care Program for the Elderly and Disabled (CCPED), Model Waivers, the AIDS Community Care Alternatives Program (ACCAP), Medically Needy and/or New Jersey Care . . . Special Medicaid Programs. (For information on how to identify a Medicaid recipient (an eligible person), please refer to N.J.A.C. 10:49-1.2.)

1. Medical day care services are available to:

- i. Pregnant women,
- ii. The aged, blind and disabled Medicaid recipient enrolled in the Medically Needy program; and
- iii. the beneficiaries enrolled in the Division's Home Care Expansion Program (HCEP).

"Medical day care center" means an identifiable part of a nursing facility, or a hospital affiliated facility, or a freestanding ambulatory care facility, or such other facility which is licensed by the New Jersey State Department of Health in accordance with its Manual for Standards for Licensure of Adult Day Health Care Facilities, N.J.A.C. 8:43F-2, which possesses a valid and current provider agreement from the New Jersey Division of Medical Assistance and Health Services and which provides services as described in this manual at N.J.A.C. 10:65-1.4.

"Medical day care recipient" means a person who is a Medicaid recipient, or a recipient who is served under the Division's Home Care Expansion Program, and who is eligible for services and is diagnosed as having an identifiable medical condition, lacks sufficient social support which impacts negatively on this condition and whose assessed physical and psychosocial needs:

1. Do not require services 24 hours a day on an in-patient basis in a hospital or nursing facility, except under special circumstances;
2. Cannot be met totally in any other ambulatory care setting, such as a physician's office, hospital out-patient department or in a partial care/partial hospitalization program;
3. Require and can be met satisfactorily by a seven-hour, including portal-to-portal travel time, day-long active medical day care pro-

gram not to exceed five days per week, provided by licensed and non-licensed personnel;

4. Are such that current health status would deteriorate without the direct services and health monitoring available at the center; and

5. Cannot be met while a resident of a residential health care facility (RHCF) setting except as follows:

i. If a resident of an RHCF was in medical day care prior to admission to the RHCF, medical day care services can continue for a limited period to allow for the adjustment into the RHCF;

ii. If a resident of an RHCF requires medical day care to encourage transition into a less structured residential setting such as a boarding home or an independent living arrangement, medical day care can be provided for a limited period;

iii. If a resident of an RHCF has been recently discharged from an acute care facility (general hospital, psychiatric hospital), medical day care services can be available for the purpose of "short term" (as determined by the Division) clinical monitoring; or

iv. If a resident of an RHCF shows evidence of an unstable clinical status which requires a short term structured therapeutic environment, medical day care services are available for a limited period.

v. Since individuals who reside in residential health care facilities are not eligible for CCPED or HCEP, medical day care services are not available to these residents.

"Prior authorization" means the approval process by the Medicaid District Office prior to the provision of services. In the context of medical day care, prior authorization shall only be used as outlined in N.J.A.C. 10:65-1.3(c)1 or upon Division discretion with new medical day care centers.

"Volunteer" means a person who gives his or her time and services regularly without remuneration.

#### 10:65-1.3 Program participation

(a) A medical day care center operated by a public or private agency or organization, either proprietary or non-profit, or a subdivision of such an agency or organization, shall meet the following requirements in order to participate in the New Jersey Medicaid Program and the Home Care Expansion Program:

1. Licensure and approval by the New Jersey State Department of Health in accordance with the Manual of Standards for Licensure of Adult Day Health Care Facilities of the New Jersey State Department of Health, (N.J.A.C. 8:43F-2);

2. Approval as a medical day care center provider by the Division. This includes, at a minimum, the completion of the New Jersey Medicaid Provider Application FD-20 (Appendix A, incorporated herein by reference), the Participation Agreement FD-218 (Appendix B, incorporated herein by reference), and a written narrative Statement on the Proposed Medical Day Care Center (Appendix C, incorporated herein by reference). On-going participation as a Division provider is contingent upon continued approval by the Division of Medical Assistance and Health Services;

3. Completion, on a quarterly basis of a Medical Day Care Participant Profile, FD-321, (Appendix E, incorporated herein by reference) and a Quarterly Discharge Form, FD-322, (Appendix F, incorporated herein by reference) on each recipient who attends medical day care for five or more days during the quarter;

4. Preparation of a cost study, annually detailing expenditures of the medical day care center. Medical day care center costs shall be segregated from other operational costs. (Division reimbursement rates may be based on cost study information or on a percentage of nursing facility per diem rates.)

i. All direct and indirect costs associated with hospital affiliated medical day care centers shall be reported separately by the hospital on New Jersey State Department of Health cost findings for payment purposes and shall not be considered an allowable cost under the Diagnosis Related Group (DRG) program.

(b) The Division shall conduct an on-going evaluation of the center's Day Care Program by on-site visits to the medical day care center. A Medical Day Care On-Site Report MCNH-89 (Appendix D, incorporated herein by reference) shall be completed by Division staff and a copy shall be forwarded to the center.

(c) Division staff may request a plan of correction if the center is evaluated as providing sub-standard services and/or inadequate

documentation of these services. The plan of correction shall address deficiencies noted by Division staff, and shall be submitted to the Division by the center by the requested date.

1. If a follow-up on-site visit reveals that the plan of correction is not being implemented, a ban on new admissions to the center or other such action as the Division deems necessary may be considered. For example, prior authorization of services may be imposed. Continued non-compliance with the Division's standards may result in the termination of the provider agreement, with a 30-day notice of termination sent to the facility by the Division. Providers wishing to request hearings under this section are referred to N.J.A.C. 10:49-1.16 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Caregivers of medical day care recipients may be contacted by Division staff to determine appropriateness of care and satisfaction with services provided.

#### 10:65-1.4 Required services

(a) At a minimum, the following services shall be provided by the center for participation in the Medical Day Care Program.

1. Consultative services as follows:

i. If the Division staff identifies that the recipient has significant, unresolved or recurring problems, the center shall be required to arrange for and/or provide appropriate consultation in any service area, as identified by the Division, until problems are corrected.

2. Dietary services as follows:

i. The nutritional status and dietary needs of each recipient shall be evaluated by a qualified dietitian upon admission to the program. Those recipients on a physician-ordered special diet, or those identified as having specific nutritional needs, shall have an evaluation of their nutritional status every 90 days. Results of the assessment and evaluation shall be documented in each recipient's record.

(1) The center shall provide each recipient with a minimum of one meal per day, as well as nutritionally appropriate snacks. The food served each day shall supply at least one-third of each recipient's daily nutritional requirement as recommended by the Nutrition Board of the National Academy of Sciences, National Research Council.

(2) All food served shall be stored and prepared in accordance with acceptable professional standards and be of appropriate temperatures.

(3) Recipients shall receive assistance to eat when necessary. Adaptive feeding devices shall be available to those who need them.

ii. Special diets and supplemental feedings shall be available as ordered by the recipient's physician. These dietary requirements shall be included in the participant's individualized multidisciplinary plan of care.

iii. On-going communication shall be established between the center's staff and the dietitian.

iv. Dietary and nutritional counseling and education shall be provided for each recipient and those involved with their care. Documentation of this education shall include the content of the program and a list of recipients.

3. Medical services as follows:

i. The center's administrator/director, with the medical director of the center, shall establish written medical and administrative policies governing the provision of medical services to the recipients. The medical director shall be responsible for, but not be limited to, the following:

(1) Developing and amending these medical policies as needed;

(2) Supervising the provision of medical services;

(3) Advising the center director regarding medical and related problems;

(4) Establishing procedures for medical matters, such as medical supervision, storage of medication, emergency coverage, emergency services, records, use of consultants, patient review, rehabilitative services, medication and discharge planning. Procedures shall be located in the center director's office and at the nurses' station, readily available to staff;

(5) Establishing relationships with appropriate personnel in other institutions, such as general or special hospitals, rehabilitation centers, home health agencies, clinics, laboratories, and related com-

munity resources. This would include, but not be limited to, arrangements for emergency room services unavailable within the center; and

(6) Providing staff with training and consultation on medically related topics.

ii. The medical day care center shall provide:

(1) A medical evaluation of all recipients, provided or arranged for by the medical director as needed, but at least every six months. (Note: Physician services for the Community Care Program for the Elderly and Disabled/Home Care Expansion program recipients are not reimbursed by the New Jersey Medicaid Program.)

(A) Any medical services required (including podiatry services, see N.J.A.C. 10:57-1.11) shall be coordinated by the recipient's attending physician.

(B) If the recipient has no attending physician, the medical director shall assist the recipient to secure one.

(C) In the event that an attending physician cannot be obtained to regularly care for the recipient, the recipient may choose the medical director as his or her attending physician, provided the medical director becomes the recipient's attending physician with all the responsibilities attendant to such a role over a 24-hour period on a continuing basis.

(D) It is only in this new role as attending physician that the medical director can bill the New Jersey Medicaid Program on the Health Insurance Claim Form, 1500-N.J., (Appendix G, incorporated herein by reference) for services provided to the Medicaid recipient.

(E) The medical director shall not bill the New Jersey Medicaid Program separately for any service performed for any Medicaid recipient in a medical day care center while serving solely in his or her capacity as medical director.

(2) An individual medical record on each recipient.

(3) Medical orders for treatment of recipients which shall include medication, diet, activities permitted, and therapies, such as physical therapy, occupational therapy, and speech-language pathology services.

4. Nursing services as follows:

i. A registered professional nurse shall be available on the premises of the medical day care center at all times when the center is operating. Additional registered professional nurses shall be present in centers where the daily attendance exceeds 60 participants. The registered professional nurse is responsible for the supervision of ancillary nursing staff.

ii. The registered professional nurse shall be responsible for, but not be limited to, the following:

(1) Interviewing the recipient and caregivers in order to evaluate the recipient's health status and health care needs;

(2) Maintaining the standards of nursing practice including, but not limited to: monitoring of identified medical conditions, administration and supervision of prescribed medications and treatments; coordination of rehabilitative services; development of a restorative nursing plan; monitoring of clinical behavior and nutritional status; assisting with the maintenance or redevelopment of the activities of daily living skills; communicating findings to the attending physician;

(3) Managing medical emergencies (see N.J.A.C. 10:65-1.4(a)3(4));

(4) Documenting the nursing services provided, including the initial assessment and evaluation of the recipient's health care needs, development of the nursing component in the individualized plan of care, evaluation of the recipient's progress in reaching established goals and defining the effectiveness of the nursing component in the individualized plan of care;

(5) Overseeing the development of the initial individualized multidisciplinary plan of care;

(6) Alerting others involved with the recipient's care about changes in status and the need to change the individualized multidisciplinary plan of care;

(7) Developing community medical referral resources and maintains on-going communication with those providers;

(8) Linking the recipient to necessary health care services outside the program;

(9) Coordinating the services provided by other staff to meet the mutually identified health care and psychosocial needs of each recipient;

(10) Providing inservice training to center staff about the recipient's health care needs;

(11) Developing and implementing a quality assurance program in conjunction with the multidisciplinary team;

(12) Providing health education for a recipient's family or primary caregiver; and

(13) Serving as an advocate to assist the recipient/caregiver to resolve problems.

iii. The center's nursing staff shall assure that nursing services provided to recipients are coordinated with health services currently received at home, as well as with existing community health agencies and services available to recipients in time of need.

5. Personal care services as follows:

i. To insure quality personal care, the center staff shall make daily checks to assure that recipients are maintaining personal hygiene, receiving medications as prescribed (which includes assuring the renewal of prescriptions as necessary and the disposition of outdated or discontinued drugs), and participating in appropriate social and recreational activities.

ii. Personal care services shall include education in and assistance with activities of daily living (for example, walking, eating, toileting, grooming) and supervision of personal hygiene.

6. Pharmaceutical services as follows:

i. The center shall designate a pharmaceutical consultant who shall be responsible for the following:

(1) Establishing written policies and procedures to insure the safe use, storage, integrity, administration, control and accountability of all drugs stored or administered in the facility;

(2) Reviewing the records of all recipients at least every 90 days to assure that the medication records are accurate, up-to-date and that these records indicate that medications are administered or self-administered in accordance with physician's orders;

(3) Reviewing records at least every 90 days to assure drug regimen, laboratory tests, special dietary requirements, and foods used or administered concomitantly with other medication to the same recipients, are monitored for potential adverse reaction, allergies, drug interaction, contraindications, rationality, drug evaluation, and test modification; and that all irregularities or recommended changes are documented on the recipient's record and reported to the medical director or attending physician;

(4) Providing and documenting inservices and consultation with staff and recipients of the center as required to assure compliance with pharmaceutical compliance and utilization; and

(5) Devoting a minimum of four hours a month to carry out these responsibilities; maintaining a written record of activities, findings and recommendations.

7. Rehabilitative services as follows:

i. Rehabilitative services, which include physical therapy, occupational therapy, and speech-language pathology services, shall be provided by the center to those recipients whose need for these services has been definitely described in the individualized plan of care and ordered by the attending physician.

ii. Physical therapy and speech-language pathology services provided by the center are not included in the per diem rate for Medical Day Care. However, they are reimbursable and may be billed separately.

iii. Occupational therapy shall be included in the per diem rate paid for Medical Day Care.

8. Social services as follows:

i. A social worker shall be responsible for the development and implementation of the social services component. In addition to clinical services, this includes policy development and the integration of social services with health services.

ii. The social work staff shall provide, but not be limited to, the following social services:

(1) Interviewing the recipients and caregivers to obtain a clinical and social assessment and evaluation of needs and problems;

(2) Providing individual and group counseling in reference to psychological, social, financial, legal, vocational, and educational needs;

(3) Assisting with obtaining concrete services; for example, housing, shopping, clothing etc.;

(4) Developing support groups and educational programs for caregivers and recipients;

(5) Providing crisis intervention;

(6) Providing family outreach;

(7) Coordinating recipient's treatment plans with other community resources;

(8) Providing inservice training to staff on recipient/caregiver psychosocial needs;

(9) Developing and implementing a quality assurance program;

(10) Participating in professional organizations and seminars;

(11) Participating in all recipient case conferences; for example, pre-admissions and post-admissions, problem-oriented cases; and

(12) Documenting assessments, treatment plans, evaluations and clinical notes.

9. Therapeutic activities as follows:

i. The center staff, under the direction of the activities coordinator, shall provide a planned program of social, physical, spiritual, psychological and cognitive activities. These activities shall reflect and be adapted to the needs, interests and capabilities of the recipients.

(1) The center may involve volunteers in the implementation of the therapeutic activities program.

(2) The current monthly schedule of activities shall be posted at a location convenient to recipients, staff and families.

(3) Therapeutic activities shall include, but not be limited to:

(A) Discussion groups (reality orientation, removitation);

(B) Arts and crafts;

(C) Specialty groups;

(D) Exercise groups;

(E) Educational programs;

(F) Participant council;

(G) Special events (parties, entertainment);

(H) Excursions or outings;

(I) Community service projects; and

(J) Individualized programs.

(4) The activities program shall be coordinated with occupational and physical therapy programs so that a total plan of care is provided each recipient.

(5) The recipients and their families, when possible, shall be involved in the planning and implementation of the activities program.

(6) The activity staff shall:

(A) Participate in all recipient conferences;

(B) Participate in professional organizations and seminars;

(C) Document assessments, treatment plans, evaluations and clinical notes; and

(D) Develop and implement a quality assurance program.

10. Transportation services as follows:

i. The center shall provide transportation for recipients to and from their homes as well as to and from services provided indirectly by the center. No recipient's total daily commutation time shall exceed two hours.

ii. The cost of transportation services provided by the Center shall be included in the per diem reimbursement for medical day care services. Medical day care transportation shall not be reimbursed as a separate service by the Division.

#### 10:65-1.5 Staff

(a) The center shall have adequate staff capability to provide services and supervision to the recipients at all times. The composition of the staff shall depend in part on the needs of the recipients and on the number of recipients the program is serving. At a minimum, the center shall have a medical day care center administrator/director, a registered professional nurse, a social worker, an activities coordinator and a medical director. If the freestanding facility has no medical director, a licensed physician shall be appointed to serve in this capacity. Staff position requirements are as follows:

1. The activities coordinator shall meet the requirements of the New Jersey State Department of Health, N.J.A.C. 8:43F-1.13, for a patient activities director.

i. An activities consultant shall possess:

(1) A master's degree in any one of the following: recreation therapy, creative arts therapy, occupational therapy, health care adminis-

tration, human services, or a related field and two years of experience in patient activities in a health care setting; or

(2) A bachelor's degree from a college or university approved by a state department of education with a major in recreation therapy, creative arts therapy, occupational therapy or a related field and two years of paid full time experience in a clinical, residential, or community-based therapeutic recreation program, and three years experience as a consultant in a health care setting.

2. The administrator/director shall be responsible for the overall conduct and management of all program activities and staff on a full-time basis. The administrator/director shall:

i. Be a qualified health professional, such as a nursing home administrator, physician, social worker, licensed nurse, licensed physical therapist, occupational therapist, or speech-language pathologist;

ii. Be experienced in the care of the elderly and disabled and knowledgeable regarding their physical, social and medical health needs; and

iii. Meet the minimum staff requirements defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.4).

3. A dietitian shall be responsible for the direction, provision and quality of dietary services. Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration (see N.J.A.C. 8:43F-1.6).

4. The medical director shall provide the medical consultation and supervision of the total health care program provided to the recipients. The medical director shall be licensed as a physician to practice medicine in the State of New Jersey (see N.J.A.C. 8:43F-1.11 and 1.16).

5. The registered professional nurse shall be licensed by the New Jersey Board of Nursing pursuant to N.J.S.A. 45:11-26 et seq. and shall have at least one year full-time or full-time equivalent experience in nursing supervision and/or nursing administration in a licensed health care facility, as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.7).

6. A pharmaceutical consultant shall be licensed by the New Jersey State Board of Pharmacy with a current license to practice in the State of New Jersey in accordance with N.J.A.C. 8:43F-1.14 and certified by the Joint Board for Certification of Consultant Pharmacists.

7. A social worker shall possess a bachelor's or master's degree from a college or university approved by a state department of education with a major in one of the following: social work, psychology, sociology, or counseling as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.18). For those persons without a master's degree in social work, at least one year of full-time or full-time equivalent social work experience in a licensed health care facility is required.

i. A social work consultant shall possess a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education and at least one year of full-time social work experience in a health care facility.

(b) Adequate staff is defined as a ratio of one regular full-time, or full time equivalent, staff person to nine recipients, calculated on the basis of the daily census. The ratio shall include the center administrator/director and all other personnel (except the medical director) who are involved in direct patient care, excluding volunteers.

1. Without compromising the above required staff-recipient ratio of one to nine, various staff positions could conceivably combine functions within one person, that is the center administrator/director may be a social worker or activities coordinator, performing dual functions of the director/social worker or director/activities coordinator. New programs for start-up purposes, or programs with less than 10 recipients, may have no fewer than two full-time staff persons. The registered nurse shall occupy one of the two positions. In programs of 36 or more recipients, the director may not serve a dual function.

#### 10:65-1.6 Recipient review, evaluation and identification

(a) Each recipient in the Medical Day Care Program shall be seen by his or her attending physician as needed but at least every six

months. A record of the physician's visit, findings, and recommendations shall be documented on the recipient's chart.

(b) Every 90 days the recipient's individualized plan of care shall be updated by the medical day care center staff to reflect the needs of the recipient for medical day care. This plan shall become part of the recipient's permanent record at the center.

(c) Medical Day Center staff shall verify that the recipient is a covered person on the first visit and at least monthly thereafter. This is done by viewing the Medicaid eligibility identification card. (see N.J.A.C. 10:49-5.4)

#### 10:65-1.7 Records

(a) As a minimum, the recipient's chart shall contain the following information:

1. An application for admission form;
2. A home visit assessment;
3. A medical history, record of physical examination, and medication record as recorded initially by the attending physician and updated every six months thereafter, citing general medical condition, disabilities and limitations. Also included shall be any consultations, reports of laboratory studies, and progress notes from therapies;

4. A nursing assessment/history, which shall be completed after the first five days of attendance or within a period of one month (whichever is less), and daily nursing observations for the first five days of attendance. A nursing summary and evaluation shall follow every 90 days thereafter, providing appropriate input into the Individualized Multidisciplinary Plan of Care;

- i. This requirement does not preclude the completion, by the nurse, of clinical documentation as often as necessary to assure consistent follow-up to care needs.

5. A social assessment history, which shall be completed after the first five days of attendance or within a period of a month (whichever is less), and social summary and evaluation notes every 90 days;

6. An activity assessment and plan, which shall be completed after the first five days of attendance or within a period of a month (whichever is less), and activity summary and evaluation notes every 90 days;

7. Physical therapy, occupational therapy, speech-language pathology services and dietary progress notes as indicated;

8. A dietary assessment, which shall be completed within the first five days of attendance or within a period of one month (whichever is less). When the recipient's nutritional status requires dietary intervention, there shall be ongoing monitoring and 90-day summary and evaluation notes;

9. A multidisciplinary individualized plan of care, which shall be completed after the first five days of attendance or within a period of one month (whichever is less) and updated every 90 days, with input from each discipline;

10. Clinical notes, which shall be required from each discipline. These notes shall be event-triggered and shall be written, signed and dated, when significant physical, emotional, mental, behavioral or social changes occur to the recipient, when problems arise and/or services are provided on an intensive basis. These notes shall include a description of signs, symptoms, treatments, services and the recipient's reactions. Clinical notes shall be written in the recipient's medical chart the day service is provided; and

11. An attendance record.

(b) The multidisciplinary individualized plan of care shall be written for each recipient, with input from the recipient, family, and interested community agencies. The plan shall state medical needs of the recipient as evaluated by the attending physician, with nursing, social service, activity and other service needs as determined by the center staff, with input from community agencies. Overall goals and services to be provided by the center to fulfill the needs expressed shall be indicated;

1. The multidisciplinary individualized plan of care shall:
  - i. Be signed by all center staff preparing or revising the plan;
  - ii. Be updated at least every 90 days by each discipline;
  - iii. Identify psychosocial, medical and nursing needs and problems of the recipient and/or caregiver(s). Each discipline shall attend the

multidisciplinary care conference held on each recipient and assess the specific area of expertise; and

- iv. In addition to the problem/need identification, include goals specifically related to each problem/need and interventions that the specific discipline shall utilize to achieve the goals. Short-term goals shall be measurable, observable and include a target date not to exceed 90 days. Long-term goals shall also be measurable, observable and include a target date not to exceed one year.

(c) Summary and evaluation shall:

1. Be completed, signed and dated by each discipline every 90 days; and

2. Be a comprehensive review of the recipient's overall adjustment to the center which includes the following:

- i. Attendance record;
- ii. Physical, emotional, mental, behavioral and social functioning;
- iii. Significant changes in the home situation;
- iv. Services provided;
- v. Referrals made; and
- vi. Contacts with the caregivers;

3. Be an appraisal of the effectiveness of the interventions identified on the care plans. Each discipline shall assess the recipient's and caregiver's responses to these interventions, including responses to physician ordered treatments; for example, dressing changes, medications, etc. If the goals were not achieved, barriers shall be cited.

#### 10:65-1.8 Basis of payment

(a) The center participating in the Medical Day Care Program shall agree to accept the reimbursement rate established by the Division as the total reimbursement for services provided to the Medicaid recipient and to the beneficiary enrolled in the Home Care Expansion Program (HCEP). In a nursing facility, the medical day care per diem rate is 45 percent of that nursing facility's per diem rate. In freestanding centers, the medical day care per diem rate is based on an average of the rates paid to nursing facility medical day care providers or a percentage of nursing facility rates in effect as of January 1 and July 1 each year. For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to nursing facility-based providers. The reimbursement rates set for any Medicaid recipient in medical day care centers may not exceed charges for non-Medicaid participants. The per diem reimbursement shall cover the cost of all services listed in N.J.A.C. 10:65-1.4 with the following exceptions:

1. Exception: Retroactive to October 1, 1990, a one-time adjustment shall be made to Medical Day Care providers for those medical day care services paid at the rate of 43 percent of the NF rate. This adjustment shall be calculated to pay the difference between 43 percent and 45 percent of the NF rate multiplied by the days of service paid at the 43 percent of the NF rate.

2. Physical therapy and speech-language pathology services shall not be included in the per diem rate and when provided by the center. These services must be billed separately on the Health Insurance Claim Form, 1500 N.J.

(b) The Division shall not reimburse for medical day care services and partial care/partial hospitalization program services provided to a recipient on the same day.

(c) The only services that are considered for payment under Medicare are physical therapy and speech-language pathology services since medical day care service is not a covered Medicare service. When the medical day care recipient is covered under both programs, only the Medicare Form UB-82/HCFA-1450 shall be completed showing the Health Services Program Case and Person Number (Medicaid Case Number).

(d) Some insurance companies currently offer medical day care as a benefit. The center shall review the recipient's and family's insurance plans before submitting Medicaid claims to assure that insurance companies are billed before submitting to the Fiscal Agent.

#### 10:65-1.9 Disaster plan

The facility disaster plan shall be posted at the nurses' station and other conspicuous locations throughout the medical day care center.

**HUMAN SERVICES**

**PROPOSALS**

**SUBCHAPTER 2. RELEVANT HCPCS CODES**

**10:65-2.1 Introduction**

(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). THE HCPCS codes as listed in this subchapter are relevant to certain Medicaid and HCEP medical day care services.

(b) These codes are used when requesting reimbursement for certain Medical Day Care Services and when a Health Insurance Claim Form, 1500 N.J., (Appendix G) is required.

**10:65-2.2 HCPCS Codes**

(a) HCPCS Codes for medical day care services are as follows:

HCPCS

Z0300

Z0310

Z0270

92507

97799

90050

Z1816

Description

Initial visit, speech-language pathology services

Initial comprehensive speech-language pathology evaluation

Initial visit, physical therapy

Speech-language pathology services

Physical therapy

Medical day care visit

Medical day care visit (ACCAP)

APPENDIX A



STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
CN-712
TRENTON, NEW JERSEY 08625

MEDICAID PROVIDER APPLICATION

- 1. Legal and/or Trade Name of Organization
2. Type of Business or Facility
3. Address Street City County State Zip Code
4. SSA and/or Employer ID Number 5. Telephone Number 6. Length of Time at Above Address
7. Billing Address, If Different 8. Name of Administrator, Chief Executive Officer, Director or Other Official
9. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program
10. Do you operate from more than one location? [ ] Yes [ ] No If yes, list all other subsidiary or affiliated organization below: (Name and address)
11. Please indicate your preference to receive central or local reimbursement:
[ ] Reimbursement to each Satellite Location
[ ] Reimbursement to Central Location
Billing through a central location is allowable and left to the provider's discretion. However, if the provider chooses to bill centrally, pre-addressed claims MUST be utilized since they reflect the proper address and provider number for that location.
12. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? [ ] Yes [ ] No If yes, have you applied for the Certificate? Attach copy of Certification of Need. If no, explain why you don't require a Certificate.
13. If your business or facility requires a license(s), list type of license(s), license number(s), effective date of license(s), and attach a non-returnable copy.
14. CERTIFICATION, ACCREDITATION OR APPROVAL - - Specify type and attach copy. For Example JCAH (Hospitals); New Jersey Department of Health (Clinics); Office of Community Services (Mental Health Clinics); State Board of Dentistry (Dental Clinics); State Board of Pharmacy (Providers offering Pharmaceutical Services); American Board for Certification in Orthotics and Prosthetics (Prosthetist and/or Orthotist) See also question 15.
15. Approved by Medicare? [ ] Yes [ ] No If yes, attach copy of your approval, if applicable. If no, have you applied for Medicare approval? [ ] Yes [ ] No attach documentation.



APPENDIX B



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

PARTICIPATION AGREEMENT  
NEW JERSEY HEALTH SERVICES PROGRAM  
MEDICAL DAY CARE PROGRAM

NAME OF FACILITY \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
STATE LICENSE NO. \_\_\_\_\_ MEDICAID PROVIDER NO.: NF \_\_\_\_\_  
MDC \_\_\_\_\_  
HMDC \_\_\_\_\_

This Contract, made and entered into by and between the Department of Human Services through the Division of Medical Assistance and Health Services, hereinafter designated as the Department, and the above-named facility, a provider of services, whose address is as stated above, hereinafter designated as the Facility, Witnesseth:

Whereas, various persons eligible for benefits under the New Jersey Health Services Program (Medicaid) are in need of medical day care, as more specifically set forth in Program regulations and guidelines; and,

Whereas, Section 1902(a)(27) of Title XIX of the Social Security Act requires states to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance (Title XIX); and,

Whereas, pursuant to N.J.S.A. 30:4D-1 et. seq., the Department is responsible for the administration of the Medicaid Program and is authorized thereunder to take all necessary steps for the proper and efficient administration of the New Jersey Medicaid Program; and,

Whereas, to participate in the New Jersey Medicaid Program, a Medical Day Care Facility must: (1) be licensed under the laws of New Jersey as a non-residential Adult Day Health Care Center by the Department of Health; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a qualified health professional; (4) meet on a continuing basis Federal and State standards for participation and more specifically Medical Day Care standards in Title XIX; (5) accept the terms and conditions of participation set out herein.

A. FACILITY AGREES:

- 1. That it will render all services which are required for participation in the Medical Day Care Program, including as a minimum: medical services, nursing services, social services, transportation, personal care services, dietary services, therapeutic activities, pharmaceutical and rehabilitative services;

2. That it will accept the Medical Day Care rate approved under the Medicaid Program as payment in full and will not make any additional charges to the participant or others on his behalf for Medicaid covered services, except for authorized physical therapy and speech-language therapy which are not included in the per diem reimbursement and must be billed separately. Medical Day Care Centers will be reimbursed in accordance with methods and procedures set forth in State regulations either on the basis of cost study information or a percentage of the nursing facility per diem rate, except for the hospital affiliated Medical Day Care Center which will be reimbursed at a negotiated per diem rate not to exceed the maximum Medical Day Care rate paid to nursing facility based providers;
3. That it will promptly initiate and terminate billing procedures, pursuant to applicable regulations, when individuals covered under this Program enter or leave the Facility or are assessed at a different level of care;
4. That it will limit billing procedures under this Program to those eligible and authorized participants and for those days on which Medical Day Care services have been received;
5. That it will make available to the appropriate State and/or Federal personnel or their agents, at all reasonable times and places in New Jersey, all necessary records, including but not limited to the following:
  - a. Medical records as required by Section 1902(e)(28) of Title XIX of the Social Security Act, and any amendments thereto;
  - b. Records of all treatment, drugs, and services for which vendor payments are to be made under the Title XIX Programs, including the authority for and the date of administration of such treatments, drugs, or services;
  - c. Documentation in each participant's record which will enable the Department to verify that each charge is due and proper prior to payment;
  - d. Financial records of the Facility, including data necessary to determine appropriate reimbursement rates;
  - e. All other records as may be found necessary by the Department in compliance with any Federal or State law, rule or regulation promulgated by the United State Department of Health and Human Services or by the Department;
6. That it will comply with the disclosure requirements specified in 42CFR 455.100 through 42CFR 455.106;

7. That the maximum number of daily participants will be in accordance with the Department's regulations and the licensure standards of the Department of Health;
8. That it will cooperate fully in permitting and assisting representatives of the Department to make assessments and evaluations of services needed by and provided to participants in general, and of individual participants who are recipients of Medical Day Care services;
9. That it will secure and arrange for other health services as may be available for Medicaid patients pursuant to Program regulations;
10. That it will comply with State and Federal Medicaid laws, rules and regulations promulgated pursuant thereto;
11. That it will cooperate fully in permitting and assisting representatives of the Department in determining continuing conformity with the Federal and State standards applicable to non-residential Medical Day Care Facilities;
12. That it will notify the Department, within five working days, of any change in the status of its license to operate as issued by the Department of Health;
13. That it will notify the Department, within five working days, of any professional staff changes;
14. That it will notify the Medical Day Care participants, in writing, thirty days prior to the Facility's termination as a Medicaid Provider;
15. That it will immediately provide the Medicaid Program with written notice of any change in ownership and/or operation of the Facility, including changes in leases, officers and directors, stock ownership or sale of the Facility when:

Corporation (Profits)

- a. There is acquisition by or transfer of ownership through purchase, contract, donation, gift, stock option, etc., of 25% or more of a corporation's outstanding stock (preferred or common).
- b. There is acquisition of the physical assets of the Facility by a newly formed or existing corporation.

Partnership

- a. There is acquisition by or transfer of ownership of 10% or more of the existing partnership's total capital interest.

- b. There is acquisition of the physical assets of the Facility by a newly formed or existing partnership.

Proprietorship

- a. There is purchase of the physical assets of the Facility.

Corporation (Non-Profit)

- a. There is a change in the officer, trustee, directors or board members of the Facility.

16. To comply with the requirements of Title VI of the Civil Rights Acts of 1964 and Section 504 of the Rehabilitation Act of 1973 and any amendments thereto; and Section 1909 of P.L. 92-603, Section 242 (c) which makes it a crime and sets the punishment for persons who have been found guilty of making any false statement or representation of a material fact in order to receive any benefit or payment under the Medical Assistance Program. (The Department of Human Services is required by Federal regulation to make this law known and to warn against false statements in an application/agreement or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.)
17. That breach or violation of any one of the above provisions shall make this entire agreement subject to immediate cancellation at the Department's discretion, in keeping with the procedures adopted by the Division in accordance with the New Jersey Administrative Procedures Act.

B. DEPARTMENT AGREES:

18. That it will pay for authorized services provided by the Facility in keeping with the availability of State appropriations, on the basis of care required by the eligible individual as determined by the Department acting under the applicable regulations, but in no event will payment be made for any individual determined not to require Medical Day Care services;
19. That it will reimburse the Medical Day Care Center through the appropriate fiscal agent in accordance with methods and procedures set forth in State regulations, either on the basis of cost study information or a percentage of the nursing facility per diem rates; reimbursement for the hospital affiliated Medical Day Care Center will be at a negotiated per diem rate not to exceed the maximum Medical Day Care Center rate paid to nursing facility based providers;

20. That it will make such payments in accordance with applicable laws and regulations as promptly as is feasible after a proper claim is submitted and approved;
21. That it will give, subject to paragraph 17, the Facility 30 days' notice of any impending changes in its status as a participating Medical Day Care Facility;
22. That it will notify the Facility of any change in Title XIX rules and regulations as it relates to the Facility's program, and will work with the individual Facility with the view toward providing the best care available within the limitations of the law and available money;
23. That the Facility may terminate its participation in the Medicaid Program at the expiration of this agreement upon a minimum of 60 days' written notice to the Department.

C. DEPARTMENT AND FACILITY MUTUALLY AGREE:

24. That, in the event the Federal and/or State laws should be amended or judicially interpreted so as to render the fulfillment of this agreement on the part of either party infeasible or impossible, or if the parties to this agreement should be unable to agree upon modifying amendments which would be needed to enable substantial continuation of the Title XIX Program as a result of amendments or judicial interpretations, then, and in that event, both the Facility and the Department shall be discharged from further obligation created under the terms of this agreement, except for equitable settlement of the respective accrued interests up to the date of termination.
25. That this agreement shall be transferable and assignable upon a change in ownership and/or operation;
26. That, in the event the participating Facility is sold, the Department shall make no division of the reimbursable proceeds for services rendered to Medicaid recipients between buyer and seller, but rather will reimburse the provider of record as of the billing month for all services rendered. Said Provider shall make the necessary adjustments;
27. This agreement shall be effective on \_\_\_\_\_ and will continue unless terminated or amended prior thereto (1) by mutual consent of the parties, (2) for cause under applicable clauses herein, or (3) because of Federal and/or State government withdrawal from Program participation.

28. To be completed by the Facility.

\_\_\_\_\_  
Facility

\_\_\_\_\_  
Address

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

29.

\_\_\_\_\_  
Division of Medical Assistance and Health Services  
Department of Human Services

## APPENDIX C

## MEDICAL DAY CARE

## OUTLINE FOR WRITTEN NARRATIVE STATEMENT ON PROPOSED MEDICAL DAY CARE CENTER

1. Describe the philosophy, goals and objectives for providing medical and ancillary health services to a non-resident population on a day care basis.
2. Describe the physical facilities to be used for the proposed Medical Day Care Center (diagram acceptable).
3. Describe the proposed Medical Day Care Program, including hours of operation; services to be provided, in-house and/or arrangement and staff who will be implementing the program.
4. Provide staff position descriptions and state qualifications of personnel selected for each position.
5. State total number of participants who will be served by Medical Day Care and give anticipated daily population.
6. Submit a projection of costs to be incurred by the Medical Day Care Program. State the period of projection and provide the basis of cost allocation if applicable.
7. Will the Medical Day Care Center be funded by other than Title XIX; i.e., Title XX and Title III?
8. Is the proposed Medical Day Care Program a new service of your facility or an expansion of an existing Day Care Program?
9. Additional comments relevant to the application for Medical Day Care under the New Jersey Medicaid Program.



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

APPENDIX D

MEDICAL DAY CARE ON-SITE REPORT

Name of Program \_\_\_\_\_ Survey Date \_\_\_\_\_  
 Address \_\_\_\_\_ Telephone Number \_\_\_\_\_  
 Facility Administrator \_\_\_\_\_ Initial Approval Date \_\_\_\_\_  
 Medical Day Care Center Director \_\_\_\_\_ Latest Contract Renewal Date \_\_\_\_\_  
 Current Total Enrollment \_\_\_\_\_ Avg. Daily Attendance \_\_\_\_\_ Medicaid Census \_\_\_\_\_  
 Number of Paid Staff \_\_\_\_\_ (full-time) Number of Volunteers \_\_\_\_\_  
 Registered Nurse: Yes ( ) No ( ) Social Worker: Yes ( ) No ( )  
 Activity Coordinator: Yes ( ) No ( ) Medical Director: Yes ( ) No ( )

Check Each Item if Applicable:

<u>Service Provided</u>	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
1. Medical	_____	_____	15. Current Lab. Reports	_____	_____
2. Nursing	_____	_____	16. Nurses Notes	_____	_____
3. Social	_____	_____	Daily 1st. 5 days	_____	_____
4. Transportation	_____	_____	Every 30 days	_____	_____
5. Personal Care	_____	_____	17. Social History	_____	_____
6. Dietary	_____	_____	18. Social Progress Notes	_____	_____
7. Social Activities	_____	_____	Every 90 days	_____	_____
8. Rehabilitative Services	_____	_____	19. Initial Activity Plan	_____	_____
9. Dental	_____	_____	20. Activity Progress Notes	_____	_____
10. Podiatry	_____	_____	Every 90 days	_____	_____
<u>Records</u>			21. Therapy Progress Notes	_____	_____
11. Admission Form	_____	_____	22. Discharge Plan	_____	_____
12. Individualized Plan or Care	_____	_____	23. Emergency Provisions	_____	_____
Updated Every 90 Days	_____	_____	24. Disaster Plan	_____	_____
13. Initial Physical Exams	_____	_____			
Every 90 Days	_____	_____			
14. Medical Orders	_____	_____			

MCNH-89 (Rev. 1/83)

Comments: Indicate deficient areas according to item number in preceding section.

Team Recommendations to Facility:

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Projected Revisit: \_\_\_\_\_

Facility Staff Present:

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\_\_\_\_\_  
Medical Consultant

\_\_\_\_\_  
RSN/RNS

\_\_\_\_\_  
ASWS

APPENDIX E



State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services
Medicaid Participant Profile—Medical Day Care

1. Last Name First Name
2. Participant's Street Address or Mailing Address
3. City 4. County 5. Zip Code
6. Month / Day / Year of Birth 7. Sex 8. Martial Status 9. Race 10. Veteran Status
11. HSP (Medicaid) Case No. 12. Social Security #
13. Waiver program? CCPED Model Waiver ACCAP N/A
13a. Level of care in waiver program (For Division Use Only)
13b. Attended day care before waiver? yes no
13c. If yes, how did participant pay? Other:
14. Living arrangement: Other:
15. Primary caregiver: Other:
16. Prior status: Other:
16a. If nursing home, give prior nursing home HSP# where different from current HSP#: (For Division Use Only)
17. Primary diagnosis: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Other:
18. Secondary diagnoses: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Other:
19. Services required: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 Other:
19a. If client is receiving therapies (service #s 1, 9 or 10 above), check payment mechanism: Medicare Medicaid Private Insurance Other
19b. If the payor is private insurance, name carrier:
20. Enrollment: (Month/Day / Year)
21. Reason for attendance: 1 2 3 4 5 6 7 8 9 10 11 12 Other:
22. Source of referral: Other:
23. Maximum number of days/week approved by Medicaid:

Center provider number: 3700 County of Provider:
Date: Completed by:

FD-321 (Rev 9/87)

State of New Jersey  
Department of Human Services  
Division of Medical Assistance and Health Services  
Medicaid Participant Profile -- Medical Day Care  
Instructions for Participant Profile Sheet

PLEASE COMPLETE THIS FORM FOR MEDICAID PARTICIPANTS ONLY.

Please print all information, using blocks designated. Complete all applicable information. Print N/A in any blocks that are not applicable.

- 1. Name - Fill in last name and first name. If name is longer than blocks allowed, fill in as much as possible.
- 2. Participant's Street Address or Mailing Address - Indicate as much of the street or mailing address as possible.
- 3. City -- Indicate City of residence
- 4. County -- Indicate County of residence
- 5. Zip Code -- Indicate participant's zip code.
- 6. Date of birth -- Indicate date of birth, giving month first, then day, then year.
- 7. Sex -- Indicate M for male; F for female
- 8. Marital Status -- Indicate marital status by using appropriate code:
  - 01. Married
  - 02. Never Married
  - 03. Divorced
  - 04. Separated
  - 05. Widowed
- 9. Race -- Indicate race by using appropriate code:
  - 01. American Indian
  - 02. Asian or Pacific Islander
  - 03. Black, Non-Hispanic Origin
  - 04. Hispanic
  - 05. White/Non-Hispanic
  - 06. Other
- 10. Veteran Status: Indicate Y for Yes, N for No.
- 11. Medicaid HSP # - Indicate the Medicaid Identification # assigned to the participant.
- 12. Social Security # -- Indicate participant's own social security number.
- 13. Waiver Program Participants: Indicate if participant is in a Medicaid waiver program. Check the appropriate program, or N/A.

13a. The level of care assigned to the waiver program participant will be filled in by the Division of Medical Assistance and Health Services (Medicaid).

13b. Did participant attend Medical Day Care before acceptance into the waiver? Indicate yes or no.

13c. If participant was in medical day care before participation in a waiver program, how did the participant pay?

01. private pay
02. Private insurance. Please write in name of provider on blank line.
03. United Way
04. Social Service Block Grants (Title XX)
05. Older Americans Act (Title III)
06. Scholarship from center
07. Other. Specify.

14. Living Arrangement -- Indicate the individual's living arrangement by using the appropriate code:

01. Alone
02. With parents or adult children
03. With spouse
04. With other relatives
05. With non-relative
06. Residential Home or Boarding Home or Rooming House or Supervised Apartments
07. Foster Care
08. Residential Health Care Facility
09. Other (specify)

15. Primary Caregiver -- Indicate who the primary caregiver is:

01. Spouse
02. Child
03. Sibling
04. Other relative
05. Friend
06. Neighbor
07. Parent
08. Foster Care
09. None
10. Boarding home sponsor in regular boarding home, or Supervisor of supervised apartments.
11. Residential Health Care Facility
12. Other. Specify. (Includes attendant care).

16. Prior Status -- Indicate the location of the participant prior to enrolling in Medical Day Care

01. In community (includes any non-residential facilities and boarding homes)
02. In nursing home
03. In-patient hospital
04. In-patient rehabilitation
05. Residential drug treatment center
06. Residential health care facility
07. Residential facility for mental retardation or mental illness
08. Other, specify.

16a. The prior nursing home HSP#, where applicable, will be supplied by Medicaid.

17. Primary Diagnosis -- Indicate the one primary diagnosis for the participant at the point of entry into program, as stated by the attending physician. (Detailed explanations of diagnoses are attached).

01. Musculoskeletal System and Connective Tissue Diseases
02. Fractures
03. Other Orthopedic
04. Diabetes
05. Anemia
06. Other Nutritional and Metabolic Diseases
07. Cancer
08. Cardiovascular
09. Cerebrovascular Accidents (Stroke)
10. Traumatic brain injuries
11. Hearing Impaired
12. Eye disorders
13. Cerebral Palsy
14. Multiple Sclerosis
15. Other Neurosensory
16. Alzheimer's and other Organic Brain Syndrome
17. Mental Illness
18. Mental Retardation
19. Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)
20. Gastrointestinal
21. Alcoholism and Alcoholism Related Diseases
22. Genitourinary
23. Respiratory
24. Skin Diseases
25. General physical deterioration, frailty
26. Other (specify) \_\_\_\_\_

18. Secondary Diagnoses: Indicate the secondary diagnoses for the participant at the point of entry into the program, as stated by the attending physician. Check as many as are required, using the same list as for number 17.

19. Services required - Indicate the services required by the participant's plan of care. Check all that apply.

01. Physical Therapy and Rehabilitation
02. Respite Care
03. Assistance Shopping
04. Personal Care
05. Supervision/ administration of Medications
06. Education in ADLs/IADLs
07. Socialization
08. Requires supervision during day
09. Speech therapy
10. Occupational Therapy (including sheltered workshops)
11. Reality Orientation
12. Therapeutic nutrition/nutritional education
13. Bowel and bladder training (or assistance with toileting)
14. Health monitoring
15. Skilled Nursing (direct care)
16. Psychotherapy/counseling/support groups
17. Therapeutic recreation
18. Case management and/or resource referrals
19. Foot care/podiatry
20. Transportation to doctor/therapies
21. Translator (to Spanish, sign language, etc).
22. Other (specify)

19a. If client is receiving therapies (service #1, 9 or 10 above), check appropriate payment mechanism.

19b. If the payor is private insurance, name carrier.

20. Date of Enrollment -- Indicate first date of attendance in Medical Day Care using numbers. (This would be the effective date on the prior authorization form FD-140).

21. Reason for Attendance -- Indicate the most important reason(s) the participant attends Medical Day Care. Why does the client need the services you provide?

01. Recent deterioration of medical status
02. Loss of primary caregiver
03. Accident/Injury
04. Primary caregiver needs relief
05. Increased dependency in ADLs and IADLs
06. Caregiver employed outside home
07. Social isolation
08. Chronic physical health problems  
(includes "requires nursing daily")
09. Psychiatric problems or depression
10. Mental retardation
11. Disorientation or confusion
12. Other, specify.

22. Source of referral. Who contacted the center to refer the client?

01. Hospital (in or outpatient)
02. Doctor
03. Social Day Care Center or Psychiatric Day Treatment or Senior Center
04. Self
05. Family or Relative or Friends or Other client or boarding home operator or other primary caregiver
06. Nursing home
07. Home Health or Homemaker Agency
08. Social Service Agency or mental health agency or meals on wheels
09. Church or clergy
10. Medicaid District Office
11. Your center or any center staff member actively recruited
12. Other Medical Day Care Centers
13. Community Care Program for the Elderly and Disabled (CCPED)
14. Other state offices
15. Other (specify) \_\_\_\_\_

23. Days in attendance: Indicate the maximum number of days/week that were approved by the Medicaid District Office for the participant to attend, as of the participant's date of enrollment.

Diagnoses

01. Musculoskeletal System and Connective Tissue Diseases-- Includes diseases such as arthritis, Rheumatoid and allied conditions, Osteomyelitis, other diseases of joints, and Lupus.

02. Fractures -- Includes all fractures, simple or compound, long or shorter term, and joint replacements.

03. Other Orthopedic -- Includes such diseases as scoliosis, dislocations, sprains, congenital deformities of the bones and organs of movement, traumatic and congenital amputations of limbs, except amputation due to diabetes.

04. Diabetes -- includes diabetes and its complications such as diabetic ulcer and amputation due to diabetes.

05. Anemia

06. Nutritional and Metabolic Diseases -- Includes diseases such as Addison's disease, Cushing's disease, hypothyroidism, malnutrition and obesity, but not anemia or diabetes.

07. Cancer -- includes malignant neoplasms of all sites

08. Cardiovascular -- includes disease of the heart and blood vessels such as cardiovascular-renal diseases, hypertension, arteriosclerotic heart disease, congestive heart failures, pacemaker use and other heart diseases.

09. Cerebrovascular Accidents (Stroke)

10. Traumatic brain injuries -- includes traumas with resulting brain injury, such as aneurism, lobotomy, gunshot wounds and car accidents, among others.

11. Hearing Impaired

12. Eye disorders -- Cataracts, Glaucoma, blindness, etc.

13. Cerebral Palsy

14. Multiple sclerosis

15. Neurosensory -- Includes diseases such as paraplegia, quadriplegia, hemiplegia, Parkinson's disease, epilepsy, ALS, neuralgia, seizure disorders, polio, spina bifida, and spinal cord injuries, among others.

16. Alzheimer's, Organic Brain Syndrome and other dementia.

17. Mental Illness -- includes all mental illness, such as schizophrenia and depression.

18. Mental retardation -- mental retardation from whatever cause, including Downs Syndrome

19. Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)

20. Gastrointestinal -- includes all non-alcohol related gastrointestinal diseases, such as ulcers, hernias, gastritis, colitis, fecal impaction; and other disease of the buccal cavity, esophagus, stomach, intestines, peritoneum, liver (except alcohol related cirrhosis), gall bladder and pancreas.

21. Alcoholism and Alcoholism related diseases (such as cirrhosis)

22. Genitourinary -- Includes all genitourinary diseases, such as infections of the kidney, ureters, bladder and urethra; prostatitis, and other diseases of the prostate or male genital organs; diseases of the breast, ovaries, fallopian tubes and other female genital organs.

23. Respiratory -- Includes all respiratory diseases, such as tuberculosis, COPD, emphysema, bronchitis, and pneumonia.

24. Skin Diseases

25. General physical deterioration, frailty

26. Other (specify)



State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

Quarterly Discharge Information
Medical Day Care

Please list each Medicaid client discharged during the quarter dated
\_\_/\_\_/\_\_ - \_\_/\_\_/\_\_. For each client include HSP#, the date
discharged, and where discharged to, using the code number from the list
below, or specifying other where appropriate.

Table with 5 columns: Name, HSP (Medicaid) Case No., Date Discharged, Discharged to. Multiple empty rows for data entry.

- Discharged to:
01 Nursing Home
02 Psychiatric Institute
03 Residential Health Care Facility
04 Hospital
05 Social Day Care Program
Community:
06 No Longer Needs
07 Unable to attend
08 No Longer Interested
09 Moved
10 Died
11 Other. Please specify.

\*\*\*\*\*

Center provider number 3700 County

Date: Completed by:

FD-322 (6/87)

APPENDIX G

HEALTH INSURANCE CLAIM FORM

READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

MEDICARE [ ] MEDICAID [ ] CHAMPUS [ ] OTHER [ ] OMB No 0938-0008

PATIENT & INSURED (SUBSCRIBER) INFORMATION

1. PATIENT'S NAME (First name, middle initial, last name) 2. PATIENT'S DATE OF BIRTH 3. INSURED'S NAME (First name, middle initial, last name) 4. PATIENT'S ADDRESS (Street, city, state, ZIP code) 5. PATIENT'S SEX MALE [ ] FEMALE [ ] 6. PATIENT'S MEDICARE/CHAMPUS NO. (Include any letters) 7. PATIENT'S RELATIONSHIP TO INSURED SELF [ ] SPOUSE [ ] CHILD [ ] OTHER [ ] 8. PATIENT'S MEDICAID I.D. NO. 9. OTHER HEALTH INSURANCE COVERAGE-- YES [ ] NO [ ] 10. WAS CONDITION RELATED TO: A. PATIENT'S EMPLOYMENT YES [ ] NO [ ] B. ACCIDENTAL INJURY AUTO [ ] OTHER [ ] 11. INSURED'S ADDRESS (Street, city, state, ZIP code) 12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE 13. I Authorize Payment of Medical Benefits to Undersigned Physician or Supplier for Service Described Below.

PHYSICIAN OR SUPPLIER INFORMATION

14. DATE OF ILLNESS (FIRST SYMPTOM) OR INJURY (ACCIDENT) OR PREGNANCY (LMP) 15. DATE PATIENT FIRST CONSULTED YOU FOR THIS CONDITION 16. HAS PATIENT EVER HAD SAME OR SIMILAR SYMPTOMS? YES [ ] NO [ ] 17. DATE PATIENT ABLE TO RETURN TO WORK 18. DATES OF TOTAL DISABILITY FROM THROUGH 19. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE (e.g. public health agency) 20. FOR SERVICE RELATED TO HOSPITALIZATION (GIVE HOSPITALIZATION DATES) ADMITTED: THROUGH DISCHARGED: THROUGH 21. NAME & ADDRESS OF FACILITY WHERE SERVICES RENDERED (If other than home or office) 22. WAS LABORATORY WORK PERFORMED OUTSIDE YOUR OFFICE? YES [ ] NO [ ] CHARGES

23A. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY, RELATE DIAGNOSIS TO PROCEDURE IN COLUMN E BY REFERENCE NUMBERS 1, 2, 3, ETC. OR DX CODE 1 2 3 4 23B. WAS THIS SERVICE PERFORMED AS A RESULT OF AN EPSDT PROGRAM REFERRAL? YES [ ] NO [ ] PRIOR AUTHORIZATION NO.

Table with 5 columns: A. DATE OF SERVICE (FROM, TO), B. PLACE OF SERVICE, C. T.O.S., D. FULLY DESCRIBE PROCEDURES, MEDICAL SERVICES OR SUPPLIES FURNISHED FOR EACH DATE GIVEN (PROCEDURE CODE, Explain Unusual Services Or Circumstances), E. DIAGNOSIS CODE, F. DAYS OR UNITS, G. CHARGES, H. CHECK IF FAMILY PLANNING, I. LEAVE BLANK

25. SIGNATURE OF PHYSICIAN OR SUPPLIER (I certify that the statements on the reverse apply to this bill and are made a part hereof.) SIGNED [ ] MD [ ] DO [ ] DPM [ ] OD [ ] DC [ ] PhD DATE 26. ACCEPT ASSIGNMENT YES [ ] NO [ ] (Medicare and CHAMPUS Only See Back) 27. TOTAL CHARGE 28. AMOUNT PAID 29. BALANCE DUE 30. PROVIDER SOCIAL SECURITY/I.D. NO. 31. PHYSICIAN'S OR SUPPLIER'S NAME, ADDRESS & ZIP CODE 32. PATIENT'S ACCOUNT NO. 33. EMPLOYER I.D. NO.

34. REMARKS: TELEPHONE NO.

\* PLACE OF SERVICE AND TYPE OF SERVICE (T.O.S.) CODES ON THE BACK 1500 N.J. ED.11-82 APPROVED BY AMA COUNCIL ON MEDICAL SERVICES APPROVED BY THE HEALTH CARE FINANCING ADMINISTRATION, N.J. MEDICAID, AND CHAMPUS.

## HEALTH INSURANCE CLAIM FORM

## REFERS TO GOVERNMENT PROGRAMS ONLY

**MEDICARE AND CHAMPUS PAYMENTS:** A patient's signature requests that payment be made and authorizes release of medical information necessary to pay the claim. If item 9 is completed, the patient's signature authorizes releasing of the information to the insurer or agency shown. In Medicare assigned or CHAMPUS participation cases, the physician agrees to accept the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary as the full charge, and the patient is responsible only for the deductible, coinsurance, and non-covered services. Coinsurance and deductible are based upon the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary if this is less than the charge sub-

mitted. CHAMPUS is not a health insurance program and renders payment for health benefits provided through membership and affiliation with the Uniformed Services. Information on the patient's sponsor should be provided in items 3, 6, 7, 8, 9, and 11.

**MEDICAID PAYMENTS:** Authorization to Release Information, and Payment Request. I certify that the service(s) covered by this claim has been received, and request that payment for these services be made on my behalf. I authorize any holder of medical or other information about me to release to the State Agency or its authorized Agents any information needed for this or a related claim.

## SIGNATURE OF PHYSICIAN OR SUPPLIER (MEDICARE AND CHAMPUS)

I certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally rendered by me or were rendered incident to my professional service by my employee under immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.

immediate personal supervision by his/her employee, 2) they must be an integral, although incidental part of a covered physician's service, 3) they must be of kinds commonly furnished in the physician's offices, and 4) the services of non-physicians must be included on the physician's bills.

For services to be considered as 'incident' to a physician's professional service, 1) they must be rendered under the physician's

For CHAMPUS claims, I further certify that neither I nor any employee who rendered the services are employees or members of the Uniformed Services (refer to 5 USC 5536).

No Part B Medicare benefits may be paid unless this form is received as required by existing law and regulations (20 CFR 422.510).

**NOTICE:** Anyone who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment under applicable Federal laws.

## NOTICE TO PATIENT ABOUT THE COLLECTION AND USE OF MEDICARE AND CHAMPUS INFORMATION

We are authorized by HCFA and CHAMPUS to ask you for information needed in the administration of the Medicare and CHAMPUS programs. Authority to collect information is in section 205(a), 1872 and 1875 of the Social Security Act as amended and 44 USC 3101, 41 CFR 101 et seq. and 10 USC 1079 and 1086.

For example, it may be necessary to disclose information about the benefits you have used to a hospital or doctor.

The information we obtain to complete Medicare and CHAMPUS claims is used to identify you and to determine your eligibility. It is also used to decide if the services and supplies you received are covered by Medicare or CHAMPUS and to insure that proper payment is made.

With the one exception discussed below, there are no penalties under Social Security law for refusing to supply information. However, failure to furnish information regarding the medical services rendered or the amount charged would prevent payment of Medicare or CHAMPUS claims. Failure to furnish any other information such as name or claim number, would delay payment of the claim.

The information may also be given to other providers of services, carriers, intermediaries, medical review boards, and other organizations or federal agencies as necessary to administer the Medicare and CHAMPUS programs.

It is mandatory that you tell us if you are being treated for a work related injury so we can determine whether worker's compensation will pay for treatment. Section 1877(a) (3) of the Social Security Act provides criminal penalties for withholding this information.

## MEDICAID PAYMENTS (PROVIDER CERTIFICATION)

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State's Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency may request.

plete; and that the services covered by this claim and the amount charged therefore are in accordance with the regulations of the Medicaid Program; and that no part of the net amount payable under this claim has been paid; and that payment of such amount will be accepted as payment in full without additional charge to the patient or to others on his behalf, with the exception of authorized deductibles and coinsurance. I also certify that services have been furnished in full compliance with the non-discrimination requirements of Title VI of the Federal Civil Rights Act and Section 504 of the Rehabilitation Act of 1973.

**SIGNATURE OF PHYSICIAN (OR SUPPLIER):** I certify that the services covered by this claim were personally rendered by me or under my direct personal supervision (as defined by Program regulations); that the foregoing information is true, accurate and com-

I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws, or both.

PLACE OF SERVICE CODES:

- (IH) - Inpatient Hospital
- (OH) - Outpatient Hospital
- (O) - Doctor's Office
- (H) - Patient's Home
- (DCF) - Day Care Facility (PSY)
- (NCF) - Night Care Facility (PSY)
- (NH) - Nursing Home
- (SNF) - Skilled Nursing Facility
- (A) - Ambulance
- (OL) - Other Locations
- (IL) - Independent Laboratory
- (OMS) - Other Medical/Surgical Facility
- (RTC) - Residential Treatment Center
- (STF) - Specialized Treatment Facility
- (KC) - Independent Kidney Care Treatment Center
- (CL) - Clinic
- (ER) - Emergency Room
- (BH) - Boarding Home

TYPE OF SERVICE CODES:

- 1 - Medical Care
- 2 - Surgery
- 3 - Consultation
- 4 - Diagnostic X-Ray
- 5 - Diagnostic Laboratory
- 6 - Radiation Therapy
- 7 - Anesthesia
- 8 - Assistance at Surgery
- 9 - Other Medical Service
- 0 - Blood or Packed Red Cells
- A - Used DME
- M - Alternate Payment for Maintenance Dialysis
- Y - Second Opinion on Elective Surgery
- Z - Third Opinion on Elective Surgery

(a)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Medicaid Only Manual**

**Proposed Redoption: N.J.A.C. 10:71**

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-3; 30:4D-7, 7a, b and c.

Agency Control Number: 90-P-6.

Proposal Number: PRN 1990-552.

Submit comments by December 5, 1990 to:

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

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:71, Medicaid Only Manual, expires on January 6, 1991. This proposed redoption is designed to readopt all eight subchapters.

An administrative review has been conducted, and a determination made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated.

The Medicaid Only Manual sets forth the eligibility rules used by the county welfare agencies to determine Medicaid eligibility for aged, blind, or disabled individuals seeking assistance for the costs of nursing home care. The Medicaid Only Manual also governs the eligibility for a small proportion of those seeking medical assistance while residing in the community. Specifically, these rules provide special Federally mandated exceptions and defined classes of individuals for which the usual application of the rules is waived.

These rules are based, in accordance with the State Plan for Title XIX (Medicaid), on the basic eligibility policies applicable in the federal Supplemental Security Income (SSI) program. Therefore, except where Federally required or where the Federal statute authorizes exceptions to the SSI policy, these rules follow the SSI eligibility process.

While SSI limits eligibility for persons in long term care to those with monthly income less than \$60.00, Title XIX of the Social Security Act allows the state to establish a higher income level for Medicaid purposes. Under this option, the state is authorized to set an income limit at a maximum of 300 percent of the Federal benefit rate (without state supplement) for SSI payable to an individual residing in the community. New Jersey has elected to maximize this Federal option and has, therefore, set the monthly income limit for long term care at \$1,158.

For individuals in the community, these rules provide for the exclusion from consideration as income for certain individuals meeting Federally specified criteria. For example, these rules provide for the disregard of Social Security benefit increases for persons who lost eligibility for SSI because of Federal cost-of-living increases in Social Security benefits.

Therefore, affected persons continue to be eligible for medical assistance even though their eligibility for cash assistance through SSI has been terminated.

These rules specify those resources which are not considered in the eligibility process as well as those that are. To the extent that resources are not excluded, the total resources must be below \$2,000 for an individual and \$3,000 for a couple. The rules also stipulate the extent that the resources of an ineligible spouse will be considered in evaluating the eligibility of the applicant.

These rules also stipulate that, in order to be eligible for Medicaid Only, an individual must be a resident of New Jersey and either a United States citizen or admitted to the United States for permanent residence.

Additionally, in order to obtain benefits from the Medicaid Only program, an individual must meet Federally categorical requirements; an individual must be either permanently and totally disabled in accordance with the definition used by the Social Security Administration, blind, or age 65 or older.

The procedural history of this manual indicates that it was previously codified as N.J.A.C. 10:94 under the jurisdiction of the Division of Public Welfare (DPW), now the Division of Economic Assistance. This manual was transferred to the Division of Medical Assistance and Health Services (DMAHS) and recodified as N.J.A.C. 10:71. The notice of transfer appeared as a Public Notice in the March 16, 1987 issue of the New Jersey Register at 19 N.J.R. 466(e). The recodification was part of the overall process of transferring the administrative functions of the Medicaid Only Program from DPW to DMAHS.

There have been amendments to N.J.A.C. 10:71. There have been periodic increases to the eligibility income standards up to the maximum permitted by Federal law (see 19 N.J.R. 646(b); 20 N.J.R. 985(a); 21 N.J.R. 763(a), 22 N.J.R. 954(a)).

The most recent amendment occurred in the August 20, 1990 issue at 22 N.J.R. 2604(a). This emergency rule and concurrent proposal (permanently adopted elsewhere in this issue of the Register) concerned changes in eligibility determinations required by Federal law. The text of N.J.A.C. 10:71-4.7 was amended to indicate that if an applicant transfers a resource, said applicant may be declared ineligible for institutional Medicaid coverage for a period up to 30 months. The rule also indicates there are certain transfers which are protected.

There are no textual changes upon reoption.

**Social Impact**

The Medicaid Only program is intended to cover aged, blind or disabled individuals who are not already receiving entitlement under Title XVI of the Social Security Act. Recipients who qualify under the Medicaid Only eligibility criteria may receive all medically necessary services covered by the New Jersey Medicaid program.

The proposed redoption impacts on those Medicaid patients who may require care in a long term care facility, now called nursing facility (NF). Persons who need Medicaid coverage to pay for NF care must establish financial eligibility under the provisions of this manual.

The proposed redoption impacts on county welfare agencies/boards of social services that determine eligibility. The rules set forth case processing requirements and eligibility verification and documentation requirements.

The proposed readoption also impacts upon the Office of Administrative Law, which conducts hearings when applicants and/or recipients contest denials of eligibility.

**Economic Impact**

The proposed readoption impacts upon persons who seek medical assistance from Medicaid for NF care and community related programs. Persons who can establish financial eligibility under the standards can qualify for Medicaid coverage. Persons receiving Medicaid coverage in NFs are required to contribute towards the cost of NF care from their available income.

There are no provider expenditures directly associated with this readoption because the manual establishes standards for eligibility.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because applicants and/or recipients are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq.

This manual contains eligibility criteria. Determinations are made by governmental agencies, such as county welfare agencies/boards of social services.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:71.

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# RULE ADOPTIONS

## AGRICULTURE

(a)

### STATE AGRICULTURE DEVELOPMENT COMMITTEE

#### Acquisition of Development Easements

#### Adopted Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.9 through 6.12 and 6.15 through 6.17

Proposed: April 16, 1990 at 22 N.J.R. 1244(a).

Adopted: September 28, 1990 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.

Filed: October 4, 1990 as R.1990 d.529, **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. 4:1C-5f.

Effective Date: November 5, 1990.

Expiration Date: July 31, 1994.

#### Summary of Public Comments and Agency Responses:

**COMMENT:** The Hunterdon County Agriculture Development Board (CADB) recognizes the competitive nature of the farmland preservation program and supports the concept of preserving the best quality farmland for every public dollar. The Board suggests that it is inappropriate for the lowest ranked farm to receive the highest funding priority simply because it has offered the largest price reduction. The Board has recommended that the Committee consider adjusting the applicant's score in the final review process and ranking in the following manner: For every percentage point reduction in asking price a landowner is willing to accept, his or her final score would be increased by the same percentage. The rationale is that the best quality farms should be given the highest priority when other farms are making a similar price reduction.

**RESPONSE:** Although the Board's suggestion to adjust the applicant's score in the final review process in the manner described may be an alternative to consider, the Board's assumption that a farm which ranks lower numerically is automatically a poorer quality farm is not valid.

The farms receiving the State Agriculture Development Committee's (SADC) preliminary approval are considered to be the best of all the farms considered based on the criteria contained in N.J.A.C. 2:76-6.16, which evaluate soils, boundaries and buffers, size and density, and local commitment. Other special considerations and degree of imminence of change of the farm to a nonagricultural use are also considered but do not contribute any points. Therefore, the purchase of development easements on any combination of farms selected is considered to be a good investment for the public.

Furthermore, the method of re-ranking as proposed by the Board would not be equally competitive among applicants receiving preliminary approval with the eligibility for State cost share funds. The proposed method would not stimulate competition for available funds because applicants of higher ranked farms have less reason to negotiate which would result in increased costs to the public to acquire the development easement.

**COMMENT:** The Hunterdon and Salem CADBs expressed concern that the SADC has not fully demonstrated that its preliminary ranking has considered the extensive evaluation and ranking that was completed by the CADB and that the SADC's decisions usurp the CADB's priorities.

**RESPONSE:** The Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and N.J.S.A. 2:76-6.5 require the CADB and SADC to evaluate and rank easement purchase applications independently. The ranking of applications provided by the CADB is a consideration and not a mandate that the SADC must adhere to the priority determined by the CADB. The CADB's ability to adopt specific criteria which are in addition to the criteria contained at N.J.A.C. 2:76-6.16 allows the CADB to conduct an independent evaluation of applications which may result in rankings that differ from those of the SADC. The ranking of applications by the CADB is important for determining which

applications would be eligible for county funding either at the preliminary or final review stage.

Furthermore, if the CADB does not want the SADC to potentially fund a specific project, then the application should not be forwarded to the SADC for consideration.

The SADC's ranking and selection of applications is provided for the purpose of determining which applications are eligible for State cost share grants. If State cost share grants are not provided, the CADB could utilize its ranking to determine which applications should be funded with 100 percent local funds.

**COMMENT:** The Hunterdon CADB supports the relative best buy formula because it encourages both landowners and counties to negotiate asking prices that will ultimately result in the preservation of more land for every public dollar. However, the CADB does not support the proposed funding ratio with a 60/40 percent base. The CADB recommends that the Committee's percent cost share remain the same for all applications, regardless of asking price.

**RESPONSE:** The SADC's decision to establish a base funding ratio of 60 percent State funds and 40 percent county and/or municipal funds falls within the statutory language which requires that the State shall provide no more than 80 percent of the cost of the development easement. The proposed rule amendment also provides the Board with the opportunity to receive 80 percent State funds where landowner negotiations have resulted in asking prices being less than the certified value of the development easement. Because the SADC is not directly involved in the negotiation process, the Committee developed the proposed rule amendments which would encourage negotiations between landowners and Boards.

**COMMENT:** The Hunterdon CADB expressed concern that municipalities have gained public support for the program on the basis of providing a 10 percent cost share for the purchase of a development easement with the county and now the percent cost share may need to be increased. Furthermore, the Committee has compounded the problem by granting preliminary approval to many more applications in one Hunterdon County municipality than what the municipality can afford. It is also noted that if the county is forced to pay as much as 30 percent of the easement costs, it may sacrifice the future of the farmland preservation program in the county.

**RESPONSE:** Initially, the 1981 Farmland Preservation Bond Act, P.L. 1981, c.286, provided for up to 50 percent State cost share grants for the purchase of development easements on farmland. In 1987, the Farmland Preservation Bond Act was amended to provide for up to 80 percent State cost share grants. Although in the past the Committee provided an 80 percent cost share on a number of individual easement purchases, on average the State cost share for easement purchase is between 60 and 65 percent.

In view of the limited funds available for the purchase of development easements, the proposed amendments promote the stretching of State funds by providing a 60 percent base State cost share. The ability for the CADB to attain a State cost share greater than 60 percent is a function of the landowner's formula index as described in N.J.A.C. 2:76-6.11(b)1.

If the county feels that there may be undue financial hardship on a given municipality, then the SADC should be informed prior to preliminary review to limit the number of farms selected in each municipality based on the availability of funds. Even though there may appear to be an excessive number of applications selected in a specific municipality at the preliminary review stage, the municipality has the ability to refuse funding on any or all of the applications at the final review stage.

**COMMENT:** The Mercer CADB has indicated that the proposed timetable in items N.J.A.C. 2:76-6.9, 6.10 and 6.12 are unrealistic and impractical for implementation because freeholder action to commit county funds is a rather lengthy process. In addition, at the time of the CADB's final negotiations with the landowner, the Board recommends that the landowner enter into a binding option agreement with the county which commits the landowner to the negotiated asking price.

**RESPONSE:** The time limits identified in the proposed rule amendments are intended to keep the decision process moving. At the time of the SADC's preliminary approval of applications, the identities of the approved applicants are known. In view of the limited number of applications selected in any county, it is anticipated that negotiations with landowners and a commitment of funds by the freeholders can reasonably

occur in the proposed time span. Advanced planning and scheduling of meetings will be critical to meet the deadlines. The time period of 30 days from receipt of the SADC certified fair market value of the development easement to negotiate with a landowner is consistent with the time period expressed in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32. The time period of 60 days from the CADB's receipt of the certified fair market value of the development easement to submit a final decision to the SADC is judged to be adequate.

COMMENT: The Warren CADB is of the opinion that the formula contained in N.J.A.C. 2:76-6.11(a), while appearing to provide a realistic and consistent basis for determining the "best buy", in fact penalizes those counties where land values are the highest. Location and full market value will easily give owners of farms with lower easement values an unfair advantage. Farmers can't afford to give up equity to gain position in the formulation especially from those areas where development values are high.

Contrary to the comments provided by the Warren CADB, the Gloucester and Salem CADB's stated that the formula index is unfair to farmers where land values are lower because the farmers will have less ability to negotiate.

RESPONSE: The formula contained in the proposed rule amendment is mandated by the Agriculture Retention and Development Act at N.J.S.A. 4:1C-31b(1). The resulting formula index is a function of relative values and not absolute values. The formula index is a percentage of the certified fair market value of the development easement. The formula index does not prohibit the landowner's asking price from being equal to or greater than the certified fair market value of the development easement. As an example, if every landowner's asking price was equal to the certified fair market value of the development easement, then the SADC would acquire those easements in the order of the priority funding rank unless otherwise influenced by the reduction in SADC cost share subject to available funds.

Although the formula index has always been utilized when evaluating easement purchase applications, the proposed rule amendments allow for the re-ranking of all applications in a manner consistent with the statute.

The proposed rule amendments are intended to promote competition. The final negotiations to acquire a development easement are only successful when there is a willing buyer and a willing seller which is consistent with all real estate transactions in the open market. Landowners who participate in the program do so on a voluntary basis.

COMMENT: The Warren CADB commented that the proposed rules benefit the program; not the farmland, not the farmer, not the resource, not the applicant or the taxpayer. Furthermore, the proposed rules give the impression that counties and CADBs are unlikely to negotiate a good "bargain" sale because of the presence of State money. The Board has argued that State funds are spread across a much greater tax base than money generated locally or at the county level.

RESPONSE: The proposed rule amendments are intended to implement the farmland preservation program in the best interest of all New Jersey citizens. The proposed rule amendments promote the prudent use of available public funds to acquire as many acres as possible within the limitations of the statutes and rules governing the program.

COMMENT: The Warren CADB suggests that the term "premises" should be clarified so as not to imply that the grantor does not have the use of his or her home. The Board feels it is buying the right to develop lands, not access or control over the maintenance or upkeep. Furthermore, the rule is unclear regarding who will be responsible for enforcement of these many and varied regulations.

RESPONSE: The proposed rule amendment does not contain the definition of "premises" but the term is defined at N.J.A.C. 2:76-6.2. The "premises" means the property under easement which is defined by the legal metes and bounds description contained in the deed of easement. Furthermore, if the residence on the farm is not excepted from the premises, it is subject to the deed restrictions contained in N.J.A.C. 2:76-6.15. The clear intent of the Agriculture Retention and Development Act is to prohibit nonagricultural development on the premises as supported by the deed restrictions.

Enforcement of the provisions contained in the deed of easement is the responsibility of the CADB and the SADC as stated in N.J.A.C. 2:76-6.15(a)14.

COMMENT: The Salem CADB expressed concern that the SADC is at cross purposes with the original intent of creating large agricultural preserves with high quality soils and the potential for long-term viability. The proposed rule amendments lose sight of important factors such as long-term viability, soil quality, and relationship to project areas.

RESPONSE: The proposed rule amendments do not significantly amend the criteria for evaluating easement purchase applications. The criteria contained in N.J.A.C. 2:76-6.16 continue to rank applications and project areas to promote contiguous masses of high quality farmland with the potential for long-term viability. The granting of preliminary approval with the eligibility for State cost share funds may not result in the purchase of development easements on all of the farms in a given project area, but the successful purchase of a development easement on any of the farms will increase the mass within the respective project area. No system which allows for voluntary participation can ensure that all farms in a specific project area will be acquired in one funding round. Future consideration of applications should be concentrated in project areas where other development easements have already been acquired unless there are insufficient funds to continue.

COMMENT: The Salem CADB objects to the SADC passing along the full share of ancillary expenses to the county.

RESPONSE: The proposed rule amendment which states that the SADC will not be responsible for any ancillary costs is generally consistent with all other expenditures from the 1981 Farmland Preservation Bond Fund to date. Only on a limited basis has the SADC provided cost share grants for ancillary costs. Based on past experience, CADBs preferred to have available grants directed to the purchase of a development easement. Another reason in support of the proposed amendments is that the ancillary costs for the purchase of a development easement are not fully known until after the closing. The uncertainty of how many dollars should be retained in the SADC's budget for ancillary costs would only further limit the available grants for the purchase of development easements.

COMMENT: The Salem CADB has suggested that if the SADC seriously wants to preserve agricultural areas of significant scope, the definition of "best buy" should include "most [acres] for the dollar".

RESPONSE: Again, the "best buy" is a function of the formula contained in N.J.S.A. 4:1C-31b(1), which cannot be amended by the rule-making process. Based on past experience, the CADB's recommendation to include "most for the dollar" in the definition of relative best buy would not be acceptable to implement a statewide farmland preservation program. The SADC is aware of the wide variation in land values throughout the State and has developed the proposed rules to treat all counties equally.

COMMENT: The Salem CADB feels that the proposed rule amendments have directed significant policy shifts after the application deadline. The farmers that applied in good faith under one set of rules are now faced with substantial equity losses should they proceed.

RESPONSE: The proposed amendments which address cost share percentages primarily affect the SADC and CADB. If the proposed amendments to the deed restrictions are adopted prior to the purchase of a development easement, the landowner will have the ability to review the amendments and decide if he or she wants to be bound by the terms of the deed restrictions. The landowner's willingness to negotiate a value to sell a development easement pursuant to the re-ranking of applications according to the proposed formula index is strictly voluntary.

COMMENT: The Gloucester CADB recommends and endorses a two-tiered formula whereby the State would fund 80 percent of the certified value of the easement up to a specified dollar limit. Any cost per acre over the dollar limit would be subject to a sliding scale cost share similar to the one used in the proposed rule amendments.

A related comment by the Salem CADB recommends that the SADC place a cap of \$5,000 per acre for easement purchases and fund those applications with values of less than \$5,000 per acre at the full 80 percent level.

RESPONSE: When evaluating various alternatives for establishing the SADC's percent cost share, the SADC considered establishing a cap for easement purchase at a fixed percent cost share and a sliding scale above that amount. Based on previous experience, the SADC did not propose that method because it is biased against those counties with development easements that are generally higher than the established cap. Also, the higher the cap is set, the more SADC funds are expended which results in fewer development easements being purchased.

COMMENT: The Gloucester CADB also supports that the State funding for the purchase of development easement program should be structured so that a certain percentage of the monies is earmarked to be spent in each participating county. This would result in a fair and equitable distribution of the funds so that no county would receive a disproportionate share of the monies.

RESPONSE: The Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 as amended, does not provide for up front allocations of funds to counties.

The guarantee of a certain percentage of available SADC funds to be earmarked to each county does not support the intent of the statute to acquire development easements on the highest quality farms at the lowest relative cost. To the extent possible, the special consideration criterion which allows for geographic distribution permits the SADC to consider the purchase of development easements on a Statewide basis.

COMMENT: Mr. Abraham Salamon (Hunterdon County resident and applicant) recommends that the SADC should increase the number of farms receiving preliminary approval with the eligibility for funding to increase competition among landowners.

RESPONSE: The SADC does not share the opinion that the SADC should grant preliminary approval with the eligibility for funding to an excessive number of farms with projected costs far exceeding available funds. Although the proposed rule amendments do not specifically dictate how many farms should receive preliminary approval with the eligibility for funding, the proposed rule amendments are intended to encourage a competitive situation while at the same time maintain a reasonable period of time to complete the process and to minimize costs to the county and State to conduct an excessive number of appraisals and reviews.

**Summary of Changes upon Adoption:**

Technical changes were made to N.J.A.C. 2:76-6.11(c) to correct publication errors.

A substantive change not requiring additional public comment was made to N.J.A.C. 2:76-6.11(a). The amendment gives the SADC the discretion to consider applicants' offers on a county-by-county basis. This change was made in consultation with the Attorney General's Office in order that the provision conforms with statutory requirements.

In addition, the SADC has adopted a substantive change not requiring additional public comment in N.J.A.C. 2:76-6.9(c)I and N.J.A.C. 2:76-6.11(a)iv. These changes are consistent with the statute and proposed rules and permit the CADB and SADC to reject applications whose values have been artificially inflated by the landowners' action.

This change was necessary since the proposed rule amendments relating to the formula index may cause landowners to initiate actions which have the effect of increasing the landowner's appraisal values.

Such activities, which inflate values, contravene N.J.S.A. 4:1C-31b(1) and the proposed rules. By artificially inflating the fair market value of the property, the landowner gains an unfair advantage over other landowners who have made good faith applications to sell their development easements.

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

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

... "Ancillary costs" means costs for appraisals, surveys, title searches and insurance, local governmental expenses, administrative costs, real property taxes, and development easement costs in excess of the fair market value of the development easement certified by the committee.

... "Formula index" means the value obtained by application of the formula contained in N.J.S.A. 4:1C-31b(1).

... "Landowner asking price" means the price of the development easement agreed upon by the landowner and the board determined at the time of the board's final review.

... "Non-agricultural development value—agricultural value" means the fair market value of the development easement as certified by the committee.

2:76-6.5 Preliminary board review

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

(c) The board shall review the application pursuant to N.J.A.C. 2:76-6.17(a) and determine the number of residual dwelling site opportunities to be allocated to the premises.

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

2:76-6.6 Preliminary committee review

(a) Upon receipt of an application from the board, the committee shall review and evaluate the easement purchase application and respective project area pursuant to N.J.A.C. 2:76-6.16.

(b) (No change.)

(c) The committee may remand the application to the board if the number of allocated residual dwelling site opportunities appears excessive in view of factors listed in N.J.A.C. 2:76-6.17(a)i through iii.

2:76-6.9 Final board review

(a) Within 30 days of the board's receipt of the certified fair market value of the development easement, the board and landowner shall arrive at a landowner asking price for the development easement.

1. The purchase price of the development easement shall be adjusted according to the acceptance or rejection of any residual dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.17.

(b) The board shall review the easement purchase application, respective project area, landowner asking price, and the formula contained in N.J.S.A. 4:1C-31b(1) to determine the suitability of the land for development easement purchase on the basis of the following factors:

1. and 2. (No change.)

(c) The board shall rank and approve or disapprove an application(s) and state the reasons for arriving at the decision.

**\*1. Regardless of the formula index, the board may disapprove an application if the board determines that the applicant has initiated proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.\***

(d) (No change.)

2:76-6.10 Board application to the committee

(a) Within 60 days of the board's receipt of the certified fair market value of the development easement, the board shall submit the following information to the committee:

1. Priority ranking of applications;
2. Landowner asking price;
3. Justification for arriving at its decision; and
4. Percent of county and local cost share for each application.

2:76-6.11 Final committee review

(a) Using the original ranking made pursuant to N.J.A.C. 2:76-6.6 as a base, the committee shall re-rank the applications which have received preliminary approval and are eligible for state cost share funds according to the formula contained in N.J.S.A. 4:1C-31b(1) and any percentage reduction of the committee's percent cost share per application.

1. Regardless of original rankings, funding priority will be given to those applications which have received preliminary approval and are eligible for State cost share funds with higher numerical values obtained by application of the following statutory formula:

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{nonagricultural value}} - \frac{\text{agricultural value} - \text{landowner asking price}}{\text{agricultural value}} = \text{formula index}$$

i. Applications having the same formula index of greater than (0) will be ranked according to the original ranking obtained in N.J.A.C. 2:76-6.6.

ii. Applications having a formula index of (0) will be ranked according to the reduction in the committee's percent cost share. Applications with identical committee cost share reductions will be prioritized according to the original ranking obtained in N.J.A.C. 2:76-6.6.

iii. Applications having the same formula index less than (0) will be ranked according to the reduction in the committee's percent cost share. Identical committee cost share reductions will be prioritized according to the original ranking obtained in N.J.A.C. 2:76-6.6. A reduction in the committee's percent cost share on an application shall be based on the fair market value of the development easement certified by the committee.

**\*iv. Regardless of the formula index, the committee may disapprove an application if the committee determines that the applicant has initiated proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.\***

**\*v. The committee may give funding priority to offers with the higher numerical values in any one county obtained by applying the above formula.\***

(b) The committee shall not authorize funding for more than 80 percent of the cost of the development easement.

1. The percent committee cost share shall be based upon the applicant's formula index as follows:

formula index	percent committee cost share
Less than 0.10	60
0.10 up to less than 0.20	65
0.20 up to less than 0.30	70
0.30 up to less than 0.40	75
0.40 or greater	80

2. Notwithstanding (b)1 above, the committee will fund a development easement purchase on the top ranked application in a county at an 80 percent cost share in those counties which have not received an 80 percent committee cost share for development easement purchase.

3. The committee will not provide any cost share funds for ancillary costs for development easement purchases.

(c) The committee will fund, on a per acre **\*[base]\* \*basis\***, a development easement purchased at the respective cost share percentage as determined in (b)1 and 2 above, based on the acreage known at the time of final committee approval; however, any increase in cost of a development easement resulting from an increase in acreage as determined by the final survey will not be paid for by the committee. The committee shall adjust its share on a per acre basis if there is a reduction in the cost of a development easement resulting **\*from a\*** decrease in surveyed acreage.

2:76-6.12 Landowner decision

(a) Within 30 days of the board's receipt of the committee's final approval, the board shall present to the landowner a written offer to purchase the development easement. A binding offer shall be contingent upon compliance with the provisions stated in N.J.A.C. 2:76-6.13.

(b) The landowner shall accept or reject the offer in writing within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1. (No change.)

"2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

"3.-5. (No change.)

"6. Grantee and its agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this easement. Grantee agrees to give Grantor at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.

"7.-9. (No change.)

"10. Nothing in this easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this easement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary.

"11. At the time of this conveyance, Grantor has (\_\_\_\_) existing single family residential building(s) on the Premises and (\_\_\_\_) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i.-iii. (No change.)

"12. Grantor may construct any new buildings for agricultural purposes. The construction of any new building for residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing such housing shall not be used as a residence for Grantor; and

ii. (No change.)

"13. The land and its buildings which are affected may be sold collectively or individually for continued agricultural uses defined in Section 2 of this easement. However, no subdivision of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order to give approval, The Grantee and Committee must find that the subdivision shall be for an agricultural purpose and result in agriculturally viable parcels. Subdivision means any division of the Premises, for any purpose, subsequent to the effective date of this easement.

"14. and 15. (No change.)

"16. This easement is binding upon the Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as an easement running with the land and shall be binding upon any person to whom title to the premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.

"17.-18. (No change.)

"19. Wherever in this easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrator, personal or legal representatives, successors and assigns' have been inserted after each and every designation.

"20. Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the non-agricultural development rights and development credits appurtenant to the lands and premises described herein. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee (\_\_\_\_) percent of the value of the development rights as determined at the time of the subsequent conveyance."

(b) and (c) (No change.)

(d) The deed restriction contained in N.J.A.C. 2:76-6.17(h) shall be incorporated in the deed of easement when there has been an award of one or more residual dwelling site opportunities.

2:76-6.16 Criteria for evaluating development easement applications

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

(h) Special considerations are as follows:

1. Factors of positive special consideration by the committee are as follows:

- i. The first viable application in a county; and
- ii. Geographic distribution among counties.

2. and 3. (No change.)

2:76-6.17 Residual dwelling site opportunity

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

(h) The following restriction shall be incorporated in the easement where there has been an award of one or more residual dwelling site opportunities:

(\_\_\_\_\_) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17. Upon the intent of the Grantor to exercise a residual dwelling site opportunity, the Grantee shall be notified of the intent to exercise a residual dwelling site opportunity and the proposed location of the residual dwelling site. The Grantee may review the proposed location and submit comments to the Grantor and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the farm operation. Approval of the location of the residual dwelling site shall be made by the municipal planning review body and meet the following standards established by the Committee:

1.-3. (No change.)

Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:

1. (No change.)

2. Submit a copy of the legal metes and bounds description to the Grantee and the Committee for general recordkeeping purposes.

In the event a subdivision of the premises occurs in compliance with deed restriction No. 13 above, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the Grantor.

For the purpose of this easement, a "residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

For the purpose of this easement, "residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

or

No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No new residential buildings are permitted on the Premises except as provided in this Deed of Easement.

**BANKING**

(a)

**CEMETERY BOARD**

**Cemeteries**

**Readoption with Amendments: N.J.A.C. 3:41**

Proposed: September 4, 1990 at 22 N.J.R. 2627(a).  
Adopted: October 10, 1990 by the New Jersey Cemetery Board, William L. Ingling, Executive Director.  
Filed: October 11, 1990 as R.1990 d.537, **without changes**.  
Authority: N.J.S.A. 8A:2-2.  
Effective Date: October 11, 1990, Readoption; November 5, 1990, Amendments.  
Expiration Date: October 11, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:41.

**Full text** of the adopted amendments follows:

3:41-5.2 Trust funds

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

(e) In any case in which multiple interment of cremated remains are interred in one interment space, each individual remains shall be subject to the statutory requirements of N.J.S.A. 8A:4-5b.

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

3:41-9.3 License form

A cemetery salesman license, when issued, is to be in the form of a pocket license with a one inch by one inch recent face photograph attached.

**COMMUNITY AFFAIRS**

(b)

**DIVISION OF HOUSING AND DEVELOPMENT**

**Maintenance of Hotels and Multiple Dwellings Ceiling Height**

**Adopted Amendment: N.J.A.C. 5:10-22.5**

Proposed: August 6, 1990 at 22 N.J.R. 2207(a).  
Adopted: October 10, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.  
Filed: October 15, 1990 as R.1990, d.544, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13A-7.

Effective Date: November 5, 1990.

Expiration Date: November 17, 1993.

**Summary of Public Comments and Agency Responses:**

Comments were received from representatives of multiple dwelling owners in Ocean City requesting that relief from ceiling height restrictions be given for multiple dwellings in shore municipalities, as well as for seasonal hotels. In response, the Department states that, although it cannot expand the scope of the amendment upon adoption, relief to owners of existing multiple dwellings will be the subject of a new proposal.

A comment was submitted inquiring as to why the amendment is limited to shore municipalities. The reason is that the Department is not aware of the situation existing on any significant scale anywhere else and, if it exists elsewhere, it can be dealt with on an exception basis pursuant to N.J.S.A. 55:13A-11.

In response to a recommendation from a member of the Hotel and Multiple Dwelling Health and Safety Board, the Department has modified the amendment to make it clear that the amendment is only applicable to hotel rooms in use prior to the effective date of the rule. The State Uniform Construction Code would preclude the construction or alteration of any building to create new hotel rooms with substandard ceiling height.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

5:10-22.5 Required ceiling height

(a) **\*Except as otherwise provided in (a)1 below, no \* [No]\*** room or space or portion of a room or space shall be considered habitable unless that room or space or portion of a room or space has a clear ceiling height of at least seven feet, zero inches<sup>\*\*</sup>; provided, however, that]\*

**\*1. Rooms\* [rooms]\*, spaces, and portions of rooms and spaces in hotels that are open and operating less than six months of each year, are located in municipalities bordering on the Atlantic Ocean and are used exclusively for transient occupancy\*, and were so used prior to November 5, 1990 in conformity with any applicable mercantile license requirement,\* shall be deemed to be habitable regardless of ceiling height unless there is a clear and present danger to the health or safety of the occupants.**

(b) (No change.)

(a)

**NEW JERSEY COUNCIL ON AFFORDABLE HOUSING**

**Controls on Affordability**

**Deed Restriction**

**Compensation for Central Air Conditioning**

**Adopted Amendments: N.J.A.C. 5:92-12.13, 12.15, 12.16 and Appendix.**

Proposed: June 4, 1990 at 22 N.J.R. 1703(a).

Adopted: October 3, 1990 by the New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.

Filed: October 12, 1990 as R.1990 d.540, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: November 5, 1990.

Expiration Date: June 16, 1991.

**Summary of Public Comments and Agency Responses:**

COMMENT: The Council should not adopt the language that prohibits the approved resale price to be established at a lower level than the last recorded purchase price. Homeowners must be able to negotiate lower prices if the market will not bear the maximum price.

RESPONSE: The Council agrees that homeowners must be able to negotiate lower sale prices if the market will not bear the maximum price. The amendment was never intended to prohibit such activity; and, in fact, there is no guarantee that homeowners will be able to sell their units at the maximum price. The purpose of the amendment was to make it clear that homeowners would not be required to sell units at a loss if income limits within a region decreased. The Council is changing the language to clarify the original intent as expressed in the Summary statement.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

5:92-12.13 Annual indexed increases while controls are in place

The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for each housing region as determined from the uncapped Section 8 income limits, published by HUD, as defined in N.J.A.C. 5:92-1.3 (see Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit. \*However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.\* **\*However, in no event shall the maximum allowable price established by the authority be lower than the last recorded purchase price.\***

5:92-12.15 Procedures for initial sales, resale prior to the expiration of controls, and rentals

(a) Low and moderate income units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-13.

(b) Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the authority shall have the option to purchase the unit for the maximum price permitted based on the regional increase in median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. If the request is granted, the seller may offer low income housing units to moderate income households and moderate income housing units to households earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall

a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, are not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-13.

5:92-12.16 Eligible capital improvements prior to the expiration of controls

(a) Property owners of single family, owner-occupied housing may apply to the authority for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the authority if an increase in the maximum sales price is sought.

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the Authority at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale, provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser shall personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

STATE OF NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
AFFORDABLE HOUSING AGREEMENT

Prepared by:

A DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and \_\_\_\_\_ thereafter "AUTHORITY", \_\_\_\_\_ both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least \_\_\_\_\_ years beginning on \_\_\_\_\_ and ending at the first non-exempt transfer of title after \_\_\_\_\_ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/

## ADOPTIONS

or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units (unit) remain(s) affordable to low and moderate income-eligible households for that period of time described in Section III TERM OF RESTRICTIONS.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income-eligible households at a maximum resale price determined by the Authority for the specified period of time.

I.-III. (No change.)

### IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. \*[However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.]\* **\*However, in no event shall the maximum allowable price established by the authority be lower than the last recorded purchase price.\***

B.-D. (No change.)

V.-VII. (No change.)

### VIII. OWNER RESPONSIBILITIES

A.-G. (No change.)

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was initially restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.

I.-M. (No change.)

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

##### Notice of Administrative Correction

##### Special Education

##### N.J.A.C. 6:28-2.3 and 3.1

Take notice that the Department of Education has discovered errors in the text of N.J.A.C. 6:28-2.3 and 3.1, as adopted in the September 4, 1990 New Jersey Register at 22 N.J.R. 2683(b).

In N.J.A.C. 6:28-2.3(d), the reference to "(a)1 through 5" is incorrect; due to the recodification and amendment of subsection (a) as (c), the correct reference is "(c)1 through 4."

In N.J.A.C. 6:28-3.1(a)1, use of the term "referral" must be changed to "initial evaluation" to correspond to other adopted changes (see, for example, N.J.A.C. 6:28-3.3(b)1) in compliance with Federal requirements.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

## ENVIRONMENTAL PROTECTION

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

6:28-2.3 Parental notice, consent, participation and meetings

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

(d) Written notice, according to [(a)1 through 5] **(c)1 through 4** above, shall be provided to the parent(s) no later than 15 days after making a determination and in no event less than 15 calendar days prior to the date for implementation, unless the parent(s) otherwise consents. If the parent(s) consents to implementation before the 15 days have elapsed, documentation of such consent shall be maintained.

(e)-(k) (No change.)

6:28-3.1 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who:

1. Shall evaluate, after parental consent for [referral] **initial evaluation** has been received, and participate in the determination of eligibility of pupils for special education and/or related services;

2.-5. (No change.)

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

## ENVIRONMENTAL PROTECTION

### (b)

#### DIVISION OF ENVIRONMENTAL QUALITY

##### Notice of Administrative Correction

##### Laboratory Certification and Standards

##### Criteria and Procedures for Bioassay Testing and Analysis

##### Methodology; Holding of Estuarine/Marine Test Organisms

##### N.J.A.C. 7:18-6.6

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:18-6.6(k)1iv. The adoption documents filed with the Office of Administrative Law pertaining to this rule, R.1981 d.279, reflect that the text to this subparagraph should be, "iv. Optimal salinity for opossum shrimp is between 10 and 27 ppt." The lower limit of this range was erroneously reproduced in the 6-21-82 update to the New Jersey Administrative Code as 20. 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]):

7:18-6.6 Methodology

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

(k) The holding and handling of the organisms shall be as follows:

1-10. (No change.)

11. Depending upon the procedure selected from N.J.A.C. 7:18-6.6(n) estuarine/marine test organisms shall either be held at salinity within their optimal range or to a series of salinities, from 5-35 ppt. and including at least 10, 20, and 30 ppt.

i-iii. (No change.)

iv. Optimal salinity for opossum shrimp is between [20] **10** and 27 ppt.

12. (No change.)

(l)-(ab) (No change.)

(a)

(b)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT  
Notice of Administrative Correction  
Special Requirements for Hazardous Waste  
Generated by Small Quantity Generators  
N.J.A.C. 7:26-8.3**

**DIVISION OF HAZARDOUS WASTE MANAGEMENT  
Notice of Administrative Correction  
Hazardous Waste Criteria, Identification and Listing  
Hazardous Constituents for Groundwater Monitoring  
N.J.A.C. 7:26-8.21**

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:26-8.3(b) currently appearing in the 9-17-90 update to the New Jersey Administrative Code. A reference to N.J.A.C. 7:26-8.3(j) in the introductory phrase to subsection (b), which was added to the rule through an adoption published at 22 N.J.R. 1565(a), was inadvertently deleted in the course of preparing the Code update in response to the adoption of another amendment to the rule at N.J.R. 2826(a). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Take notice that the Department of Environmental Protection has discovered errors in the text of the hazardous constituents for groundwater monitoring list currently in the New Jersey Administrative Code at N.J.A.C. 7:26-8.21. A number of the items in the list do not correspond to the items as listed at 40 CFR 264, Appendix IX, from which the New Jersey list is drawn. In order to correct these discrepancies, 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]):

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletions indicated in italicized brackets /thus/):

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

7:26-8.21 Hazardous constituents for groundwater monitoring

- (a) (No change.)
- (b) Except for those wastes identified in (d) [and], (e) **and** (j) below, and provided the requirements at (f) below are met, a small generator's hazardous wastes are not subject to regulation under N.J.A.C. 7:26-7 and N.J.A.C. 7:26-9 through 11.
- (c)-(j) (No change.)

- (a) The following table lists the hazardous constituents for which groundwater samples are to be analyzed when such analysis is required, pursuant to the detection monitoring program of N.J.A.C. 7:14A-6.15(i) or the compliance monitoring program of N.J.A.C. 7:14A-6.15(j), or both.

Common name <sup>2</sup>	CAS RN <sup>1</sup>	Chemical abstracts service index name <sup>4</sup>	Sug- gested meth- ods <sup>3</sup>	PQL (µg/L) <sup>5</sup>
..... Bis(2-chloro-1-methylethyl) ether; 2,2'-Di-chlorodiisopropyl ether	/106-60-1/ <b>108-60-1</b>	Propane,2,2'-oxybis[1-chloro-.....	8010 8270	100 10
..... Chlorobenzilate .....	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester	8270	10
..... 4,4'-DDE .....	72-55-9	Benzene, 1,1'-(/dichloroethylidene/ <b>dichloroethenylidene</b> )bis[4-chloro-	8080 8270	0.05 10
..... 4,4'-DDT .....	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis(/[4-chloro-	8080 8270	0.1 10
..... /Dialfate/ <b>Diallate</b> .....	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,-dichloro-2-propenyl) ester	8270	10
..... 1,2-Dibromo-3-chloropropane; DBCP	/96-12-5/ <b>96-12-8</b>	Propane, 1,2-dibromo-3-chloro-.....	8010 8240 8270	100 5 10
..... 1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-.....	8010 8240	10 5
..... Disulfoton .....	298-04-4	Phosphorodithioic acid, O,O-diethyl /S-[2-(ethylthio)-S-[2-ethyl]ester/S- <b>[2-ethylthio)ethyl]ester</b>	8140 8270	2 10
..... Isophorone .....	/76-59-1/ <b>78-59-1</b>	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
..... Methapyriline .....	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'- /(2-thien-yimethyl)-/ <b>(2-thienylmethyl)-</b>	8270	10
..... Pentachlorophenol .....	/37-86-5/ <b>87-86-5</b>	Phenol, pentachloro-.....	8040 8270	5 50
..... Pyridine .....	/110-36-1/ <b>110-86-1</b>	Pyridine .....	8240 8270	5 10
..... Safrole .....	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
..... 1,1,2-Trichloroethane .....	79-00-5	Ethane,/1,1,2-trichloro-/ <b>1,1,2-trichloro-</b> .....	8010 8240	0.2 5

(a)

**COMMISSION ON RADIATION PROTECTION****Dental Radiographic Installations****Adopted Repeal and New Rules: N.J.A.C. 7:28-16**

Proposed: March 19, 1990 at 22 N.J.R. 894(a).

Adopted: September 19, 1990 by the Commission on Radiation Protection, Max M. Weiss, Chairman.

Filed: October 11, 1990 as R.1990 d.538, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7, 26:2D-9(f), 26:2D-9(h), and 26:2D-10.

DEP Docket Number: 006-90-02.

Effective Date: November 5, 1990.

Expiration Date: July 30, 1995.

**Summary of Public Comments and Agency Responses:**

Secondary notice was accomplished by publication in the Trenton Times, the Newark Star-Ledger and the Camden Courier Post, by direct mail notification to three State agencies with dental facilities, three professional societies and registrants of dental radiographic installations. A public hearing was held on April 18, 1990. The Department reviewed written comments from three commenters received within the comment period, reproduced and responded to below.

COMMENT: This regulation is ambiguous and we want to go on record as being opposed until further explanation is provided.

RESPONSE: This rule is promulgated for the purpose of protecting both the patient and the operator from the radiation hazards attendant upon the improper use of dental radiographic installations. It reflects both current industry practice and current national regulatory standards. Without more specificity, the Commission on Radiation Protection (C.O.R.P.) is unable to respond further to this comment.

COMMENT: If deficiencies are found, how much time is allowed for the dentist to arrange for compliance?

RESPONSE: When the inspection is performed, the inspector reports to the office by the following Wednesday to process the paperwork. Violation reports are referred to the Division of Environmental Quality's Bureau of Enforcement, which issues either an Administrative Order (Order) or a Notice of Prosecution (NOP). An Order assesses no penalty and stipulates a date by which compliance with N.J.A.C. 7:28 must be met. An NOP, however, includes a financial penalty and offer of settlement and anticipates immediate compliance. If there are extenuating circumstances which make it impossible for compliance to be met by the Order due date, the registrant may request an extension in writing before the due date stating the reasons and including supporting documentation. The Department may grant extensions as appropriate.

COMMENT: Are there penalties for non-compliance, and if so, what are they? Who would put them into effect?

RESPONSE: N.J.S.A. 26:2D-13 provides that violation of this code may subject the violator to a penalty of not more than \$2500. Each day of a violation of a continuing nature is to be considered a separate offense. As described in the previous response, the Department initiates penalty proceedings.

COMMENT: Is there a list of items the inspector will be looking at available to the registrant so that maybe he can correct any deficiencies before the inspector gets there?

RESPONSE: There is no checklist beyond N.J.A.C. 7:28-16 itself. Hiring a private consultant who fulfills the requirements of a "qualified individual" to check the equipment would provide additional advice as to compliance.

COMMENT: Could there be devised a simplified list of requirements differentiating the equipment that might fall under the grandfather clause and equipment that does not fall under the grandfather clause?

RESPONSE: With the exception of a unit purchased before July 1, 1969 and still within the same ownership and possession, there is no specific "grandfathering" in this chapter. N.J.A.C. 7:28-16.3(a)5 allows the original pointed cone to be used on such a unit—all others require an open-ended cone. In addition, however, uncertified units are not subject to the timer accuracy requirement of N.J.A.C. 7:28-16.3(a)16 and are permitted a greater co-efficient of variation under N.J.A.C. 7:28-16.3(a)15 and 18.

Beyond these specific exemptions, however, only those subsections which are specifically stated to apply to certified units are not applicable to units manufactured prior to August 1, 1974.

COMMENT: N.J.A.C. 7:28-16.2. Is there a simplified method for determining the date your equipment was manufactured and what needs to be checked to see if it complies with either the certified or noncertified regulations?

RESPONSE: On all equipment manufactured after August 1, 1974, Federal regulations require each component of the x-ray unit to be labeled with the date of manufacture, model and serial number. Thus, all such units are certified. Before this date, the label was not required, and these units are termed noncertified x-ray equipment.

COMMENT: N.J.A.C. 7:28-16.2. According to the Economic Impact statement, units manufactured prior to August 1, 1974 may incur minimal additional expense in order to comply with the proposed rules. How much variation is there between the older equipment and new equipment as far as compliance is concerned?

RESPONSE: All units manufactured after August 1, 1974 must comply with Federal standards. Although these standards do not specifically require that equipment be retrofitted on older units, those units manufactured prior to August 1, 1974 may not be capable of conformity with the more recent standards, as set forth in these amendments. Thus, a mechanical timer may be retained if the reproducibility co-efficient of variation can be kept below 0.07; however, most mechanical timers cannot achieve that level of reproducibility and must therefore be replaced by electronic timers (see N.J.A.C. 7:28-16.3(a)15). Other areas in which older units may need upgrading include linearity (see N.J.A.C. 7:28-16.3(a)19), cephalometric radiography (N.J.A.C. 7:28-16.5(a)) and panoramic radiography (N.J.A.C. 7:28-16.6(a)).

COMMENT: N.J.A.C. 7:28-16.3(a). The term "cone" used throughout the regulation is colloquial. We suggest "position indicating device (PID)" or "collimator" depending on which meaning is intended.

RESPONSE: The Commission on Radiation Protection and the Department have reviewed the alternative terms suggested to replace the term "cone" and have determined that the term "cone" is the most appropriate and correct term to use.

Although a cone may function as a position indicating device, there exist other position indicating devices, some of which may be attached to the cone. Moreover, although a cone can assist in collimation, only a lead-lined cone can be considered a true collimator. By the same token, many collimators are not cones.

The term cone, whether or not "official", has a precise meaning with which the industry has long been familiar.

COMMENT: N.J.A.C. 7:28-16.3(a)19 and 20. The requirement for tube current linearity (mA) for both certified and uncertified units should not be a requirement. It is typical of practitioners to select the proper exposure (mA and time) using only one mA station. The second mA station is idle. Variation in exposure for different projections occurs by changing the time value.

RESPONSE: The proposed linearity requirement does not address mA linearity. As described in subparagraphs i and ii, the requirement is for the linearity of radiation exposure at mA stations when more than one mA station is available for use, and for variable mA units with only one mA station available. N.J.A.C. 7:28-16.3(a)19 and 20 are changed upon adoption as described below to clarify the meaning of those paragraphs and to conform their language with subparagraphs i and ii.

COMMENT: N.J.A.C. 7:28-16.3(a)19 and 20. In reference to the linearity requirements, uncertified units requirements exceed those of certified units.

RESPONSE: The linearity requirement—specifically the factor of 0.10—is the same for both certified and uncertified units. In order to clarify this point, N.J.A.C. 7:28-16(a)20ii is added as set forth below to reconcile the language of these two paragraphs.

COMMENT: N.J.A.C. 7:28-16.10(a)6. It seems that this section is vague and seems to require personnel monitoring equipment in all dental installations. We feel that such a requirement is unnecessary in dental offices and suggest that this be clarified.

RESPONSE: This section, which merely reproduces N.J.A.C. 7:28-7.4 for the convenience of the regulated community, is quite specific. What constitutes a controlled area or a likelihood of a certain exposure is objectively determinable and should be known by the qualified individual who is required to perform the radiation survey. It is his or her function to determine whether or not personnel monitoring devices must be worn.

Far from requiring these devices in all offices, the likelihood of exceeding the industry and nationwide standard of 25 millirems per seven

consecutive days is non-existent in a dental installation where the equipment is operating properly and the shielding is appropriate.

#### Summary of Agency Initiated Changes:

References to radiation exposure were added to N.J.A.C. 7:28-16.3(a)19 and 20 to clarify the language and to conform it to subparagraphs i and ii. Redundant language was deleted from N.J.A.C. 7:28-16.3(a)19ii. N.J.A.C. 7:28-16.3(a)20 was rewritten to specify radiation exposure linearity as described in subparagraphs i and ii, to explain the application of the linearity formula for equipment whose tube current selection is continuous, and to conform the structure of that paragraph to N.J.A.C. 7:28-16.3(a)19.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

### SUBCHAPTER 16. DENTAL RADIOGRAPHIC INSTALLATIONS

#### 7:28-16.1 Scope

(a) This subchapter establishes the requirements for dental radiographic installations.

(b) No person shall operate or permit the operation of x-ray equipment used in the practice of dentistry unless the equipment and installation meet the applicable requirements of this subchapter.

(c) The provisions of this subchapter are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28-1 through 3, 5 through 8, 13 and 19.

#### 7:28-16.2 Definitions

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

"Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

"Certified components" means components of x-ray systems which are subject to the regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J—Radiological Health.

"Certified unit" means any x-ray system which has only certified components.

"Coefficient of variation" or "C" means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \sum_{i=1}^n \left[ \frac{(X_i - \bar{X})^2}{n-1} \right]^{1/2}$$

where:  $\frac{s}{\bar{X}}$  = Estimated standard deviation of the population.  
 $\bar{X}$  = Mean value of observations in sample.  
 $X_i$  = *i*th observation sampled.  
 $n$  = Number of observations sampled

"Control panel" means the x-ray system component and operational controls that include the indicators for x-ray tube voltage (kVp), tube current (mA), timer setting and beam-on.

"Diagnostic type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one meter (39.37 inches) from the source does not exceed 100 milliroentgens in one hour when the tube is operated at its maximum continuous rated current for the maximum continuous rated tube potential.

"Kilovolts peak" (see "peak tube potential").

"kV" means kilovolts.

"kVp" (see "peak tube potential").

"Image receptor" means any device such as, but not limited to, a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where a device is provided to preselect portions of the image

receptor, the term "image receptor" shall mean the preselected portion of the device.

"Leakage radiation" means all radiation emanating from the diagnostic source assembly except the useful beam. Leakage radiation also means radiation produced when the exposure switch or timer is not activated.

"mA" means milliamperere.

"mAs" means milliamperere second.

"Multiple dental radiographic tube installation" means an installation in which one control panel may energize more than one x-ray tube.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Primary protective barrier" (see "protective barrier").

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for protection purposes to reduce the radiation exposure so that it does not exceed two milliroentgens per hour.

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two milliroentgens per hour.

"Radiation (ionizing)" means any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, by interaction with matter.

"Scattered radiation" means radiation that, during passage through matter, has changed in direction or in energy.

"Secondary protective barrier" (see "protective barrier").

"Source-to-image distance" or "SID" means the distance from the radiation source to the center of the input surface of the image receptor.

"Source-to-skin distance" or "SSD" means the distance between the radiation source and the skin of the patient. It is also known as the target-to-skin distance.

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique factors" means the following conditions of operation:

1. For capacitor energy storage equipment, the technique factors are peak tube potential in kV and quantity of charge in mAs;

2. For field emission equipment rated for pulsed operation, the technique factors are peak tube potential in kV and number of x-ray pulses;

3. For CT x-ray systems designed for pulsed operation, the technique factors are peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

4. For CT x-ray systems not designed for pulsed operation, the technique factors are potential in kV, scan time in seconds, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and

5. For all other equipment, the technique factors are peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

"Uncertified unit" means an x-ray system comprised of components that are not subject to the regulations promulgated under Public Law 90-602, the Radiation Control Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J—Radiological Health.

#### 7:28-16.3 Dental radiographic equipment

(a) A person shall not operate or permit the operation of ionizing radiation-producing equipment used in the practice of dentistry unless the equipment meets the requirements listed below:

1. A diagnostic type protective tube housing shall be provided on the x-ray equipment.

2. Diaphragms or cones shall be used to collimate the useful beam and shall provide the same degree of protection as the diagnostic type protective tube housing.

3. For intraoral radiography, the diameter of the useful beam at the end of the cone in contact with the patient shall be no greater than seven centimeters (cm) (2.75 inches) when the source-to-skin distance is 18 cm (seven inches) or more. At SSD's less than 18 cm (seven inches), the diameter of the useful beam at the minimum SSD shall be no greater than six cm (2.36 inches).

4. A cone or spacer frame shall provide a source-to-skin distance of not less than 18 cm (seven inches) when the x-ray unit operates above 50 kVp or not less than 10 cm (four inches) when the x-ray unit operates at or below 50 kVp.

5. All machines purchased, donated, or otherwise obtained after July 1, 1969, shall be equipped with open end cones.

6. The amount of total filtration permanently in the useful beam shall meet the minimum half-value layer (HVL) specified in the following table:

TABLE I  
TABLE OF HALF-VALUE LAYERS FOR DENTAL UNITS  
X-ray tube voltage (kilovoltage peak)

Designed operating range (kVp)	Measured operating potential (kVp)	Minimum HVL (mm of Al)
Below 50	30	1.5
	40	1.5
50 to 70	50	1.5
	60	1.5
	70	1.5
	71	2.1
Above 70	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

7. For certified units, the x-ray tube voltage (kilovoltage peak) measured operating potential shall meet the manufacturer's specifications.

8. The exposure control switch shall be of the dead-man type.

9. The exposure control switch shall be provided with a timer that terminates the exposure after a preset time or preset exposure.

10. The exposure control switch button when depressed shall not energize the x-ray tube when the timer is in the "zero" or "off" position.

11. The exposure control switch shall be arranged to allow the operator to stand at least 1.83 meters (six feet) from the patient and well out of the path of the useful beam or to stand behind a protective barrier.

12. The x-ray control panel shall provide visual indication whenever x-rays are produced.

13. For certified units, a signal audible to the operator shall be provided to indicate that the exposure has terminated.

14. For certified units, the coefficient of variation of the timer reproducibility shall not exceed 0.05 measured at any specific combination of technique factors.

15. For uncertified units, the coefficient of variation of the timer reproducibility shall not exceed 0.07 measured at any specific combination of technique factors.

16. For certified units, the timer accuracy shall meet or exceed the manufacturer's specifications. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value.

17. For certified units, the coefficient of variation of the radiation exposure reproducibility shall not exceed 0.05 measured at any specific combination of technique factors.

18. For uncertified units, the coefficient of variation of the radiation exposure reproducibility shall not exceed 0.07 measured at any combination of technique factors.

19. For uncertified units, the following requirements for **\*radiation exposure\*** linearity shall be met when the equipment is operated on a power supply as specified by the manufacturer for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rated:

i. For equipment having independent selection of x-ray tube current (mA), the average ratios of exposure to the indicated milliampere-seconds product [(C/kg/mAs) or (mR/mAs)] obtained at any tube current settings shall not differ by more than 0.10 times their sum. This is:  $[X_1 - X_2] \leq 0.10(X_1 + X_2)$ ; where  $X_1$  and  $X_2$  are the average C/kg/mAs (or mR/mAs) values obtained at any two tube settings.

ii. For equipment having a combined x-ray tube current-exposure time product (mAs) selector, **\*[but not a separate tube current (mA) selector,]\*** the average ratios of exposure to the indicated milliampere-seconds product [(C/kg/mAs) or (mR/mAs)] obtained at any two mAs selector settings shall not differ by more than 0.10 times their sum. This is:  $[X_1 - X_2] \leq 0.10(X_1 + X_2)$ ; where  $X_1$  and  $X_2$  are the average C/kg/mAs (or mR/mAs) values obtained at any two mAs selector settings.

20. For certified **\*[systems]\* \*units\***, the requirement for linearity is as follows:

**\*i. For equipment that allows a choice of x-ray tube current settings,\*** the average ratios of exposure to the indicated milliampere-seconds product obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum:  $[X_1 - X_2] \leq 0.10 * [(X_1 + X_2)] * (X_1 + X_2)$ ; where  $X_1$  and  $X_2$  are the average **\*[(C/kg/mAs)]\*** (or mR/mAs) values obtained at each of two consecutive tube current settings **\*or at two tube current settings differing by no more than a factor of two where the tube current selection is continuous.\***

**\*ii. For equipment having selection of x-ray tube current-exposure time product (mAs), the average ratios of exposure to the indicated milliampere-seconds product [C/kg/mAs (or mR/mAs)] obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum:  $[X_1 - X_2] \leq 0.10(X_1 + X_2)$ ; where  $X_1$  and  $X_2$  are the average C/kg/mAs (or mR/mAs) values obtained at each of two consecutive mAs selector settings or at two mAs settings differing by no more than a factor of two where the mAs selector provides continuous selection.\***

21. The mechanical support of the tube head and the cone shall maintain the exposure position without movement, unless the diagnostic type protective tube housing movement is a designed function of the x-ray system (for example, as in panoramic units).

7:28-16.4 Multiple dental radiographic tube installations

(a) No person shall use x-ray equipment in a multiple dental radiographic tube installation set-up or cause it to be used unless the following requirements are met:

1. It shall be possible to activate only one dental radiographic tube at any one time.

2. Where two or more radiographic tubes are controlled by one exposure switch, the dental radiographic tube which has been selected shall be clearly indicated prior to initiation of the exposure. For certified units only, there shall be an indicator on both the x-ray control and at or near the dental radiographic tube housing assembly which has been selected.

3. It shall be possible to energize a dental radiographic tube from an exposure switch located at a specific dental radiographic tube's remote station only when that specific dental radiographic tube is selected.

4. It shall be possible to energize a dental radiographic tube from the main control panel exposure switch only when that specific dental radiographic tube is selected.

7:28-16.5 Cephalometric radiographic installations

(a) No person shall use x-ray equipment or cause it to be used to perform cephalometric radiographic procedures unless the following requirements are met:

1. The x-ray field in the plane of the image receptor shall not exceed each dimension of the image receptor by more than two percent of the source-to-image distance, when the axis of the x-ray beam is perpendicular to the plane of the image receptor. In addition,

the center of the x-ray field shall be aligned with the center of the image receptor to within two percent of the SID, or there shall be a device provided to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

2. The x-ray unit used for cephalometric radiographs shall meet all the requirements of this subchapter with the exception of N.J.A.C. 7:28-16.3(a)3 and 7:28-16.6.

#### 7:28-16.6 Panoramic radiographic installations

(a) No person shall use any panoramic radiographic unit or cause it to be used unless the following requirements are met:

1. The x-ray field in the plane of the image receptor shall not exceed each dimension of the image receptor by more than two percent of the SID, when the axis of the x-ray beam is perpendicular to the plane of the image receptor. In addition, the center of the x-ray field shall be aligned with the center of the image receptor to within two percent of the SID or there shall be a device provided to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

2. These units shall meet all the requirements of this subchapter with the exception of N.J.A.C. 7:28-16.3(a)3 and 7:28-16.5.

#### 7:28-16.7 Structural shielding

(a) No person shall operate or permit the operation of x-ray equipment used in the practice of dentistry unless the following requirements are met:

1. Permanent structural shielding and protective barriers shall be used to ensure that no person other than the patient being x-rayed receives a radiation dose in excess of two milliroentgens in any one hour.

2. When dental x-ray units are installed in adjacent areas of the same room, such units shall not be used simultaneously unless protective barriers are provided and used in the area between the units when necessary to comply with the radiation exposure limits in N.J.A.C. 7:28-6.

#### 7:28-16.8 Radiation safety surveys

(a) The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs a radiation survey of the controlled and non-controlled areas within 60 days of the installation of the x-ray equipment to ensure compliance with this chapter. The qualified individual shall provide the registrant with a report of the results of the radiation survey.

(b) The registrant shall submit a copy of the radiation survey report required in (a) above to the Department within 30 days after the date of the survey. The registrant shall maintain the original survey report at the facility for at least as long as the registrant owns the radiographic equipment at that location. The survey report shall be produced for review by the Department during an inspection.

(c) The registrant shall have a radiation protection survey performed by a qualified individual within 60 days after any changes made to shielding or equipment location. The registrant shall submit a copy of the survey to the Department within 30 days after the date of the survey. The registrant shall maintain the original survey report at the facility for at least as long as the registrant owns the equipment in that location. The survey report shall be produced for review by the Department during an inspection.

#### 7:28-16.9 Operating criteria

(a) No person shall operate a dental ionizing radiation-producing machine in such a manner as to expose human beings unless such person is a licensed practitioner or holds a valid license issued by the Department pursuant to N.J.A.C. 7:28-19 and the Radiologic Technologist Act, N.J.S.A. 26:2D-24 through 36.

(b) A person shall operate a dental ionizing radiation-producing machine in a manner consistent with the scope of practice defined on that person's license issued by the Department pursuant to N.J.A.C. 7:28-19.

#### 7:28-16.10 Operating procedures

(a) All persons who operate or permit the operation of dental radiographic equipment shall comply with following operating procedures:

1. No individual other than the patient being x-rayed shall be in the path of the useful beam;

2. During each exposure the operator shall stand at least 1.83 meters (six feet) from the patient or behind a protective barrier;

3. The film shall not be held by the dentist, the operator, or the assistant during any radiographic exposure;

4. The diagnostic type protective tube housing and the cone shall not be hand held during exposures;

5. Fluoroscopy shall not be used in dental examinations; and

6. The registrant shall provide personnel monitoring equipment to and require that it be worn by each individual who enters a controlled area and receives or is likely to receive a dose in excess of 25 millirems in any period of seven consecutive days.

i. Each personnel monitoring device shall be assigned to and worn by only one person.

ii. Records of radiation exposure derived from the personnel monitoring device shall be kept in accordance with the requirements of N.J.A.C. 7:28-8.

iii. The registrant shall keep the personnel monitoring records at the facility. These records shall be kept in accordance with the requirements of N.J.A.C. 7:28-8. These records or true copy of same shall be produced for review by the Department during an inspection, and shall be submitted to the Department upon request.

iv. The personnel monitoring records shall be available to the employees.

## HIGHER EDUCATION

### (a)

#### BOARD OF HIGHER EDUCATION

##### State Colleges

##### Admissions Policies; Baccalaureate Degree Policies; Definitions; Adjunct Faculty; Visiting Specialist; Academic Rank for Non-Teaching Personnel

##### Adopted Amendments: N.J.A.C. 9:6-3.2, 3.13, 3.14 and 4.5

##### Adopted Repeals and New Rules: N.J.A.C. 9:6-1 and 9:6-2

Proposed: June 4, 1990 at 22 N.J.R. 1658(a).

Adopted: October 15, 1990 by the Board of Higher Education,

Edward D. Goldberg, Acting Chancellor and Secretary.

Filed: October 15, 1990 as R.1990 d.546, **without change**.

Authority: N.J.S.A. 18A:64-6 and 18A:3-14.

Effective Date: November 5, 1990.

Expiration Date: April 30, 1995.

##### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text of the adoption follows.**

#### SUBCHAPTER 1. ADMISSIONS POLICIES

##### 9:6-1.1 Establishment of admissions policy

Each State college board of trustees shall establish an admissions policy that meets the specific educational objectives of the institution and that provides for equitable educational opportunity. Admissions policies shall include such criteria as minimum numbers of completed units of college preparatory subjects, graduation from an accredited secondary school (or a high school equivalency certificate such as the G.E.D.) and examination scores of the Scholastic Aptitude Test

of the College Entrance Examination Board or the American College Testing Program. They shall also provide for exceptions to the regular admissions program for students admitted under the Educational Opportunity Fund program and students admitted through the college's special admissions program.

#### 9:6-1.2 Reporting requirement

The president of the college shall transmit to the Chancellor a copy of the board of trustee's admissions policy upon its initial adoption in fulfillment of N.J.A.C. 9:6-1.1 and whenever amended by the trustees

### SUBCHAPTER 2. BACCALAUREATE DEGREE POLICIES

#### 9:6-2.1 Baccalaureate degree requirements

(a) Each State college board of trustees shall establish requirements for the baccalaureate degree including such factors as minimum numbers of credits to be earned for course work in the major, in general education and in elective subjects, and minimum grade point average or other measure of performance.

(b) Each degree program shall be minimally composed of 120 credits, approximately half of which shall be general education. Within specialized programs, such as the B.F.A., the B. Mus. and programs in the regulated professions, major course requirements may exceed one-half of the total required for the degree.

#### 9:6-2.2 Reporting requirement

The president of the college shall transmit to the Chancellor a copy of the board of trustee's policy on baccalaureate degree standards upon initial adoption in fulfillment of N.J.A.C. 9:6-2.1 and whenever amended by the trustees.

#### 9:6-3.2 (Reserved)

#### 9:6-3.13 Adjunct faculty

(a) Each State college board of trustees shall establish salary rates for adjunct faculty teaching at the State colleges.

(b) Adjunct faculty shall not teach more than the equivalent of half-time (12 teaching credit hours) at a State college during the college's academic year, nor shall teach any more than eight teaching credit hours in any one semester.

#### 9:6-3.14 Visiting specialist

A visiting specialist who may be appointed to a State college with a rank such as artist- or poet- or composer-in-residence shall be one who has achieved distinction in a field such as the arts, the humanities, the sciences, or public life. While the attainment of academic excellence in a given field is desirable, such appointment shall be made principally on the basis of the distinction the person has achieved in his or her chosen field. A visiting specialist may serve at a State college for a period not exceeding three years of consecutive, full-time service.

#### 9:6-4.5 Academic rank for non-teaching personnel

(a) (No change.)

(b) Librarians who meet appropriate qualification requirements and hold State College Classification Plan titles of librarian I, librarian II, and librarian III are eligible for concurrent academic rank. Concurrent academic rank equivalencies for librarians I, II and III shall be the following:

State College Classification Plan Title—Concurrent Academic Rank

1. Librarian I—Assistant professor in the library;
2. Librarian II—Assistant professor in the library;
3. Librarian III—Instructor in the library.

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

(a)

### BOARD OF HIGHER EDUCATION

#### State Colleges

#### Elements of the Institutional Plan

#### Adopted Amendment: N.J.A.C. 9:6-7.4

Proposed: August 6, 1990 at 22 N.J.R. 2255(a).

Adopted: October 15, 1990 by the Board of Higher Education,

Edward D. Goldberg, Acting Chancellor and Secretary.

Filed: October 15, 1990 as R.1990 d.545, **without change.**

Authority: N.J.S.A. 18A:64-6(v) and 18A:3-14(t).

Effective Date: November 5, 1990.

Expiration Date: April 30, 1995.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### 9:6-7.4 Elements of the institutional plan

(a) The plan approved by the board of trustees shall include the following:

1.-3. (No change.)

4. Trends, goals and outcomes in the following:

i.-vi. (No change.)

vii. Human resources, including total salary expenditures, faculty staffing both by academic unit and by rank and tenure, administrative staff, support staff, faculty and staff development and affirmative action;

viii.-xi. (No change.)

(b)

### BOARD OF HIGHER EDUCATION

#### Disbursement of Funds for Technical and Engineering Facilities and Equipment Under the Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99

#### Readoption: N.J.A.C. 9:8

Proposed: August 6, 1990 at 22 N.J.R. 2256(a).

Adopted: October 15, 1990 by the Board of Higher Education,

Edward D. Goldberg, Acting Chancellor and Secretary.

Filed: October 15, 1990 as R.1990 d.547, **without change.**

Authority: P.L. 1984, c.99.

Effective Date: October 15, 1990.

Expiration Date: October 15, 1995.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:8.

**HUMAN SERVICES****(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Pharmacy Manual****Readoption: N.J.A.C. 10:51**

Proposed: August 6, 1990 at 22 N.J.R. 2217(a).

Adopted: October 5, 1990 by Alan J. Gibbs, Commissioner,  
Department of Human Services.Filed: October 9, 1990 as R.1990 d.530, **without change.**Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, b, and c; 30:4D-12;  
30:4D-20.

Effective Date: October 9, 1990.

Expiration Date: October 9, 1995.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:51.**(b)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Medicaid Only Manual****Medicaid Eligibility****Transfer of Resources****Adopted Concurrent Amendment: N.J.A.C. 10:71-4.7**

Proposed: August 20, 1990 at 22 N.J.R. 2604(a).

Adopted: September 26, 1990, by Alan J. Gibbs, Commissioner,  
Department of Human Services.Filed: September 27, 1990 as R.1990 d.524, **without change.**Authority: N.J.S.A. 30:4D-3, 30:4D-6a(4)(a)b(14), 30:4D-7, 7a,  
b, and c; 1917(c) of the Social Security Act, codified as 42  
U.S.C. 1396p.

Effective Date: September 27, 1990.

Expiration Date: January 6, 1991.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.**10:71-4.7 Transfer of resources**

(a) The provisions of this section apply only to persons who are receiving an institutional level of services or who are seeking that level of services. An individual shall be ineligible for institutional level services through the Medicaid program if he or she (or his or her spouse) has disposed of resources at less than fair market value at any time during or after the 30 month period immediately before:

1. In the case of an individual who is already eligible for Medicaid benefits, the date the individual becomes an institutionalized individual; or

2. In the case of an individual not already eligible for Medicaid benefits, the date that the individual applies for Medicaid as an institutionalized individual.

(b) The following definitions apply in situations involving the transfer of resources:

1.-2. (No change.)

3. Institutionalized individual: An institutionalized individual for the purposes of this section is a person who is receiving care in a Medicaid certified skilled nursing facility, intermediate care facility (level A or B and ICFMR) and licensed special hospital (Class B or C) or Title XIX psychiatric hospital (if under the age of 21 or age 65 and over). Effective October 1, 1990, an institutionalized

individual shall include an individual receiving care in a Medicaid certified nursing facility (NF). For the purposes of this section, an institutionalized individual shall include a person seeking benefits under a home or community care waiver program, not including the Home Care Expansion Program. An institutionalized individual shall not include a person who is receiving care in an acute care general hospital.

4. Penalty period: The penalty period is the period of ineligibility for Medicaid coverage for institutional level care established for an individual as a result of the transfer of a resource for less than fair market value. The penalty period begins with the month of the resource transfer and is the lesser of:

i. 30 months; or

ii. The number of months resulting from dividing the uncompensated value of the transferred resource by statewide monthly average lowest semi-private room rate for Medicaid certified nursing facilities as calculated annually. The current average through December 31, 1990 is \$3,376.

(c) General procedures: If an individual or his or her spouse described in (a) above (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any resources (including any interest in a resource or future rights to a resource) within the 30 months preceding the date of application or entry into institutional care, the following steps shall be taken and fully documented in the case record:

1.-5. (No change.)

6. Advise the applicant that he or she may rebut the presumption that a resource was transferred at less than FMV in order to qualify for Medicaid coverage for institutional care (see (i) below).

(d) The provisions of this section apply whether or not the resource would have been considered an excluded resource at the time of its disposal or transfer. However, an individual shall not be ineligible for an institutional level of care because of the transfer of his or her equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence and the title to the home was transferred to:

1. The institutionalized individual's spouse;

2. A child of the institutionalized individual who is under the age of 21 or a child of any age who is blind or totally and permanently disabled;

i. In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability shall be evaluated by the Disability Review Section of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13;

3. A brother or sister of the institutionalized individual who already had an equity interest in the home prior to the transfer and who was residing in the home for a period of at least one year immediately before the individual becomes an institutionalized individual; or

4. A son or daughter of the institutionalized individual (other than described in (d)2 above) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual and who has provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.

i. The care provided by the individual's son or daughter must have exceeded normal personal support activities (for example, routine transportation and shopping). The individual's physical or mental condition must have been such as to require special attention and care. The care provided by the son or daughter must have been essential to the health and safety of the individual and consisted of activities such as, but not limited to, supervision of medication, monitoring of nutritional status, and insuring the safety of the individual.

(e) The provisions of this section do not apply to the following resource transfer situations:

1. The resources were transferred to the community spouse (or to another individual for the sole benefit of the community spouse) prior to the entry into institutional care so long as the resources were not subsequently transferred by the community spouse;

i. If funds were transferred to another individual for the sole benefit of the community spouse prior to entry into institutional care, in order that the transfer not be considered to have been for the purposes of qualifying for Medicaid, the funds must have been transferred in the form of a legally binding trust document specifying that the trustee(s) may use the funds solely for the benefit of the community spouse. Should the transferred funds not be so designated, the transfer shall be presumed to be for the purpose of qualifying for Medicaid in accordance with the provisions of this section;

2. The resources were transferred to the community spouse subsequent to the application for Medicaid in accordance with N.J.A.C. 10:71-4.8(a)3; or

3. The resources were transferred from the institutionalized individual or the community spouse to the institutionalized individual's child who is blind or permanently and totally disabled.

i. In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability will be evaluated by the Disability Review Section of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13.

(f) (No change in text.)

(g) Resource transferred, resource limit not exceeded: When the UV of a transferred resource, combined with all other countable resources, does not exceed the applicable resource limit, the application shall be processed as usual.

(h) Resource transferred, resource limit exceeded: When the UV of a transferred resource, combined with other countable resources, exceeds the resource limit, eligibility for institutional level services shall be denied and the procedures below followed:

1. Notify the applicant via Form PA-13 that he or she has transferred a resource at less than FMV, the amount of the UV and the length of the penalty period. Explain that the law states that transfer of a resource at less than FMV is presumed to be for the purpose of establishing Medicaid eligibility for institutional services.

2. Advise the applicant that he or she may rebut the presumption (see (i) below).

3. Prepare a list of such cases for control purposes. The control list shall include the case number, client's name, Social Security number, date of resource disposal, FMV of the resource, amount of UV, and the start and end dates of the period of ineligibility for institutional level services.

(i) (No change in text.)

(j) Factors which may indicate that the transfer was for some other purpose. The presence of one or more of the following factors, while not conclusive, may indicate that the resources were transferred exclusively for some purpose other than establishing Medicaid eligibility.

1. (No change.)

2. Resources that would have been below the resource limit during each of the preceding 30 months if the resource has been retained.

3.-4. (No change.)

(k) (No change in text.)

(l) In the case of any resource transfer which occurred between April 1, 1990 and August 20, 1990 and which would otherwise be subject to the provisions of this section, the period of ineligibility for institutional services shall be the lesser of:

1. 24 months; or

2. The number of months resulting from the application of the calculation at N.J.A.C. 10:71-4.7(b)4ii.

## (a)

**DIVISION OF ECONOMIC ASSISTANCE****Public Assistance Manual—Child Support and Paternity****Enforcement of Health Insurance Coverage, Paternity Determinations, Disregarded Child Support Payments, Seeking of Support Orders, Timeframes, Form Utilization, ACSES System, Location Activities, Review of Child Support Orders****Adopted Amendments: N.J.A.C. 10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11, 11.12, 11.13, 11.14, and 11.15**

Proposed: June 4, 1990 at 22 N.J.R. 1664(a)

Adopted: October 12, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: October 12, 1990, as R.1990 d.541, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), **and with N.J.A.C.**

**10:81-11.21 not adopted.**

Authority: N.J.S.A. 44:10-3; Family Support Act of 1988 (Public Law 100-485).

Effective Date: November 5, 1990.

Expiration Date: August 24, 1994.

**Summary of Public Comments and Agency Responses:**

Comments were received from five county welfare agencies, Legal Services of New Jersey and the Administrative Office of the Courts. Comments and the Department's responses are as follows:

COMMENT: One commenter noted that, under N.J.A.C. 10:81-11.4(a), some families may be entitled to more than one \$50.00 pass-through, occurring when a payment was made in a previous month due but received in the present month because of delays in processing.

RESPONSE: N.J.A.C. 10:81-11.4(a) is being revised upon adoption to address this issue. Language has been deleted at N.J.A.C. 10:81-11.4(a) due to a decision made by the Federal Office of Child Support Enforcement to further review the timeframe requirements for the \$50.00 pass-through payment. That agency will consider changes to the timeframes as part of proposed Federal regulations under development.

COMMENT: Several commenters noted that the proposed amendments do not specify, with sufficient clarity, the penalty that would be imposed on a Medicaid Only recipient who fails to cooperate with child support requirements without good cause.

RESPONSE: The Department recognizes the need for further development of regulatory text in this area and will undertake separate rulemaking at a later date through inter-Divisional consultation.

COMMENT: One commenter questioned whether persons receiving Medicaid Only must assign all rights to current and future support.

RESPONSE: The AFDC/Medicaid Only applicant must assign only his or her rights to medical support. N.J.A.C. 10:81-11.4(c) has been modified to reflect this.

COMMENT: One commenter remarked that Federal law requires that a Title IV-D application for services must be filed to reinstate IV-D services. The commenter noted that the proposed amendment at N.J.A.C. 10:81-11.4(d)1v(1) states that it may be required.

RESPONSE: N.J.A.C. 10:81-11.4(d)1v(1) has been modified to reflect this. For clarification purposes, the Department also modified the proposed amendment to encompass all IV-D services instead of specifying collection services only.

COMMENT: Two commenters pointed out that N.J.A.C. 10:81-11.5(a) makes no reference to Medicaid Only cases, while previous sections include and AFDC Medicaid Only cases.

RESPONSE: N.J.A.C. 10:81-11.5(a) has been changed to reflect that it applies to both Medicaid Only and AFDC cases.

COMMENT: One commenter stated that, at N.J.A.C. 10:81-11.7(a), reference to the "county adjusters office, for URESA Activity", which was deleted, should have been replaced by "Family Case Management Units" since those units are now responsible for URESA activities.

RESPONSE: N.J.A.C. 10:81-11.9(c) has been modified to state that the interview should take place within 20 calendar days. In accordance

with Federal regulations at 45 CFR 303.2(b), a case record must be established and necessary information must be solicited within 20 calendar days of receipt of referral of a case or of filing an application for services.

COMMENT: One commenter questioned the 20 working day timeframe at N.J.A.C. 10:81-11.9(d).

RESPONSE: For purposes of consistency, with other subsection timeframes, text at N.J.A.C. 10:81-11.9(d) has been modified to reflect the 90 calendar day timeframe, instead of 20 working days.

COMMENT: One commenter requested clarification at N.J.A.C. 10:81-11.9(d)1 with respect to establishing paternity and/or establishing an order for support within 90 calendar days. Specifically, when does the 90 calendar day period begin?

RESPONSE: N.J.A.C. 10:81-11.9(d)1 has been modified to state that the 90 calendar day period begins on the day the non-custodial parent is located.

COMMENT: One commenter questioned as to whether the proposed amendment at N.J.A.C. 10:81-11.9(d)2ii supersedes a recent adoption on the same subparagraph which appeared in the August 6, 1990 issue of the New Jersey Register at 22 N.J.R. 2318(a).

RESPONSE: The Administrative Office of the Courts (AOC) supervises the Family Case Management Unit. Inasmuch as AOC is already mentioned, it is not necessary to list all the subdivision agencies under the AOC's supervision.

COMMENT: Two commenters requested clarification at N.J.A.C. 10:81-11.9(a) and (d) as to which agency is responsible for the preparation and filing of paternity complaints for non-AFDC clients.

RESPONSE: The CWA/CSP unit will provide location services to the non-AFDC client when an order has not been established. Once the non-custodial parent is located, it is the responsibility of the Family Intake Unit to assist the non-AFDC client in the preparation and filing of the complaint. Modifications have been made at N.J.A.C. 10:81-11.9(a) and (d)2 to clarify these procedures.

COMMENT: One commenter requested clarification at N.J.A.C. 10:81-11.9(a) with respect to the CWA/CSP Unit's responsibility for the transmittal of all health benefits information. The commenter agrees that the transmittal of this information might be necessary in an occasional case but noted that most of the information concerning medical support orders can be obtained from the appropriate ACSES screen.

RESPONSE: N.J.A.C. 10:81-11.9(a) has been modified to reflect that the transmittal of the health benefits information is not necessary inasmuch as such information is available through ACSES.

COMMENT: One commenter requested clarification at N.J.A.C. 10:81-11.9(c) as to whether the CSP unit has to arrange an interview within 20 calendar days or actually have the interview within the timeframe.

RESPONSE: These proposed amendments at N.J.A.C. 10:81-11.9(d)2ii do not supersede the regulations as adopted at 22 N.J.R. 2318(a). The revision in this proposal was done prior to the adoption at 22 N.J.R. 2318(a) and, therefore, the proposed amendment had to reflect current N.J.A.C. text. N.J.A.C. 10:81-11.9(d)2ii in this proposal, therefore, is not being adopted as proposed. The proposed amendments to N.J.A.C. 10:81-11.9(d)2ii(a), and (2)(A) are being adopted as proposed.

COMMENT: Three commenters stated that, based on the schedule of the hearing officers, it would not always be possible for the defendant to be brought before the hearing officer on the same day a consent conference was held as indicated at N.J.A.C. 10:81-11.9(d)3.

RESPONSE: Due to the logistics of this matter and the 90-day timeframe, N.J.A.C. 10:81-11.9(d)3 has been changed to state that the defendant will be brought before a hearing officer on the same day or the next available date. However, in all cases, establishing paternity or establishing a court order must take place within 90 days of location.

COMMENT: One commenter considered the 30 calendar day timeframe to file a petition for establishment of a Support Order, at N.J.A.C. 10:81-11.9(d)4, to be unrealistic.

RESPONSE: For consistency, N.J.A.C. 10:81-11.9(d)4 has been modified to reflect a 90 calendar day timeframe.

COMMENT: Three commenters felt that the two-day timeframe to complete the petition and testimony was unrealistic. One commenter proposed a 45-day timeframe.

RESPONSE: As a result of the comments received, N.J.A.C. 10:81-11.9(d)5 has been modified. Although the two-day timeframe will no longer pertain, in accordance with 45 CFR 303.7(b)(3), this section will reflect that interstate IV-D cases must be referred to the responding state's Interstate Central Registry for action within 20 calendar days of

determining that the absent parent is in the responding state. As a result of this Federal regulation, the 45-day timeframe recommended by one of the commenters cannot be implemented.

COMMENT: One commenter inquired as to whether the proposed amendment at N.J.A.C. 10:81-11.9(d)5i means that the CWA will be required to enforce interstate support payments or whether the CWA will request that another state administratively change the beneficiary of its order if the obligee is receiving AFDC in New Jersey.

RESPONSE: The intent of the proposed amendment is to specify that the CWA would request enforcement through the probation department through which payments are directed.

COMMENT: Two commenters noted that the proposed amendment at N.J.A.C. 10:81-11.9(1)1 infers that the CWA will provide Title IV-D applications to locate obligors, establish paternity and secure support for non-public assistance as well as AFDC clients.

RESPONSE: The intent of the proposed amendment is to comply with Federal regulations requiring equal services to AFDC and non-public assistance clients. Upon request, a non-public assistance client will be provided with the appropriate applications and be directed to the appropriate child support agency for assistance as necessary.

COMMENT: One commenter noted that under Federal regulations, information describing IV-D services must accompany the IV-D application. The commenter requested clarification as to who would be responsible for producing the information sheet at N.J.A.C. 10:81-11.9(1).

RESPONSE: As an interim procedure, the informational sheet will be developed at the State level for reproduction at the local level. In the future, however, a pamphlet will be made available to the county welfare agencies by the State office.

COMMENT: One commenter stated that text at N.J.A.C. 10:81-11.9(d)10, concerning the treatment of an absent parent who is in the military, falls short of addressing the myriad of actions required of the CWA/CSP unit to file a support petition.

RESPONSE: N.J.A.C. 10:81-11 provides rules and procedures which are necessary to comply with Federal regulations. The subchapter could not possibly cover all situations which could arise and cannot provide countless possible solutions. As the necessary steps are outlined in the subchapter, no additional changes are required.

COMMENT: One commenter stated that at N.J.A.C. 10:81-11.12(a), the issue of notifying the client of case closure and the continuation of service is automatically handled through ACSES. The commenter suggested that it may be more helpful to explain the closure process of IV-D services for various types of cases such as AFDC, Division of Youth and Family Services, and Medicaid Only.

RESPONSE: The termination of IV-D services would be the same in all of the cases mentioned by the commenter. Case closing criteria will be submitted as separate proposed amendments at a later date.

COMMENT: One commenter questioned whether the State Parent Locator Service mentioned at N.J.A.C. 10:81-11.14(b) was still in existence as a separate entity due to the advent of automated ACSES location searches and system generated forms. The commenter also questioned if the language at N.J.A.C. 10:81-11.14(b) was still applicable.

RESPONSE: The State PLS does not exist as a separate entity to handle requests from other State agencies and transmit information to the Federal Parent Locator Service. The language at N.J.A.C. 10:81-11.14(b) is no longer applicable and has been deleted.

COMMENT: One commenter questioned as to what other family court matters would the CWA/CSP Unit have access to.

RESPONSE: For clarification purposes the proposed amendment has been modified at N.J.A.C. 10:81-11.14(a)1x(4) to reflect that the CWA/CSP units have the ability to investigate only those family court matters pertaining to child support.

COMMENT: Two commenters requested clarification concerning the sharing of information by counties as set forth at N.J.A.C. 10:81-11.14(c)2. Specifically, which county will enter the information onto the ACSES system?

RESPONSE: Only the county which is in charge of the case can enter new information onto the ACSES system. Any county obtaining information concerning an absent parent on a case which another county is in charge of should route that information to that county where it can be updated onto the ACSES system. The proposed amendment has been modified to reflect such clarification.

COMMENT: One commenter thought that the use of Form PA-450A had been discontinued.

RESPONSE: Although the use of Form PA-450A has been discontinued at the county level, the State PLS still uses this form when notifying other State agencies.

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COMMENT: Five commenters requested that N.J.A.C. 10:81-11.21 be expanded inasmuch as the section did not reflect current policies and procedures, nor was it consistent with the Family Support Act of 1988.

RESPONSE: As a result of the comments received and inasmuch as Federal regulations have not been finalized, N.J.A.C. 10:81-11.21 is not being adopted. Once final Federal regulations are issued, separate rulemaking will be undertaken.

COMMENT: One commenter suggested that the number of terms used to refer to client and agency be reduced.

RESPONSE: The commenter's concerns will be taken into consideration. If the modifications are determined to be necessary, in order to maintain consistency, N.J.A.C. 10:81 will have to be reviewed in its entirety.

**Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):**

AGENCY NOTE: The text of N.J.A.C. 10:81-11.9(d)2ii reproduced below is correct as identical to that currently in the code, adopted subsequent to the proposed amendments adopted herein. The proposed amendments to N.J.A.C. 10:81-11.9(d)2ii(1), (2) and (2)(A) are adopted herein.

### 10:81-11.2 Eligibility requirements.

(a) In addition to the eligibility requirements contained in N.J.A.C. 10:81-3 and 5, requirements for AFDC eligibility shall include the following:

1.-2. (No change.)

3. Cooperation: The AFDC/Medicaid Only applicant shall be required to cooperate in obtaining support and medical insurance to which members of the eligible unit are entitled (see N.J.A.C. 10:81-11.5).

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

(d) Title IV-D support collections and paternity determination shall be made available to the Division of Youth and Family Services (DYFS) upon application and referral.

### 10:81-11.4 Assignment of support rights

(a) State law provides that application for or receipt of AFDC shall automatically operate as an assignment to the county welfare agency of any rights to support under Titles IV-A and IV-D of the SSA, except in those cases in which the only legally responsible relative is a member of the eligible unit or is the incapacitated parent in an AFDC-C case. Any support collections assigned to the CWA are subject to the provisions at N.J.A.C. 10:82-4.17 concerning the disregard payment. **\*[Effective October 1, 1990, new timeframes for the distribution of the disregard payment will be as follows:]\*** The first \$50.00 of support collected in a month **\*and the first \$50.00 of any payment for a prior month paid by the absent parent in the month due\*** shall be sent to the client.\* **\*[within 20 calendar days of the date of initial receipt. If less than \$50.00 of support is collected in a month, the disregard payment shall be sent to the client within 20 calendar days of the end of the month.]\***

(b) (No change.)

(c) Applicability: The assignment of support rights applies to the AFDC program **\*[and AFDC/Medicaid Only]\***. **\*AFDC/Medicaid Only applicants will assign only their rights to medical support.\*** It is not an eligibility requirement for the Refugee Resettlement Program.

(d) IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC or AFDC/Medicaid Only, he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C or Medicaid Only, shall complete the appropriate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check, or determination of eligibility, but no later than 45 days of initial application.

i. Relationship to application process: The fact that eligibility is not immediately established shall not delay routing of the IV-D referral document to the IV-D Unit. However, when a case is determined ineligible the IM worker shall notify the IV-D Unit immediately, or within 24 hours of such determination.

ii. (No change.)

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the client shall, upon receipt, be forwarded to the CWA/IV-D Unit. If the IV-D Unit discovers that directly received support payments are being, or have been retained by the client, it shall immediately notify the IV-A Unit in writing.

(1) The client shall be required to remit the support payment to the CWA. If the client fails to comply, the amount of the direct support, less the \$50.00 disregarded child support payment, shall be counted as unearned income received in the budget month and used to determine the amount of the assistance payment to be issued for the corresponding payment month as set forth at N.J.A.C. 10:90-4.3(c)2ii.

(2) (No change.)

iv. (No change.)

v. Continuing IV-D services for families that lose AFDC eligibility: The IV-D agency is required to pay all amounts collected representing support to the family. A IV-D agency may not recover costs from either parent.

(1) If **\*[collection]\*** services are terminated, the IV-D agency **\*[may]\*** **\*shall\*** require that a IV-D application be filed for services if the family requests these services to be reinstated.

(2) The application for non-AFDC services will require a \$5.00 fee on all cases where an application is filed on or after October 1, 1985.

### 10:81-11.5 Cooperation in establishing paternity and obtaining support

(a) Cooperation in obtaining support and medical insurance and establishing paternity whenever necessary is a condition of eligibility for AFDC **\*and AFDC/Medicaid Only\*** for each applicant **\*and\*** recipient. The IM worker and supervisor have responsibility for the determination of whether or not good cause for refusal to cooperate exists. This determination shall be based on evidence provided by the client and on consultation, where appropriate, with the CSP Unit.

(b) Notice to applicant or recipient: At the time of application, the IM worker will explain to the client the requirements for cooperation in connection with establishment of paternity, collection of support, and medical insurance. The worker shall also provide a written notice (PA-46) of the client's right to claim good cause for refusal to cooperate. Should the client claim to have good cause for noncooperation or request further clarification, he or she shall be given a further written notice (PA-47) describing the circumstances and evidence necessary for a finding of good cause.

1. (No change.)

(c) Cooperation requirements: Each applicant/recipient is required to cooperate with the CWA/CSP Unit, probation department, county prosecutor's office and other child support agencies in the following:

1.-2. (No change.)

3. Assisting in obtaining support payments and medical insurance for each individual for whom aid is requested; and

4. Assisting in obtaining any other payments, including medical support, or property due any individual for whom aid is requested.

(d) Cooperation explained: The term "cooperation" includes the following actions by the client:

1. Appearing at the offices of the appropriate child support agencies as necessary to provide oral or written information, or documentary evidence relevant to, obtaining support and medical insurance, which is known to, possessed by, or reasonably obtainable by the client;

2.-3. (No change.)

4. After receipt of a grant, paying to the CWA any child support payments which are received directly from the absent parent, whether voluntary or court ordered, or through the probation department.

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(e) Good cause for refusal to cooperate: A client who claims to have good cause for refusal to cooperate has the burden of establishing the existence of a good cause circumstance.

1. (No change.)

2. Good cause circumstances: Only when at least one of the following circumstances exists will the CWA determine that the client's cooperation is against the best interests of the child and there is good cause for refusal to cooperate:

i.-ii. (No change.)

iii. Proceeding to establish paternity or collect support and medical insurance in the particular case would be detrimental to the child because:

(1)-(3) (No change.)

3. Physical and emotional harm: Physical and emotional harm must be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment which substantially affects the individual's functioning.

i. Anticipated emotional harm: When the good cause determination is based in whole or in part upon anticipated emotional harm to the child, parent or parent-person, the CWA will consider the following:

(1)-(3) (No change.)

(4) The extent to which the child will be involved in paternity establishment, court proceedings, and/or support collection and medical insurance activity.

(f)-(g) (No change.)

(h) Refusal to cooperate: If the CWA determines that no good cause exists for the client's refusal to cooperate, the client shall be notified of the determination and given an opportunity to cooperate, withdraw the application for assistance, or have the case closed. The client shall also be advised of his or her rights to a fair hearing to appeal this adverse decision in accordance with N.J.A.C. 10:81-7.1(c).

1.-2. (No change.)

3. Maintenance of CSP effort: The deletion of the AFDC parent or parent-person from the eligible unit shall not be construed as a bar to continuing effort by the CSP Unit to establish paternity or obtain support and medical insurance for the AFDC children.

(j) (No change.)

(j) Enforcement without parent's cooperation: When the CWA makes a determination that good cause for refusal to cooperate exists, it will also determine whether or not child support enforcement and/or establishment of paternity and medical insurance can proceed without risk of harm to the child or parent with whom he or she lives if the enforcement or collection activities do not involve their participation. This decision, with the basis for the determination, will be recorded in the case record.

1. CSP recommendation: The CSP Unit will be given the opportunity to review the proposed determination and will be notified immediately or within 24 hours regarding the decision.

2. Notification of client: The client will be notified that child support enforcement or establishment of paternity and medical support will proceed without the client's cooperation. The client may choose to withdraw his or her application of have the case closed. The client must also be advised of his or her rights to appeal this decision in accordance with N.J.A.C. 10:81-7.1(c).

(k) (No change.)

10:81-11.7 Responsibilities of the State agency

(a) The State Office of Child Support and Paternity Programs, located in the Division of Economic Assistance, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Office of CSP Programs. Responsibilities of the Office of CSP Programs include, but are not limited to, the following:

1. The coordination of activities involving CWA/CSP Units, the county probation departments, county prosecutor's offices, county sheriff's offices, the State Attorney General's Office, and the Administrative Office of the Courts;

2.-8. (No change.)

9. Transmittal of all health benefits information, both voluntary and/or on support orders for AFDC and Medicaid Only clients, to the State's Division of Medical Assistance and Health Services.

10. (No change in text.)

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a) **\*[This]\* \*The CWA/CSP\* unit shall be responsible for taking appropriate action **\*in those cases where an order does not exist\*** to locate obligors, to establish paternity and/or secure child support and medical insurance due AFDC and Medicaid Only recipients **\*[and]\* **\*.\* \*Upon application\* non-AFDC persons **\*will be provided with location services; once location is established, non-AFDC persons will be referred to the Family Intake Unit to file a complaint.\*\*[;]\* **\*The CWA/CSP unit shall be responsible\*** to annually send a notice of the amount of support payments collected during the preceding year to individuals who have assigned rights to support, as per N.J.A.C. 10:81-11.2(a)2; for securing **\*[and timely transmittal of]\*** all health benefits information, **\*[both voluntary and from new or modified court orders for support of AFDC and non-AFDC clients to the State Office of Child Support and Paternity and the State Division of Medical Assistance and Health Services;]\*** for referral of cases, when the whereabouts of the obligor is unknown, to the State Parent Locator Service; for providing services for location, filiation and obtaining and enforcing support for non-public assistance persons; and for referral of requests from consumer reporting agencies, concerning the amount of overdue support owed by an obligor, to the State Office of Child Support and Paternity, via Form CSP-166. (See N.J.A.C. 10:81-11.7 regarding responsibilities of the State agency.)********

(b) Notification to remit support payments to the CWA:

1. Purpose: All support rights due AFDC-C recipients are assigned to the CWA and paid through the appropriate county probation department.

2. (No change in text.)

(c) Investigative interview: In cases where a court order does not exist and sufficient current information is not already available, the CSP Unit shall **\*[arrange for an]\*** interview **\*[with]\*** the AFDC recipient or IV-D applicant no later than 20 calendar days after receipt of the referral document.

1. Purpose of interview: The purpose of the interview shall be to obtain any information which may be necessary to assist the CSP Unit in the establishment of paternity and/or support and medical insurance and/or in its search for an absent parent (see N.J.A.C. 10:81-11.13 through 11.14). Such information shall be recorded in the case record as specified in (e) below.

2. Action resulting from the interview:

i. If the information provided by the AFDC recipient is sufficient to warrant legal action, such action shall be taken in accordance with (d) below. If information provided by the non-AFDC client is sufficient to warrant legal action, the non-AFDC client will be referred to the county family intake unit to file a paternity or non-support complaint and schedule a consent conference.

ii. (No change.)

iii. If the probation department refers an AFDC parent or parent-person to the CSP Unit for refusal to cooperate (see N.J.A.C. 10:81-11.5), the CSP Unit shall conduct an interview with such client within 10 working days to ascertain if there exists actual refusal to cooperate. The CSP Unit shall proceed in accordance with (c)2ii above. If it is determined that such person has cooperated, any pertinent information shall be forwarded to the probation department immediately.

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings shall be initiated for the purpose of establishing paternity and/or obtaining support and medical insurance within **\*[20]\* **\*90\*** working days of location.**

1. Consent process: For all cases in which sufficient information is available to initiate proceedings for the purpose of establishing paternity and/or obtaining support and medical insurance, a consent order will be attempted in accordance with individual county procedures within 90 calendar days **\*of location\***.

i. Purpose: The consent process is to facilitate time efficient and cost effective methods to establish paternity and/or support and medical support orders.

ii. (No change.)

iii. Results: If paternity is acknowledged and/or support and medical insurance are agreed upon, an order shall be established and forwarded to the appropriate court for review and approval by the judge within 90 calendar days.

2. Filiation proceedings: With regard to \*[all IV-D]\* **\*AFDC and AFDC/Medicaid Only\*** cases in which paternity has not been acknowledged, the CSP Unit shall file a complaint to establish paternity in a court of competent jurisdiction within 20 working days of locating the alleged father.

i. Genetic test scheduling: If paternity is denied and the court orders genetic tests, the CWA/CSP Unit shall schedule the test at a legally and medically acceptable facility within one year of successful service or the child reaching six months of age.

ii. Payment for genetic test: The CWA/CSP Unit shall have the court stipulate that the defendant is responsible for payment of the genetic test. The only exceptions would be for the following reasons:

(1) The defendant is excluded and the court specifies that the defendant is not financially responsible.

(2) The defendant has been declared indigent by the court.

(A) Note: Defendant can be held liable for the cost and possible future payment in cases where he is found indigent.

iii. Legal proceedings waived: Filiation proceedings shall be waived when good cause is established as per section 402(a)(26)(B) of the Social Security Act. Good cause includes any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the judgment of the CWA, it would not be in the best interest of the child to pursue the establishment of paternity.

iv. Order of filiation: If the court finds that the person charged is the father, an order of filiation is made which also specifies the amount of support and medical coverage to be provided by the father for the maintenance of the child.

v. (No change.)

vi. Order of filiation denied: If a court of competent jurisdiction denies an order of filiation against an individual, the CSP Unit shall take no further action with regard to that alleged absent parent, except for appeal of the decision of the court, if warranted. If the court or administrative authority dismisses a petition for a support order without prejudice, the CWA/CSP unit shall examine the reasons for dismissal, determine when it would be appropriate to seek a support order in the future, and seek a support order at that time.

3. Support proceedings: In cases where paternity has been legally established through marriage and an agreement cannot be reached at the consent conference, the defendant will be brought before a hearing officer the same day **\*or on the first available date. However, in all cases, establishing paternity or establishing a court order must take place within 90 days of location\***.

4. Filing of complaint: The applicant/recipient is not required, as a condition of eligibility for assistance, to sign a complaint to establish paternity or obtain support and medical insurance. Such complaints shall be filed in the name of the CWA by the director or his or her authorized representative within **\*[30]\* \*90\*** calendar days **\*of location or paternity establishment\***. Whenever possible, the complaints should be filed in the name of both the CWA and the client to ensure continuation of the court action should the client's assistance be terminated. In non-AFDC cases only the custodial parent will sign the complaint.

5. Treatment of cases in which the absent parent resides out-of-State: In cases where the absent parent resides out-of-State, proceedings to establish paternity and/or secure child support and medical insurance shall be in accordance with the Uniform Reciprocal Enforcement of Support Act (1968) (URESA). **\*[Within two days of locating the absent parent the CWA, with the client's cooperation, will complete Uniform Support Petition (OS550) and General Testimony For URESA (OS548).]\* \*Within 20 days of determining the absent parent is out-of-State, the CWA, with the client's cooperation, will file a Uniform Support Petition and General Testimony for URESA with the responding state's central registry\***.

i. Where an order for support exists, the CWA will request payment enforcement through the local County Probation Department (CPD) by use of URESA Action request (OS546-01).

6.-9. (No change.)

10. Treatment of a case in which the absent parent is in the military: In cases where the absent parent is serving in the military, formal legal proceedings should be initiated (see (d)1 through 5 above).

i. If the absent parent is temporarily stationed out of the country and New Jersey does not have reciprocity with the particular country, the absent parent's commanding officer shall be contacted to obtain a voluntary admission of paternity and/or a military allotment for child support and medical coverage.

ii. In cases where the absent parent is serving in the military and there is a valid court order under the jurisdiction of a probation department within the State, a request for an allotment shall be made through the appropriate probation department.

(e) (No change.)

(f) Application for IRS full collection: Application for full collection by the IRS may be made only in those cases which involve a delinquent amount of a child support obligation under the order of a court of competent jurisdiction. Applicants/recipients of AFDC may be eligible for this service under Section 402(a)26 of the Social Security Act and 45 CFR 232.11 since the application for assistance assigns support rights to the State. Under Section 454(6) of the Social Security Act, non-AFDC families may also be eligible for this service when a signed "Application for IV-D Services" is obtained from the client.

1.-3. (No change.)

4. Approval or disapproval of application: If the Office of CSP Programs approves the application, it will then be submitted to the DHHS Regional Office of Child Support Enforcement, which will approve or disapprove the application. The CWA or county probation department (CPD) will be notified, in writing, by the **\*[Bureau]\* \*Office\*** of CSP Programs with regard to approval or rejection of the application.

5. (No change.)

6. Form CSP-109, Application for IRS **\*[Full]\* Collection \*of Child Support\***: Application for such services is made via Form CSP-109, Application for IRS **\*[Full]\* Collection \*of Child Support\***. Applications may be submitted by the director of the CWA or his or her designee or the chief probation officer or his or her designee. Certification and authorization of pertinent court order information and arrearage amounts must also be signed by the chief probation officer or any individual so designated by the chief. The application shall be submitted to the Office of CSP Programs and a copy retained in the case record.

(g) Access to IRS data for child support enforcement: Upon written request, the IRS is authorized to disclose individual income tax return information to State and local child support enforcement agencies. The State CSP Unit has been designated the single State unit responsible for requesting information and ensuring adequate safeguards against wrongful disclosure in accordance with Federal requirements. Records that may be accessed include master file information and tax return information.

1.-4. (No change.)

5. Security requirements: The Federal Government has issued the following security requirements for IRS tax information.

i. (No change.)

ii. An access list of persons authorized to process and request IRS data must be submitted to the New Jersey Office of Child Support and Paternity Programs before any information can be released. Access to areas where IRS information is stored or processed must be controlled to the degree that unauthorized personnel, to include janitorial staff, must be escorted there by an authorized individual during non-working hours. Locks or combination to the security container must be changed yearly or upon departure or reassignment of authorized personnel. When written material containing IRS data is no longer needed, it must be returned to the State CSP Office. No information provided by IRS may be copied in any manner. Records must be maintained as to the disposition of such material. Periodic inspections of State and local facilities by the IRS will be conducted to ensure that security precautions and confidentiality requirements are being met.

6.-8. (No change.)

(h)-(k) (No change.)

(l) Title IV-D services available to non-public assistance persons: Appropriate child support services are to be made available to non-public assistance persons upon application filed by such individual with the IV-D Agency. These services shall include locating obligors, establishing paternity and securing support and medical insurance.

1. Form CSP-111, Application for Non-Public Assistance Child Support and Paternity Services: Non-public assistance individuals requesting services from the CWA shall apply for such services by signing Form CSP-111. This form shall be executed in duplicate. (See N.J.A.C. 10:81-11.2(c) regarding application fee.) The CWA will provide applications on the day an individual requests an application for services. Information describing services, rights and responsibilities, fees, cost recovery and distribution policies must accompany all applications for services. An application must be accepted on the day it is received.

i.-ii. (No change.)

2.-3. (No change.)

4. Obtaining an order: Non-public assistance persons seeking support payments and medical insurance shall be referred to the county intake unit responsible for initiating consent conference.

5. (No change.)

#### 10:81-11.11 Good cause determination

(a) The CSP Unit shall not undertake to establish paternity or secure child support and medical insurance when the unit has received notice from the income maintenance unit that there has been a finding of good cause for noncooperation (N.J.A.C. 10:81-11.5), except as noted in N.J.A.C. 10:81-11.5(j)2.

1. Activities suspended: Upon receipt of notice from the IM Unit that an applicant/recipient has claimed good cause (see N.J.A.C. 10:81-11.5(i)2), the CSP Unit will, until notified of a final determination, suspend all activity in regard to establishment of paternity, and collection of support and/or medical insurance.

2. CSP activity without client participation: When there has been a finding that good cause exists but the IM Unit notifies the CSP Unit that child support enforcement may proceed without participation of the applicant/recipient, the CSP Unit will undertake to establish paternity and/or secure child support and medical insurance without involvement in any way of the applicant/recipient (see N.J.A.C. 10:81-11.5(j)).

#### 10:81-11.12 Notification of deletions, terminations, suspension or transfer of case/individual

(a) In the case of termination of AFDC assistance, the IV-D agency will notify the family that it will continue to collect and distribute current child support payments. The appropriate IV-D agency collecting support must be notified of the continuation of IV-D services for families that lose AFDC eligibility.

#### 10:81-11.13 Parent Locator Service

(a) The locating of absent parents for the purpose of establishing paternity and enforcing child support and medical insurance obligations is a CWA responsibility. To fulfill this requirement, the CWA shall establish a parent locator service within the CSP Unit to perform parent locator services as described in N.J.A.C. 10:81-11.14.

1. The CSP Unit will conduct parent location activity in all cases for which no court order exists within 30 working days of application or referral. In cases where a court order does exist, the probation department has responsibility for parent location activities; however, it is recommended that on cases where court ordered support is not being received the CWA notify the probation department of the need for enforcement.

#### 10:81-11.14 CWA parent locator responsibilities

(a) The CSP Unit shall conduct ongoing investigations to locate the absent parent at the local, State and Federal levels as necessary based on information obtained during the investigative interview or other leads. The opening of a case and referral for location must take place within 20 calendar days. All locate sources are required to be accessed and responses verified within 75 calendar days of determining that location is necessary. CWA/CSP shall utilize the Automated Child Support Enforcement System (ACSES) to do searches and appropriate systems-generated forms. When the absent parent is be-

lieved to be in another county within the State, the CSP Unit shall access ACSES to obtain all necessary information to pursue location.

\*[(b)] Local investigation: The CSP Unit shall conduct a concurrent investigation with the State PLS in an effort to locate the absent parent at the county level. The State PLS shall be notified immediately if the absent parent is located after such referral. If the investigation reveals additional location information, such new information shall be forwarded to the State PLS.]\*

1. Sources: The following sources are to be used by the CWA/CSP Units during its investigation, as appropriate. All of these sources may not be available in every county. This list of sources is not exclusive.

i.-iii. (No change.)

iv. Last known employer of absent parent regarding:

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

(3) Social Security number and date of birth;

(4) (No change.)

v.-ix. (No change.)

x. County court house records:

(1)-(3) (No change.)

(4) Other family court matters **\*pertaining to child support matters\***;

xi.-xii. (No change.)

xiii. Credit bureaus and credit reporting agencies and the ACSES Find Screen to determine if the absent parent is connected to any other AFDC case.

\*[(c)]\*\*\*(b)\* Inter-county cooperation requirement:

1. (No change.)

2. Counties are directed to share known information on an absent parent even when it is not requested by another county, or the requesting county has changes. **\*This information should be sent to the county in charge of the case where it can be input onto the ACSES system.\*** The information will be entered as an update to the absent parent screen and known system-wide via ACSES.

\*[(d)]\*\*\*(c)\* (No change.)

\*[(e)]\*\*\*(d)\* The following State sources are to be utilized by CWA/CSP for absent parent searches via automated interfaces on ACSES. This list is not all inclusive:

1. State Division of Motor Vehicles;

2. State Department of Labor;

3. Records of Public Assistance Agencies;

4. State Department of the Treasury;

5. State Department of Corrections; and

6. Parent Locator Services of other states (where appropriate).

\*[(f)]\*\*\*(e)\* Federal PLS is to be utilized via tape interface to check the following sources:

1. National Personnel Records Commission (NPRC);

2. Department of Veterans Affairs (DVA);

3. Social Security Administration (SSA);

4. Internal Revenue Service (IRS); and

5. Department of Defense (DOD).

\*[(g)]\*\*\*(f)\* If the Federal PLS is unsuccessful in the location process, cases which meet the minimum data requirements shall be resubmitted at least annually.

#### 10:81-11.15 State/Federal Parent Locator Service (PLS)

(a) The State PLS shall be responsible for absent parent searches at the State agency level, coordination of interstate location activities, and referrals to the Federal PLS. This includes the Division of Youth and Family Services (DYFS), parental kidnapping, Administrative Office of the Courts (AOC) referrals, out-of-State and out-of-county locate requests.

1. (No change.)

(b) All State PLS cases, excluding AOC and out-of-country, will access Federal PLS via PC to search the following sources:

1. National Personnel Records Commission (NPRC);

2. Department of Veterans Affairs (DVA);

3. Social Security Administration (SSA);

4. Internal Revenue Service (IRS); and

5. Department of Defense (DOD).

(c) The State PLS will notify the requesting office immediately via form PA-450A, Source Response Form, or other hard copy, of information obtained on a case.

\*[10:81-11.21 Modification of support orders

(a) The criteria for the selection of cases for review, regarding modifications, will be active IV-D child support orders that are three years or older from the date of the initial order or review.

1. The county probation department will supply the county welfare agency with a list of all support orders that are three years or older from the date of the initial order or last review. Included in this list will be the defendant's name and social security number, the amount of the support order and the date of the support order.

2. The county welfare agency will review the listing and determine the last known place of employment for the absent parent accessing the IAPI screen of the ACSES system.

3. If the ACSES system does not contain a place of employment for the absent parent, the case will be submitted to the Office of Child Support and Paternity Programs for further efforts in locating the place of employment via credit reporting, integrity control, and so forth.

i. The State Office of Child Support and Paternity Programs will document the last place of employment reported and forward this information back to the appropriate county welfare agency. The CSP worker(s) involved will examine the information and prepare a subpoena and a cover letter to all employers.

4. The child support worker will review all returned wage verifications and compute the child support guidelines worksheet to determine the weekly child support amount. The support amount will be computed in accordance with New Jersey Court Rule 5:6A.

5. When a determination is made that an adequate change has occurred in the defendant's salary, circumstances which warrant an increase in the support obligation, an application for an increase in the support order will be initiated on behalf of the plaintiff. Adequate change is determined by the defendant's ability to pay. A monetary increase of \$15.00 per week in the formulated support order is considered an adequate change.

6. Those cases requiring hearings will be scheduled before a court-appointed child support hearing officer. Court dates will be listed in advance.

7. The county welfare agency will prepare a certification in support of the application for increase and attach to it the wage verification and the child support worksheet. The entire packet will be photostated for the county welfare agency file with the original packet being forwarded for service as per New Jersey Court Rule 4:4-4.

8. The county welfare agency attorney will represent the agency at all modification hearings and will be responsible for recording the results of the hearing.

9. Each case reviewed pursuant to this section shall be reviewed again every three years.]\*

**CORRECTIONS**

**(a)**

**THE COMMISSIONER**

**Security and Control**

**Transport of Maximum Custody Inmates**

**Adopted Amendment: N.J.A.C. 10A:3-9.3**

Proposed: August 6, 1990 at 22 N.J.R. 2223(a).

Adopted: October 5, 1990, by William H. Fauver, Commissioner, Department of Corrections.

Filed: October 11, 1990, as R.1990 d.536, **without change**.

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

Effective Date: November 5, 1990.

Expiration Date: October 6, 1991.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

10A:3-9.3 Transport of maximum custody inmates

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

(i) When transporting inmates outside of a correctional facility, at least one correction officer shall be of the same sex as the inmate(s) being escorted. Additional correction officers may be assigned regardless of gender.

(j)-(k) (No change.)

(l) The strip search of an inmate(s), as part of the transportation process, shall be conducted in compliance with the provisions of N.J.A.C. 10A:3-5.7.

**LABOR**

**(b)**

**OFFICE OF WAGE AND HOUR COMPLIANCE**

**Wage and Hour**

**Readoption with Amendments: N.J.A.C. 12:56**

Proposed: August 6, 1990 at 22 N.J.R. 2235(a).

Adopted: September 25, 1990 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: September 26, 1990 as R.1990 d.520, **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. 34:1-20, 34:1A-3(e), 34:11-56a19, and 34:2-21.64.

Effective Date: September 26, 1990, Readoption; November 5, 1990, Amendments.

Expiration Date: September 26, 1995, N.J.A.C. 12:55 and 12:56.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

The Department of Labor has made two changes upon adoption in an effort to clarify an error made during proposal and to recodify a chapter.

Specifically, the Department is revising N.J.A.C. 12:56-7.1(a)5 and 6 to correct an error in text. In the proposal, the language in these two paragraphs was overlapped, and thus paragraph (a)5 is unintelligible and paragraph (a)6 is incomplete. The changes made upon adoption correct these errors, conforming the rule text changes to those described in the proposal Summary. In N.J.A.C. 12:56-7.2(a)5 and (b) and 7.3(a)5, the date September 26, 1990 is changed to November 5, 1990 as the actual amendments' effective date.

Additionally, N.J.A.C. 12:56-16, the subchapter concerning Payroll Deductions for Mass Transportation, is being recodified as a separate chapter, N.J.A.C. 12:55. The purpose of this recodification is to remove a subchapter from a chapter to which it is unrelated. Payroll deductions relate to wage payments, not to wage and hour, and thus the Department has chosen to recodify the subchapter in its own chapter to make note of this distinction.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:56.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

12:56-1.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-56a et seq., the New Jersey State Wage and Hour Law (Act), to provide sanctions for noncompliance, and to protect established wage rates.

(b) The chapter is applicable to:

- 1. Wages and hours subject to the Act; and
- 2. Wages paid to an employee for services rendered.

(c) This chapter shall not apply to:

- 1. Volunteers; or
- 2. Patients.

## 12:56-1.2 Violations

An employer is a disorderly person if he willfully hinders or delays the Commissioner in the performance of his or her duties in the enforcement of this chapter or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any such record accessible to the Commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter or any wage order issued pursuant thereto, or otherwise violates any provision of this chapter or of any regulation or order issued under this chapter and shall be guilty of a disorderly person offense and shall, upon conviction therefor be fined not less than \$100.00 nor more than \$500.00 or by imprisonment of not less than 10 nor more than 90 days or by both such fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him or her under this chapter or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

## 12:56-1.3 Discharge or discrimination against employee making complaint

An employer is a disorderly person if he discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, and shall be guilty of a disorderly person offense and shall, upon conviction therefor, be fined not less than \$50.00 nor more than \$200.00. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

## 12:56-2.1 Definitions

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

"Commissioner" means the Commissioner of the Department of Labor or his or her designee.

...  
 \*["\*First processing of farm products occupations": See N.J.A.C. 12:56-11.1(a).

"Gratuity": See N.J.A.C. 12:56-8.1(b).

"Handicapped person": See N.J.A.C. 12:56-9.1(a).

"Hotel and motel occupation": See N.J.A.C. 12:56-13.1(a).

"Industry engaged primarily in first processing of farm products": See N.J.A.C. 12:56-11.1(b).

"Minimum fair wage order" means a wage order promulgated pursuant to the act.\*]\*

...  
 "Office of Wage and Hour Compliance" means Office of Wage and Hour Compliance of Division of Workplace Standards of New Jersey State Department of Labor, CN 389, Trenton, N.J. 08625.

...  
 "Volunteer" means a person who donates his or her service for the protection of the health and safety of the general public. Such a person would include, among others, a volunteer fireman, rescue worker, an aide in the care of the sick, aged, young, mentally ill, destitute and the like or assistant in religious, eleemosynary, educational, hospital, cultural and similar activities.

...  
 12:56-3.1 Statutory minimum wage rates for specific years  
 (a) Except as provided in N.J.A.C. 12:56-3.2, employees shall be paid minimum wage rates of not less than:

1. \$3.80 per hour for each hour of working time, effective May 3, 1990;
2. \$4.25 per hour for each hour of working time, effective April 1, 1991; and
3. \$5.05 per hour for each hour of working time, effective April 1, 1992.

## 12:56-4.3 Fixed working schedule

(a) Many employees, particularly in offices, are on a fixed working schedule from which they seldom vary. In these instances, the employer may keep a record showing the exact schedule of daily and weekly work hours that the employee is expected to follow and merely indicate each workweek that the schedule was followed.

(b) (No change.)

## 12:56-4.5 Location; inspection

(a) (No change.)

(b) In unusual circumstances where it is not feasible to keep records in New Jersey, exception from this provision may be obtained from the Commissioner.

(c) All records shall be open to inspection by the Commissioner at any reasonable time.

## 12:56-4.7 Employee gratuity reports

(a) Employees receiving gratuities shall report them either daily or weekly as required by the employer. The information in the report shall include:

1. The employee's name, address and social security number;
- 2.-4. (No change.)

## 12:56-5.2 Computation

(a) All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked.

(b) Nothing in this chapter requires an employer to pay an employee for hours the employee is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reasons.

## 12:56-5.6 On-call time

(a) When employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, the hours shall not be considered hours worked. When an employee does not go out on an on call assignment, only the time actually spent in making the call shall be counted as hours worked.

(b) (No change.)

## 12:56-6.5 "Regular hourly wage" payment basis

(a) (No change.)

(b) The act does not require employers to compensate employees on a hourly rate basis. Their earnings may be determined on a piece-rate, salary, bonus, commission or other basis, but the overtime compensation due to employees shall be paid on the basis of the hourly rate derived therefrom. Therefore, the regular hourly wage of an employee is determined by dividing his or her total remuneration for employment, exclusive of overtime premium pay, in any workweek, by the total number of hours worked in that workweek for which such compensation was paid.

(c) If an employee is remunerated solely on the basis of a single hourly rate, the hourly rate shall be his or her "regular hourly wage".

## 12:56-6.6 Items excluded from "regular hourly wage"

(a) The "regular hourly wage" shall not be deemed to include:

1.-2. (No change.)

3. Reasonable payments for traveling or other expenses incurred by an employee in the furtherance of his or her employer's interests and properly reimbursable by the employer which are not made as compensation for employment;

4.-7. (No change.)

## 12:56-7.1 Definition of executive

(a) "Executive" means any employee:

1. Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and

2.-4. (No change.)

5. Who devotes less than 20 percent of his or her workweek to non-exempt work or less than 40 percent if employed by a retail or service establishment, provided that in either case he or she retains \*[his or her services on a salary basis exclusive of gratuities, board, lodging or other facilities, at a rate of not less than \$300.00 per week effective (the effective date of this amendment), \$350.00 per week effective April 1, 1991, and \$400.00 per week effective April 1, 1992]\* **\*his or her role as manager and supervises two or more full time employees; and\***

6. Who is compensated for his or her services on a salary basis exclusive of gratuities, board, lodging or other facilities, at a rate of not less than \*[\$350.00]\* **\*\$300.00\*** per week effective \*[September 26, 1990]\* **\*November 5, 1990\***, \$350.00 per week effective **April 1, 1991,\*** and \$400.00 per week effective April 1, \*[1991]\* **\*1992\***.

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

#### 12:56-7.2 Definition of administrative

(a) "Administrative" means any employee:

1. Whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his or her employer or his or her employer's customers; and

2.-3. (No change.)

4. Who devotes less than 20 percent of his or her work to nonexempt work or less than 40 percent if employed by a retail or service establishment; and

5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective \*[September 26, 1990]\* **\*November 5, 1990\***, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

(b) "Administrative" shall also include an employee whose primary duty consists of sales activity and who receives at least 50 percent of his or her total compensation from commissions and a total compensation of not less than \$300.00 per week effective \*[September 26, 1990]\* **\*November 5, 1990\***, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

#### 12:56-7.3 Definition of professional

(a) "Professional" means any employee:

1.-3. (No change.)

4. Who devotes less than 20 percent of his or her workweek to nonexempt work; and

5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective \*[September 26, 1990]\* **\*November 5, 1990\***, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

#### 12:56-7.4 Definition of outside salesmen

(a) "Outside salesmen" means any employee:

1. Who is employed for the purpose of and who is customarily and regularly engaged away from his or her employer's place or places of business in:

i.-ii. (No change.)

2. (No change.)

#### 12:56-8.4 Administrative handling of gratuities

(a) Provided there is an agreement in advance with the employees, the employer, in order to facilitate the administrative handling of gratuity allowances, may establish an average value of gratuities received by an employee based upon a percentage of gross sales apportioned on basis of hours worked among the employees being tipped. This portion shall be:

1.-2. (No change.)

3. Such other method as may be agreed upon subject to the approval of the Commissioner.

(b) (No change.)

#### 12:56-8.5 Additional cash contribution claim

In no event shall N.J.A.C. 12:56-6.4 and 6.5 be interpreted to deny to an employee the right to make claim for additional cash compensation where it is shown to the satisfaction of the Commissioner that

the actual amount of tips received was less than the amount determined by the employer.

#### 12:56-8.6 Fair value computed

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

(c) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be arrived at in accordance with generally accepted accounting practices.

(d) Generally accepted accounting practices shall not include those rejected by the New Jersey Division of Taxation or the Federal Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

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

#### 12:56-8.7 Inspection of fair value methods

Methods of determining fair value shall be subject to inspection and approval by the Commissioner.

#### 12:56-8.9 Cash wage guarantee in food service occupations

(a) Cash wages in food service occupations should not fall below 60 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, food and lodging as follows:

1. \$2.28 per hour for each hour of working time effective May 3, 1990;

2. \$2.55 per hour for each hour of working time effective April 1, 1991; and

3. \$3.03 per hour for each hour of working time effective April 1, 1992.

#### 12:56-9.5 Cancellation of permit

(a) The Commissioner may cancel any special handicap permit for cause.

(b) A special handicap permit may be cancelled as of the date of issuance upon the following conditions:

1.-2. (No change.)

3. As of the date of notice of cancellation, if in the judgment of the Commissioner, the special handicap permit is no longer necessary in the interest of the employees covered.

#### 12:56-10.5 Cancellation of permit

(a) The Commissioner may cancel any special learner, apprentice and student permit for cause as outlined in (b) below.

(b) A special learner, apprentice, and student permit may be cancelled upon the following conditions:

1.-2. (No change.)

3. As of the date of notice of cancellation, if in the judgment of the Commissioner, the special learner, apprentice, or student permit is no longer necessary in the interest of the employees covered.

#### 12:56-12.2 Minimum wage

Employees engaged in seasonal amusement occupations shall be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

#### 12:56-13.3 Food service and other occupations in which gratuities are customary, except chambermaids

(a) Cash wages should not fall below 60 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, food and lodging, as follows:

1. \$2.28 per hour for each hour of working time effective May 3, 1990;

2. \$2.55 per hour for each hour of working time effective April 1, 1991; and

3. \$3.03 per hour for each hour of working time effective April 1, 1992.

#### 12:56-13.4 Chambermaids, except in seasonal hotels and motels

(a) Cash wages should not fall below 89 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, as follows:

1. \$3.38 per hour for each hour of working time effective May 3, 1990;

2. \$3.78 per hour for each hour of working time effective April 1, 1991; and

3. \$4.49 per hour for each hour of working time effective April 1, 1992.

(b) Cash wages should not fall below 84 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, and food or lodging, as follows:

1. \$3.19 per hour for each hour of working time effective May 3, 1990;

2. \$3.57 per hour for each hour of working time effective April 1, 1991; and

3. \$4.24 per hour for each hour of working time effective April 1, 1992.

#### 12:56-13.5 Chambermaids in seasonal hotels and motels

(a) Cash wages should not fall below 80 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, as follows:

1. \$3.04 per hour for each hour of working time effective May 3, 1990;

2. \$3.40 per hour for each hour of working time effective April 1, 1991; and

3. \$4.04 per hour for each hour of working time effective April 1, 1992.

(b) Cash wages should not fall below 75 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, and food or lodging, as follows:

1. \$2.85 per hour for each hour of working time effective May 3, 1990;

2. \$3.19 per hour for each hour of working time effective April 1, 1991; and

3. \$3.79 per hour for each hour of working time effective April 1, 1992.

#### 12:56-13.7 Cash wage standard; additional compensation on credits (a) (No change.)

(b) In no event shall this section be construed to deny to an employee the right to claim additional compensation or to an employer to claim a credit in excess of that so established where it is proven to the satisfaction of the Commissioner that the actual amount of the gratuities received is either more or less than the amount of credit herein established.

#### 12:56-13.8 Substantiation of gratuities; food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

#### 12:56-14.3 Occupational wages where gratuities are customary

(a) Cash wages in food service and other occupations in which gratuities are customary should not fall below 60 percent of the applicable minimum wage rate per hour, after allowances are made for gratuities, food and lodging, as follows:

1. \$2.28 per hour for each hour of working time effective May 3, 1990;

2. \$2.55 per hour for each hour of working time effective April 1, 1991; and

3. \$3.03 per hour for each hour of working time effective April 1, 1992.

#### 12:56-14.4 Overtime rates

(a) Overtime at 1-1/2 times the regular hourly wage shall be paid for all hours worked in excess of 40 hours in any week.

1. The minimum overtime rate for those covered by the overtime provision is \$5.70 on May 3, 1990, \$6.38 on April 1, 1991, and \$7.58 on April 1, 1992.

2.-3. (No change.)

AGENCY NOTE: N.J.A.C. 12:56-16.1 concerning payroll deductions for mass transportation is recodified on adoption as N.J.A.C. 12:55-1.1, as follows:

### \*CHAPTER 55 WAGE PAYMENTS

#### SUBCHAPTER 1. PAYROLL DEDUCTIONS FOR MASS TRANSPORTATION\*

Recodify existing text of N.J.A.C. 12:56-16.1 as 12:55-1.1 (No change in text).

### SUBCHAPTER 17. UNIFORMS

#### 12:56-17.1 Uniforms

(a) Any employer who requires an employee to furnish more than one style, type or color of uniform during any one year of his or her employment shall pay to each such employee, in addition to his or her regular wages otherwise due, the amount which employee is required to pay for newly required uniform or uniforms and such additional payment shall be made to the employee in the week in which the change is required.

(b) It shall be a presumption that the employer has required his or her employees to wear uniforms if such garments are of a similar design, color or material, or form part of the decorative pattern of the establishment.

(c) Maintenance and upkeep of uniforms of kitchen people, cooks, and dishwashers shall be provided and maintained by the employer.

(d) If uniforms are required which are not appropriate for street wear or use in other establishments, the employer shall pay for the cost of such uniforms.

(e) No deduction from the pay of employees for uniforms shall be permitted. If the employee pays for uniforms in cash and the cash payment brings the employee below the minimum wage, the employer shall make up the difference for the minimum wage for that week.

#### APPENDIX A AVAILABILITY OF STANDARDS REFERRED TO IN THIS CHAPTER

A copy of each of the standards referenced in this chapter is on file and may be inspected at the following office between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor  
Division of Workplace Standards  
John Fitch Plaza  
Trenton, New Jersey

Copies of the referenced standards may be obtained from the following office:

Office of Wage and Hour Compliance  
New Jersey Department of Labor  
CN 389  
Trenton, New Jersey 08625

(a)

#### OFFICE OF WAGE AND HOUR COMPLIANCE Wage Orders for Minors

##### Readoption with Amendments: N.J.A.C. 12:57

Proposed: August 6, 1990 at 22 N.J.R. 2240(a).

Adopted: September 25, 1990 by Raymond L. Bramucci,  
Commissioner, Department of Labor.

Filed: September 26, 1990 as R.1990 d.521, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56a19, and 34:2-21.64.

Effective Date: September 26, 1990, Readoption; November 5, 1990, Amendments.

Expiration Date: September 26, 1995.

Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:57.

Full text of the adopted amendments follows.

#### 12:57-1.1 Purpose; scope

(a) The purpose of this chapter is to define and clarify certain sections of N.J.S.A. 34:11-56a et seq.

(b) This chapter shall apply to the wage rates for the employment of minors subject to N.J.S.A. 34:11-34 et seq.

(c) This chapter shall apply to minors employed in mercantile occupations, beauty culture operations, and laundry, cleaning and dyeing occupations.

(d) Other wage orders and regulations for minors under 18 years of age are provided for under N.J.A.C. 12:56-11, 13 and 14, Wage and Hour.

12:57-1.2 Violations and penalties

(a) An employer or his agent, or the officer or agent of any corporation, is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because the employee has served or is about to serve on a wage board or has testified or is about to testify before a wage board or in any other investigation or proceeding or because the employer believes that the employee may serve on a wage board or may testify before a wage board or in any investigation or proceeding under this chapter and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than \$500.00.

(b) An employer or the officer or agent of any corporation is a disorderly person if he or she pays or agrees to pay to any minor less than the rates applicable to such minor under a mandatory minimum fair wage order and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than \$500.00 or by imprisonment of not more than 90 days or by both such fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him or her under a mandatory minimum fair wage order; and each employee so paid, shall constitute a separate offense.

(c) An employer or the officer or agent of any corporation is a disorderly person if he or she fails to keep the records required or to furnish such records to the Commissioner upon request and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than \$500.00 and each day of such failure to keep the records or to furnish same as required shall constitute a separate offense.

12:57-2.1 Definitions

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

“Commissioner” means the Commissioner of the Department of Labor or his or her designee.

“Employee” means any individual employed by an employer.

“Employer” means any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

12:57-3.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in mercantile occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

12:57-3.4 Overtime rate

(a) Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

1. N.J.A.C. 12:56-7 is available for review between the hours of 9:00 A.M. and 4:00 P.M. on normal working days at the New Jersey Department of Labor Division of Workplace Standards, John Fitch Plaza, Trenton, New Jersey.

2. A copy of N.J.A.C. 12:56-7 may be obtained without cost from the Office of Wage and Hour Compliance, New Jersey Department of Labor, CN 389, Trenton, New Jersey 08625.

12:57-4.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in beauty culture occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

12:57-4.4 Overtime rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

12:57-5.1 Scope

This subchapter shall apply to the minimum wage rate paid to all minors engaged in laundry, cleaning and dyeing occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

12:57-5.4 Overtime rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE

Child Labor

Readoption with Amendments: N.J.A.C. 12:58

Proposed: August 6, 1990 at 22 N.J.R. 2241(a).

Adopted: September 5, 1990 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: September 26, 1990 as R.1990 d.522, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56a19, and 34:2-21.64.

Effective Dates: September 26, 1990, Readoption. November 5, 1990, Amendments.

Expiration Date: September 26, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

The Department of Labor has decided to change N.J.A.C. 12:58 upon adoption to include a new section which prohibits minors under age of 18 from working in or around bar areas, including bar service areas located at pools or other recreational facilities. The Department has added this section to prevent minors from being involved in any way with the service of alcoholic beverages, and the section reflects the statutory prohibition at N.J.S.A. 34:2-21.17.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:58.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks \*thus\*).

12:58-1.1 Purpose; scope

(a) The purpose of this chapter is to define and clarify certain sections of the child labor statutes.

(b) This chapter shall apply to the employment of minors subject to the child labor statutes, except as provided in N.J.A.C. 12:58-1.4.

12:58-1.2 (No change in text.)

12:58-2.1 Definitions

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

12:58-4.2 Construction work

(a) (No change.)

(b) “Construction work” shall mean the erection, alteration, repair, renovation, demolition or removal of any building or structure; the excavation, filling and grading of sites; the excavation, reno-

vation, repair or paving of roads and highways; and any function performed within 30 feet of the above operations.

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

12:58-4.6 Highly inflammable substances

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

(c) "Highly inflammable substance" shall mean a flammable liquid or a pyroforic liquid, except that a "highly flammable substance" shall not mean gasoline at a service station where gasoline tanks of gasoline motor driven vehicles are filled by use of a hose that is a part of powered pumping equipment.

(d) Minors under 18 years of age shall be prohibited from fueling aircraft, either commercial or private.

12:58-4.12 Slaughtering and meat packing establishments; rendering plants; wholesale, retail or service establishments

(a) Minors under age 18 shall not be employed, permitted or suffered to work in or about slaughtering and meat packing establishments, rendering plants, or wholesale, retail or service establishments in the following occupations:

1.-3. (No change.)

4. All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including setting up, adjusting, repairing, oiling, or cleaning such machines: meat patty forming machines, meat and bone cutting saws, knives including circular and horizontal knives used for slicing meat, slicing machines used in delicatessens and restaurants for cutting or slicing any food product (except bacon-slicing machines), head-splitters, and guillotine cutters, snout-pullers and jaw-pullers, skinning machines, horizontal rotary washing machines, casing-cleaning machines such as crushing, stripping, and finishing machines, grinding, mixing, chopping, and hashing machines, and presses (except belly-rolling machines):

5.-7. (No change.)

(b)-(g) (No change.)

12:58-4.14 Indecent or immoral exposure

(a) Minors under 18 years of age shall not:

1.-4. (No change.)

5. Pose in the nude or without generally-accepted attire;

6. Work in adult book stores or massage parlors; or

7. Work in video stores where x-rated movies are rented or sold.

(b) (No change.)

12:58-4.15 Pesticide

(a) Minors under 18 years of age shall not be employed as applicators of pesticides, nor shall such minors be permitted in any area when such pesticides are being applied.

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

12:58-4.16 Rim wheels

Minors under 18 years of age shall not be permitted to service single piece or multi-piece rim wheels.

\*12:58-4.17 Bar service areas

(a) Minors under the age of 18 years of age shall not be employed, permitted or suffered to work serving beverages out of any bar service area.

1. "Bar service area" includes, but is not limited to, outside bars at pools or other recreational facilities.\*

APPENDIX A

AVAILABILITY OF STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

State of New Jersey  
 Department of Labor  
 Division of Workplace Standards  
 John Fitch Plaza  
 Trenton, New Jersey

N.J.S.A. New Jersey Statutes Annotated  
 Copies available from:  
 Office of Wage and Hour Compliance  
 New Jersey Department of Labor  
 CN 389  
 Trenton, New Jersey 08625

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF MEDICAL EXAMINERS

Examination Fees

Adopted Amendment: N.J.A.C. 13:35-6.13

Proposed: July 2, 1990 at 22 N.J.R. 1988(a).

Adopted: September 5, 1990, by the State Board of Medical Examiners, Michael B. Grossman, D.O., President.

Filed: September 28, 1990 as R.1990 d.525, without change.

Authority: N.J.S.A. 45:9-2.

Effective Date: November 5, 1990.

Expiration Date: September 21, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)

i. Examination—Both Components \$500.00

ii. Re-examination

Component I

\$300.00

Component II

\$325.00

iii.-vii. (No change.)

2.-11. (No change.)

(b)

STATE BOARD OF MORTUARY SCIENCE

Notice of Administrative Correction

Failure to Disclose Required Price Information: An Unfair or Deceptive Practice

N.J.A.C. 13:36-9.3

Take notice that the State Board of Mortuary Science has discovered errors in two rule cross-references contained in N.J.A.C. 13:36-9.3(b). Both cross-references refer to sections in N.J.A.C. 13:35 which do not exist. The cross-references would be incorrect even if the listed sections existed, due to the subject matter of that chapter being the rules of the State Board of Medical Examiners. The correct chapter cross-references, as indicated by the context of the subsection, are to N.J.A.C. 13:36. This notice of administrative correction is published pursuant to 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]):

13:36-9.3 Failure to disclose required price information: An unfair or deceptive practice

(a) (No change.)

(b) To prevent the unfair or deceptive acts and practices mentioned in (a) above as well as those defined in N.J.A.C. [13:35]13:36-9.15(a), funeral providers must comply with the provisions of N.J.A.C. [13:35]13:36-9.4, 9.5, 9.6, 9.7 and 9.8.

**(a)****NEW JERSEY RACING COMMISSION****Thoroughbred Rules  
Telephone and Telegraph****Adopted Repeal and New Rule: N.J.A.C. 13:70-3.44**

Proposed: August 20, 1990 at 22 N.J.R. 2402(a).

Adopted: September 28, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: October 9, 1990 as R.1990 d.533, **without change**.

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

Effective Date: November 5, 1990.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.

13:70-3.44 Telephone

All public telephones at the race track may remain open during the race day, with the approval of the Commission.

**(b)****NEW JERSEY RACING COMMISSION****Thoroughbred Rules  
Protest by Jockey****Adopted Amendment: N.J.A.C. 13:70-13.8**

Proposed: August 20, 1990 at 22 N.J.R. 2402(b).

Adopted: September 28, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: October 9, 1990 as R.1990 d.532, **without change**.

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

Effective Date: November 5, 1990.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.

13:70-13.8 Protest by jockey

If a jockey wishes to protest a happening in a race, he or she must so notify an outrider that is equipped with a two-way radio for communication with the stewards. The jockey shall then proceed to the clerk of scales and contact the stewards upon dismounting.

**(c)****NEW JERSEY RACING COMMISSION****Thoroughbred Rules  
Declaring Race Official****Adopted Repeal and New Rule: N.J.A.C. 13:70-19.23**

Proposed: August 20, 1990 at 22 N.J.R. 2403(a).

Adopted: September 28, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: October 9, 1990 as R.1990 d.534, **without change**.

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

Effective Date: November 5, 1990.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.

13:70-19.23 Declaring race official

The stewards shall communicate with the outriders after a race to determine if any claim of foul has been lodged by a jockey in the race. If the outriders report that there has been no claim of foul, the stewards may permit a "fast official" to be posted. The stewards shall notify the placing judges that a race is official and the placing judges shall promptly display the official sign.

**(d)****NEW JERSEY RACING COMMISSION****Harness Rules  
Radios, Receivers and Transmitters****Adopted Repeal and New Rule: N.J.A.C. 13:71-22.1**

Proposed: August 20, 1990 at 22 N.J.R. 2403(b).

Adopted: September 28, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: October 9, 1990 as R.1990 d.535, **without change**.

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

Effective Date: November 5, 1990.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.

13:71-22.1 Telephone

All public telephones at the race track may remain open during the race day, with the approval of the Commission.

**TREASURY-GENERAL****(e)****DIVISION OF PENSIONS****Administration  
Minimum Adjustments****Adopted Amendment: N.J.A.C. 17:1-1.10**

Proposed: August 20, 1990 at 22 N.J.R. 2404(b).

Adopted: September 20, 1990, by Margaret McMahan, Director,

Division of Pensions.

Filed: September 25, 1990 as R.1990 d.516, **without change**.

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: November 5, 1990.

Expiration Date: May 6, 1993.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows:

17:1-1.10 Minimum adjustments

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

(d) Rules concerning the bad balances in retirement accounts are as follows:

1.-2. (No change.)

3. All money found to be due and payable subsequent to a member's retirement shall be repaid in one sum or scheduled for repayment within a period of 12 months. Any other schedule of repayment shall be referred to the Board of Trustees.

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

**(a)**

**DIVISION OF PENSIONS**

**Alternate Benefit Program  
Transfers; Interest**

**Adopted Amendment: N.J.A.C. 17:1-2.36**

Proposed: August 20, 1990 at 22 N.J.R. 2405(a).  
 Adopted: September 20, 1990, by Margaret M. McMahon,  
 Director, Division of Pensions.  
 Filed: September 25, 1990 as R.1990 d.517, **without change**.  
 Authority: N.J.S.A. 18A:66-192 et seq.  
 Effective Date: November 5, 1990.  
 Expiration Date: May 6, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

17:1-2.36 Transfers; interest

Pursuant to the provisions of N.J.S.A. 18A:66-173, when payment of the transferred member's reserves in the State-administered retirement system is made more than 30 days after eligibility for the transfer, interest is added to the reserves being transferred from the system to the carriers of the Alternate Benefit Program. The 30-day period after eligibility for transfer shall not begin to run until the Division of Pensions has received all of the documents or other related information necessary to effectuate the transfer in question. The rate of interest is the average rate of return, to the nearest hundredth percent, of the State Cash Management Fund (State accounts) as reported by the Division of Investment for the fiscal year ending June 30 preceding the period for which interest is payable. No interest is payable if the amount of interest is less than \$10.00.

**(b)**

**DIVISION OF PENSIONS**

**Police and Firemen's Retirement System  
Date of Board Meetings**

**Adopted Amendment: N.J.A.C. 17:4-1.1**

Proposed: March 19, 1990, at 22 N.J.R. 909(a).  
 Adopted: September 24, 1990, by the Police and Firemen's  
 Retirement System, Janice Nelson, Acting Secretary.  
 Filed: October 1, 1990 as R.1990 d.527, **without change**.  
 Authority: N.J.S.A. 43:16A-13(7).  
 Effective Date: November 5, 1990.  
 Expiration Date: June 8, 1995.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows:

17:4-1.1 Board meetings

The Board of Trustees shall meet on the third Monday of each month, unless a change is declared in order by the chairperson at an appropriate time.

**(c)**

**DIVISION OF PENSIONS**

**State Police Retirement System  
Outstanding Loans at Retirement**

**Adopted Amendment: N.J.A.C. 17:5-5.5**

Proposed: May 7, 1990 at 22 N.J.R. 1348(b).  
 Adopted: September 21, 1990, by the State Police Retirement  
 System, Michael Weik, Acting Secretary.  
 Filed: September 25, 1990 as R.1990 d.518, **without change**.

Authority: N.J.S.A. 53:5A-30h.  
 Effective Date: November 5, 1990.  
 Expiration Date: December 2, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

17:5-5.5 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement shall repay the loan balance, with interest, as follows:  
 1. In full as provided by N.J.S.A. 53:5A-29; or  
 2. By retention of retirement payments, excluding authorized deductions by the retirement system, until the loan balance, with interest, is repaid.  
 (b) (No change.)

**(d)**

**OFFICE OF THE STATE TREASURER**

**Local Public Employee Charitable Fund-Raising  
Campaign**

**Readoption: N.J.A.C. 17:29**

Proposed: August 6, 1990 at 22 N.J.R. 2248(a).  
 Adopted: September 25, 1990 by Nathan Scovronick, Executive  
 Director, Department of the Treasury.  
 Filed: September 26, 1990 as R.1990 d.519, **without change**.  
 Authority: N.J.S.A. 52:14-15.9c1 and N.J.S.A. 52:18A-30.  
 Effective Date: September 26, 1990.  
 Expiration Date: September 26, 1995.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:29.

**OTHER AGENCIES**

**(e)**

**HACKENSACK MEADOWLANDS DEVELOPMENT  
COMMISSION**

**Official Zoning Map**

**Adopted Amendment: N.J.A.C. 19:4-6.28**

Proposed: June 4, 1990 at 22 N.J.R. 1699 (b).  
 Adopted: September 29, 1990 by the Hackensack Meadowlands  
 Development Commission, Anthony Scardino, Jr., Executive  
 Director.  
 Filed: October 1, 1990 as R.1990 d.528, **with substantive changes**  
 not requiring additional public notice and comment (see  
 N.J.A.C. 1:30-4.3).  
 Authority: N.J.S.A. 13:17 et seq., specifically, 13:17-6(i) and  
 N.J.A.C. 19:4-6.27.  
 Effective Date: November 5, 1990.  
 Expiration Date: May 26, 1993.

**Summary of Public Comments and Agency Responses:**

The adopted amendment to the Hackensack Meadowlands District Zoning Map consists of a change in the zoning designation of the following parcels:

- Portion of Block 4010, Lot 4, from Marshland Preservation to Heavy Industrial;
- Portion of Block 4010, Lot 3, from Waterway to Heavy Industrial;
- Block 4010, Lot 2, from Light Industrial "B" and Railroad Right-of-Way to Heavy Industrial;

## ADOPTIONS

Portion of Block 4007, Lot 1, from Railroad Right-of-Way to Heavy Industrial;

Block 4008, Lot 1, from Light Industrial "B" to Heavy Industrial;  
Portion of Block 4011, Lot 3, from Light Industrial "B" to Heavy Industrial;

Block 4013, Lot 1, from Light Industrial "B" to Heavy Industrial.

The following is a summary of public comments received and Commission staff's responses to those items of concern raised by the public and interested individuals both during the public hearing and in subsequent letters forwarded to the Hackensack Meadowlands Development Commission (HMDC) regarding the proposed rezoning.

Before the comments are addressed, it must be noted that the amendment was adopted with changes. The changes made consist of changes to the Block and Lot number designations. The areas being rezoned have not changed. Some of these changes were outlined in the agency proposal published in the New Jersey Register. One change, Block 4004 being changed to Block 4010, was discussed at the Public Hearing. The designation used in the Public Notice (Block 4004) was the one given to the applicant and to the Office of the Chief Engineer by the Ridgely Tax Assessor. However, upon further review, the correct designation is Block 4010.

COMMENT: Fred J. Dressel, Executive Director of the Hackensack Meadowlands Municipal Committee (HMMC), in a letter dated 9/10/90 to Executive Director Scardino, indicated that the HMMC declined to take any action on the subject matter.

RESPONSE: No Commission response is necessary.

COMMENT: Andrew J. Willner, NY/NJ Bay Keeper for the American Littoral Society (ALS), and John Klarquist of the Environmental Defense Fund (EDF) requested that this rezoning and other proposed rezonings in the Hackensack Meadowlands District be delayed until the Environmental Impact Statement of the Special Area Management Plan (SAMP) is complete.

RESPONSE: The HMDC does not support such a request for delay. Adequate environmental studies including wetlands delineation and chemical cleanup for this site have been undertaken. The proposed rezoning is in essence to correct a prior designation of an upland area as a Marshland Preservation Zone. To delay this correction until the district-wide study is completed, appears unreasonable and without merit. Furthermore, once this situation is corrected, the entire site will be upgraded and modernized and this new facility will have many environmental benefits associated with it. A delay is not a position the Commission can support.

COMMENT: Nancy L. Zerbe, Deputy State Historic Preservation Officer from the New Jersey Department of Environmental Protection (NJDEP), Division of Parks and Forestry Office of New Jersey Heritage; T. Robin Brown, Historic Preservation Officer from the Bergen County Division of Cultural and Historic Affairs; Margaret Utzinger of the Hackensack River Coalition (HRC), and the American Littoral Society indicated the need to protect and preserve the Railroad Roundhouse, which is on the subject property, due to its standing as a resource eligible for the National Register of Historic Places.

RESPONSE: The HMDC agrees with this concern. The Commission would not support any proposal which would involve the destruction of a designated historic resource that can be protected and preserved in a reasonable manner. Towards that end, the HMDC has enlisted the services of a historical preservation expert to inspect the site and recommend appropriate procedures to protect any historical resources at the site. This preservation recommendation could range from preservation through pictures and exhibits, to full preservation of the resource.

The propose rezoning would not affect this historical analysis review or reduce any potential for preservation of the resource. In fact, the applicant has indicated his willingness to work with historic preservation officials in order to determine the status and future of the roundhouse.

It must be stated however that the HMDC would not support preservation of the roundhouse and creation of a cultural facility which would be open to the public at its current location. The site is an industrial site, with limited access through the heart of the intermodal operation. Safety concerns would dictate that the public not be encouraged to mix with these uses. If a determination is made that resource preservation in full is desirable, the HMDC would support a relocation off site to an area better suited for public access.

COMMENT: The Hackensack River Coalition raised a concern regarding the potential for the waterway carrying thermal effluent from the Public Service Electric & Gas Company facility to the Hackensack River to be piped thereby discharging heated water farther out into the Hackensack River and having an increased negative effect on the sur-

## OTHER AGENCIES

rounding wetlands. Steve Whitney, Assistant Director for Planning for the NJDEP Division of Coastal Resources, stated that as any work within the waterway would require NJDEP permits, the rezoning should be delayed until such time as NJDEP takes action on any such requests.

RESPONSE: The rezoning of the Waterway area to a Heavy Industrial zone will *not* allow for any piping of the waterway to occur of and by itself. Regardless of the zoning or rezoning of the property, the applicant would still be required to obtain all New Jersey Department of Environmental Protection permits that would be required to fill and/or pipe any portion of this waterway. No piping or filling of the waterway is proposed by the applicant at this time. The applicant is fully aware that any such proposal requires approval of State, HMDC, and possibly Federal agencies.

COMMENT: The NJDEP Division of Coastal Resources, the Hackensack River Coalition, and the Environmental Defense Fund requested that the rezoning be delayed until the Army Corps of Engineers (ACOE) determines the exact extent of illegal wetlands fill on site, and the remediation measures that are to be undertaken by the property owner to correct the violations.

RESPONSE: The HMDC is of the opinion that the rezoning does not have to wait for the Army Corps of Engineers determination as to the exact line of wetlands/illegal fill. Preliminary indications from the Corps have indicated that the wetlands delineation that the applicant has submitted to the Corps for their review is accurate for the extent of current wetlands, but there is a fill violation on site. The core of the illegal fill area is to the north of the area of the site being rezoned for development and in an area that the applicant has already expressed a willingness to retain as open space in accordance with the HMDC and Corps requirements. Land area outside of the proposed development area is available for any remediation/mitigation measures that the Army Corps may choose to require.

No building permit to allow development on this site can occur prior to the Army Corps of Engineers acceptance of a wetlands delineation line. No development will be allowed to occur within the area delineated as wetlands unless approved by the Corps. The current or requested zoning of the property bears no relationship to the wetlands delineation line—what is designated wetlands will be wetlands, what is designated uplands will be considered for development in accordance with Army Corps rules and regulations.

COMMENT: The Hackensack River Coalition advised that any rezoning of the subject property would be in conflict with, and indicate apparent disregard for, the NJDEP Flood Plain Management Regulations.

RESPONSE: This matter is once again more of a site plan related issue than a rezoning. Any rezoning would *not* relieve the applicant from obtaining any requisite NJDEP Flood Plain Management or Stream Encroachment Permits. Any zoning certificate that the HMDC would grant subsequent to the rezoning and site plan review would be conditioned upon the obtaining of such permits by the applicant.

COMMENT: The Hackensack River Coalition raised concerns regarding hazardous substances stored on site and the potential dangerous situation that could be created for future users of the site and residents in the area.

RESPONSE: The applicant has indicated to the Commission, in a letter dated July 16, 1990, that approximately 3.2 percent of the 33,824 loads handled at the Little Ferry intermodal terminal were subject the New Jersey Department of Environmental Protection hazardous material transportation rules and regulations. It has also been stated that normal intermodal operations do not involve the opening of loaded containers within the terminal.

The HMDC is of the opinion that the use of this property for the incidental intermodal transport of hazardous material as represented by the applicant does not pose an unacceptable risk and does indeed advance a number of planning goals:

a. An expansion of the intermodal operation will remove a great amount of trucks from the area roadways. Obviously, included in this number would be trucks carrying hazardous materials. The potential for trucks to have an accident on the roadways is far greater than the potential for rail accidents. The intermodal expansion and upgrading will allow for safer hazardous material transport.

b. The subject properties are uniquely suited to handle hazardous waste material. It is surrounded by industrial users, with no resident living within the Ridgely area of the District adjacent to the property. Indeed, the closest residences are in Little Ferry, across the Hackensack River from the site. Since hazardous materials are currently brought to the site, it benefits everyone to upgrade the facility to insure that the material is being handled as safely as possible.

COMMENT: The NJDEP Division of Coastal Resources is concerned about the apparent incompatibility of uses that would be allowed to be adjacent to one another in the Marshland Preservation Zone and the proposed Heavy Industrial Use.

RESPONSE: While on the surface it may appear that a heavy industrial use cannot be compatible with a marshland, the HMDC is not of the opinion that that is necessarily true in all cases. This issue is once again an issue that is reviewed during the zoning certificate/site plan review process. The industrial use is not a smokestack use or a use discharging water pollutants into the river. The heavy industrial zone requires a 30 foot rear yard setback to which the applicant will be required to adhere. This setback will be a buffer between the industrial use and the marsh. It will also be a heavily landscaped buffer with plant material appropriate for screening purposes and providing food and cover for wildlife associated with the marsh. This buffer will be measured from the Army Corps of Engineers' designated wetlands line and will be designed to be an adequate buffer between the two uses.

COMMENT: The NJDEP Division of Coastal Resources requested that the rezoning be delayed until all outstanding riparian claims to the subject property are resolved.

RESPONSE: The HMDC finds that there is no reason for all riparian claims to be settled prior to rezoning the properties as there is no relationship between riparian claims and zoning; riparian claims become critical during the site development phase. The rezoning can take place without affecting the riparian claims, and as always, HMDC will condition any development plans on this property with the need to resolve all outstanding riparian claims. NYS&W RR has submitted applications to NJDEP in order to resolve all riparian claims, and this will be dealt with during the zoning certificate review process, not the rezoning process.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

#### 19:4-6.28 Official Zoning Map

Change the current zoning designation of the \*[following]\* parcels listed below to Heavy Industrial; all are located in the Borough of Ridgfield:

Portion of Block \*[4004]\* **\*4010\***, Lot 4, from Marshland Preservation to Heavy Industrial;

Portion of Block 4010, Lot 3, from Waterway to Heavy Industrial; Block 4010, Lot 2, from Light Industrial "B" and Railroad Right-of-Way to Heavy Industrial;

Portion of Block 4007, Lot 1, from Railroad Right-of-Way to Heavy Industrial;

Block 4008, Lot 1, from Light Industrial "B" to Heavy Industrial; \*[Portions of Block 168, Lot 1, from Light Industrial "B" to Heavy Industrial];

Block 167, Lot 1B, from Light Industrial "B" to Heavy Industrial; Portion of Block 167, Lot 1C, from Light Industrial "B" to Heavy Industrial.

It should be noted that the Block and Lot numbers for the Conrail parcel have been changed by the Borough of Ridgfield as follows:

Portions of Block 168, Lot 1 and Block 167, Lot 1C, have the new designation of Block 4011, Lot 3, and Block 167, Lot 1B, have the new designation of Block 4013, Lot 1.]\*

**\*Portion of Block 4011, Lot 3, from Light Industrial "B" to Heavy Industrial;**

**Block 4013, Lot 1, from Light Industrial "B" to Heavy Industrial.\***

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission  
One DeKorte Park Plaza  
Lyndhurst, New Jersey 07071  
Office of Administrative Law  
Quakerbridge Plaza, Building 9  
Quakerbridge Road  
Trenton, New Jersey 08625

## (a)

### NEW JERSEY TURNPIKE AUTHORITY

#### Organization of the New Jersey Turnpike Authority Adopted Amendments: N.J.A.C. 19:9-6.2, 7.2, 7.3 and 7.4

Adopted: October 5, 1990 by the New Jersey Turnpike Authority, Donald L. Watson, Executive Director.

Filed: October 9, 1990 as R.1990 d.531.

Authority: N.J.S.A. 27:23-1 et seq., specifically N.J.S.A. 27:23-29, and 52:24B-4(f).

Effective Date: October 9, 1990.

Expiration Date: October 17, 1993.

Take notice that the New Jersey Turnpike Authority has adopted amendments to its organizational rules at N.J.A.C. 19:9-6.2(b) and 7.4 revising the information previously provided with regard to the name of the individual who currently holds the position of Executive Director. The adopted amendments to N.J.A.C. 19:9-7.2 and 7.3 reflect a change in the organizational structure of the Authority. This new structure streamlines the reporting responsibility to the Executive Director by reducing the number of departments from 12 to eight, thus creating greater efficiency.

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

#### 19:9-6.2 Procedure for petitioner

(a) (No change.)

(b) Petitions shall be addressed to:

[Frank B. Holman] **Donald L. Watson**, Executive Director  
New Jersey Turnpike Authority  
P.O. Box 1121

New Brunswick, New Jersey 08903

(c) (No change.)

#### 19:9-7.2 Table of organization

A table of organization showing the general course and method of operation within the Authority [and the major sections within each Department follows:] is **appended to this chapter as Appendix A, incorporated herein by reference.**

#### 19:9-7.3 Functions of departmental units

(a) [The function] **Functions** of the various departments within the New Jersey Turnpike Authority are as follows:

1. Engineering: **This department** is responsible for design, construction and major rehabilitation of the roadway, bridges and related facilities.

2. Maintenance: **This department** is responsible for the care and maintenance of existing Turnpike facilities.

3. Toll Collection: **This department** oversees the collection of toll revenue and the activities of the toll collection personnel in providing service to the motoring public.

4. Accounting is responsible for all fiscal matters for the Authority, including financing issues, annual capital and operating budgets, payroll and other disbursements.

5. Public Information coordinates Turnpike interaction with media, provides press information, photographs, etc. and community relations regarding patron and neighbor complaints or requests for information.

6. Operations is responsible for all activities related to day-to-day operation of the Turnpike project including Traffic Engineering, Regulations, Patron Services, Emergency Services, Coordination of Construction and Maintenance Activities, Hazardous Materials Training, Employee Safety, Communications, and the liaison with the New Jersey State Police assigned to the Turnpike.

7. Purchasing is responsible for the procurement of all materials, supplies and services for the maintenance, repair and operation of all New Jersey Turnpike Authority departments. The sale of surplus equipment through bid processes or public auction is also implemented by the Purchasing Department.

8. Risk Management is responsible for obtaining insurance coverage for the New Jersey Turnpike Authority, for the establishment

## ADOPTIONS

of a loss control program, and for overseeing the administration of employee benefit programs. Processes patron claims and oversees property damage cases.

9. Revenue and Data Management is responsible for toll auditing activities, toll tickets and general clerical service.

10. Management Information Systems is responsible for design, development and implementation of all real time, on-line and batch information systems; with emphasis on efficiency and cost effectiveness.

11. Law provides legal services to all Turnpike Authority departments, reviews contracts, acquires property, conducts all legal and quasi-legal hearings and deals with labor relations.

12. Personnel is responsible for all employment decisions (hiring, promotions, etc.).]

4. **Operations:** This department manages all activities related to day-to-day operation of the Turnpike. Its responsibilities include traffic engineering, traffic regulations, emergency services, coordination of construction and maintenance activities, hazardous materials training, employee safety, communications, and liaison with the New Jersey State Police assigned to the Turnpike.

5. **Finance and Budgets:** This department is responsible for all fiscal matters for the Authority, including financing and investment issues, annual capital and operating budgets, asset management, payroll, and other disbursements.

6. **Law:** This department provides legal service to all Turnpike Authority departments, including the review of contracts, acquisition of property, management of all legal and quasi-legal hearings, the handling of matters associated with labor relations, and the performance of contract administration duties. In addition, this department has all responsibility for Risk Management functions and operations.

7. **Human Resources:** This department is responsible for all employment activities (recruiting, promotions, etc.), labor relations manage-

## OTHER AGENCIES

ment, training of Authority employees, and administration of the employee benefits program.

8. **Administrative Services:** This Department is responsible for providing necessary support services to the Authority departments and all its employees. Management Information Systems provides design, development and installation of all real-time, on-line office management and batch information systems. Office Services provides centralization of supplies necessary to conduct business for all Turnpike departments. In addition, this section is responsible for all mail activities and duplication requests. Purchasing is responsible for the procurement of all materials, supplies, and services for the maintenance, repair and operation of all Authority Departments. This section also maintains responsibility for the management of the disposal of surplus property.

9. **Public Affairs:** This department coordinates Authority interaction with the media, provides information to the press, manages all community relations activities, all patron services activities including complaints, requests for information, and the like.

10. **Secretary to the Authority:** This position manages all activities of the Authority's Commission, and manages the official records and their disposition for the Authority.

### 19:9-7.4 Information

Interested persons can obtain information from the Authority by addressing inquiries to:

[Frank B. Holman] Donald L. Watson, Executive  
Director  
New Jersey Turnpike Authority  
P.O. Box 1121  
New Brunswick, New Jersey 08903

APPENDIX A

**NEW JERSEY TURNPIKE AUTHORITY**  
 Table of Administrative Organization  
 August, 1990

**CHAIRMAN & COMMISSIONERS**

**EXECUTIVE DIRECTOR**

<b>E.E.O. OFFICER</b>	<b>EXECUTIVE ASSISTANT</b>	<b>SECRETARY TO AUTHORITY</b>	<b>PUBLIC AFFAIRS</b>
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**CHIEF ENGINEER**

Comm. Relations
Public Relations
Patron Relations

<b>ENGINEERING</b>	<b>MAINTENANCE</b>	<b>TOLLS</b>	<b>OPERATIONS</b>	<b>FINANCE &amp; BUDGETS</b>	<b>LAW</b>	<b>HUMAN RESOURCES</b>	<b>ADMINISTRATIVE SERVICES</b>
Construction Specifications	Equipment Buildings	Section Managers (5)	Engineering	Comptroller	Risk Management	Employment	Purchasing
Highway Planning and Design	Roadway North	Tolls Distribution	Emergency Services	Budget	Contract Admin.	Labor Relations	Office Services
Capital Program Management	Roadway South	Tolls Administration	Employee Safety	Asset Management	Real Estate	Benefits Admin.	M. I. S.
Special Projects & Building Design		Tolls Equipment Maintenance	Traffic Operations Center	Accounting	Division of Law	Medical	
				Audit			
				Payroll			
				Disbursements			

**(a)**

**ELECTION LAW ENFORCEMENT COMMISSION**  
**Election Law Enforcement Commission Regulations**  
**Readoption with Amendments: N.J.A.C. 19:25**

Proposed: August 6, 1990 at 22 N.J.R. 2251(a).

Adopted: September 27, 1990 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: October 1, 1990 as R.1990 d.526, **without change**.

Authority: N.J.S.A. 19:44A-6, 19:44A-38, 19:44B-7, 52:13C-22.3.

Effective Date: October 1, 1990, Readoption; November 5, 1990, Amendments.

Expiration Date: October 1, 1995.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:25.

**Full text** of the adopted amendments follows:

19:25-1.1 Scope of regulations

The provisions of this chapter are promulgated pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, P.L. 1973, c.83, as amended, N.J.S.A. 19:44A-1 and following ("the act"); the Gubernatorial Legislative Disclosure Statement Act; N.J.S.A. 19:44B-1 et seq.; and the Legislative Activities Disclosure Act of 1971, N.J.S.A. 52:13C-18 et seq. Such provisions shall constitute the rules and regulations of practice and procedure of the New Jersey Election Law Enforcement Commission ("the Commission").

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

...  
 "File" or "filed" means deposited in the office of the Commission designated in N.J.A.C. 19:25-2.1.

...

19:25-2.1 Office

The office of the Election Law Enforcement Commission is located at 28 W. State Street, Trenton, New Jersey. All correspondence may be sent to the following address only: Election Law Enforcement Commission, CN-185, Trenton, New Jersey 08625-0185. The telephone number is: (609) 292-8700.

19:25-4.4 Continuing political committees: political party committees

(a) (No change.)

(b) A political party committee is a continuing political committee for the purposes of the quarterly reporting requirements of the act regardless of the amount expended on election-related activity in any one or subsequent years.

19:25-4.6 Statement of organization: continuing political committee

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

(d) Upon receiving the statement of organization, the Commission shall review the information provided by the continuing political committee for the purposes of determining the classification of the committee in accordance with N.J.A.C. 19:25-4.5. The Commission shall thereafter notify the committee of its classification and filing obligation, if any.

19:25-4.7 Write-in candidates

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

(c) If a write-in candidate who spends or has \$2,000 or less spent on his or her behalf receives any contribution from any one source aggregating more than \$100.00 during any reporting period, the write-in candidate shall file a report (Form C-1) of such contribution with the Commission on the appropriate reporting period date set forth in N.J.S.A. 19:44A-16. The report shall include the identity of the source and the aggregate total of the contribution during the reporting period.

19:25-6.1 Deposits of funds by candidates or committees

(a) (No change.)

(b) All funds received by a treasurer or deputy treasurer of a candidate, a political committee, or a continuing political committee serving as the campaign committee of a candidate shall be deposited by the treasurer or deputy treasurer in a depository of the candidate or committee, in an account clearly designated as such a campaign account, no later than the 10th calendar day following receipt of such funds; except that any such treasurer or deputy treasurer may, when authorized by the candidate or committee of which he is the treasurer or deputy treasurer transmit any such funds to the duly designated or deputy treasurer of another candidate or committee for inclusion in his or her or its campaign fund without first so depositing them; provided, however, that a record of non-deposited funds so transmitted shall be maintained and included in the pre and post-election reports of the original recipient, identifying them as to the source and amount in the same manner as deposited funds.

(c)-(d) (No change.)

19:25-7.7 Limitation on or expenditure financial activity by political party committee

A State, county or municipal committee of a political party may not receive or expend funds in violation of N.J.S.A. 19:34-33 and N.J.S.A. 19:44A-11.

19:25-9.8 Contributions made immediately before election

Each campaign treasurer of a candidate or a political committee shall file a written notice with the Commission of a contribution in excess of \$250.00 received during the period between midnight on the 13th day prior to the election and the date of the election. The notice shall be filed in writing or by telegram or other expedited delivery system with the Commission within 48 hours of the receipt of the contribution, but such notice cannot be filed with the Commission by use of electronic facsimile transmission (that is, FAX). The notice shall set forth the amount and the date of receipt of the contribution and the name and address of the contributor.

19:25-10.5 Time and place of filing

The original and one copy of the report must be received by the Commission at its office by 5:00 P.M. on the filing day. A report postmarked on the filing day but received by the Commission at any time subsequent to 5:00 P.M. on the filing day will not be deemed timely filed.

19:25-10.6 Contributions made immediately before election

(a) Each organizational treasurer of a continuing political committee shall file a written notice with the Commission of a contribution in excess of \$250.00 received after the final day of the quarterly report and on or before the date of an election as to which it has made or intends to make a contribution, or otherwise intends to or does participate or intends to participate in. The notice shall be filed in writing or by telegram or other expedited delivery system with the Commission within 48 hours of the receipt of the contribution, but such notice cannot be filed with the Commission by use of electronic facsimile transmission (that is, FAX). The notice shall set forth the amount and the date of receipt of the contribution and the name and address of the contributor.

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

**(b)**

**CASINO CONTROL COMMISSION**  
**Accounting and Internal Controls**  
**Jobs Compendium Submission**

**Adopted Amendment: N.J.A.C. 19:45-1.11A**

Proposed: August 6, 1990 at 22 N.J.R. 2253(a).

Adopted: September 26, 1990 by the Casino Control

Commission, Valerie H. Armstrong, Acting Chair.

Filed: September 27, 1990, as R.1990 d.523, **without change**.

Authority: N.J.S.A. 5:12-69a, 70a and 99.

Effective Date: November 5, 1990.

Expiration Date: March 24, 1993.

**Summary of Public Comment and Agency Responses:**

Comments were received from the Division of Gaming Enforcement (Division) and the Sands Hotel, Casino and Country Club (the Sands).

COMMENT: The Division, noting its support for the concept of streamlining the jobs compendium submission process, comments that the Commission has assumed primary responsibility for the review of the jobs compendiums and that the Division no longer requires a separate copy to be filed with its office.

RESPONSE: The Commission agrees with these comments, as evidenced by its adoption of the proposed amendment.

COMMENT: The Sands comments that the proposed amendment "will serve to lessen the regulatory burden imposed on casino licensees," and states its support for the proposed amendment.

RESPONSE: The Commission agrees with this comment.

Full text of the adoption follows:

19:45-1.11A Jobs compendium submission

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

(f) Whenever required by this section, a casino licensee shall file five copies of a jobs compendium or an amendment to a jobs compendium with the Records Administrator of the Commission. A casino license applicant shall file five copies of a jobs compendium or an amendment to a jobs compendium with the Records Administrator of the Commission and one copy with the Division of Gaming Enforcement. The cover shall indicate the name of the casino licensee or applicant, the date of the submission and shall be labeled "Jobs Compendium Submission" or "Jobs Compendium Amendment" as appropriate.

(a)

**CASINO CONTROL COMMISSION**

**Temporary Amendment of Rules of the Games  
Pursuant to Five Times Odds at Craps Experiment  
N.J.A.C. 19:47-1.6**

Petitioner: Resorts International Hotel, Inc.

Authority: N.J.S.A. 5:12-69(e) (P.L. 1987 c.354) 5:12-70(f) and 5:12-100(e).

Take notice that beginning November 12, 1990, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for a period of 90 days (until February 10, 1991) for the purpose of determining if a new rule should be adopted which would permit casino licensees to offer a patron up to five times odds at the game of Craps.

Specifically, the test would allow Resorts International Hotel, Inc. to offer supplemental wagers at the game of Craps in an amount up to five times the patron's Pass Line or Come Wager or in the case of a Don't Pass or Don't Come Wager in an amount so as to win five times the original wager for the purpose of gathering empirical data to determine the impact on Craps revenues. The test will be conducted on a limited number of Craps tables at Resorts International Hotel, Inc. Signage will be posted at the major casino entrances and at the tables involved in the testing of five times odds.

A petition for rulemaking on this subject was filed with the Commission on October 12, 1990. Should the test prove successful, the Commission will propose the new rule for adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

**HEALTH**

(b)

**DIVISION OF HEALTH FACILITIES EVALUATION  
AND LICENSING**

**Ambulatory Care Facilities  
Standards for Licensure**

**Adopted Amendments: N.J.A.C. 8:43A-12**

Proposed: May 21, 1990 at 22 N.J.R. 1496(a).

Adopted: October 5, 1990 by Frances J. Dunston, M.D.,

M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: October 12, 1990 as R.1990 d.543, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically N.J.S.A. 26:2H-5.

Effective Date: November 5, 1990.

Operative Date: March 1, 1991.

Expiration Date: July 27, 1995.

**Summary of Public Comments and Agency Responses:**

On May 21, 1990, the Department proposed the readoption of N.J.A.C. 8:43A, with amendments to subchapter 12, Surgical Services (see 22 N.J.R. 1496(a)). The readoption became effective on July 27, 1990, with the amendments to N.J.A.C. 8:43A-12 not adopted but still pending (see 22 N.J.R. 2507(a)). Action on the proposed amendments was deferred at that time in order to allow the Department to give full consideration to the comments and recommendations submitted regarding the proposed anesthesia-specific rules which constitute the amendments to N.J.A.C. 8:43A-12. These comments and recommendations are addressed below.

The Department received 55 letters of comment concerning the proposed amendments to subchapter 12, Surgical Services. Letters were submitted by the New Jersey State Society of Anesthesiologists, the New Jersey State Board of Nursing, the New Jersey Psychiatric Association, the Planned Parenthood Federation of America, Inc., the Family Planning Association of New Jersey, the New Jersey State Nurses Association, the Monmouth County Medical Society, eight licensed ambulatory care facilities which included ambulatory surgical facilities, family planning clinics, and abortion clinics, five hospitals, eight anesthesiologists, 14 certified registered nurse anesthetists, three gastroenterologists, two plastic surgeons, one gynecologic surgeon, one dental surgeon, five psychiatrists, an attorney, and a State senator. These letters are on file at the Office of Administrative Law and at the Standards and Quality Assurance Program of the Department. As discussed below, consideration of the comments and recommendations received and further review of the proposed rules have resulted in changes being made to the proposed rules. The Department maintains that these changes will not jeopardize patient health or safety. In preparing its responses to the recommendations submitted during the public comment period, the Department sought and received the advice of technical experts who serve as members of the Anesthesia Standards Advisory Committee of the Department.

The following is a summary of the comments submitted in reference to the proposed amendments and the corresponding Departmental responses.

COMMENT: One commenter stated that, although standards for anesthesia care need to be set forth, the proposed rules address a hypothetical, rather than an actual, problem. It was noted that the ratio of anesthesia complications to surgical procedures is much lower in ambulatory surgical facilities than in hospitals due to differences in patient population and in duration of procedures performed. The commenter claimed that, in one of two untoward events which the commenter knows to have occurred in a 10-year period, the use of an EKG monitor and a pulse oximeter was irrelevant to the outcome. Another respondent emphasized the difference between hospital and ambulatory care patients in arguing that the idea of promulgating rules which are not determined by type of facility is reasonable when "patient profiles are identical." This commenter also stated that the proposed rules would not affect unlicensed facilities, where "inappropriate and excessive use of general anesthesia" is especially worthy of concern.

**RESPONSE:** The adopted amendments to N.J.A.C. 8:43A-12, such as those requiring monitoring equipment, derive from a need to address the particular risks associated with receiving anesthesia. The Department recognizes the fact that there are differences between hospitals and ambulatory care facilities with respect to both the types of procedures performed and the acuity levels of the patient populations. The Department believes, however, that the focus of the anesthesia safety requirements should be on the type of anesthetic agent administered to the patient rather than on the location in which the procedure is performed. The risk factors of greatest concern are related to adverse reactions to anesthesia, not to the particular surgical procedures performed. Thus, by structuring the rules by level of anesthesia administered, the Department will be able to apply comparable standards of care to both hospitals and ambulatory care facilities.

Although unlicensed settings are beyond the scope of the rules, the Department acknowledges the commenter's concern regarding proper use of anesthesia in those facilities. It is the Department's understanding that the New Jersey State Board of Medical Examiners is studying the situation with the objective of taking regulatory action in the future.

**COMMENT:** Planned Parenthood of Monmouth County, Inc., remarked that the proposed rules would affect only licensed providers and would increase costs to patients in licensed facilities. Consequently, access to services in licensed facilities would decrease, and the probability of patients receiving general anesthesia in unlicensed settings would increase. Mercer Medical Center similarly stated that the proposed rules would drive patients to physician offices rather than to safer ambulatory care facilities by causing ambulatory care facility rates to approach those of hospitals through the introduction of requirements regarding number and qualifications of personnel. The Family Planning Association of New Jersey stated that the proposed requirements for additional staffing and equipment would increase cost and decrease access, without enhancing the quality of services provided.

**RESPONSE:** The fact that the rules can be applied only to facilities licensed by the Department does not diminish their appropriateness. The adopted rules are intended to ensure that practices which correspond to at least a minimal level of safety are observed in licensed facilities providing anesthesia services. In developing the rules, the Department attempted to balance needs for cost-containment, quality of services, and access to services. As noted above, regulation of unlicensed settings is beyond the authority of the Department, and the New Jersey State Board of Medical Examiners is reviewing this area for potential regulatory action.

**COMMENT:** Several respondents expressed concern over the potential impact of the proposed rules on the provision of electroconvulsive therapy (ECT) in hospitals. The New Jersey Psychiatric Association requested that ECT be excluded from the scope of the proposed rules, despite its use of anesthesia, because ECT differs substantially from surgery. It was noted that ECT involves the administration of only low levels of a short-acting barbiturate and that patients are anesthetized for approximately eight minutes. It appears that uncertainty regarding the relation between the proposed rules and the provision of ECT in hospitals resulted in several requests for a delay in the implementation of the proposed rules.

**RESPONSE:** Since ECT is not normally provided in an ambulatory care facility, the immediate impact on ECT of the adoption of the amendments to N.J.A.C. 8:43A-12 will be minimal, though not unimportant. The Department is currently examining the use of anesthetic agents for ECT and has reviewed a report of the Task Force on ECT of the American Psychiatric Association entitled "The Practice of ECT: Recommendations for Treatment, Training and Privileging." This report states that ECT entails the use of brief, light general anesthesia. The level of anesthesia associated with ECT corresponds to that described in the definition of "general anesthesia" in N.J.A.C. 8:43A-12, and, therefore, ECT falls within the scope of these rules. The Department contends that the risks presented by the anesthetic agents used for ECT in hospitals warrant the application of minimum standards such as those adopted for ambulatory care facilities. When the Department proposes amendments to the anesthesia and psychiatric standards for hospitals, N.J.A.C. 8:43G-6 and N.J.A.C. 8:43G-26, similar to those adopted for ambulatory care facilities with respect to administration, supervision, and monitoring, these amendments will not exclude ECT from their scope.

**COMMENT:** A psychiatrist stated that the short-term barbiturate anesthesia used for electroconvulsive therapy in hospitals is similar to that used for minor procedures and should not be considered together with anesthesia used for major surgery.

**RESPONSE:** Technical information received by the Department through discussion with members of the Anesthesia Standards Advisory

Committee and through review of the report of the Task Force on ECT of the American Psychiatric Association discussed above indicates that the anesthetic agents in question produce a level of anesthesia characterized by loss of consciousness. This level of anesthesia clearly falls within the scope of the rules.

**COMMENT:** Planned Parenthood Federation of America, Inc., claimed that the proposed rules are overly restrictive with respect to the case of conscious sedation and that they do not adequately differentiate conscious sedation from conduction, regional, or general anesthesia.

**RESPONSE:** In addition to differentiating conscious sedation from other levels of anesthesia by means of providing a definition of each of the corresponding terms, the proposed rules quite clearly treated anesthetic agent administration, personnel supervision, and patient monitoring for procedures involving conscious sedation as a separate case. Changes have been made to the proposed amendments upon adoption in order to remove those requirements regarding the use of conscious sedation which, the Department concurs, are unnecessary. As discussed below, N.J.A.C. 8:43A-12.8(c), 12.8(i), 12.13(a), (e) and (f), and 12.14(d) have been amended.

**COMMENT:** It was recommended that "intravenous" precede "conscious sedation" in the definition of "conscious sedation" in proposed N.J.A.C. 8:43A-12.2, in order to properly define the technique.

**RESPONSE:** The definition is intended to be as inclusive as possible with regard to the various techniques used to induce conscious sedation. Addition of the word "intravenous" to the definition of "conscious sedation" would limit the definition to one particular route of administration. The definition, therefore, was not revised in the manner suggested.

**COMMENT:** Several commenters requested the deletion of the term "deep sedation" and of its definition in proposed N.J.A.C. 8:43A-12.2. Reasons cited include the claims that this level of anesthesia is a form of general anesthesia, that it is difficult to define, that it is "a consequence of a conscious sedation that has progressed inadvertently to a deeper level" rather than an intended technique, and that it requires a higher level of training than that specified in the rules concerning administration of anesthesia.

**RESPONSE:** The rules refer to "deep sedation" in order to be sufficiently inclusive as to apply to cases in which the described level of consciousness is induced through the administration of anesthesia. It is not the Department's intention to define or suggest a specific technique of administering anesthesia or to determine which level of consciousness should be induced. Since deletion of the term "deep sedation" could render the rules unenforceable in situations in which this level of consciousness is produced, the rules were not revised in the manner requested.

**COMMENT:** One respondent indicated that there is a difference between the use of certain quantities of Brevital and the use of general anesthesia in hospitals.

**RESPONSE:** On the basis of clinical information and advice obtained from members of the Department's Anesthesia Standards Advisory Committee, the Department disagrees with the commenter's assessment of the use of Brevital. This anesthetic agent is often used to induce general anesthesia; thus, no special exception has been made for the use of this anesthetic agent.

**COMMENT:** Planned Parenthood of Monmouth County, Inc., recommended that the use of local anesthetics be exempted from all of the proposed rules because general standards "regarding staff, protocols, etc., are adequate to assure appropriate patient care when only local agents are used." The commenter stated that some of the proposed rules use the general term "anesthesia" rather than one or more of the specific, defined anesthesia terms, and, in some of the rules, "conscious sedation" is inappropriately grouped with "general anesthesia." Consequently, some rules are applied unnecessarily to "first and early second trimester abortions performed under local anesthesia with conscious sedation." The Family Planning Association of New Jersey added that the proposed rules, particularly those addressing staffing, would be excessive and would increase cost without increasing the quality of care provided in the case of these procedures. The Association asserted that the use of conscious sedation during these short procedures should be exempted from the scope of the proposed rules. Similarly, the Association, and other commenters, requested that facilities which perform surgical procedures using only local anesthesia, such as vasectomies and the implanting of "Norplant," be exempted also.

**RESPONSE:** The Department agrees that the risks to patients associated with the use of conscious sedation and local anesthesia differ from those of general anesthesia. The structure of N.J.A.C. 8:43A-12.3 reflects the Department's recognition of these differences. The rules,

however, take these differences into account and have been developed, and revised upon adoption, with the intention of ensuring that appropriate standards of care are applied to the separate and diverse levels of consciousness defined in N.J.A.C. 8:43A-12.2. For example, N.J.A.C. 8:43A-12.3(f) explicitly excludes from its scope anesthetic agents utilized for conscious sedation or as minor conduction blocks, while N.J.A.C. 8:43A-12.13(f), as revised, requires postanesthesia monitoring by pulse oximetry only for patients who have received general anesthesia or regional anesthesia. The Department maintains that the adopted rules are written so as to apply only to those situations in which they can be expected to contribute to quality of care. Consequently, the adopted rules include no general, comprehensive exemption for the use of local anesthesia or conscious sedation.

COMMENT: The New Jersey State Nurses Association recommended that a definition of "nurse anesthetist" be added to proposed N.J.A.C. 8:43A-12.2 and that the proposed definition of "practitioner" be changed so as to include nurse practitioners and clinical nurse specialists. It was noted that nurse practitioners and clinical nurse specialists can cost-effectively perform the patient examination required by proposed N.J.A.C. 8:43A-12.4(a)5.

RESPONSE: It is not the intent of adopted N.J.A.C. 8:43A-12.4(a)5 to address duties of nursing personnel, since N.J.A.C. 8:43A-12.4 primarily concerns medical staff policies and procedures. N.J.A.C. 8:43A-12.2(a)4, prior to being amended, required that the examination be performed by a physician. Adopted N.J.A.C. 8:43A-12.4(a)5 is consistent with N.J.A.C. 8:43G-32.5(e)2 of the hospital licensing standards regarding same-day stay. This latter rule requires that a preoperative note be made by "the physician, dentist, or podiatrist." The definition of "practitioner" and N.J.A.C. 8:43A-12.4(a)5, therefore, were not revised in the manner suggested.

A definition of "certified registered nurse anesthetist" may be found at N.J.A.C. 8:43A-1.1.

COMMENT: It was recommended that the definition of "direct supervision" allow the supervising physician "to be in the area but not necessarily in the room when agents are administered by a CRNA."

RESPONSE: The word "direct" has been deleted from adopted N.J.A.C. 8:43A-12.3(f)2, (i)2, and (j)2. In accordance with the revised definition of "supervision" in N.J.A.C. 8:43A-12.2, the supervising physician is "immediately available for overseeing the administration and monitoring of anesthesia by anesthesia personnel." It is not required that the supervising physician be in the operating room.

COMMENT: Planned Parenthood of Monmouth County, Inc., stated that certification in cardiac life support by the American Red Cross should be sufficient to satisfy the intent of proposed N.J.A.C. 8:43A-12.3(b), for facilities using conscious sedation. Mercer Medical Center noted that the proposed rule "seems excessive when an Anesthesiologist is also on the premises."

RESPONSE: The Department does not agree that training in basic cardiac life support is an acceptable alternative to training in advanced cardiac life support in any ambulatory care facility which provides anesthesia services, including those which use conscious sedation, because the risks of anesthesia are accentuated in freestanding ambulatory care facilities by a lack of access to some of the services available in a hospital setting. The rule was not revised. The presence of an anesthesiologist who is certified in advanced cardiac life support, together with a registered nurse, however, would satisfy the rule.

COMMENT: In reference to proposed N.J.A.C. 8:43A-12.3(c), two commenters claimed that it is not necessary or realistic for the physician director of anesthesia services of a facility utilizing conscious sedation, local anesthesia, and minor conduction blocks to be board-certified. Another commenter recommended deletion of the requirement for an anesthesiologist in facilities performing only first trimester abortions. Two respondents from one facility interpreted the proposed rule as prohibiting physicians who administer anesthesia in hospitals, but who are not board-certified, from administering "light anesthesia" or "deep sedation" in ambulatory care facilities and, consequently, objected to the rule. One of them agreed that "an anesthesiologist should be present in a clinic performing abortions." The other respondent, who is the director of anesthesia services and the sole anesthesiologist of the facility but who is not board-certified, noted that, since board certification is not a requirement for obtaining a license to practice anesthesiology, the proposed rule might represent a restriction of trade. This latter commenter recommended that the proposed rule refer to "every licensed Anesthesiologist" rather than to "Board Certified Anesthesiologist."

RESPONSE: It is common for the possession of certain credentials to be considered indicative of an individual's qualifications to deliver

health care services affecting the life and safety of patients. In this case, the Department contends that it is important for patient care that the anesthesia services in ambulatory care facilities be directed by a physician with the qualifications specified in N.J.A.C. 8:43A-12.3(c). This physician director must participate in the credentialing process and in the delineation of privileges of all personnel who administer anesthetic agents, as indicated by N.J.A.C. 8:43A-12.3(d). Note, however, that the rules do not require that the physician director be on-site for any particular minimum amount of time. Facilities which currently have a physician director of anesthesia services without the qualifications listed in N.J.A.C. 8:43A-12.3(c) may request a waiver, in accordance with N.J.A.C. 8:43A-2.7. This latter rule requires that the facility provide an alternative proposal which would ensure patient safety. N.J.A.C. 8:43A-12.3(c) does not require board-certification for the practice of anesthesiology and does not address administration of anesthesia.

COMMENT: The Newark Mini-Surgi-Site, Inc., recommended that the physician director of anesthesia services be required to be responsible for compliance with the licensure rules, "oversight and quality assurance in an ongoing manner" and that the medical staff be allowed to decide whether or not the CRNAs need to be supervised by anesthesiologists, on the basis of a quality assurance review.

RESPONSE: The medical director of the facility, who may be the same as the physician director of anesthesia services, is responsible for the direction, provision, and quality of medical care, in accordance with N.J.A.C. 8:43A-7.2(a). Responsibilities of the medical director include monitoring of the professional performance of medical staff members and participating in the development and maintenance of a system of quality assurance, as stated in N.J.A.C. 8:43A-7.3(a)1 and (a)8. Although adopted N.J.A.C. 8:43A-12.4(a)6 requires the medical staff to develop policies and procedures addressing responsibilities and qualifications of persons who administer anesthesia and monitor patients, the Department maintains that it is necessary that the requirements of N.J.A.C. 8:43A-12.3 concerning supervision of anesthesia administration be retained. The rules were not revised in the manner suggested.

COMMENT: A number of commenters objected to proposed N.J.A.C. 8:43A-12.3(f)1 as it relates to the administration of anesthesia for electroconvulsive therapy (ECT) by psychiatrists. The New Jersey Psychiatric Association noted that anesthesiologists do not generally work with such short-acting agents, which can be safely administered by psychiatrists. This record of safety "is reflected in the psychiatrist's liability insurance rates." This commenter, as well as others, stated that a requirement for an anesthesiologist to be present could make ECT prohibitively expensive for patients. One respondent indicated that selected patients are monitored by a cardiologist and contrasted the safety of ECT in hospitals with the provision of anesthesia in dental offices. Another remarked that it would be difficult to obtain the services of an anesthesiologist and that the provision of ECT, therefore, would be discontinued. The difference between proposed N.J.A.C. 8:43A-12.3(f)1 and the licensure rules for hospitals was noted. A psychiatrist recommended that each hospital be permitted to establish its own credentialing process, with agreement of the departments of psychiatry and anesthesiology. Two commenters apparently misunderstood the proposed rules as requiring that all anesthetic agents be administered by an anesthesiologist.

RESPONSE: As noted above, ECT is not normally provided in an ambulatory care facility and, thus, will be minimally affected by adoption of the amendments to N.J.A.C. 8:43A-12 at the present time. Nevertheless, as discussed above with reference to the report of the Task Force on ECT of the American Psychiatric Association, the level of anesthesia induced by the anesthetic agents used for ECT constitutes general anesthesia and, therefore, falls within the scope of N.J.A.C. 8:43A-12. The Department maintains that ECT warrants the application of minimum standards such as N.J.A.C. 8:43A-12.3(f)1 regardless of the type of facility in which it is provided, and amendments to the hospital licensure rules (N.J.A.C. 8:43G-6) which will reflect this position are currently being developed. In developing hospital amendments applicable to ECT, the Department will give consideration to the cost and availability of services of anesthesiologists. It should be noted that N.J.A.C. 8:43A-12.3(f)1 permits personnel other than anesthesiologists to administer general anesthesia. The Department acknowledges that there are differences between licensed facilities and private offices with respect to available resources and safety regulations. N.J.A.C. 8:43A must, however, be limited in application to licensed ambulatory care facilities.

COMMENT: One anesthesiologist objected that proposed N.J.A.C. 8:43A-12.3(f)1, in conjunction with the definition of "anesthesiologist,"

could prohibit someone with the qualifications of a physician director of anesthesia services from administering anesthesia himself or herself.

**RESPONSE:** The definition of "anesthesiologist" has been revised so as to include any physician who is qualified to be physician director of anesthesia services. This revision removes the problem noted by the commenter.

**COMMENT:** The New Jersey State Nurses Association questioned the authority of the Department to promulgate rules regarding the practice of nursing. Such authority lies with the New Jersey State Board of Nursing. The New Jersey State Board of Nursing requested that the proposed amendments not be adopted until the Board reviews with the Department the Board's revised rules for certified registered nurse anesthetists, which are currently being developed.

**RESPONSE:** N.J.S.A. 26:2H-5 requires the Department to adopt standards relating to the licensing of health care facilities. In fulfilling its responsibilities, the Department attempts to ensure that its rules do not conflict with those of the State licensing boards for those disciplines involved in the provision of health care in facilities licensed by the Department. In the present case, the Department has discussed the adopted amendments with the New Jersey State Board of Nursing as the amendments pertain to nurse anesthetists. The New Jersey State Board of Nursing and the Department are in agreement that the adopted amendments to N.J.A.C. 8:43A-12 do not conflict with the rules which are currently being developed by the Board regarding qualifications to practice as a nurse anesthetist in New Jersey.

**COMMENT:** Many of the letters received by the Department concern the proposed rules' requiring supervision of certified registered nurse anesthetists (CRNAs) who administer anesthesia or who monitor patients who have been administered an anesthetic agent (proposed N.J.A.C. 8:43A-12.3(f)2, (h)2, and (j)2). The commenters argued that adoption of a rule requiring supervision of certified registered nurse anesthetists by anesthesiologists would increase the cost of anesthesia services without enhancing the quality of the care provided or the safety of the patient. It was stated that there has been no demonstration of need to support such a requirement and that proposed N.J.A.C. 8:43A-12.3(f)2, therefore, is unfair to CRNAs, who currently provide safe, cost-efficient services, and to those consumers who, for economic reasons, would be denied access to services. Attorneys for the American Association of Nurse Anesthetists stated that the proposed rule represents "a regressive, unnecessary step, at a time when health policy planners are urging an increase in utilization of nurse anesthetists . . ." and that it is "arbitrary, unsupported by evidence and capricious." State Senator John O. Bennett could not support the proposed changes due to lack of demonstrated need. The senator added that nurses are, and will continue to be, responsible for administering medication and tend to other health care needs "which are just as critical and potentially life threatening" as the administration of an anesthetic agent prescribed by a physician. Several commenters expressed the opinion that the proposed rule would eliminate the ability of CRNAs to compete in the marketplace and that some support for the rule derives from a desire to suppress competition. The issue, according to this view, is, unfortunately, one of economics rather than one of safety. One commenter stated that the proposed rule would render the licensed facility less competitive than the unlicensed private office. Another held that, if the goal is to apply standards uniformly, the New Jersey State Board of Medical Examiners should apply the standards to "any setting where ambulatory anesthesia is given, even physicians' offices."

In support of the position that anesthesiologist supervision of CRNAs is unnecessary, commenters adduced the following claims: (1) that neither the Joint Commission on the Accreditation of Healthcare Organizations nor any other state has such a rule; (2) that the proposed rule is inconsistent with the national standard of care; (3) that it would not be possible for anesthesiologists to provide for the required level of supervision; and (4) that Medicare reimburses CRNAs directly for services "without requiring anesthesiologist supervision."

**RESPONSE:** As a result of these comments, the Department has further studied the need for anesthesiologist supervision of CRNAs and has reconsidered the ramifications of the proposed rules in question. In doing so, the Department has met with representatives of professional associations for both anesthesiologists and CRNAs. These discussions have resulted in a number of revisions to proposed N.J.A.C. 8:43A-12.2 and 12.3. Generally speaking, these revisions clarify the requirements for supervision of personnel and monitoring of patients who have been administered an anesthetic agent. As discussed above, the word "direct" has been deleted from adopted N.J.A.C. 8:43A-12.3(f)2, (i)2, and (j)2 so that, in accordance with the revised definition of "supervision" in

N.J.A.C. 8:43A-12.2, the supervising physician is "immediately available for overseeing the administration and monitoring of anesthesia by anesthesia personnel." More specifically, proposed N.J.A.C. 8:43A-12.3(f)2 has been restructured in such a way as to allow a CRNA to administer anesthetic agents used for general anesthesia or regional anesthesia under the supervision of "a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise the administration of anesthesia." The Department believes that these revisions eliminate problems discussed by the commenters while protecting the health and safety of patients. It is the intent of the adopted rules to ensure that the physician supervising the anesthesia practice of CRNAs has been granted limited privileges by the facility for such supervision based on its assessment of the practitioner's knowledge of anesthesia administration techniques, effects, and risks. A definition of "credentialed" has been added to clarify this intent.

**COMMENT:** One commenter recommended that the provisions of proposed N.J.A.C. 8:43A-12.3 which address dental cases only, proposed N.J.A.C. 8:43A-12.3(f)3, (h)3, and (j)3, be revised so as to include those dentists who have successfully completed a nationally approved graduate medical education program in oral and maxillofacial surgery. Such a change would avoid an inadvertent exclusion of "the major percentage of practitioners who are currently providing this service in New Jersey and nationally."

**RESPONSE:** The Department has ascertained that dentists who have successfully completed a nationally approved graduate medical education program in oral and maxillofacial surgery meet, by virtue of their training in anesthesiology, the intent of the proposed rules. The rules have been revised as requested.

**COMMENT:** Mercer Medical Center asked whether or not proposed N.J.A.C. 8:43A-12.3(g) applies to the use of epidural anesthesia "for pain control in obstetrics or in intractable pain patients."

**RESPONSE:** Since epidural anesthesia is classified as a major conduction block in N.J.A.C. 8:43A-12.2, the rules do generally apply to the use of epidural anesthesia for intractable pain patients. The issue of the use of epidural anesthesia for pain control in obstetrics will be considered as the amendments to the hospital licensure standards concerning anesthesia are developed.

**COMMENT:** It was recommended that the requirement for the presence of anesthesia personnel during procedures in which conscious sedation is administered be deleted, but that monitoring of such patients be required.

**RESPONSE:** The Department contends that the presence of "anesthesia personnel," as described in adopted N.J.A.C. 8:43A-12.3(i), is necessary for the safety of the patient receiving conscious sedation. N.J.A.C. 8:43A-12.3(j) requires monitoring by a person who is continuously present for the primary purpose of anesthesia monitoring and who is separate from the person performing the procedure.

**COMMENT:** With regard to proposed N.J.A.C. 8:43A-12.3(h), it was recommended that gastroenterologists and surgeons who have completed a two-year fellowship or residency in endoscopy and who have been credentialed "by their individual hospitals" be permitted to administer agents used for conscious sedation, but that other personnel be supervised by anesthesiologists. It was further stated that "strong credentialing and quality assurance is the key to safety for the public."

**RESPONSE:** Adopted N.J.A.C. 8:43A-12.3(i) leaves the responsibility for the credentialing of physicians who may administer anesthetic agents used for conscious sedation to the facility. Others must be supervised in accordance with adopted N.J.A.C. 8:43A-12.3(i)2. The Department believes that these rules will serve the interest of patient safety.

**COMMENT:** One respondent recommended that proposed N.J.A.C. 8:43A-12.3(h) be revised so as to explicitly prohibit a registered nurse from administering intravenous sedation.

**RESPONSE:** The proposed rule specifically lists all those who may administer anesthetic agents used for conscious sedation. Hence, the rule prohibits registered nurses who do not also possess one of the enumerated qualifications from administering such agents. The rule was not revised in the manner requested.

**COMMENT:** One respondent questioned the meaning of "direct supervision" in proposed N.J.A.C. 8:43A-12.3(h)2.

**RESPONSE:** The word "direct" has been deleted. A revised definition of "supervision" may be found at N.J.A.C. 8:43A-12.2.

**COMMENT:** Given that current monitors have visual and auditory alarms, Mercer Medical Center stated that, proposed N.J.A.C. 8:43A-12.3(j) notwithstanding, it is not necessary for a "highly trained professional to monitor patients receiving conscious sedation when the physician is in the same room . . ." It was also noted that the level of

personnel required by proposed N.J.A.C. 8:43A-12.3(j) exceeds that required in the postanesthesia care unit, "where a RN may supervise a LPN who monitors the patient."

RESPONSE: The Standards of Practice Committee of the American Society for Gastrointestinal Endoscopy has stated that "offsetting the apparent advantages of monitoring devices is the tendency to surrender the responsibility for patient safety to a machine." The Department agrees, and the requirement for monitoring of patients receiving conscious sedation by an individual who is continuously present for the primary purpose of anesthesia monitoring, N.J.A.C. 8:43A-12.3(j), has been retained.

The Department realizes that the patient monitoring requirements for the Post-Anesthesia Care Unit (PACU) differ from those which apply during the administration of anesthesia. In the interest of patient safety, N.J.A.C. 8:43A-12.11 specifies the training required of all registered professional nurses assigned to the PACU.

COMMENT: One hospital remarked that proposed N.J.A.C. 8:43A-12.3(j)2iv would "add a financial burden and/or severely limit the nursing staff in Radiology" by requiring nurses to be certified in advanced cardiac life support.

RESPONSE: Although N.J.A.C. 8:43A-12 was not developed for the purpose of regulating hospital radiology departments, the Department plans to amend N.J.A.C. 8:43G-6 of the hospital licensing standards, so as to include a rule similar to N.J.A.C. 8:43A-12.3(j)2iv. The Department maintains that anesthesia standards should be based upon level of anesthesia induced rather than upon the location in which anesthesia is administered. On the recommendation of the Anesthesia Standards Advisory Committee of the Department, N.J.A.C. 8:43A-12.3(j)2iv was included in order to permit a registered professional nurse certified in ACLS and trained and experienced in the use of monitoring devices to monitor patients receiving conscious sedation. The list of professionals who may monitor patients receiving conscious sedation would otherwise be limited to those who are permitted to administer anesthetic agents used for conscious sedation. The rule does not require the facility to use nurses described by N.J.A.C. 8:43A-12.3(j)2iv for the purpose of patient monitoring.

COMMENT: Planned Parenthood of Greater Northern New Jersey, Inc., expressed uncertainty regarding the relation between the proposed rules and procedures such as simple suturing, vasectomy, and implantation of Norplant. Classification as a "minor local block" might, for example, preclude injection of Xylocaine by a urologist. The Planned Parenthood League of Middlesex County stated that it would be "unnecessary, costly and inappropriate to require an anesthesiologist or registered nurse anesthetist to be in attendance" for implantation of Norplant.

RESPONSE: N.J.A.C. 8:43A-12.3(k) has been amended on adoption so as to specifically address the administration of a minor conduction block in a way in which the proposed rule, with its reference to conscious sedation, did not.

The procedures discussed by the commenters involve the administration of minor conduction blocks. In accordance with adopted N.J.A.C. 8:43A-12.3(k), it is not necessary that an anesthesiologist or a CRNA administer a minor conduction block. A new subsection has been added at N.J.A.C. 8:43A-12.3(l) which requires that such blocks be monitored continuously by medical or nursing personnel. The adopted rules do not preclude the injection of Xylocaine by a urologist.

COMMENT: Concern was expressed regarding the confidentiality of the reports described in proposed N.J.A.C. 8:43A-12.4(a)15iii. The commenter suggested that, if confidentiality cannot be guaranteed, reportable incidents be limited to deaths and comas. If the reports are "discoverable as evidence," they will be used extensively in malpractice cases.

RESPONSE: The rule was not revised. As the rule states, reports will be made available only to Department of Health personnel for official purposes and to the specific facility to which the report pertains. Otherwise, the policy of the Department will be to release the reports only as a result of a court order, not solely upon subpoena.

COMMENT: One commenter remarked that use of the term "anesthesia" in proposed N.J.A.C. 8:43A-12.8(c), (g), and (h) is unclear as to which types of anesthesia are included.

RESPONSE: The term "anesthesia" includes the types of anesthesia specified in the definition of "anesthetic agent" in N.J.A.C. 8:43A-12.2, that is, conscious sedation, deep sedation, conduction anesthesia, and general anesthesia. Note, however, that proposed N.J.A.C. 8:43A-12.8(c) has been revised so as to apply only in the case of patients receiving general or regional anesthesia (see below).

COMMENT: Whereas one respondent questioned whether or not proposed N.J.A.C. 8:43A-12.8(c) is intended to apply to the case of conscious sedation, others stated that continuous monitoring of body temperature is unnecessary both in this situation and in the case of procedures lasting less than one hour.

RESPONSE: Having received further technical advice, the Department concurs that continuous monitoring of the body temperature of a patient receiving conscious sedation or a minor conduction block is not necessary as a minimum standard of safety. Consequently, the rule has been revised so as to apply only in the case of patients receiving general or regional anesthesia. The Department, however, disagrees with the comment which was based on the duration of a procedure.

COMMENT: One respondent stated that technology such as pulse oximetry and electrocardiography, which is required by proposed N.J.A.C. 8:43A-12.8(d) and 12.8(f), has not been proven to reduce the frequency of adverse occurrences during conscious sedation for gastrointestinal endoscopy. This technology, however, would "increase cost to physicians, patients, and taxpayers." Another gastroenterologist noted that, although continuous EKG monitoring is appropriate for high risk patients, such monitoring would be unnecessary and costly if required on a routine basis. Another stated that constant EKG monitoring would be counterproductive and that patients "receiving conscious sedation for endoscopy should have EKG monitoring if they have a history of significant cardiac arrhythmia requiring medication, or if active ischemic heart disease is present, or if it is deemed clinically necessary in the judgment of the attending physician." Planned Parenthood of Monmouth County, Inc., and the Planned Parenthood Federation of America, Inc., added that pulse oximetry and EKG monitoring are unnecessary for patients receiving conscious sedation. More generally, one commenter claimed that the surgical procedures performed in an ambulatory setting are shorter and less complex than those performed in hospitals and therefore, require less with respect to monitoring equipment. Metropolitan Surgical Associates, Inc., noted that purchase of equipment to the extent required by the proposed rules would result in an unnecessary fee increase for abortion procedures and would, therefore, limit access to services. One commenter requested that requirements for "high-tech equipment in the operating rooms" be kept to a minimum.

RESPONSE: After reconsidering the need for continuous use of pulse oximetry and electrocardiographic monitoring for patients receiving anesthesia and the issues of quality, cost, and access, the Department has revised proposed N.J.A.C. 8:43A-12.8(d) so as to require the use of pulse oximetry during administration of general anesthesia, regional anesthesia, or conscious sedation, rather than during administration of all anesthesia. The rule is now similar in scope to N.J.A.C. 8:43A-12.8(f), which concerns EKG monitoring. While the Department agrees that patients with a "history of significant cardiac arrhythmia" would be especially likely to benefit from the use of EKG monitoring, the Department maintains that any patient receiving one of the specified types of anesthesia could benefit from continuous monitoring by pulse oximetry and EKG during administration of anesthesia. For example, a patient receiving anesthesia may have undiscovered cardiac disease. With regard to patients receiving conscious sedation, the Department believes that the required monitoring is appropriate, given the possibility of the state of anesthesia progressing to a deeper level than intended. Finally, although it may be true that procedures performed in an ambulatory setting differ from those performed in a hospital, the rules require monitoring on the basis of level of anesthesia rather than on the basis of duration or complexity of procedure.

COMMENT: One commenter recommended that "clinically feasible" be changed to "clinically indicated" in proposed N.J.A.C. 8:43A-12.8(e) because of the technical difficulty encountered in trying to obtain accurate end-tidal carbon dioxide readings on non-intubated patients.

RESPONSE: On the basis of discussion with members of its Anesthesia Standards Advisory Committee, the Department maintains that accurate readings can be obtained on non-intubated patients. The rule was not revised. The intent of the rule is to require that end-tidal carbon dioxide monitoring be performed whenever possible.

COMMENT: Several respondents commented on the frequency of determining blood pressure, pulse rate, and respiration specified by proposed N.J.A.C. 8:43A-12.8(g). One commenter claimed that current monitors have alarms which render the recording of vital signs every five minutes unnecessary for patients under conscious sedation or conduction anesthesia. Another recommended a frequency of every 15 minutes for patients receiving conscious sedation and local anesthesia. Also, the feasibility of a frequency of every five minutes was questioned in the case

of first trimester abortions, which have a duration of approximately three minutes.

**RESPONSE:** The Department contends that a requirement for the recording of blood pressure, pulse rate, and respirations every five minutes for all patients receiving anesthesia is reasonable. Since the rule does not specify a minimum interval during which these must be recorded, the rule is not incompatible with procedures of short duration. Use of monitors with alarms does not provide information sufficient to replace the recordkeeping required by N.J.A.C. 8:43A-12.8(g). The rule, therefore, was not revised.

**COMMENT:** Two commenters stated that use of a stethoscope, as specified in proposed N.J.A.C. 8:43A-12.8(h), is unnecessary for patients receiving local anesthesia and conscious sedation. One of the commenters noted that the proposed rule requires only that the stethoscope be used "when indicated" and, consequently, questioned the intent of the rule.

**RESPONSE:** Given the modest cost of a stethoscope and the importance of the information which it provides, the rule was not revised. The intent of the rule is to encourage use of the stethoscope without denying health care professionals reasonable flexibility in determining the circumstances under which such use is appropriate.

**COMMENT:** It was claimed that the proposed requirement for availability of a peripheral nerve stimulator, N.J.A.C. 8:43A-12.8(i), is unnecessary in the case of patients receiving local anesthesia and conscious sedation.

**RESPONSE:** The Department agrees, and the rule has been revised accordingly.

**COMMENT:** One commenter remarked that, if proposed N.J.A.C. 8:43A-12.10(a) and 12.11 would require a hospital radiology department to have a postanesthesia care unit and staff, the rule would impose a financial burden upon the facility.

**RESPONSE:** It is not the intent of N.J.A.C. 8:43A-12 to regulate hospital radiology departments. If the radiology department is an anesthetizing location, however, the subchapter of the hospital licensure manual concerning anesthesia, N.J.A.C. 8:43G-6, does apply. Moreover, N.J.A.C. 8:43G-35 specifically addresses postanesthesia care in hospitals. The Department is currently studying the relationship between the hospital postanesthesia care standards and the radiology department.

**COMMENT:** The New Jersey State Nurses Association stated that the Department should refrain from promulgating nursing staff rules such as proposed N.J.A.C. 8:43A-12.11 and that the postanesthesia nursing staff is qualified to develop and implement policies concerning postanesthesia care qualifications and training. According to another commenter, qualifications and training should depend upon the level of anesthesia used, and the items listed in proposed N.J.A.C. 8:43A-12.11(c) are unnecessary in the case of local anesthesia and conscious sedation.

**RESPONSE:** The Department is required by N.J.S.A. 26:2H-5 to adopt standards related to the licensing of health care facilities. The areas of staff qualifications and training are appropriate subjects for minimum standards. Nevertheless, the rules do recognize the role of the facility in developing and implementing policies for training postanesthesia care staff. N.J.A.C. 8:43A-12.11(c), for example, enumerates the areas to be addressed during training, but does not specify the content of the training program in any detail. Also, proposed N.J.A.C. 8:43A-12.11(d) has been revised and N.J.A.C. 8:43A-12.11(e) has been deleted in order to provide additional flexibility to the facility with respect to the qualifications and training of registered nurses in the postanesthesia care unit. In requiring training concerning management of the patient during altered states of consciousness, N.J.A.C. 8:43A-12.11(c)3 allows for variation on the basis of the levels of anesthesia used, including local anesthesia and conscious sedation.

**COMMENT:** With regard to proposed N.J.A.C. 8:43A-12.11(d), one respondent asserted that it would be "extremely difficult" for a facility to have at least one postanesthesia care unit nurse certified in advanced cardiac life support (ACLS). Moreover, the proposed rule is unnecessary, given proposed N.J.A.C. 8:43A-12.3(b), which requires that there be a physician or registered nurse, at least one of whom is certified in ACLS, present in the facility as long as any patient remains in the facility. Another commenter claimed that the rule would be excessive when an anesthesiologist is also on the premises. One commenter implied that proposed N.J.A.C. 8:43A-12.11(e), too, is unnecessary.

**RESPONSE:** Given the requirements of N.J.A.C. 8:43A-12.3(b), the Department agrees that some of the concerns which generated proposed N.J.A.C. 8:43A-12.11(d) and (e) are adequately addressed by N.J.A.C. 8:43A-12.3(b). The latter rules, consequently, have been simplified as revised N.J.A.C. 8:43A-12.11(d). Note that a single registered nurse could

satisfy the requirement for an ACLS-certified individual in N.J.A.C. 8:43A-12.3(b) and the requirement for a registered nurse in N.J.A.C. 8:43A-12.12.

**COMMENT:** Planned Parenthood of Monmouth County, Inc., remarked that, in the case of conscious sedation, there should be two health care personnel in the facility and at least one in the postanesthesia care unit (PACU). Proposed N.J.A.C. 8:43A-12.12 requires that there be at least two health care personnel present whenever a patient is in the PACU. Hackettstown Community Hospital commented that the hospital would need to increase staffing levels in order to comply with the proposed rule and asked about the justification for the additional expense and about the source of payment. Another respondent requested that "additional Registered Nurses in the operating room or the recovery room" not be required.

**RESPONSE:** The Department has revised N.J.A.C. 8:43A-12.12, following comparison of the rule with N.J.A.C. 8:43G-32.4(b) of the hospital licensing standards for same-day surgery services. Adopted N.J.A.C. 8:43A-12.12 requires the presence of a registered professional nurse whenever a patient is in the PACU. It further requires that a second health care staff member be immediately available.

N.J.A.C. 8:43G-32.4(b) applies when a hospital has a PACU dedicated to same-day surgery patients. If a hospital has had to implement staffing changes in response to adoption of N.J.A.C. 8:43G-32.4(b), the hospital may use this as a basis for a rate appeal.

**COMMENT:** Planned Parenthood of Monmouth County, Inc., stated that, since patients receiving local anesthesia and conscious sedation can walk to the recovery area, "one staff person to accompany the transfer is sufficient." Proposed N.J.A.C. 8:43A-12.13(a) requires that the patient be accompanied by two individuals.

**RESPONSE:** The Department agrees that the recommended change would not jeopardize patient safety. N.J.A.C. 8:43A-12.13(a)1 has been added accordingly.

**COMMENT:** It was suggested that "transfer to second tier postanesthesia unit area" be added to proposed N.J.A.C. 8:43A-12.13(d), since most outpatient facilities have, or will have, a second tier PACU in which patient monitoring is less intense. Another respondent asked how patients in abortion clinics can be continually monitored in the PACU when they "are anxious to leave after 10 minutes."

**RESPONSE:** The Department acknowledges that it was not the intent of the proposed rule to extend the utilization of an objective scoring system for the tracking of patient recovery from anesthesia to a second stage recovery area. The rule has been revised so as to clarify the fact that "discharge" refers to discharge from the PACU. With regard to the latter comment, it should be noted that the rule does not specify a minimum amount of time during which the patient must remain in the PACU.

**COMMENT:** One commenter asserted that the monitoring required by proposed N.J.A.C. 8:43A-12.13(e) and (f) is not needed in the second tier PACU.

**RESPONSE:** The Department does not anticipate that there will be a need for the monitoring required by N.J.A.C. 8:43A-12.13(e) and (f) to extend into second stage recovery. The facility is responsible for developing and implementing policies and procedures concerning extent of postanesthesia monitoring (see N.J.A.C. 8:43A-12.4(a)7 and 10). These policies and procedures should take patient condition into account.

**COMMENT:** The Newark Mini-Surgi-Site, Inc., recommended that "clinically feasible" in proposed N.J.A.C. 8:43A-12.13(e) and (f) be changed to "clinically indicated" and that the use of EKG monitors and pulse oximeters, which must be available, be at the discretion of the anesthesia personnel. It was claimed that the proposed rule would result in considerable expense to the facility, although an intubated patient has never been transferred to the recovery suite in this facility and EKG monitoring and pulse oximetry are not necessary for every patient. Short-acting anesthetic agents are used, and there is no need for a second-stage recovery area. Planned Parenthood of Monmouth County, Inc., asserted that monitoring in the PACU should be "that which is clinically indicated, based on the perioperative monitoring. . ." Hence, pulse oximetry and EKG monitoring are unnecessary for patients receiving conscious sedation with local anesthesia.

**RESPONSE:** The Department has reconsidered the need for pulse oximetry and EKG monitoring of postanesthesia patients who have received conscious sedation or minor conduction blocks. On the basis of discussion with members of the Department's Anesthesia Standards Advisory Committee, the proposed rules have been revised so as to require pulse oximetry and EKG monitoring in the postanesthesia care unit only

for patients who have received general or regional anesthesia. The phrase "clinically feasible" has been retained in order to encourage maximal use of this technology in the case of patients who have received general or regional anesthesia. Adopted N.J.A.C. 8:43A-12.13(e) and (f) do not exceed the perioperative requirements for pulse oximetry and EKG monitoring specified in N.J.A.C. 8:43A-12.8(d) and (f).

COMMENT: With regard to proposed N.J.A.C. 8:43A-12.14, one respondent stated that there is no need for a sterile PACU if sterile procedures are not performed in the facility. The commenter added that vacuum aspiration abortion is classified as a clean, but not sterile, surgical procedure.

RESPONSE: The Department acknowledges that there may be facilities in which surgical procedures requiring sterile conditions are not performed. In such instances, the Department will consider requests for a waiver, submitted in accordance with N.J.A.C. 8:43A-2.7, on a case-by-case basis.

COMMENT: Ervin Moss, M.D., of the New Jersey State Society of Anesthesiologists noted that, contrary to the intent of the proposed rules, proposed N.J.A.C. 8:43A-12.14(d) does not require EKG monitoring or availability of end-tidal carbon dioxide monitoring. The rule also fails to require that each patient be monitored by pulse oximetry. The Planned Parenthood Federation of America, Inc., stated that proposed N.J.A.C. 8:43A-12.14(d) is "excessive and unnecessary" for facilities which do not administer general anesthesia. One commenter stated that the equipment required by N.J.A.C. 8:43A-12.14(d) should be determined by the surgical procedure performed, for patients receiving conscious sedation. Another commenter requested deletion of requirements for "high-tech equipment in the recovery room."

RESPONSE: N.J.A.C. 8:43A-12.14(d) is intended to list the equipment and services which must be available in the postanesthesia care unit. In order to render the rule consistent with N.J.A.C. 8:43A-12.13(e) through (g), which do require specific types of monitoring, "electrocardiographic monitoring" and access to "end-tidal carbon dioxide monitoring" have been added to the services enumerated in N.J.A.C. 8:43A-12.14(d). Since the monitoring requirements do, in fact, depend on the level of anesthesia administered, the Department acknowledges that a limited exemption is appropriate for facilities in which neither general nor regional anesthesia is administered. N.J.A.C. 8:43A-12.14(d) has been added accordingly. As in the case of other rules in this subchapter, N.J.A.C. 8:43A-12.14(d) refers to specific levels of anesthesia rather than to specific surgical procedures performed.

In addition to the changes which have been made as a result of comments received, editorial or technical changes have been made at N.J.A.C. 8:43A-12.2 in the definitions of "conscious sedation" and "monitoring," N.J.A.C. 8:43A-12.4(a)5, N.J.A.C. 8:43A-12.4(a)15iii, and N.J.A.C. 8:43A-12.8(j). Also, the intent of N.J.A.C. 8:43A-12.10(b)8 has been clarified; the revised rule explicitly excludes patients who have received minor conduction blocks, since it was not the Department's intent to include such patients.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## SUBCHAPTER 12. SURGICAL AND ANESTHESIA SERVICES

### 8:43A-12.1 Services

(a) If the facility provides surgical services to patients, the surgical and anesthesia services provided shall be limited to those procedures approved by the governing authority and the medical staff.

(b) (No change.)

### 8:43A-12.2 Definitions

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

"Anesthesiologist" means a physician who has successfully completed an approved residency program in anesthesiology\*, or who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a Fellow of the American College of Anesthesiology before 1972\*.

"Anesthetic agent" means any drug or combination of drugs administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia.

"Anesthetizing location" means any location in a health care facility where anesthetic agents are administered.

"Conduction anesthesia" means the administration of anesthetic agents to interrupt nerve impulses without loss of consciousness. Major conduction blocks include regional nerve blocks (epidural, caudal, and spinal anesthesia). Minor conduction blocks include local infiltration, local nerve blocks, and nerve blocks by direct pressure and refrigeration.

"Conscious sedation" means the administration of drugs to obtund, or dull or reduce the intensity of\*, \* pain and awareness without the loss of defensive reflexes.

**"Credentialed" means granted the privilege by the ambulatory care facility to provide specified anesthesia services, such as administration or supervision of one or more types of anesthetic agents or procedures.\***

"Deep sedation" means the administration of drugs which results in some loss of defensive reflexes; the patient, however, remains arousable by strong stimulation.

"Defensive reflexes" means the ability of an individual to counteract noxious events, especially to defend the breathing passages against foreign material.

"General anesthesia" means the administration of drugs which causes loss of consciousness, that is, complete unawareness of routine surroundings. During general anesthesia the patient is unable to make meaningful responses to even the strongest stimulation.

"Local anesthetic" means an agent which produces a transient and reversible loss of sensation in a circumscribed portion of the body.

"Minor conduction block" means the injection of a local anesthetic to stop a painful sensation in a severely circumscribed area of the body (local infiltration or local nerve block), or the block of a nerve by direct pressure and refrigeration.

"Monitoring" means the observation of a patient using instruments to measure, display, and/or record (continuously or intermittently) \*the values of\* certain physiologic variables such as pulse, blood pressure, \*oxygen saturation,\* and respiration.

"Operating room" means a unit for the performance of surgery.

"Practitioner" means a physician, a dentist, or a podiatrist.

"Regional anesthesia" means a major conduction block such as epidural, caudal, and spinal anesthesia.

"Special procedure" means patient care which requires entering the body with instruments in a potentially painful manner. Examples are: endoscopy (diagnostic and surgical), oral surgery, radiologic procedures, or emergency procedures.

"Special procedure room" means the specially equipped facility location in which special procedures are performed.

"Supervision" means \*[direct oversight of nurse anesthetists and residents by a physician who has been granted privileges in anesthesia. The supervising physician is physically present in the operating room suite or postanesthesia care unit and has no direct patient care responsibilities other than for the patients under the care of the personnel being supervised.] \*responsibility by a physician who is credentialed in accordance with medical staff bylaws, and who is immediately available for overseeing the administration and monitoring of anesthesia by anesthesia personnel.\*

### 8:43A-12.3 Surgical and anesthesia staff; qualifications

(a) Surgical procedures shall be performed only by practitioners who are licensed to practice in New Jersey and who have been granted privileges to perform those procedures by the governing body of the facility, upon the recommendation of the medical staff, after medical review of each practitioner's documented education, training, experience, and current competence.

(b) A physician and a registered professional nurse, at least one of whom is certified in advanced cardiac life support by the American Heart Association, shall be present during all surgical procedures and shall be present in the facility as long as any patient remains in the facility.

(c) There shall be a physician director of anesthesia services who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a Fellow of the American College of Anesthesiology before 1972. The medical director of the facility may serve as physician director of anesthesia services.

(d) The physician director of anesthesia services shall participate in the credentialing process and delineation of privileges of all personnel who administer anesthetic agents.

(e) Anesthetic agents administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia shall be administered in any location in the facility only in accordance with medical staff policies and procedures.

(f) All anesthetic agents, except those utilized for conscious sedation or as minor conduction blocks, shall be administered and monitored only by the following:

1. An anesthesiologist; **\*[or]\***

2. Under the **\*[direct]\*** supervision of an anesthesiologist:

**\*[i.]** A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);**\***

**\*[ii.]\*\*i.\*** A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the **\*American Association of Nurse Anesthetists (\*AANA)\***, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

**\*[iii.]\*\*ii.\*** A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; **\*[or]\***

**\*3. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise the administration of anesthesia:**

**i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the AANA; or\***

**\*[3.]\*\*4.\*** For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology **\*or oral and maxillofacial surgery\***.

(g) The administration<sup>[, supervision,]</sup> and monitoring of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by an individual who is continuously present and separate from the individual who is performing the procedure.

**(h) The supervision of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by a physician who is credentialed in accordance with medical staff bylaws, who is immediately available, and who has no direct patient care responsibilities.\***

**\*[(h)]\*\*i)\*** Anesthetic agents used for conscious sedation shall be administered only by the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation;

2. Under the **\*[direct]\*** supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer **\*or supervise\*** anesthetic agents used for conscious sedation **\*and who is immediately available\*:**

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology **\*or oral and maxillofacial surgery\***.

**\*[(i)]** The administration of anesthetic agents utilized for conscious sedation shall be provided by an individual who is continuously present in the anesthetizing location during the procedure.<sup>]</sup>

(j) The monitoring of patients who have been administered an anesthetic agent for the purpose of creating conscious sedation shall be provided by an individual who is continuously present for the primary purpose of anesthesia monitoring<sup>\*,</sup> who is separate from

the individual performing the procedure, and who is one of the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation;

2. Under the **\*[direct]\*** supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer **\*or supervise\*** anesthetic agents used for conscious sedation **\*and who is immediately available\*:**

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification;

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

iv. A registered professional nurse who is certified in advanced cardiac life support by the American Heart Association and who has training and experience in the use of monitoring devices; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology **\*or oral and maxillofacial surgery\***.

(k) Minor conduction blocks shall be administered **\*[and monitored]\*** only by **\*[one of the individuals identified in N.J.A.C. 8:43A-12.3(h). This individual shall be continuously present.]\*** **\*the following:**

1. A physician who has been credentialed in accordance with medical staff bylaws to administer minor conduction blocks;

2. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise minor conduction blocks and who is immediately available:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the AANA;

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(l) Minor conduction blocks shall be monitored continuously by medical or nursing personnel.\*

**\*[(l)]\*(m)\*** Provision shall be made for remote monitoring of the patient if radiation or another direct hazard necessitates the removal of personnel.

#### 8:43A-12.4 Policies and procedures

(a) The **\*[medical staff]\*** **\*facility\*** shall develop and implement written bylaws, rules, regulations, policies, and procedures for surgical and anesthesia services, in accordance with the governing authority and medical staff bylaws. The policies and procedures shall be reviewed annually and revised as needed, and shall include at least the following:

1.-3. (No change.)

4. Policies and procedures regarding preanesthesia evaluation, patient preparation, and intraoperative management;

5. Policies and procedures to ensure that every patient is examined by **\*a\*** practitioner immediately prior to surgery;

6. Policies and procedures for use of analgesia and anesthesia, including types which may be used for each procedure, safety regulations, and responsibilities and qualifications of persons who administer anesthesia and monitor patients;

7. Policies and procedures for the preoperative and postoperative recording of vital signs (blood pressure, temperature, respiration rate, and pulse);

8. Policies and procedures for reporting of morbidity and mortality;

9. Policies and procedures for monitoring of patients in any special procedure room or other location where patients receive anesthesia;

10. Policies and procedures for postoperative observation and care required for each type of procedure;

11. Methods to ensure that gross and microscopic tissue removed surgically or by any other procedure, including termination of pregnancy in accordance with the regulations of the New Jersey State Board of Medical Examiners, N.J.A.C. 13:35-4.2, is examined by a pathologist and a report of the findings is documented in the patient's medical/health record;

i. The facility shall ensure that the tissue is disposed of in accordance with N.J.A.C. 8:43A-14.6 of this chapter whether it is examined on the facility's premises or off the facility's premises;

12. Specification of the duration of time the patient shall remain in the facility after surgery;

13. (No change in text.)

14. Policies and procedures for the provision of written instructions to the patient (multilingual, if indicated) on pre- and post-surgical care, including, but not limited to, restrictions on food and beverages before surgery and procedures for obtaining help in the event of postoperative problems; and

15. Procedures for a systematic review and evaluation of patient care and surgical and anesthesia practices and techniques, as part of the audit and quality assurance (evaluation) system of the facility.

i. Quality assurance shall include morbidity and mortality conferences.

ii. Quality assurance activities shall include at least the monitoring of outcomes for patients receiving anesthetic agents.

iii. The facility shall notify the \*[Director of Standards and Quality Assurance,]\* Division of Health Facilities Evaluation and Licensing, New Jersey State Department of Health, by telephone at (609) \*[588-7737]\* \*588-7727\* or (800) 792-9770 within 24 hours, and in writing within 30 days, of all deaths in anesthetizing locations and unexpected intraoperative or postoperative events or outcomes related to anesthesia. The written report shall include a summary of the incident and the patient's risk status or American Society of Anesthesiology (ASA) Physical Status classification. Records of such reports and telephone calls shall be made available only to Department of Health personnel for official purposes and, for each report, to the specific facility to which the report pertains.

#### 8:43A-12.5 Records

(a) The facility shall maintain a record of all surgical procedures performed which shall include the type of procedure performed, operative diagnosis, type of anesthesia used, personnel participating, postoperative diagnosis, and any unusual or untoward occurrence.

(b) A preanesthesia note, reflecting evaluation of the patient and of the patient record prior to administration of anesthesia, shall be made or reviewed by the physician administering or supervising the administration of anesthesia and entered into the medical/health record of each patient receiving anesthesia at any anesthetizing location.

(c) A record of anesthesia that conforms with policies and procedures developed by the medical staff shall be made for each patient receiving sedation or anesthesia at any anesthetizing location.

(d) Postanesthesia notes shall be entered into the patient's medical/health record early in the postoperative period by a member of the facility's anesthesia team and after the patient's discharge from the postanesthesia care unit by a member of the postanesthesia care unit staff.

#### 8:43A-12.6 Anesthesia supplies and equipment; safety systems

(a) Diameter index safety systems or equivalent systems shall be used on all large cylinders of medical gases and wall and ceiling outlets of medical gases.

(b) Pin index safety systems with a single washer shall be used on all small cylinders to prevent interchangeability of medical gas cylinders.

(c) All medical gas hoses and adapters shall be color-coded.

(d) An oxygen failure-protection device ("fail-safe" system) shall be used on all anesthesia machines to announce a reduction in oxygen pressure and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced.

(e) A vaporizer exclusion ("interlock") system shall be used to assure that only one vaporizer, and therefore only a single agent, can be actuated on any anesthesia machine at one time.

(f) To prevent delivery of excess anesthesia during an oxygen flush, no vaporizer shall be placed in the circuit downstream of the oxygen flush valve.

(g) All anesthesia vaporizers shall be pressure-compensated in order to administer a constant non-pulsatile output.

(h) Accurate flow meters and controllers shall be used to prevent the delivery to a patient of an inadequate concentration of oxygen relative to the amount of nitrous oxide or other medical gas.

(i) Alarm systems shall be in place for high (disconnect), low (subatmospheric), and minimum ventilatory pressures in the breathing circuit for each patient under general anesthesia.

(j) There shall be a written protocol to identify those situations in which surgery may proceed when there are disabled alarms, depleted batteries and inactive sensors in oxygen monitors, improperly positioned breathing-circuit sensors, or other insufficiencies.

(k) Each facility shall have until April 1, 1991, to purchase equipment necessary to comply with the provisions of this section. Thereafter, facilities either shall have such equipment in place or else shall have written proof that, by April 1, 1991, an order for such equipment has been received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery and shall be used in conformance with this section.

#### 8:43A-12.7 Anesthesia supplies and equipment; maintenance and inspections

(a) A record shall be maintained of all service and maintenance performed on all anesthesia machines, ventilators, and vaporizers. The record shall include machine identification; the name of the servicing agent; the work performed; and the date of the work. This maintenance shall conform with maintenance requirements established by the machine manufacturer. Credentials of each servicing agent shall be approved by the machine manufacturer or shall be determined by the physician director of anesthesia services to be equivalent to the credentials of manufacturers' servicing agents.

(b) All anesthesia equipment shall be inspected fully at the beginning of each day of use. A record of each such inspection shall be maintained for each machine. The inspection shall conform with a checklist that is supplied by the manufacturer of the machine, issued by the Federal Food and Drug Administration, or, alternatively, developed by the facility's anesthesia services and approved by the physician director of anesthesia services.

(c) All anesthesia equipment shall be inspected before each use. A record of each inspection shall be maintained for each machine and shall also be noted in the patient's anesthesia record. Each record may consist of a single phrase or check mark in a box on a form.

#### 8:43A-12.8 Anesthesia supplies and equipment; patient monitoring

(a) An in-circuit oxygen analyzer shall monitor the oxygen concentration within the breathing circuit, displaying the percent oxygen of the total mixture, for all patients receiving general anesthesia.

(b) A respirometer (volumeter) measuring exhaled tidal volume shall be used whenever the breathing circuit of a patient under general anesthesia allows.

(c) The body temperature of each patient under \*general or regional\* anesthesia shall be continuously monitored.

(d) Pulse oximetry shall be performed continuously during administration of \*[all]\* \*general anesthesia, regional\* anesthesia, \*[including intravenous]\* \*or\* conscious sedation, at all anesthetizing locations, unless such monitoring is not clinically feasible for the patient. Any alternative method of measuring oxygen saturation may

be substituted for pulse oximetry if the method has been demonstrated to have at least equivalent clinical effectiveness.

(e) End-tidal carbon dioxide monitoring shall be performed continuously during administration of all general anesthesia, unless such monitoring is not clinically feasible for the patient.

(f) An electrocardiogram monitor shall be used continuously on all patients receiving general anesthesia, regional anesthesia, or conscious sedation at any anesthetizing location.

(g) Blood pressure, pulse rate, and respirations shall be determined and charted at least every five minutes for all patients receiving anesthesia at any anesthetizing location.

(h) A precordial stethoscope or esophageal stethoscope shall be used when indicated on each patient receiving anesthesia. If necessary, the stethoscope may be positioned on the posterior chest wall or tracheal area.

(i) A peripheral nerve stimulator shall be available to any anesthetizing location **\*in which patients receive general or regional anesthesia\*** to monitor the patient's extent of muscle paralysis from muscle relaxants. Another peripheral nerve stimulator shall be available within the postanesthesia care unit.

(j) Each facility shall have until April 1, 1991, to purchase equipment necessary to comply with the provisions of this section. Thereafter, facilities either shall have such equipment in place or else shall have written proof that\*,\* by April 1, 1991, an order for such equipment has been received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery and shall be used in conformance with this section.

#### 8:43A-12.9 Anesthesia staff education and training

Anesthesia staff education programs and training sessions shall include, but not be limited to, patient safety and the inspection and use of equipment.

#### 8:43A-12.10 Postanesthesia care policies and procedures

(a) Facilities providing anesthesia services shall have a postanesthesia care unit.

(b) The postanesthesia care unit shall have written policies and procedures which are reviewed annually, revised as needed, and implemented. These shall include at least:

1. Criteria for admission to and discharge from the unit;
2. Delineation of the primary medical responsibility for postanesthesia and postsurgical care of each patient in the unit, including authority to discharge;
3. Policies and procedures regarding monitoring of patients in the postanesthesia care unit, including availability of monitoring equipment;
4. Protocol of care for all patients;
5. Protocol for patient emergencies;
6. Policies and procedures regarding orders for intravenous administration of medications;
7. Requirements for documentation of patient status; and
8. A requirement that patients who receive anesthesia\*, **excluding minor conduction blocks,\*** not drive themselves home after discharge and that they be accompanied home by another person who accepts responsibility for the patient. If the patient fails to comply with the requirement, the circumstances shall be documented in the patient's medical/health record.

#### 8:43A-12.11 Postanesthesia care staff qualifications

(a) There shall be a physician director with overall responsibility for postanesthesia care. The physician director of anesthesia services may serve as physician director of postanesthesia care.

(b) There shall be a registered professional nurse with administrative responsibility for nursing care provided in the postanesthesia care unit.

(c) All registered professional nurses assigned to the postanesthesia care unit shall be trained in postanesthesia care, including at least:

1. Management of airway and ventilatory function;
2. Monitoring of cardiac function, arrhythmia recognition, and treatment of life-threatening emergencies;

3. Management of the patient during altered states of consciousness;

4. Management of monitoring and respiratory equipment;

5. Management of fluid lines, tubes, drains, and catheters;

6. Cardiopulmonary resuscitation;

7. Administration of drugs and identification of drug-related problems; and

8. Recognition of the actions and interactions of anesthetic techniques.

(d) All registered professional nurses in the postanesthesia care unit shall have training in basic cardiac life support **\*and in critical care\***. **\*[There shall be at least one registered professional nurse certified in advanced cardiac life support by the American Heart Association in the postanesthesia care unit whenever there is a patient in the unit.]\***

(e) All registered professional nurses in the postanesthesia care unit shall have training in critical care. There shall be at least one registered professional nurse who has successfully completed a course in critical care in the postanesthesia care unit whenever there is a patient in the unit.]\*

#### 8:43A-12.12 Postanesthesia care staff time and availability

There shall be at least **\*[two health care personnel,]\*** one **\*[of whom is a]\*** registered professional nurse**\*,]\*** present whenever a patient is in the postanesthesia care unit**\*, and a second health care staff member shall be immediately available\***. Additional nursing staff shall be assigned on the basis of the volume and case mix of patients in the unit.

#### 8:43A-12.13 Postanesthesia care patient services

(a) The patient shall be accompanied to the postanesthesia care unit by two individuals, one of whom, stationed at the patient's head, shall be a member of the anesthesia team.

**\*1. If a patient who has received conscious sedation or a minor conduction block is able to walk to the postanesthesia care unit, the patient shall be accompanied by at least one individual, who shall be a member of the anesthesia team.\***

(b) An oral report on the patient's condition shall be given to postanesthesia care unit nursing staff by a member of the anesthesia team when the patient is admitted to the postanesthesia care unit.

(c) A member of the anesthesia team shall stay with the patient in the postanesthesia care unit at least until the patient's vital signs, including blood pressure, pulse, and respiration, are recorded.

(d) The postanesthesia care unit shall continually evaluate the condition of each patient and maintain an accurate written report of his or her vital signs, with an objective scoring system used to track the patient's recovery from anesthesia from the time of admission to the unit until discharge **\*from the postanesthesia care unit\***.

(e) Electrocardiographic monitoring shall be conducted for each patient who has received general anesthesia**\*,]\*** **\*or\*** regional anesthesia, **\*[or conscious sedation,]\*** unless such monitoring is not clinically feasible for the patient.

(f) Each patient **\*who has received general anesthesia or regional anesthesia\*** shall be monitored by pulse oximetry, unless such monitoring is not clinically feasible for the patient.

(g) The postanesthesia care unit shall have immediate access to end-tidal carbon dioxide monitoring.

(h) The medical record maintained for each patient in the postanesthesia care unit shall include at least such preoperative data as allergies, physical and mental impairments, prostheses, electrocardiogram, vital signs, radiologic findings, laboratory values, drug use, and mobility limitations.

(i) The medical record maintained for each patient in the postanesthesia care unit shall include at least such postoperative data as the patient's general condition, respiration, consciousness, circulation, special problems or precautions, summary of fluids received during surgery, and oxygen saturation.

(j) Patients shall be discharged from the postanesthesia care unit using discharge criteria, including authority to discharge, which have been developed through the postanesthesia policies and procedures specified at N.J.A.C. 8:43A-12.10(b).

## HEALTH

## ADOPTIONS

### 8:43A-12.14 Postanesthesia care units and equipment

(a) Postanesthesia care units shall be adjacent to or within the operating suite.

(b) The postanesthesia care unit shall be maintained as a closed unit. Access to the restricted zone of the postanesthesia care unit shall be through or past a control center.

(c) All staff in the postanesthesia care unit shall be attired in scrub attire. Any other individuals who are permitted limited access shall wear scrub attire, cover gowns, or jumpsuits.

(d) Equipment and services available in the postanesthesia care unit shall include at least emergency equipment and drugs, pulse oximetry, **\*electrocardiographic monitoring, body temperature monitoring,\*** equipment necessary for intubation and extubation,

respirometer, various means of oxygen delivery, constant and intermittent suction, blood pressure monitoring, adjustable lighting, peripheral nerve stimulator, equipment which ensures protection of the patient's privacy, and immediate access to a ventilator **\*and to end-tidal carbon dioxide monitoring\*.**

**\*1. If neither general anesthesia nor regional anesthesia is administered in the facility, then the requirements for pulse oximetry, electrocardiographic monitoring, and a peripheral nerve stimulator in (d) shall not apply to the postanesthesia care unit.\***

(e) If the facility provides a second stage recovery area in addition to a postanesthesia care unit, the requirements of (a) through (d) above shall not apply to the second stage recovery area.

# PUBLIC NOTICES

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Notice of Public Testimony Session

December 18, 1990

Take notice that the following agenda item is scheduled for Notice of Proposal in the December 17, 1990 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Tuesday, December 18, 1990 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call Celeste Carpiano at (609) 292-0739 by 12:00 noon Friday, December 14, 1990.

Rule Proposal: N.J.A.C. 6:12, Governor's Teaching Scholars Program.

**Please Note:** Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the November 7, 1990 monthly public meeting.

### (b)

#### BUREAU OF GRANTS AND CONTRACTS

#### Notice of Availability of Directory of Federal and State Programs

Take notice that the New Jersey Department of Education has available for the general public the 1990 edition of **Directory of Federal and State Programs** which gives information regarding the availability of Federal and State grant funds pursuant to Chapter 7, laws of 1987, supplementing Title 52 of the Revised Statutes. A copy of this directory has been given to each local education agency and county Office of Education. Copies may be obtained by writing to:

Bureau of Grants and Contracts  
New Jersey State Department of Education  
CN 500  
Trenton, NJ 08625

## ENVIRONMENTAL PROTECTION

### (c)

#### DIVISIONS OF SOLID AND HAZARDOUS WASTE MANAGEMENT

#### Notice of Action on Petition for Rulemaking concerning Fees for Solid and Hazardous Waste Haulers and Facilities

N.J.A.C. 7:26-16.13

Petitioner: Waste Management Association.

Authority: N.J.S.A. 13:1E-6(a)2; 52:14B-4(f).

Take notice that on June 19, 1990, the Department of Environmental Protection received a petition from Waste Management Association requesting an amendment to N.J.A.C. 7:26-16.13 concerning fees for solid and hazardous waste haulers and facilities subject to disclosure statement and integrity review pursuant to N.J.S.A. 13:1E-126 et seq. ("A-901"). Notice of receipt of this petition was published in the August 6, 1990, New Jersey Register at 22 N.J.R. 2364(a).

Specifically, petitioner requests that an amendment to the current fee structure be implemented which:

- Bases each regulated entity's fee not only on the number of key individuals of the entity but also on the entity's annual revenue;
- Eliminates non-managerial individuals from the formula for determining the number of key individuals;

c. Establishes fees which increase incrementally when one or more key individuals is added;

d. Establishes separate application and renewal fees which are tied to the anticipated effort required to process an application and renewal, respectively;

e. Reinstates a lower fee for family-owned businesses; and

f. Establishes a fee structure which is "designed to recover not more than the actual amount of appropriation proposed in Governor Florio's current budget."

In accordance with N.J.A.C. 7:1-1.2, the Department gives notice that it has deferred the matter for further deliberation since the amendment requested by the Petitioner represents a significant change in Department policy and in the fee structure of the disclosure rules. The Department believes that further deliberation is required before taking action on the petition.

The Department will deliberate on these issues until no later than November 30, 1990, at which time the results of its deliberation will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 7:1-1.2.

### (d)

#### DIVISION OF WATER RESOURCES

#### Amendment to the Atlantic County Water Quality Management Plan Public Notice

Take notice that an amendment to the Atlantic County Water Quality Management (WQM) Plan has been submitted for approval. The amendment would change the alignment of the sanitary sewer line to serve the site of the Atlantic County Utilities Authority's Environmental Park solid waste facility from that specified in the Egg Harbor Township Wastewater Management Plan to a more northerly alignment. The new alignment will run from the Park in the rights-of-way of Pleasant Avenue, Mill Road and Ohio Avenue.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the Office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026 or the Atlantic County Department of Regional Planning and Development at (609) 345-6700.

Interested persons may submit written comments on the amendment to Edward Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

**DIVISION OF WATER RESOURCES****Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan  
Public Notice**

Take notice that an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would identify a treatment works facility to be utilized at the Environmental Protection Agency's Environmental Technology and Engineering (E-TEC) Facility in Edison Township. Process wastewater will be collected in holding tanks and treated, if necessary, prior to discharge to the Middlesex County Utilities Authority (MCUA). Process wastewater that cannot be treated to meet pretreatment standards will be transported off-site for treatment and disposal. The quantity of wastewater discharged from the facility to MCUA will not exceed 100,000 gallons per day.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

**DIVISION OF WATER RESOURCES****Amendment to the Mercer County Water Quality Management Plan  
Public Notice**

Take notice that Hopewell Township has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would update the Hopewell Township Wastewater Management Plan (WMP). The WMP identifies additional sewer service areas in the Washington Crossing-Titusville neighborhood to be treated by the Ewing-Lawrence Sewerage Authority (ELSA). In the southeast quadrant of the Township, a sewer service area expansion from 1,100 acres to 2,400 acres is proposed. This ELSA sewer service expansion includes a 270 acre transfer from the Stony Brook Regional Sewerage Authority (SBRSA) service area to the ELSA service area. The SBRSA-Hopewell Borough Sewage Treatment Plant service area is expanded to include a residential development adjacent to the Princeton Farms Residential Development. The SBRSA-Pennington Borough Sewage Treatment Plant service area is expanded to include a proposed Life Care Facility.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, County Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water

Quality Planning at (609) 633-7026 or the Mercer County Planning Division at (609) 989-6545.

The Mercer County Planning Board will hold a public hearing on the proposed WQM Plan amendment. The public hearing will be on Wednesday, December 12, 1990, at 8:30 A.M. in Room 211 of the Mercer County Administration Building. Interested persons may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(c)

**DIVISION OF WATER RESOURCES****Amendment to the Monmouth County Water Quality Management Plan  
Public Notice**

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes a spray irrigation treatment system to service a proposed 130-home golf course community and clubhouse that will be located in Marlboro Township. The design wastewater flow will be 50,000 gallons per day. This area is presently designated in the Western Monmouth Utilities Authority Wastewater Management Plan as being served by individual subsurface sewage disposal systems less than 2,000 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

**DIVISION OF WATER RESOURCES****Amendment to the Northeast, Upper Raritan and Lower Raritan/Middlesex County Water Quality Management Plans  
Public Notice**

Take notice that on September 6, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4),

an amendment to the Northeast, Upper Raritan and Lower Raritan/Middlesex County Water Quality Management (WQM) Plans was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Warren Township. The WMP identifies the entire Raritan River Basin portion of Warren Township as being within the existing or proposed sewer service areas to the Somerset-Raritan Valley Sewerage Authority (SRVSA) Sewage Treatment Plant (STP). Portions of the Townships of Bernards, Bridgewater and Green Brook, including the "Green Brook II" and "Top of the World" proposed developments in Green Brook Township, are included in the existing or proposed sewer service areas to the SRVSA STP. Within the Passaic River Basin portion of the Township, the WMP delineates the existing and proposed sewer service areas for the Warren Sewerage Authority Stage I/II, Stage IV and Stage V STPs and allows for future expansion of these STPs to treat projected wastewater flows.

## (a)

**DIVISION OF WATER RESOURCES**  
**Amendment to the Sussex County Water Quality**  
**Management Plan**  
**Public Notice**

**Take notice** that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Sparta Township. That document allows for the upgrade and expansion of the Sparta Township Plaza Sewage Treatment Plant to a design capacity of 125,000 gallons per day and establishes a sewer service area for that facility. The WMP identifies five other existing wastewater treatment plants within the Township and specifies a sewer service area for each. The majority of the Township is included within the individual on-site wastewater treatment system service area.

**This notice** is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Water Resource Management Program, 55-57 High Street, Newton, New Jersey 07860; and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, Third Floor, 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 either the Bureau of Water Quality Planning at (609) 633-7026 or the Sussex County Water Resource Management Program at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Tuesday, December 11, 1990 at 7:30 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above; and Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

## (b)

**DIVISION OF WATER RESOURCES**  
**Amendment to the Tri-County Water Quality**  
**Management Plan**  
**Public Notice**

**Take notice** that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Township and the City of Burlington Wastewater Management Plan (WMP). The Township and City of Burlington WMP proposes to expand the sewer service area of Burlington Township and Burlington City to include the majority of both municipalities. In addition, the WMP proposes to upgrade and expand the Burlington Township Central Avenue Wastewater Treatment Facility (WTF) to a wastewater flow capacity of 3.65 million gallons per day (MGD) and move the effluent outfall location to the Delaware River. The existing LaGorce Square WTF will be abandoned and replaced by a 1.0 MGD pumping station. This pumping station will transfer wastewater from eastern Burlington Township to the expanded Central Avenue WTF. The Burlington City WTF will be upgraded and rerouted to a design capacity of 2.7 MGD and the effluent outfall location will be moved to the Delaware River. An existing 600,000 GPD force main, which transfers wastewater from the Central Avenue WTF to the City WTF, will become a permanent component of the municipal infrastructure.

**This notice** is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** may submit written comments on the amendment to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by 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 this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

## (c)

**DIVISION OF WATER RESOURCES**  
**Amendment to the Upper Delaware Water Quality**  
**Management Plan**  
**Public Notice**

**Take notice** that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Harmony Township, Warren County. The WMP identifies two proposed sewage treatment plants (STPs), the Brainards/Buckhorn Creek and Harmony Station STPs, which will discharge to the Delaware River and the Lopatcong Creek STP which will utilize groundwater discharge. An area along Route 519 in the northern portion of the Township is designated as an on-site groundwater disposal facility area. The remainder of the Township will utilize individual subsurface sewage disposal facilities.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029,

Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

## HUMAN SERVICES

(a)

### OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (OPMRDD)

#### Notice of Available Grant Funds OPMRDD Public Information Projects (Fiscal Year 1992)

**Take notice** that, in compliance with P.L. 1987, c.7 (N.J.S.A. 52:14-34.4 et seq.), which supplements Title 52 of the Revised Statutes, the Department of Human Services anticipates the following availability of funds.

**Name of the grant program that has funds available:**

OPMRDD Public Information Projects (FY92)

**Purpose for which the grant program funds shall be used:**

The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD) anticipates the availability of State funds specific to the goal of public information relative to prevention of mental retardation and other developmental disabilities. The intent of this program is to increase the public and professional awareness of the preventability of many forms of disabilities, and to modify conditions of life, professional practices, or personal behaviors in such a way as to reduce the risk, and hence the incidence, of various kinds of mental and physical disabilities originating in early life.

**Amount of money in the grant program:**

Approximately 15 grants will be awarded between the amounts of \$5,000 and \$25,000. The grants will be planned for initiation and completion between July 1, 1991 and June 30, 1992.

**Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:**

Agencies must be New Jersey based organizations, or corporate bodies; non-profit or public entities, which have demonstrated the capacity to carry out the proposed project.

**Qualifications needed by applicant to be considered for the grant program:**

Agencies must have demonstrated experience in designing and implementing public education prevention projects.

**Procedure for eligible organizations to apply for grant funds:**

Proposed packages may be requested from:

Deborah E. Cohen, Director  
Office for Prevention of Mental Retardation  
and Developmental Disabilities  
Department of Human Services  
222 South Warren Street, CN 700  
Trenton, New Jersey 08625  
(609) 984-3351

**Address of division, office or official receiving application:**

Same as above.

**Deadline by which applications must be submitted to the office:**

Proposals must be submitted by February 15, 1991.

**Date by which applicants shall be notified whether they will receive funds under the grant program:**

Applicants shall receive notice of approval or disapproval by April 15, 1991.

(b)

### OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (OPMRDD)

#### Notice of Available Grant Funds Advanced Research Fellowship Program

**Take notice** that, in compliance with P.L. 1987, c.7 (N.J.S.A. 52:14-34.4 et seq.), which supplements Title 52 of the Revised Statutes and P.L. 1987, c. 5, the Department of Human Services anticipates the following availability of funds.

**Name of the grant program that has funds available:**

Advanced Research Fellowship Program

**Purpose for which the grant program funds shall be used:**

Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD) anticipates the availability of funds to encourage and stimulate cooperative programs of research among state governmental departments and agencies, universities and private agencies. The purpose of the Advanced Research Fellowship Program is to attract and retain in New Jersey talented scientists who wish to pursue a career in research related to the prevention of mental retardation and other developmental disabilities. Fields of possible research include, but are not limited to, genetics, embryology, biochemistry, immunology, endocrinology, teratology, epidemiology, morphology, environmental, or other areas related to the causes of developmental disabilities.

**Amount of money in the grant program:**

A maximum of four fellowships in the amount of \$25,000 per fellowship will be awarded. These funds can be used for stipend support only. Research costs for experimentation, data collection, fieldwork, computer searches and analyses, and equipment cannot be supported by these fellowships. Candidates must be prepared to begin their research in July, 1991 and to end on June 30, 1992.

**Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:**

Candidates must be residents of New Jersey and must be prepared to conduct their research in New Jersey-based institutions of higher learning or other non-profit or public research entities.

**Qualifications needed by an applicant to be considered for the grant program:**

Candidates must have been awarded their doctorate or medical degree or a master's degree in a related field such as public health. Candidates must demonstrate established institutional relationships and support for the proposed research within the application process.

**Procedure for eligible entities to apply for fellowships:**

Proposed packages may be requested from:

Deborah E. Cohen, Director  
Office for Prevention of Mental Retardation  
and Developmental Disabilities  
Department of Human Services  
222 South Warren Street, CN 700  
Trenton, New Jersey 08625  
(609) 984-3351

**Address of division, office or official receiving application:**

Same as above.

**Deadline by which applications must be submitted to the office:**

Proposals must be submitted by January 31, 1991.

**Date by which applicants shall be notified whether they will receive funds under the grant program:**

Applicants shall receive notice of approval or disapproval by May 1, 1991.

**LAW AND PUBLIC SAFETY****(a)****DIVISION OF CONSUMER AFFAIRS  
BUREAU OF EMPLOYMENT AND PERSONNEL  
SERVICES****Notice of Action Petition for Rulemaking  
Registered Consulting Firms  
N.J.A.C. 13:45B**

Petitioner: New Jersey Association of Personnel Consultants, by  
McCarter and English, Attorneys for Petitioner.  
Authority: N.J.S.A. 34:8-43 et seq., and N.J.S.A. 56:8-1.1.

**Take notice** that on September 5, 1990, petitioner filed a petition with the Division of Consumer Affairs requesting an amendment to N.J.A.C. 13:45B-6.1 (the fee schedule of the Bureau of Employment and Personnel Services) and a new rule regarding consulting firms, notice of which was published in the October 15, 1990 New Jersey Register at 22 N.J.R. 3257(c). Petitioner stated the following as the purpose of the requested new rule:

"P.L. 1989, ch. 331 requires consulting firms to register with the Bureau of Employment and Personnel Services within 60 days of its enactment on January 12, 1990. However, regulations implementing the registration requirement for consulting firms have not yet been promulgated by the Division of Consumer Affairs."

Petitioner submitted suggested text for the amendment and new rule. (See 22 N.J.R. 3257(c).)

The Division has considered the petition for rulemaking and has determined to deny the petition because the regulation of consulting firms is covered in the Bureau of Employment and Personnel Services comprehensive rule proposal to be published in a forthcoming issue of the New Jersey Register. Comments and suggestions will be received from all interested parties during the 30 days following publication of the proposal. The Division believes it is in the best interests of all concerned to address the entire subject of employment and personnel services after the body of regulations is proposed, rather than to address the various issues involved piecemeal.

**PERSONNEL****(b)****MERIT SYSTEM BOARD****Notice of Receipt and Action on Petition for  
Rulemaking  
N.J.A.C. 4A:2-6.2****Resignation Not in Good Standing**

Petitioner: Robert W. Pursell, New Jersey Area Director,  
Communications Workers of America (CWA).

**Take notice** that the Merit System Board of the Department of Personnel received a petition for rulemaking on July 30, 1990, concerning N.J.A.C. 4A:2-6.2, the rule on an employee's resignation not in good standing.

The petitioner requests that the Board amend N.J.A.C. 4A:2-6.2 to limit the circumstances under which an employee may be resigned not in good standing when he or she has been absent from work for five or more consecutive days without approval. The petitioner proposes that, for a resignation not in good standing to be imposed, the employee must have evidenced an intent to abandon his or her position. In addition, the petitioner proposes that, where an appointing authority has knowledge that an employee has not reported to work for medical reasons, or where an employee has requested a leave of absence or leave extension,

a resignation not in good standing should not apply. Finally, the petitioner proposes that appointing authorities be required to promulgate reasonable leave procedures, subject to negotiations, and that requests for leave or leave extensions for medical reasons not be unreasonably denied.

It is noted that a resignation not in good standing may be appealed under current merit system rules. Whether such a resignation is justified is now addressed on a case-by-case basis. This petition for rulemaking proposes substantial changes in current practices and procedures, requiring thorough and significant review. While the petition is being denied at this time, the issues raised by the petitioner's proposal deserve serious consideration and will be discussed with appropriate Department of Personnel advisory boards.

**PUBLIC UTILITIES****(c)****BOARD OF PUBLIC UTILITIES****Notice of Extension of Time to Submit Proposals or  
Comments  
Request for Proposal  
Telecommunications Dual Party Relay System**

**Take notice** that the Board of Public Utilities has extended the deadline to November 19, 1990, for the submission of proposals or comments pertaining to the provisions of a Dual Party Relay System (DPRS) for the State of New Jersey, as set forth in the Request for Proposal notice published in the September 17, 1990 New Jersey Register at 22 N.J.R. 3058(a).

**Interested parties** may submit proposals or comments until November 19, 1990, to the DPRS System Evaluation Committee, c/o the Board of Public Utilities, c/o Michael P. Gallagher, Two Gateway Center, Newark, New Jersey 07102.

**OTHER AGENCIES****(d)****CASINO CONTROL COMMISSION****Notice of Petition for Rulemaking  
Transportation Expense Reimbursements  
N.J.A.C. 19:45-1.9A**

Petitioner: Trump's Castle Associates.

Authority: N.J.S.A. 5:12-69c. and N.J.S.A. 52:14B-4(f).

**Take notice** that on September 27, 1990, petitioner filed a petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.9A, concerning procedures for the documentation of transportation expense reimbursements.

Specifically, the petitioner requests an amendment to permit the reimbursement of transportation expenses, in amounts of \$250.00 or less, without requiring that the ticket, invoice or receipt evidencing such expenses be in the name of the requesting patron, or a person accompanying the patron.

The petitioner states that this amendment is necessary since certain common carriers, such as taxicabs and trains, do not print the traveler's name on the ticket, invoice or receipt.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69c.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 4, 1990 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

**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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 20, 1990**

**NEXT UPDATE: SUPPLEMENT SEPTEMBER 17, 1990**

**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
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-8.2	Transmission of contested cases to the OAL	22 N.J.R. 2066(a)	R.1990 d.484	22 N.J.R. 3003(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:1-18.4	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
1:10-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:10B-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		

**Most recent update to Title 1: TRANSMITTAL 1990-4 (supplement August 20, 1990)**

<b>AGRICULTURE—TITLE 2</b>				
2:1-2, 3	Department organization and rules of practice	22 N.J.R. 2865(a)		
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:19-2	Rose mosaic disease control	22 N.J.R. 2069(a)	R.1990 d.494	22 N.J.R. 3146(a)
2:20-2	White pine blister rust control	22 N.J.R. 2070(a)	R.1990 d.495	22 N.J.R. 3146(b)
2:48	Dairy industry rules	22 N.J.R. 2625(a)		
2:76-6.2, 6.5, 6.6, 6.9-6.12, 6.15-6.17	Farmland preservation program	22 N.J.R. 1244(a)	R.1990 d.529	22 N.J.R. 3359(a)

**Most recent update to Title 2: TRANSMITTAL 1990-7 (supplement August 20, 1990)**

<b>BANKING—TITLE 3</b>				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)	Expired	
3:7	Safe and sound methods of banking	22 N.J.R. 2205(a)	R.1990 d.497	22 N.J.R. 3213(a)
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:27	Mortgage loans by savings and loan associations	22 N.J.R. 2206(a)	R.1990 d.498	22 N.J.R. 3213(b)
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:41	Cemetery Board rules	22 N.J.R. 2627(a)	R.1990 d.537	22 N.J.R. 3363(a)

**Most recent update to Title 3: TRANSMITTAL 1990-5 (supplement July 16, 1990)**

## CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)**

<b>PERSONNEL—TITLE 4A</b>				
4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)		
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(a)		
4A:4-5.5	Working test period	22 N.J.R. 2629(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1-.8, 1.21	Family leave: administrative correction			22 N.J.R. 2682(a)
4A:8-2.2	Employee layoff rights	22 N.J.R. 2629(b)		

**Most recent update to Title 4A: TRANSMITTAL 1990-4 (supplement August 20, 1990)**

**COMMUNITY AFFAIRS—TITLE 5**

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)	R.1990 d.544	22 N.J.R. 3363(b)
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)	R.1990 d.459	22 N.J.R. 2964(a)
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)		
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)		
5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14-3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)	R.1990 d.507	22 N.J.R. 3214(a)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)	R.1990 d.489	22 N.J.R. 3147(a)
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)	R.1990 d.490	22 N.J.R. 3148(a)
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)	R.1990 d.508	22 N.J.R. 3218(a)
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:26-1.4, 2.11, 9.3, 11.1, 11.5	Planned real estate development full disclosure	22 N.J.R. 1702(a)	R.1990 d.452	22 N.J.R. 2682(b)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)		
5:70-6.3	Congregate Housing Services Program: income and service subsidies	22 N.J.R. 1970(a)	R.1990 d.467	22 N.J.R. 2964(b)
5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)	R.1990 d.504	22 N.J.R. 3220(a)
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)	R.1990 d.540	22 N.J.R. 3364(a)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

**Most recent update to Title 5: TRANSMITTAL 1990-8 (supplement August 20, 1990)**

**MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A**

**Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)**

**EDUCATION—TITLE 6**

6:3-1.11, 1.12, 1.24	Teacher preparation and certification	22 N.J.R. 1873(a)	R.1990 d.510	22 N.J.R. 3240(a)
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)		
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)	R.1990 d.510	22 N.J.R. 3240(a)
6:20-1.1, 1.2, 4.1-4.4, 4.7-4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)		
6:22-5.4	School facility planning service: administrative correction			22 N.J.R. 2683(a)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5-2.9, 3.3-3.7, 3.9, 4.1, 4.2, 4.4-4.8, 5.1, 5.2, 6.1-6.5, 7.1, 7.4, 8.1, 8.4-8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)	R.1990 d.450	22 N.J.R. 2683(b)
6:28-2.3, 3.1	Special education: administrative corrections	_____	_____	22 N.J.R. 3365(a)
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:61, 62, 63, 65	State Library rule forewords: administrative deletion	_____	_____	22 N.J.R. 2964(c)

**Most recent update to Title 6: TRANSMITTAL 1990-5 (supplement August 20, 1990)**

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1	Practice and procedure; hazardous substances discharge reporting; pesticides disposal	22 N.J.R. 1457(a)	R.1990 d.457	22 N.J.R. 2965(a)
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)		
7:7-2.3	Waterfront development	22 N.J.R. 2361(a)	R.1990 d.503	22 N.J.R. 3222(a)
7:7-2.3	Waterfront development: extension of comment period	22 N.J.R. 2669(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)	R.1990 d.446	22 N.J.R. 2753(a)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)	R.1990 d.444	22 N.J.R. 2754(a)
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)	R.1990 d.443	22 N.J.R. 2758(a)
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)	R.1990 d.442	22 N.J.R. 2816(a)
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:18-6.6	Certification of laboratories for water analysis: administrative correction	_____	_____	22 N.J.R. 3365(b)
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-18.1	Taking of striped bass	22 N.J.R. 3078(a)		
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26	Hazardous waste management	22 N.J.R. 2882(a)		
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)	R.1990 d.445	22 N.J.R. 2826(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2	Hazardous waste exclusions: administrative correction	_____	_____	22 N.J.R. 3148(b)
7:26-8.3	Hazardous waste from small quantity generators: administrative correction	_____	_____	22 N.J.R. 3366(a)
7:26-8.15	Hazardous waste listing: administrative correction	_____	_____	22 N.J.R. 3227(a)
7:26-8.21	Hazardous constituents for groundwater monitoring: administrative correction	_____	_____	22 N.J.R. 3366(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-10.6	Surface impoundments: administrative correction	_____	_____	22 N.J.R. 3227(b)
7:26-10.8	Hazardous waste landfills: administrative correction	_____	_____	22 N.J.R. 2966(a)
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-3.12	Ionizing radiation-producing machines: registration fees: administrative correction	_____	_____	22 N.J.R. 2830(a)
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)	R.1990 d.538	22 N.J.R. 3367(a)
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)	R.1990 d.511	22 N.J.R. 3227(a)
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)	R.1990 d.505	22 N.J.R. 3229(a)

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8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)		
8:21	Food and drugs	22 N.J.R. 2465(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:31B	Hospital rate setting	22 N.J.R. 1480(a)	R.1990 d.462	22 N.J.R. 3004(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)	Expired	
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-App. VI	Computation of reasonable direct patient care costs: administrative correction	_____	_____	22 N.J.R. 3229(b)
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)		
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)		
8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)	R.1990 d.513	22 N.J.R. 3230(a)
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)		
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)	R.1990 d.473	22 N.J.R. 3013(a)
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)		
8:43A-12	Ambulatory care facilities: surgical and anesthesia services	22 N.J.R. 1496(a)	R.1990 d.543	22 N.J.R. 3392(b)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)	R.1990 d.421	22 N.J.R. 2703(b)
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)	R.1990 d.422	22 N.J.R. 2705(a)
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)	R.1990 d.423	22 N.J.R. 2708(a)
8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)	R.1990 d.463	22 N.J.R. 3014(a)
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)	R.1990 d.512	22 N.J.R. 3232(a)
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)	R.1990 d.472	22 N.J.R. 3014(b)
8:57-1.6	Reportable communicable diseases and immunization requirements: administrative correction	_____	_____	22 N.J.R. 2709(a)
8:57-3.2	Reporting of occupational and environmental diseases and poisons: administrative correction	_____	_____	22 N.J.R. 3025(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		

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8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)	R.1990 d.453	22 N.J.R. 2710(a)
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b))	22 N.J.R. 1214(b)	R.1990 d.487	22 N.J.R. 3149(a)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)		
8:71	Interchangeable drug products	22 N.J.R. 3191(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)	R.1990 d.546	22 N.J.R. 3370(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)	R.1990 d.545	22 N.J.R. 3371(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)	R.1990 d.547	22 N.J.R. 3371(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		

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10:6	Administrative hearings	22 N.J.R. 3115(a)		
10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:31-1.4, 2.1, 2.3, 8.1	Screening and Screening Outreach Program: notice of rule invalidation			22 N.J.R. 2966(b)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)	R.1990 d.430	22 N.J.R. 2710(b)
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)		
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)	R.1990 d.431	22 N.J.R. 2712(a)
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)	R.1990 d.409	22 N.J.R. 3030(a)
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)		
10:48	Developmental Disabilities: appeal procedure; viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)		
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)	R.1990 d.530	22 N.J.R. 3372(a)
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(b)	R.1990 d.456	22 N.J.R. 2713(a)
10:60	Home Care Services Manual	22 N.J.R. 1663(a)	R.1990 d.458	22 N.J.R. 2966(c)
10:60	Home Care Services Manual	22 N.J.R. 3116(a)		
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)	R.1990 d.466	22 N.J.R. 2967(a)
10:65-2.1	Medical day care reimbursement	22 N.J.R. 2604(a)	R.1990 d.524	22 N.J.R. 3372(b)
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	22 N.J.R. 2604(a)	R.1990 d.524	22 N.J.R. 3372(b)

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10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1-14.8, 14.10-14.15, 14.17, 14.19-14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)		
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11-11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)	R.1990 d.541	22 N.J.R. 3373(a)
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)		
10:87-5.10, 6.15, 12.1-12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)	R.1990 d.437	22 N.J.R. 2715(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		

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10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)	R.1990 d.536	22 N.J.R. 3379(a)
10A:9-4.6	Consideration for minimum custody status: administrative correction			22 N.J.R. 2969(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)	R.1990 d.488	22 N.J.R. 3149(b)
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		

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11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)		
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3241(a)	Expired	
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		

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11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-3.37, 14.8	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)		
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11:3-16-App.	Private passenger automobile rate filings: administrative correction	_____	_____	22 N.J.R. 2969(b)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 2231(a)		
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)	R.1990 d.470	22 N.J.R. 2969(c)
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(a)		
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	22 N.J.R. 2108(a)		
11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 2233(a)		
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 2111(a)		
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 2455(a)		
11:3-38	Automobile towing and storage fee schedule: extension of comment period	22 N.J.R. 3195(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.25	Repeal (see 11:5-6)	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		

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12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46-12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:56	Wage and hour	22 N.J.R. 2235(a)	R.1990 d.520	22 N.J.R. 3379(b)
12:57	Wage orders for minors	22 N.J.R. 2240(a)	R.1990 d.521	22 N.J.R. 3382(a)
12:58	Child labor	22 N.J.R. 2241(a)	R.1990 d.522	22 N.J.R. 3383(a)
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)	R.1990 d.436	22 N.J.R. 2744(a)
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)		

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## COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

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13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)	R.1990 d.506	22 N.J.R. 3236(a)
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)	R.1990 d.465	22 N.J.R. 2982(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-4.2-4.6, 4.9, 4.14-4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)	R.1990 d.491	22 N.J.R. 3151(b)
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)	R.1990 d.514	22 N.J.R. 3236(b)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)	R.1990 d.435	22 N.J.R. 2747(a)
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)	R.1990 d.525	22 N.J.R. 3384(a)
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-9.3	Mortuary practice: administrative correction			22 N.J.R. 3384(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)	R.1990 d.476	22 N.J.R. 3153(a)
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)	R.1990 d.478	22 N.J.R. 3153(b)
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)	R.1990 d.434	22 N.J.R. 2747(b)
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14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
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16:28-1.72	Speed limit zones along U.S. 206 in Somerset, Morris, and Sussex counties: administrative correction	_____	_____	22 N.J.R. 3156(b)
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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