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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 17, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT NOVEMBER 21, 1994

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 29(1994)
Governor's Advisory Council on AIDS

Issued: December 1, 1994.
Effective: December 1, 1994, with retroactive application to June 2, 1994.
Expiration: Indefinite.

WHEREAS, Executive Order No. 45 of Governor Florio creating the Governor's Advisory Council on AIDS ("Advisory Council") expired on June 2, 1994; and

WHEREAS, the presence of Acquired Immune Deficiency Syndrome ("AIDS") and Human Immunodeficiency Virus ("HIV") continue to present a serious public health concern for the State of New Jersey; and

WHEREAS, New Jersey currently ranks fifth in the nation in the total number of its citizens infected with AIDS, third in the nation in pediatric cases of AIDS and first in the nation in the proportion of women with AIDS; and

WHEREAS, the number of AIDS cases in the State as of March 31, 1994 had grown to 20,942 cases, with 482 of those persons affected being children; and

WHEREAS, combating the spread of AIDS and HIV must be considered a public health priority for the State;

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

1. The Advisory Council is hereby continued.

2. The Advisory Council shall consist of the Commissioner of Health, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Human Services, the Commissioner of Community Affairs, the Commissioner of Insurance, the Attorney General and the Secretary of State or their designees; two members of the New Jersey Senate to be appointed by the Senate President, no more than one of whom shall be from the same political party; two members of the New Jersey General Assembly to be appointed by the Speaker of the Assembly, no more than one of whom shall be from the same political party; and no more than twenty-five public members to be appointed by the Governor. The public members shall consist of educators, representatives of the State's business community, labor representatives, health care and other service providers, representatives of the insurance industry, community leaders and persons who have tested HIV positive. The public members shall serve at the pleasure of the Governor. All members of the Advisory Council shall serve without compensation.

3. The Governor shall designate a Chairperson and Vice Chairperson from among the public members of the Advisory Council.

4. It shall be the duty of the Advisory Council to:

a. advise the Governor on policy issues relating to AIDS;

b. reassess the Department of Health's implementation of its plan to fight AIDS and HIV in the 1990's, and offer recommendations for updating the plan;

c. recommend relevant legislation to the Governor;

d. advise the Governor on the actions needed to coordinate State efforts concerning AIDS and HIV research, prevention and treatment;

e. advise the Executive Branch concerning its relationship with voluntary agencies and private sector entities involved in AIDS and HIV-related activities; and

f. prepare an annual report for the Governor on or before June 30 of each year summarizing its findings and providing any recommendations it deems appropriate.

5. The Advisory Council shall receive administrative staff support from the Department of Health.

6. This Order shall take effect immediately and shall apply retroactively to June 2, 1994.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Special Education Program
Proposed Readoption: N.J.A.C. 1:6A

Authorized By: Jeff S. Masin, Acting Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f), and (g).
Proposal Number: PRN 1995-1.

Submit comments by February 2, 1995 to:
Jeff S. Masin, Acting Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the special rules for special education hearings, N.J.A.C. 1:6A, expire on March 19, 1995.

These rules establish a procedure for conducting due process hearings transmitted by the Division of Special Education of the Department of Education concerning the classification and placement of students. These rules should be read in conjunction with the rules of the Division at N.J.A.C. 6:28. The rules are established in implementation of the Individuals with Disabilities Education Act, 20 U.S.C.A. 1415 et seq., and the regulations promulgated thereunder, 34 C.F.R. 300 et seq. Aspects of the hearing which are not specifically covered by these special rules are controlled by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

The rules at N.J.A.C. 6:28 were repealed and replaced effective March 19, 1990. That rulemaking included recodification and significantly regulated the representation by non-lawyers in the hearing process. Other significant amendments took place in September 1992 in response to U.S. Department of Education comments, including adjournment policies, taping of hearings, availability of tapes and the issuance and mailing of decisions: The rules have provided an efficient hearing process for the resolution of disputes regarding the classification and placement of Special Education children.

The Office of Administrative Law (OAL) has reviewed these rules and has determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated. The OAL is therefore proposing to readopt the rules without change at this time. The significant provisions of the rules are summarized below:

Within seven days of receipt of a hearing request, the Division of Special Education conducts a conference, which is voluntary for the parents of the pupil, to identify the issues and evidence, exchange information, stipulate facts, and list possible witnesses. If both parties agree, mediation is available at this conference. If settlement is not reached, the Department's representative telephones the OAL to schedule the hearing. A date within 14 days of the conference is assigned unless a party requests an adjournment. Within three days thereafter, the matter must be transmitted to the OAL.

The hearing date may be adjourned for a specific amount of time at the request of either party, which also extends the deadline for decision.

All requests for discovery must be made at the conference and responded to no later than five days before the hearing. Each party must disclose documentary evidence and summaries of witness' testimony. Information not exchanged at least five days before the hearing may be excluded by the judge.

Parties may be represented by an attorney or accompanied and advised by individuals with special knowledge or training with respect to handicapped pupils. Non-lawyers must comply with the application approval process contained in N.J.A.C. 1:1-5.4.

Either party may request emergency relief pending settlement or decision by submitting an application setting forth the specific relief sought and the specific circumstances justifying that relief, supported by affidavit. An emergency hearing will be scheduled at the earliest possible date. The judge may order emergency relief pending final determination if it is determined that the applicant has a reasonable probability of prevailing on the merits, that serious physical harm or termination or interruption of the student's education program will occur if the relief is not granted and the relief is narrowly defined to prevent the specific harm and will not cause unreasonable expense and substantial inconvenience.

The hearings are scheduled to the extent possible at a time and place convenient to the parents who have the right to open the hearing. The proposed action of the public agency is not accorded any presumption of correctness at the hearing.

The judge may require the Department of Education to provide an interpreter and may order an independent educational evaluation of the pupil at the expense of the local school board.

Hearings are stenographically and tape recorded. Parents may receive a copy of the tape recording at no cost upon request.

A written final decision must be issued no later than 45 days from the date of the hearing request, subject to any adjournments at the request of a party. Privacy is maintained in the decision through the use of initials rather than full names in referring to the student and parent.

The decision may be appealed either to the Superior Court of New Jersey or to the District Court of the United States.

Unless the parties otherwise agree or ordered by the judge pursuant to N.J.A.C. 1:6A-12.1, the educational placement of the pupil shall not be changed prior to issuance of the decision.

Social Impact

These rules provide parties with a prompt and efficient hearing process for resolution of issues concerning the classification and placement of special education children in conformity with the federal statute and regulations.

Economic Impact

The rules provide an efficient process for the resolution of disputes between parents and local school boards. Readoption of the rules will ensure continuation of that process. It is difficult to clearly identify the specific economic impacts that result from this process being available. However, for those individuals choosing to rely on non-lawyer advisors there may be some savings realized and in the instance of those desiring a taped copy of the proceedings, the rules make the tapes available free of charge.

Regulatory Flexibility Statement

The parties to these cases are not small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq. The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:6A.

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Diseases of Bees

Proposed Readoption with Amendments: N.J.A.C. 2:24

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

Authority: N.J.S.A. 4:6-1 et seq.

Proposal Number: PRN 1995-17.

Submit written comments by February 2, 1995 to:

Robert J. Balaam, Director
Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625-0330
Telephone: (609) 292-5441

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:24, Diseases of Bees, expires on April 2, 1995. The Department of Agriculture has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

Subchapter 1, Definitions, is a proposed new subchapter which has been added to clarify the meaning of certain terms specific to the bee industry. This subchapter sets out the precise meaning intended when a specific term is used in Chapter 24.

Existing subchapter 1 has been recodified as subchapter 2, Shipment of Bees into New Jersey, and contains the requirements for the movement of honey bee colonies, queens or package bees and associated equipment into the state from out of state sources. The wording of subchapter 2 is largely unchanged although several potentially ambiguous phrases have been reworded and redundant portions deleted. The major changes include:

(1) Simplification of the terminology used to describe diseases and pests in N.J.A.C. 2:24-1.1 to allow for a more flexible approach in responding to changing conditions;

(2) Clarification of what constitutes an Africanized bee;

(3) Inspection and certification requirements for bee colonies entering New Jersey from out of state. These requirements are based on similar protocols used by other Mid-Eastern States;

(4) Requirement that the shipper and/or seller of queens and/or package bees provide the address and destination of any package bees or queens shipped to New Jersey or to New Jersey residents; and

(5) Requirement that all queens or package bees shipped to New Jersey be accompanied by an approved miticide treatment for control of Varroa mite.

Both of these latter measures are needed to regulate the annual spring influx of packages and queens into New Jersey. In the past this has been a pathway for the introduction of parasitic mites into New Jersey.

Existing subchapter 2 has been recodified as subchapter 3, Registration of Apiaries, setting forth the procedure for the annual registration of overwintering bee yards.

This subchapter contains a major addition which the program feels is needed to better serve the beekeeping industry. The original wording of N.J.A.C. 2:24-2.1(b) is already in the statute and need not be repeated in the code. It has been replaced with a statement regarding the need for confidentiality of certain individual registration information. The only information that the department will release upon request will be a beekeeper's name and mailing address; other collected information including location and number of colonies or yards will not be available as public information. There are several different reasons for such a statement of confidentiality:

(1) Apiary sites and beekeeping zones vary in value for several reasons. Seasonal abundance of pollen or nectar, wintering conditions and many other factors which can constitute a competitive advantage would be disclosed to anyone who had a knowledge of beekeeping and access to this information. Based on the number of hives and the distribution of these hives, virtually down to the precise location of the hives, would allow anyone to gain access to hard earned knowledge of local conditions.

(2) Bees and hive equipment are valuable but highly portable material, particularly when remote outyards are involved. Theft of hives and equipment could be enhanced by the free distribution of beekeeper information. Problems can arise through outright public vandalism or "turf wars" when beekeepers feel that "their" area has been invaded through divulgence of their yard locations.

(3) There is a pronounced, albeit small, segment of the population who flaunt the registration requirement because they consider it an invasion of their privacy. Beekeeping is a unique profession in that a widespread knowledge of a beekeeper's existence or the precise whereabouts of his or her bees is rarely beneficial.

(4) The very knowledge which registration provides is needed for an effective apiary program which reaches all segments of the beekeeping industry. This privileged information cannot be freely disclosed without potentially abusing the industry which provided it as required by law. To do otherwise is to punish the very individuals who are the most cooperative to the program.

N.J.A.C. 2:24-3.1(d), which is new, requires the Department to provide documentation to each registered beekeeper identifying them as legally registered New Jersey beekeepers.

Subchapter 4, Inspection and Certification of Apiaries, is a new subchapter which provides a written protocol for inspection and expands the ability of the Department to control the spread of contagious diseases and parasites within the New Jersey beekeeping industry. The goal of these rules is to enhance the value of New Jersey produced bees to the general beekeeping public without unduly burdening the users of pollination services. These rules will re-enforce the quality and value of the locally produced bees. These regulations are similar to the requirements for bees shipped into New Jersey.

Existing subchapter 3 is being recodified as subchapter 5, Transport of Bees, and gives the requirements for the safe and timely movement of bee colonies through the state. This requirement for covering or screening hives during transport is primarily aimed at the protection of human health and safety rather than protection of New Jersey's bee industry from pests and diseases of the honeybee. The subchapter contains several rewordings to more clearly address exactly what the requirements are for the transport of bees in and through the State of New Jersey. As previously written the mesh of hive opening screens or netting could be no finer than eight squares to the inch, when just the reverse was intended. N.J.A.C. 2:24-3.1(b) has been rewritten to recognize the potential of vehicle accidents and breakdowns. Lastly, N.J.A.C. 2:24-5.1(c) defines exactly when a release of bees must be reported. Under the previous wording any and all releases (including for the purpose of commercial pollination), in theory, had to be reported to the Department.

Existing subchapter 4 has been recodified as subchapter 6, Voluntary Inspector Program, Noncommercial Apiaries, and provides a framework for the voluntary inspection of non-commercial beekeepers.

This subchapter remains basically unchanged. Minor deletions or the rephrasing of certain statements have been made to eliminate possible ambiguities. The definitions previously contained in this section have been moved to subchapter 1 and combined with the expanded definitions. The only significant change is a simplification in the definition of a non-commercial beekeeper.

Social Impact

The rules have and will affect beekeepers and inhabitants in affected municipalities where beekeeping is practiced within New Jersey. Beekeeping and the pollination services beekeepers provide are invaluable to the well being of the New Jersey public. The quantity and quality of the crops produced by the pollination dependent portions of the New Jersey agricultural industry benefit residents of New Jersey with both employment and a wholesome, economical and nutritious food source. The potential impact of Africanized bees (AHB) on all segments of the state population will be lessened by a strong code which protects, enhances and educates the New Jersey beekeeping industry.

Economic Impact

The proposed amendments involve the clarification and updating of the existing code as well as an expansion or restatement to cover economically important pest situations which have arisen since the last revision. Heretofore the major problem for beekeepers, and the primary focus of this code, has been the highly contagious and persistent, spore

forming bacterial disease known as American foulbrood (AFB) caused by *Bacillus larvae.* During the 1980's, two parasitic mites of honey bees were accidentally introduced into North America. These mites have caused major economic losses, through both outright colony mortality and the reduced viability of survivors, throughout the United States including New Jersey. The endoparasitic tracheal mite *(Acarapis woodi)* and the ectoparasitic *Varroa* mite *(Varroa jacobsoni)* differ markedly in their respective life cycles from each other and even more so from American foulbrood. The interstate spread of neither mite is controllable without amendment of the present code. Although both mites are currently pandemic in New Jersey there exists a real and present danger that other less controllable strains of these mites could be introduced into the state. There is considerable evidence that the direct effect of these mites on the health of the honeybee population may be only a portion of the total problem. There is mounting evidence that both mites are capable of vectoring previously low economic impact bacteria and viruses. These secondary effects could become of major concern, but be beyond the program's ability to suppress unless steps are taken to increase the sensitivity of the code.

The proposed amendments will substantially benefit the beekeeping industry by enacting preventative procedures and early detection sampling methods to determine economically important bee pest problems. The cost to the beekeeper to implement these rules are small when compared to the damage caused by these highly injurious pests.

Regulatory Flexibility Analysis

All beekeepers in New Jersey qualify as small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and most, if not all, migratory beekeepers entering into New Jersey do also. Most farmers who use pollinating services are also small businesses. However, the rules do not impose any reporting or recordkeeping requirements on small businesses. They do, however, impose compliance requirements and levels of performance which will impact upon small businesses. The rules are, for the most part recognized as such by most beekeepers and beekeeping associations.

All beekeepers, both commercial and hobbyists, in New Jersey are subject to the right of inspection and must inform the New Jersey Department of Agriculture of the numbers and locations of their bees, by law, and are visited periodically by inspectors. Registration will provide for an accurate accounting of all bee yards and enable the Department to do its work in a more efficient manner and to minimize the costs of compliance by time spent in tracking down bee colonies and owners. This should also relieve new beekeepers and established beekeepers from spending time accounting for hives. No fees are imposed for registration and it is felt that the costs of mailing will more than be offset by minimizing the time and effort spent by the beekeeper and the Department in tracking bee yard locations.

In reference to inspection protocols, these are standards used by other states and cannot be changed for different size businesses. Not having these standards would have an adverse impact on the health and safety of the beekeeping industry.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:24.

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

SUBCHAPTER 1. DEFINITIONS

As used in this chapter, the following words and terms shall have the following meaning:

"Activity log" means the record of VIP inspection activities maintained by each VIP designee on a form provided by the Department.

"Advisory report" means a non-binding written report made by a VIP designee to the beekeeper following the inspection of an apiary on a form provided by the Department.

"Apiary" means one or more colonies of honey bees.

"Apiary site" means the place where an apiary is located.

"Bee" means members of the genus Apis.

"Colony" means a hive or swarm of bees.

"Commercial apiary" means a business classified by the United States Standard Industrial Classification (commonly referred to in the SIC Code) as 0279B—Bee farms.

"Consignee" means the receiver of any bees or equipment shipped into New Jersey.

"Department" means the New Jersey Department of Agriculture.

"Divide," "split" or "nucleus" means bees and brood on drawn frames, with or without a queen. The number of frames, and the ratio of brood to honey or pollen, may vary but never exceeds 10 frames.

"Equipment" means hive parts, bee-related tools and extracting or wax rendering appliances.

"Hive" means the manmade structure which contains a colony of honey bees.

"Noncommercial apiary" means any apiary not classified as commercial.

"Nucleus" see "divide."

"Package" means a group of bees, with or without a queen, shipped without comb in a wire cage.

"Queen" means the female reproductive caste of the honey bee. These normally are shipped in small individual cages and are often accompanied by up to a half dozen sterile workers as attendants.

"Secretary" means the Secretary of Agriculture or an authorized designee.

"Seller" means any person or business entity which offers for sale queens, packages or divides into or within New Jersey or to New Jersey residents.

"Shipper" means any person or business entity which ships or dropships, queens, packages or divides into New Jersey or to New Jersey residents.

"VIP" means Voluntary Inspector Program.

"VIP designee" means a person who meets the Department's qualification criteria and has received Department training in the fundamentals of bee and apiary inspection; has been designated by the Department as a volunteer inspector pursuant to this subchapter; and, who does not receive compensation or reimbursement for expenses by the Department.

SUBCHAPTER [1.]2. SHIPMENT OF BEES INTO NEW JERSEY

2:24-[1.1]**2.1** Regulated articles

Bees of the genus Apis, in any life stage, fresh or frozen bee sperm, [equipment, shipping and storage containers that have been] used [at an] **equipment**, unprocessed comb, [vehicles that have been used to carry regulated articles other than fresh or frozen sperm,] and any other product, article or means of conveyance of any character whatsoever, which when determined by the Department of Agriculture presents the risk of the spread of [American foulbrood, European foulbrood, tracheal mites, Varroa mites; or] any [other] contagious and infectious disease, **anthropod pest** or condition as determined by the Department of Agriculture, shall be permitted importation only if in compliance with N.J.A.C. 2:24-[1.2] **2.2** through [2:24-1.5]**2.5**.

2:24-[1.2]**2.2** Entities with apiary inspection services

(a) No colony, nucleus of bees, used apiary [supplies and apparatus] **equipment** coming from a state or country having an apiary inspection service shall be permitted into New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that [each colony or supply is] **the bees or equipment are apparently** free from the conditions listed in N.J.A.C. 2:24-[1.1]**2.1** and that the bees are[, in fact, honeybees (Apis mellifera) and] not Africanized bees **derived from the African subspecies** (Apis mellifera scutellata) and free from the characteristics identifiable therewith in accordance with N.J.A.C. 2:22-3.1.

(b) No certificate of inspection shall be honored unless [the complete] **a** brood nest inspection was made **and a Varroa** mite **sample taken, no more than** [30] **60** days prior to shipment [and tracheal mite inspection was made 90 days prior to shipment] from the site the bees [or suppliers] were immediately prior to shipment into New Jersey. **Inspections shall be conducted in the manner prescribed at N.J.A.C. 2:24-4.**

1. If, after inspection, the average of the Varroa mite sampling technique in an apiary exceeds two mites per sample with an ether roll, or an average of 50 mites per sticky board, all colonies must be shipped under treatment with an EPA approved miticide according to label specifications.

2. The inspection date and percentage of inspection for American foulbrood, the percentage sampled for Varroa mites, and the sampling method with the results, must be shown on the inspection certificate.

(c) (No change.)

(d) No certificate of inspection shall be honored on [honeybees from operations containing] any [infected] colonies **infected with American foulbrood** or from an infected area as determined by the New Jersey Department of Agriculture. **[If an] Any** examination of the bees [is] undertaken pursuant to N.J.A.C. 2:22-[3.1]**2.1**, the certificate of inspection will not be honored unless the findings of the examination are supplied.

(e) (No change.)

(f) The certificate of inspection must be [mailed and] received prior to entrance into New Jersey by the:

Director, Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625-**0330**
Phone (609) 292-5440
Fax (609) 633-2550

2:24-[1.3]**2.3** Queen or package bees

(a) All apiaries shipping queen or package bees into New Jersey shall have recorded with the New Jersey Department of Agriculture, a valid certificate in accordance with N.J.A.C. 2:24-[1.2]**2.2**.

(b) All sellers or shippers shall provide the Department, by February 1, of the following year, with a list, including consignee's name and address, of all queen or package shipments to New Jersey or to New Jersey residents during the preceding year (that is, January 1 through December 31).

(c) All queens or package bees shipped to New Jersey shall be accompanied by a Federally approved miticide treatment for the control of Varroa mite.

2:24-[1.4]**2.4** Transporter

No colony, [or] nucleus of bees [of] **or** used apiary [supplies] **equipment** coming from a state or country having apiary inspection service shall be accepted by any person or common carrier for transportation to a point within this state unless accompanied by a valid certificate of inspection stating that [each colony] **the bees** or equipment [is] **are** free of the conditions listed in N.J.A.C. 2:24-[1.1]**2.1** and 2:24-[1.2]**2.2**. A copy of the certificates will be carried by the transporter and shown to the grower, **apiary inspector or law enforcement personnel upon request**.

2:24-[1.5]**2.5** Entities without apiary inspection services

A colony, nucleus of bees or used apiary equipment coming into New Jersey from a state or country having no apiary inspection service shall be immediately reported by the consignee and by the person or carrier delivering them in this state; giving the name and address of the consignee to the Department of Agriculture, which shall cause the shipment to be inspected at such time as shall be prudent and proper. **Documentation of such inspection shall be issued to the owner and consignee** after examination [and approval] by the Department of Agriculture as to the freedom from the conditions listed in N.J.A.C. 2:24-[1.1]**2.1** and [2:24-1.2] **2.2**.

[2:24-1.6 (Reserved)]

SUBCHAPTER [2]**3**. REGISTRATION OF APIARIES

2:24-[2.1]**3.1** Registration requirements; **confidentiality and documentation**

(a) (No change.)

(b) [All registered bee yards shall comply with applicable orders, laws and rules.] **The only information contained in the individual registration that shall be considered public shall be the beekeeper's name and mailing address; all other required information shall be considered confidential.**

(c) The Department of Agriculture shall supply the registrant, with any and all appropriate orders, laws and rules.

(d) The Department shall issue to each registered beekeeper documentation which identifies them as a legally registered New Jersey beekeeper.

SUBCHAPTER 4. INSPECTION AND CERTIFICATION OF APIARIES

2:24-4.2 Inspection protocol

(a) Beekeepers will be notified in advance, where possible and feasible, of any potential inspection of their bees; where possible, that notification will be at least five days prior to inspection.

(b) All inspections will be conducted in accordance with the following procedures:

1. The minimum numbers of hives, as listed below, shall be opened and physically opened and the brood nest inspected for American foulbrood:

1-10 colonies in an apiary—100 percent of the colonies
11-20 colonies in an apiary—50 percent of the colonies
21-50 colonies in an apiary—33 percent of the colonies
51+ colonies in an apiary—20 percent of the colonies

2. Any apiary site where American foulbrood is found shall be inspected 100 percent.

3. Varroa mite sampling shall be conducted according to the following minimum standard: either sample 20 percent of the colonies in each apiary using an ether roll technique, or five percent of the colonies in each apiary using an approved miticide and sticky board technique.

(c) All hives sold in New Jersey must be found by the Department to be apparently free of American foulbrood. All hives sold in New Jersey must be inspected and found by the Department to average less than two Varroa mites per sample by ether roll, or be under treatment with an EPA approved miticide to label specifications. The inspection by the Department shall be conducted within 10 working days of the request for inspection by the seller.

(d) The treatment procedure for Varroa in hives within New Jersey is as follows:

1. Apiaries which average two or fewer mites per sample with an ether roll, or an average of 50 mites or less per sticky board should begin treatment within 12 months of the inspection.

2. Apiaries which average more than two and less than 50 mites per sample with an ether roll, or average more than 50 and less than 1,000 mites per sticky board should be monitored and treatment should begin as soon as practical but no later than December 31 following the inspection.

3. Apiaries which average 50 or more mites per sample with an ether roll, or average 1,000 or more mites per sticky board must begin treatment within 15 days of an order by the Department or before movement whichever occurs first. If time constraints prohibit treatment before movement, the Department, upon request from the beekeeper, may approve movement to a holding yard until treatment is commenced.

2:24-4.2 Certification protocol

All New Jersey queen breeders, as well as sellers of splits, nucleus hives, or divides must average less than two mites per sample to be certified. All sales of queens, splits, nucleus hives, or divides to New Jersey apiarists will include an EPA approved miticide administered according to label specifications.

SUBCHAPTER [3.]**5.** TRANSPORT OF BEES

2:24-[3.1]**5.1** Transport requirements

(a) No bees shall be transported in or through New Jersey unless:

1. All hives are adequately secured to prevent excess movement of the hives during transport.

[1]**2.** [The] **All** hive [entrance is] **openings are either blocked or** covered with screening material of at [most a size 7] **least eight squares** per inch mesh, or the colonies are covered with a weatherproof netting of at [most a size] **least eight squares** per inch mesh to prevent the escape of any bees from the vehicle; or

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

(b) Vehicles transporting bees shall not stop, except for refueling **or emergencies due to accident or equipment failure,** unless certified for entrance into New Jersey, under N.J.A.C. 2:24-[1.2]**2.2 or 2.5**.

(c) The vehicle operator or other responsible person shall immediately report to the New Jersey Department of Agriculture, any release of bees, whether accidental or intentional **which results during transport**.

SUBCHAPTER [4]**6**. [VOLUNTEER] **VOLUNTARY** INSPECTOR PROGRAM, NONCOMMERCIAL APIARIES AND BEES

[2:24-4.1 Definitions

As used in this subchapter, the following words and terms shall have the following meaning:

"Activity log" means the permanent record of VIP inspection activities and Advisory Reports maintained by each VIP designee on a form provided by the Department. VIP designees shall forward a copy of their Activity Log to the Department at least once each inspection season.

"Advisory report" means a non-binding written report made by a VIP designee to an apiary owner or operator following an inspection of a hive(s) or apiary. The report shall be made in the form, or facsimile thereof, as supplied by the Department.

"Department" means the New Jersey Department of Agriculture.

"Noncommercial" means a beekeeper enterprise of 50 or less colonies which does not engage in the sale of bee colonies, package bees, queens, or the rental of bees for pollination services. Beekeepers with 50 or less colonies who sell honey, but do not engage in the above activities, shall be considered noncommercial.

"Secretary" means the Secretary of Agriculture or his or her authorized designee.

"Significant event" means any noteworthy occurrence or discovery which shall be reported to the Department of Agriculture because of its regulatory significance or potential to adversely affect the New Jersey beekeeping industry.

"VIP" means Volunteer Inspector Program.

"VIP inspector" means a person who meets the Department's qualification criteria and has received Department training in the fundamentals of bee and apiary inspection; has been designated by the Department as a Volunteer Inspector pursuant to this subchapter; and, who does not receive compensation or reimbursement for expenses by the Department.]

2:24-[4.2]**6.1** General organization and purpose of the Voluntary Inspector Program

(a) The [Volunteer] **Voluntary** Inspector Program (VIP) is a cooperative and [volunteer] **voluntary** program involving the Department of Agriculture, interested beekeepers, educators, and interested beekeeping organizations. The purpose of this program is to train volunteers in the fundamentals of apiary [and bee] inspection so that they may assist the [State Bee Inspection Service] **Department's** Apiary Inspection Program with the inspection and monitoring of noncommercial intrastate [bees and] apiaries **in order to prevent the introduction and spread of bee disease and other pests**.

(b) The organization and roles of the VIP components are [generally] as follows:

1. (No change.)

2. The VIP designees are volunteers trained by the Department and designated as VIP [bee and] apiary inspectors;

3. [The beekeepers and] **Non-commercial New Jersey** apiary [operators] **owners** may request a VIP inspection **and advisory report** of [his or her bees or] **their** apiary. The request [may] **shall** be made by contacting the Department [for a list of local VIP designees] **which will arrange for a mutually agreed upon VIP to perform an inspection**. The person requesting the inspection shall be present at the time of the [inpsection] **inspection**.

2:24-[4.3]**6.2** Provisions and standards for VIP designee activities

(a) VIP designees may inspect and make advisory reports only for noncommercial intrastate [bees and] apiaries. Commercial and interstate bee inspections **requiring certification** shall be performed only by [State employed Bee] **Department Apiary** Inspectors.

(b) (No change.)

(c) VIP [inspection] **inspections** shall be performed only at the request of the owner [or operator] of an apiary.

(d) The owner [or operator] of the apiary must be present at the time of a VIP inspection.

(e) [In addition to making] **An** advisory [reports] **report shall be provided by the VIP** to beekeepers **and to the Department**[, VIP designees shall report any significant event directly to the Department].

(f) (No change.)

(g) VIP designees shall:

1. Maintain an up-to-date activity log of all VIP inspections and retain a record **of each inspection** for not less than three years from the date of the [last entry] **inspection;**

2. Comply with VIP directives as may be issued by the [Secretary] **Department;** and

3. (No change.)

2:24-[4.4]**6.3** Qualifications and training

(a) Volunteers shall have at least five years experience in keeping bees, or have other beekeeping experience and education acceptable to the [Secretary, and shall be currently active beekeepers] **Department**.

(b) Standards and requirements for initial and recurrent VIP training shall be established by the Department. Training sessions for VIP designees and designee candidates shall be offered by the Department.

(c) Classroom training sessions may be supplemented by additional practical field training. At the [sole] discretion of the Department **and the apiary owner**, VIP designees or designee candidates may accompany, for practical field training purposes, a [State Bee] **Department Apiary** Inspector during actual apiary inspections.

2:24-[4.5]**6.4** Expiration of designation

VIP [designations made by the Department] **designee status** shall be valid for no more than two years. VIP designees shall take refresher and update training on no less than a biennial (every two years) basis.

2:24-[4.6]**6.5** [Suspension] **Cancellation** orders by the [Secretary or] Director

(a) The [Secretary or the] Director of the Division of Plant Industry may [temporarily or permanently order the suspension of] **rescind** the VIP designation of any person.

(b) Notification of [suspension] **rescission** of any VIP designee shall be done in writing and may be delivered in person or by mail. The notice shall state the [Secretary's or] Director's reason(s) for the order and the effective date of the [suspension] **action**.

2:24-[4.7]**6.6** Liability

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Creation of Farmland Preservation Programs

Proposed Amendments: N.J.A.C. 2:76-3.3, 3.5, 3.6, 3.9, 3.10 and 3.12

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1995-23.

Submit comments by February 2, 1995 to:

Donald D. Applegate
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 2:76-3 are in response to public comments received during the State Agriculture Development Committee's (SADC's) review and readoption of N.J.A.C 2:76 in June 1994 (See 26 N.J.R. 1419(a) and 3159(b)). At that time it was realized that many of the comments required a more thorough review of the rules and substantive amendments which would have delayed the readoption of Chapter 76.

The proposed amendments at N.J.A.C 2:76-3.3, 3.5 and 3.6 contain minor technical amendments which have no operative impact on the current rule.

The proposed amendments at N.J.A.C 2:76-3.9 are substantive amendments which were needed to correct deficiencies in the renewal, termination and reformation of farmland preservation programs. The current rule was tailored from the procedures outlined in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, concerning the renewal, termination and reformation of municipally approved farmland preservation programs. When the rule was initially adopted, the problems associated with renewal and termination of farmland preservation programs were not anticipated.

Recently, the initial farmland preservation programs which were created in 1986 began to expire due to the completion of the eight year period. It has become apparent that the current rules are inadequate and fail to address the various problems which were encountered by county agriculture development boards (CADBs). Generally, although landowners were notified during the last year of the eight year program that the program was due to expire, many landowners failed to respond to the CADB's notice. Many CADBs were uncomfortable with automatically renewing the farmland preservation program without the landowner's consent. Furthermore, the CADB was unable to confirm if the record ownership of the land or if the metes and bounds description of the land had remained the same during the eight year period.

In view of the problems, the SADC has proposed amendments at N.J.A.C 2:76-3.9 to establish some definitive time frames regarding notice to the landowner(s) and action taken by the CADB. As proposed, within one year of the effective date of termination, the CADB must conduct a review of the practicability and feasibility to continue the program. At least 60 days prior to the expiration of the program, the CADB shall by certified mail, notify all parties which have entered into the agreement to contact the board in writing within 30 days of receipt of the notice if they want to continue the program for another eight years or to terminate the program at the end of the initial eight year period. In the event the landowner(s) intends to continue the farmland preservation program for another eight years, the landowner(s) shall confirm that the record owner(s) of the premises as identified in the agreement has not changed and that the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial farmland preservation program.

The proposed amendment at N.J.A.C 2:76-3.9(c) stipulates that the renewal of the farmland preservation program shall occur only if the CADB and landowner pursuant to N.J.A.C 2:76-3.9(b), determine to continue the program for another eight year period.

The proposed amendment at N.J.A.C 2:76-3.9(d) stipulates that if the CADB receives a notice to terminate the farmland preservation program or the landowner fails to respond during the 30 day period pursuant to N.J.A.C 2:76-3.9(b), the program shall terminate at the end of the eight year period.

The proposed amendment at N.J.A.C 2:76-3.9(e) requires the CADB, at least 30 days prior to the expiration of the farmland preservation program to document the renewal or termination of the farmland preservation program by resolution and record such action with the county clerk's office and other parties already identified in the existing rules.

The proposed amendment at N.J.A.C 2:76-3.9(f) clarifies that the reformation of a farmland preservation program as a result of a change in ownership or amendment to the metes and bounds description of the premises shall comply with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

The proposed amendment at N.J.A.C 2:76-3.12 incorporates the provision at N.J.A.C 2:76-3.5(c) which requires a landowner that intends to subdivide the subject lands, to advise the CADB prior to initiating such action. The provision was incorporated in the agreement to ensure that the landowner was aware of providing such notice.

Social Impact

The proposed amendments will have a positive social impact by ensuring that landowners that are currently enrolled in farmland preservation programs are properly notified of the pending expiration of the program. Furthermore, CADBs are provided with a uniform procedure to follow when considering the renewal or termination of a farmland preservation program.

One of the primary benefits to landowners that voluntarily enroll in farmland preservation programs is the eligibility to apply to the SADC for a soil and water conservation cost share grant for the installation of approved soil and water conservation practices.

The public benefits from the enrollment of lands in farmland preservation programs because the landowner agrees to not develop his or her land for nonagricultural purposes during the eight year period.

Economic Impact

The proposed amendments will have a positive economic impact for those landowners that want to renew the farmland preservation program for another eight year period. The total eligible amount of soil and water conservation cost-share funds that a landowner or an agent for the landowner may receive for the installation of approved soil and water conservation projects on the farm is recalculated if the land enrolled in a farmland preservation program is renewed for a subsequent eight year period. A landowner that renews a farmland preservation program is provided with a new eligibility which is determined by the formula contained at N.J.A.C 2:76-5.4. The SADC may provide a grant for up to 50 percent of the cost for the installation of the project(s) up to the maximum eligibility.

The proposed amendments will also have a positive impact by not requiring CADBs to submit the renewed farmland preservation programs to the SADC for certification. This would result in a reduction in administrative costs and time to process the paperwork.

Regulatory Flexibility Analysis

The majority of the lands which are currently enrolled in farmland preservation programs and subject to the proposed amendments are owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not impose undue burdensome recording, recordkeeping or compliance requirements on landowners participating in the program.

The proposed amendment which requires the landowner to document if the record ownership of the premises and legal metes and bounds description have remained the same when renewing a program imposes no additional burden. In the event there is a change in record ownership or the metes and bounds description of the premises, the landowner is required to complete a new agreement when renewing the farmland preservation program. This compliance requirement is not mandated by the proposed amendment but by common legal standards for preparing recordable documents dealing with encumbrances imposed on real estate.

The proposed amendments impose compliance requirements which are uniform for small businesses and other businesses to protect the integrity of the program, and therefore no differing standards are proposed.

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

2:76-3.3 Petition

(a) One or more owners of land may voluntarily enter into a farmland preservation program provided the following statutory criteria are satisfied:

1.-2. (No change.)

3. Eligibility criteria established by the board; **and**

4. Eligibility criteria established by the [committee] **Committee.**

(b) (No change.)

2:76-3.5 Agreement

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

(c) Deed restrictions established by the [committee] **Committee** shall be placed on all lands that are to be included in the farmland preservation program. These restrictions shall remain in effect for the length of the agreement unless the land is withdrawn from the program in compliance with provisions contained in N.J.S.A. 4:1C-30 and N.J.A.C 2:76-3.11. Any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action (see N.J.A.C 2:76-3.12).

(d) Subject to [committee] **Committee** approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(e) Eligibility of benefits follows:

1. The land or owner(s) of the land in a farmland preservation program are eligible for the following:

i. To apply, to the board to sell a development easement on the land subject to the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32**;

ii. To apply, or have a farm operator as an agent apply to the local soil conservation district and the board for a grant for a soil and water conservation project as approved by the State Soil Conservation Committee and authorized by the [committee] **Committee**;

iii. To use a farm structure design as an acceptable minimum construction standard to build farm structures based on criteria developed by a land grant college or a recognized organization of agricultural engineers and approved by the [committee] **Committee**. In addition, the use of the approved design shall exempt the owner or operator from any requirement concerning the seal of approval or fee of an architect or professional engineer;

iv. Additional benefits as determined by the board in accordance with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32**;

v. Additional benefits as may be made available from time to time through amendments to N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32** and all other pertinent State, county and municipal laws, rules or policies.

(f) (No change.)

2:76-3.6 Certification request

(a) The board shall submit the following to the [committee] **Committee**:

1.-3. (No change.)

4. A copy of the owner of last record search; **and**

5. (No change.)

2:76-3.9 Renewal, termination, reformation

(a) (No change.)

(b) The board shall conduct a review of the practicability and feasibility to continue the program within one year of the effective date of termination. [During this period,] **At least 60 days prior to the expiration of the program,** the board shall, [in writing] **by certified mail**, notify all parties which have entered into [an] **the** agreement to contact the board **in writing, within 30 days of receipt of the notice** if they want to continue the program for another eight years or to terminate the program at the end of the initial eight year period. [The landowner's decision shall be documented in the agreement.]

1. In the event the landowner(s) intends to continue the farmland preservation program for another eight years, the landowner(s) shall confirm the following:

i. That the record owner(s) of the premises as identified in the agreement has not changed since the creation of the initial farmland preservation program; and

ii. That the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial farmland preservation program.

[(c) If the board does not receive any notice to terminate the farmland preservation program within the one year period, the program shall continue for another eight year period and may continue for succeeding eight year periods provided that no notice of termination is received by the board during subsequent periods of review.

(d) Termination of the farmland preservation program at the end of the eight year period shall occur following the receipt by the board of any notice of termination. The committee, landowner, soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, municipal planning board and county clerk shall be notified that the farmland preservation program was terminated.]

(c) Renewal of the farmland preservation program shall occur if the board and landowner, pursuant to (b) above, determine to continue the program for another eight year period.

(d) If the board receives a notice to terminate the farmland preservation program or the landowner fails to respond during the 30 day period pursuant to (b) above, the program shall terminate at the end of the eight year period.

(e) At least 30 days prior to the expiration of the initial farmland preservation program, the board shall document the renewal or termination of the farmland preservation program by resolution and record such action with the county clerk's office.

i. The board shall provide notice of the renewal or termination of the farmland preservation program to the Committee, landowner, soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, and municipal planning board.

[(e)](**f**) Reformation of a farmland preservation program **as a result of a change in ownership or amendment to the metes and bounds description of the premises** [must] **shall** comply with provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32]**c.32** and all rules promulgated by the [committee] **Committee**.

2:76-3.10 Inclusion of additional lands

(a) (No change.)

(b) Any landowner not included in **the** farmland preservation program may request inclusion at any time during the review conducted pursuant to N.J.A.C 2:76-3.9(b). The inclusion shall be approved provided the board finds this inclusion would promote agriculture production.

2:76-3.12 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board and the landowner(s) when a farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1.-"4. (No change.)

"5. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, of this agreement. **In the event Grantor intends to subdivide the subject lands, Grantor shall advise Grantee prior to initiating such action.**

6.-21. (No change.)"

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Creation of Municipally Approved Farmland Preservation Programs

Proposed Amendments: N.J.A.C. 2:76-4.3, 4.5, 4.6, 4.9 and 4.11

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1995-24.

Submit comments by February 2, 1995 to:

Donald D. Applegate
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 2:76-4 are in response to public comments received during the State Agriculture Development Committee's, "SADC" review and readoption of N.J.A.C. 2:76 in June 1994 (see 26 N.J.R. 1419(a) and 3159(b)). At that time it was realized that many of the comments required a more thorough review of the rules and substantive amendments which would have delayed the readoption of Chapter 76. The proposed amendments at N.J.A.C. 2:76-4.3 and 4.6

contain minor technical amendments, capitalization of the word "committee," which have no operative impact on the current rule.

The proposed amendments at N.J.A.C. 2:76-4.5 contain minor technical amendments which have no operative impact on the current rule, in addition to substantive amendments. The proposed amendment at N.J.A.C. 2:76-4.5(c) requires that any landowner intending to subdivide the subject lands enrolled in a municipally approved program shall advise the county agriculture development board (CADB) prior to initiating such action. This provision was added to assist the CADB in its monitoring of municipally approved programs. CADB approval of the subdivision is not required.

The proposed amendments at N.J.A.C. 2:76-4.9 are substantive amendments which were needed to correct deficiencies in the renewal, termination and reformation of municipally approved programs. The current rule references the procedures outlined in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, concerning the renewal and termination of municipally approved farmland preservation programs. It should be noted that the proposed amendments at N.J.A.C. 2:76-4.9 regarding renewal and termination of municipally approved programs are different than the amendments proposed elsewhere in this issue of the New Jersey Register at N.J.A.C. 2:76-3.9 for the renewal and termination of farmland preservation programs. The primary reason for the variation is that the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, only identifies the procedures for renewal and termination of municipally approved programs. The procedures for the renewal and termination of a farmland preservation program were only identified in the rules at N.J.A.C. 2:76-3.9.

Recently, the initial municipally approved programs which were created in 1986 began to expire due to the completion of the eight year period. It has become apparent that the current rules and statute are inadequate and fail to address the various problems which were encountered by county agriculture development boards, CADBs. Generally, although landowners were notified during the last year of the eight year program that the program was due to expire, many landowners failed to respond to the CADB's notice. Many CADBs were uncomfortable with the statutory provision which automatically renewed the municipally approved program without the landowner's consent if the landowner and/or municipal governing body failed to provide a notice to terminate the program. Furthermore, the CADB was unable to confirm if the record ownership of the land or if the metes and bounds description of the land had remained the same during the eight year period in those instances when the landowner failed to respond.

In view of the problems, the SADC has proposed amendments at N.J.A.C. 2:76-4.9 to establish some definitive time frames regarding notice to the landowner(s) and municipal governing body and action taken by the CADB within the one year period of review. In addition to the proposed amendments, the general provisions as contained in the statute were also inserted for ease of reading. As required by statute, within the year immediately preceding the termination date, the CADB and municipal governing body must conduct a review of the practicability and feasibility to continue the program. The proposed amendment stipulates that at least 60 days prior to the expiration of the program, the CADB shall by certified mail, notify all parties which have entered into the agreement to contact the board in writing within 30 days of receipt of the notice if they want to continue the program for another eight years or to terminate the program at the end of the initial eight year period. In the event the landowner(s) intends to continue the municipally approved program for another eight years, the landowner(s) shall confirm that the record owner(s) of the premises as identified in the agreement and that the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial municipally approved program.

The proposed amendment at N.J.A.C. 2:76-4.9(c) stipulates if the board does not receive any notice to terminate the municipally approved program within the 30 day period, the municipally approved program shall continue for another eight year period and may continue for succeeding eight year periods provided that no notice of termination is received by the board during subsequent periods of review and notification. Furthermore, at least 30 days prior to the expiration of the municipally approved program, the CADB shall document the renewal of the municipally approved program by resolution and record such action with the county clerk's office. Notification shall be provided to the SADC, landowner(s), soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing board, municipal planning body and municipal clerk.

The proposed amendment at N.J.A.C. 2:76-4.9(c)3 also requires that the SADC shall not authorize a cost share grant for the installation of any soil and water conservation cost share projects pursuant to N.J.A.C. 2:76-5, until the landowner(s) confirms that the record owner(s) of the premises as identified in the agreement has not changed and that the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial municipally approved program.

The proposed amendment at N.J.A.C. 2:76-4.9(d) stipulates that termination of the municipally approved program shall occur following the receipt by the CADB of any notice of termination. Furthermore, at least 30 days prior to the expiration of the municipally approved program, the CADB shall document the termination of the municipally approved program by resolution and record such action with the county clerk's office. Notification shall be provided to the parties identified above.

The proposed amendment at N.J.A.C. 2:76-4.9(e) clarifies that the reformation of a municipally approved program as a result of a change in ownership or amendment to the metes and bounds description of the premises shall comply with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

The proposed amendment at N.J.A.C. 2:76-4.11 incorporates the proposed amendment at N.J.A.C. 2:76-4.5(c) which requires the landowner that intends to subdivide the subject lands, to advise the CADB prior to initiating such action. The provision was incorporated in the agreement to ensure that the landowner(s) was aware of providing such notice.

Social Impact

The proposed amendments will have a positive social impact by ensuring that municipal governing bodies and landowners that are parties to municipally approved programs are properly notified of the pending expiration of the program. Furthermore, CADBs are provided with a uniform procedure to follow when considering the renewal or termination of municipally approved programs.

One of the primary benefits to landowners that voluntarily enroll in municipally approved programs is the eligibility to apply to the SADC for a soil and water conservation cost share grant for the installation of approved soil and water conservation practices. Landowners are also afforded other benefits and protections pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, not afforded to landowners enrolled in only a farmland preservation program.

The public benefits from the enrollment of lands in municipally approved programs because the landowner agrees to not develop his or her land for nonagricultural purposes during the eight year period.

Economic Impact

The proposed amendments will have a positive economic impact for those landowners that want to renew the municipally approved program for another eight year period. The total eligible amount of soil and water conservation cost-share funds that a landowner or an agent for the landowner may receive for the installation of approved soil and water conservation projects on the farm is recalculated if the land enrolled in a municipally approved program is renewed for a subsequent eight year period. A landowner that renews a municipally approved program is provided with a new eligibility which is determined by the formula contained at N.J.A.C. 2:76-5.4. The SADC may provide a grant for up to 50 percent of the cost for the installation of the project(s) up to the maximum eligibility. As required by the proposed amendment, the SADC will not authorize a grant for the installation of approved soil and water conservation projects until the landowner(s) confirm that the record owner(s) of the premises has not changed and that the legal metes and bounds description of the boundaries of the premises has not changed.

The proposed amendments will also have a positive impact by not requiring CADBs to submit the renewed municipally approved programs to the SADC for certification. This would result in a reduction in administrative costs and time to process the paperwork.

Regulatory Flexibility Analysis

The majority of the lands which are currently enrolled in municipally approved programs and subject to the proposed rule amendments are owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments

do not impose undue burdensome recording, recordkeeping or compliance requirements on landowners participating in the program.

The proposed amendments will benefit landowners enrolled in municipally approved programs by ensuring that they are properly notified and provided ample opportunity to request a renewal or termination of the municipally approved program at the end of the eight year period. If the landowner fails to respond during the 30 day period, the program will automatically renew as required by the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32. Provided the record ownership of the premises and legal metes and bounds description remain the same, the landowner is not required to complete a new agreement when renewing a municipally approved program. A landowner that terminates a municipally approved program may request enrollment in a new municipally approved program pursuant to N.J.A.C. 2:76-4.3.

In the event there is a change in record ownership or the metes and bounds description of the premises, the landowner is required to complete a new agreement when renewing the municipally approved program. This compliance requirement is not mandated by the proposed amendment but by common legal standards for preparing recordable documents dealing with encumbrances imposed on real estate.

The proposed amendments impose compliance requirements which are uniform for small businesses and other businesses to protect the integrity of the program, and therefore no differing standards are proposed.

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

2:76-4.3 Petition

(a) One or more owners of land may voluntarily enter into a municipally approved preservation program provided the following statutory criteria are satisfied:

1.-2. (No change.)

3. Eligibility criteria established by the board; **and**

4. Eligibility criteria established by the [committee] **Committee**.

(b) (No change.)

2:76-4.5 Agreement

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

(c) Deed restrictions established by the [committee] **Committee** shall be placed on all lands that are to be included in the municipally approved program. These restrictions [will] **shall** remain in effect for the length of the agreement unless the land is withdrawn from the program in compliance with provisions contained in N.J.S.A. 4:1C-30 and N.J.A.C. 2:76-4.10. **Any landowner intending to subdivide the subject lands shall advise the board prior to initiating such action** (see N.J.A.C. 2:76-4.11).

(d) Subject to [committee] **Committee** approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(e) Eligibility of benefits follows:

1. The land or owner(s) of the land in a municipally approved program are eligible for the following:

i. Benefits contained in N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32**;

ii. Additional benefits as determined by the board in accordance with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32**;

iii. Additional benefits as may be made available from time to time through amendments to N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] **c.32** and all other pertinent State, county and municipal laws, rules or policies.

(f) (No change.)

2:76-4.6 Certification request

(a) The board shall submit the following to the [committee] **Committee**:

1.-3. (No change.)

4. A copy of the tax map and any other documents designated by the board for identifying the boundaries of the proposed programs. The board shall certify that the land(s) are in a certified ADA and all other criteria pursuant to N.J.A.C. 2:76-4.3 have been satisfied[.];

5. (No change.)

6. A copy of the owner of last record search; **and**

7. (No change.)

2:76-4.9 Renewal, termination, reformation

[(a) The renewal, termination and reformation of a municipally approved program shall comply with N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32. Any action taken by the landowner shall be documented in the agreement.]

(a) The municipally approved program shall remain in effect for a minimum of eight years from the effective date of the creation of a municipally approved program.

(b) The board and municipal governing body shall conduct a review of the practicability and feasibility to continue the program within the year immediately preceding the termination date of the municipally approved program. At least 60 days prior to the expiration of the program, the board shall, by certified mail, notify all parties which have entered into the agreement to contact the board in writing, within 30 days of receipt of the notice if they want to continue the program for another eight years or to terminate the program at the end of the initial eight year period.

1. In the event the landowner(s) intends to continue the municipally approved program for another eight years, the landowner(s) shall confirm the following:

i. That the record owner(s) of the premises as identified in the agreement has not changed since the creation of the initial farmland preservation program; and

ii. That the legal metes and bounds description of the boundaries of the premises has not changed since the creation of the initial municipally approved program.

(c) If the board does not receive any notice to terminate the municipally approved program within the 30 day period, the program shall continue for another eight year period and may continue for succeeding eight year periods provided that no notice of termination is received by the board during subsequent periods of review and notification.

1. At least 30 days prior to the expiration of the municipally approved program, the board shall document the renewal of the municipally approved program by resolution and record such action with the county clerk's office.

2. The board shall provide notice of the renewal of the municipally approved program to the Committee, landowner(s), soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, municipal planning board and municipal clerk.

3. The Committee shall not authorize a cost share grant for the installation of any soil and water conservation cost share projects pursuant to N.J.A.C. 2:76-5 until the provisions of (b)1i and ii above have been confirmed.

(d) Termination of the municipally approved program at the end of the eight year period shall occur following the receipt by the board of any notice of termination.

1. At least 30 days prior to the expiration of the municipally approved program, the board shall document the termination of the municipally approved program by resolution and record such action with the county clerk's office.

2. The board shall provide notice of the terminated municipally approved program to the Committee, landowner(s), soil conservation district, municipal tax assessor, county planning board, county governing body, municipal governing body, municipal planning board and municipal clerk.

(e) Reformation of a municipally approved program as a result of a change in ownership or amendment to the metes and bounds description of the premises shall comply with provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and all rules promulgated by the Committee.

2:76-4.11 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board, the municipal governing body and the landowner(s) when a municipally approved farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1.-"4. (No change.)

"5. The land and its buildings which are affected hereby may be sold collectively or individually for continued agricultural production and related uses as defined in Section 1, of this agreement. **In the event Grantor intends to subdivide the subject lands, Grantor shall advise Grantee prior to initiating such action.**

"6.-"21. (No change.)

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Acquisition of Development Easements

Proposed Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.7 and 6.9 through 6.17

Proposed New Rules: N.J.A.C. 2:76-6.18, 6.18A and 6.18B

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1995-25.

Submit comments by February 2, 1995 to:

Donald D. Applegate
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 2:76-6 are in response to public comments received during the State Agriculture Development Committee's review of N.J.A.C 2:76 in June 1994 and subsequent readoption in the August 1, 1994 issue of the New Jersey Register (see 26 N.J.R. 1419(a) and 3159(b)). At that time it was realized that many of the comments required a more thorough review of the rules and substantive amendments which would have delayed the readoption of Chapter 76.

The proposed amendment at N.J.A.C 2:76-6.2 incorporate new definitions used in the subchapter. The definition of "agriculturally viable parcel" was added and the definitions of "ancillary costs" and "project area" were deleted.

The proposed amendments at N.J.A.C 2:76-6.5 stipulates that the board is required to submit a request for a grant for the purchase of a development easement to the SADC within 30 days of the date appraisal work is authorized. The incorporation of the 30 day period was to provide the boards with an expended time frame and flexibility for submitting a grant request to the SADC.

The proposed amendment at N.J.A.C. 2:76-6.6(b) and (c) allows the SADC to consider granting preliminary approval to an application which is in excess of seven in a given county, provided the application is for a farm which is located in more than one county and is selected by at least one other board as one of its applications not requiring SADC approval.

The proposed amendment at N.J.A.C. 2:76-6.6(d) reduces the time frame between the SADC's preliminary ranking of approved applications and the SADC's certification of development easement values from 30 days to 15 days. For all practical purposes, the time frame separating the action of determining the preliminary rank and certification of development easement values was to ensure that the two actions were independent events. This would provide the SADC with more flexibility in scheduling its meetings to accomplish the two actions.

The proposed amendment at N.J.A.C. 2:76-6.7 requires the SADC to adopt a list of appraisers who are designated as state certified general real estate appraisers (SCGREA), pursuant to N.J.A.C. 13:40A-1.2. The approved appraisers are then eligible to conduct appraisals of farms from which development easements may be purchased.

The proposed amendment at N.J.A.C. 2:76-6.9 establishes a time frame during which the landowner must submit an offer to the SADC for the sale of a development easement. The time frame was increased from 30 days to 45 days and fixed from the date of the SADC's certification of the fair market value of the development easement instead of the board's receipt of the certified value. This provides the landowner with more time to consider the certified value of the development easement in relation to the offer submitted to the SADC.

The proposed amendment at N.J.A.C. 2:76-6.10 identifies the time frame during which the board must conduct a final review of the applications. The time frame was changed from 60 days from the board's receipt of the SADC's certified fair market value of the development easement to 30 days from the SADC's opening of the confidential offers. For all practical purposes, the time for the board to conduct its final review is slightly increased. Most importantly, the 30 day period is fixed from the date of the SADC's opening of the confidential offers. In addition, the provision requiring the board to identify the percent county and local cost share funding for each application at the time of final review at N.J.A.C. 2:76-6.10(a)3 was deleted. The elimination of this provision will provide the board with greater flexibility to coordinate the commitment of funds by the county board of chosen freeholders and if applicable the municipality at some time subsequent to the 30 day review period, but prior to the actual purchase of the development easement.

The proposed amendment at N.J.A.C. 2:76-6.11(a) removes the requirement that the SADC must determine the maximum limit of funds available for the purchase of development easements on farmland during the period subsequent to the SADC's certification of development easement values but prior to the applicant's submission of an offer to sell a development easement. Instead, the amendment only requires that the SADC approves a maximum limit of funds for an easement purchase grant round. This would allow the SADC more flexibility to determine the maximum grant amount to provide boards with as much notice as possible at the beginning of the grant round.

The proposed amendments at N.J.A.C. 2:76-6.11(d)1 are technical changes for defining the "landowner's formula index method" as the "discount method" and the "landowner's asking price method" as the "sliding scale method" for determining the SADC's cost share percentage.

The proposed amendment at N.J.A.C. 2:76-6.11(d)3 removes the provision that the SADC shall not provide a cost share grant to the board for ancillary costs. Instead, the SADC shall provide a cost share grant to the board for up to 50 percent of the cost for eligible ancillary costs for the purchase of development easements. Eligible and ineligible costs are also defined.

The proposed amendment at N.J.A.C. 2:76-6.11(f) requires the county board of chosen freeholders to enter into a grant agreement with the SADC in order to receive a grant for the purchase of a development easement. Also refer to N.J.A.C. 2:76-6.18.

The proposed amendments at N.J.A.C. 2:76-6.12 reflect minor technical changes of the word "Committee." In addition, N.J.A.C. 2:76-6.13(e) requires the board to be responsible for monitoring all lands from which a development easement has been purchased since June 1, 1985, to ensure compliance with the provisions of the Deed of Easement. The monitoring includes an onsite inspection performed at least once a year, that the inspections and monitoring are completed within the period commencing July 1 and ending June 30. The board is also required to provide a written summary to the SADC by July 15 of each year of the status of compliance. The board must inform the SADC of any violations within 30 days of discovering the violation and the board must take appropriate action within its authority to ensure that the terms and conditions of the Deed of Easement are enforced.

The proposed amendments at N.J.A.C. 2:76-6.14 incorporate amendments to the Agriculture Retention and Development Act which pertain to the establishment of a schedule of payments for the purchase of a development easement. The period for the schedule of payments was changed from 10 years to 40 years. Furthermore, the proposed amendment provides that the governing body of the county may retain sufficient funds to pay the landowner pursuant to the agreed upon schedule.

The proposed amendment at N.J.A.C. 2:76-6.15(a)5 eliminates the provision which allows the grantor or landowner to retain and reserve all oil, gas, and other mineral rights in the land underlying the premises and the ability to drill or mine any of the minerals in a manner which is done by slant from an adjacent property or in any other manner which will not materially affect the agricultural operation.

The proposed amendment at N.J.A.C. 2:76-6.15(a)14iii incorporates the deed restrictions contained at N.J.A.C. 2:76-6.17(c). In addition, the definition of "use for agricultural purposes" which is also defined at N.J.A.C. 2:76-6.2 was inserted.

The proposed amendment at N.J.A.C. 2:76-6.15(a)15 reflects a change of the word "subdivision" to "division" which is currently set forth in that paragraph. In addition, the definition of "agriculturally viable parcel" was incorporated which is also proposed at N.J.A.C. 2:76-6.2.

The proposed amendment at N.J.A.C. 2:76-6.15(a)23 sets forth the process for distributing any proceeds which may result from a condemnation award or other disposition of the premises in compliance with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

The proposed amendment at N.J.A.C. 2:76-6.15(d) deletes the provision which requires the deed restriction contained at N.J.A.C. 2:76-6.17(c) (residual dwelling site opportunity) since the actual language of the deed restriction is now incorporated in the proposed amendment at N.J.A.C. 2:76-6.15(a)14iii.

The proposed amendment at N.J.A.C. 2:76-6.16(d)2i(3) removes the reference to ranking "project areas" which is no longer required by the SADC.

The proposed amendment at N.J.A.C. 2:76-6.17(f) reflects a change in the word "subdivision" to "division" as amended in N.J.A.C. 2:76-6.15(a)15.

The proposed new rules at N.J.A.C. 2:76-6.18, 6.18A and 6.18B identify the provisions of the SADC's grant agreement which is executed between the SADC and the county board of chosen freeholders when the SADC authorizes a grant to the county for the purchase of a development easement on farmland. The grant agreement summarizes the obligations of the SADC and county which include the conditions of the grant, requirements for acquisition and development of a monitoring program to ensure that the provisions of the Deed of Easement are not violated.

Social Impact

The proposed amendments and new rules will have a positive social impact on the county agriculture development boards and the citizens of New Jersey. The proposed amendments address the concerns raised by the boards during a previous public comment period to further improve the operation of the farmland preservation program.

The proposed amendments help fine tune the process at the State and county levels for reviewing and approving applications considered for the purchase of development easements on farmland. The SADC had adopted substantive amendments to the subchapter in August 1993 which provided boards with more flexibility in the application selection process and a more consolidated review process to allow for annual easement purchase funding rounds. The preservation of productive farmlands in the State will benefit not only the agricultural industry but all citizens of the State.

The proposed new rule will ensure that the SADC and counties understand the independent and mutual obligations associated with the SADC's grant to the county for the acquisition of a development easement on farmland.

Economic Impact

The proposed amendments and new rules will result in varying economic impacts for county agriculture development boards, landowners participating in the farmland preservation program through the sale of a development easement and the SADC.

The proposed amendment at N.J.A.C. 2:76-6.11(d)3, which requires the SADC to provide a cost share grant to the county for eligible ancillary costs, will result in a positive economic impact for counties. As proposed, the SADC would provide a grant for up to 50 percent of the cost for wetlands determinations, appraisals, review appraisals, title searches, title insurance and surveys on those farms from which a development easement has been purchased by the board pursuant to the Agriculture Retention and Development Act and implementing rules. The SADC recognizes that by providing a cost share grant to the county for up to 50 percent of eligible ancillary costs, subject to available funds, it would help increase the county's financial resources for purchasing development easements on other farmlands. However, the monies available to the SADC are also limited which reduces the SADC's ability to provide a cost share grant for the purchase of development easements on farmlands by the respective amount. It is estimated that the SADC's cost to provide a 50 percent grant for ancillary costs would be approximately $60.00 per acre.

The proposed amendment at N.J.A.C. 2:76-6.13(e) which requires the board to monitor all lands from which a development easement has been purchased since June 1, 1985, should not impose any additional financial obligations on the county. As mandated by the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, development easements acquired on farmland are held by the county. Therefore, the county's voluntary participation in the program is with the understanding that the county should be responsible for instituting and maintaining a monitoring program to enforce the conditions or restrictions on the use and development of the land on which a development easement has been purchased pursuant to the Act. In those instances where the board has not performed monitoring inspections in the past, there will be an added administrative cost to the county for monitoring and maintaining a data base of pertinent information about the farms. The overall impact is directly related to the number of development easements acquired.

The proposed amendment at N.J.A.C. 2:76-6.15(a)5, which removes the landowner's right to retain and reserve all oil, gas, and other mineral rights in the land underlying the premises to extract these resources in the future should have no economic impact. The proposed amendment will only affect new landowners that voluntarily sell a development easement to the county. The proposed amendment was introduced to ensure that the provision of the Agriculture Retention and Development Act, which prohibits any nonagricultural development on the premises is not violated. Landowners participating in the sale of a development easement to the county are compensated for the placement of a development easement on the property. Any amendment to the deed restrictions imposed on the property is considered by the appraisers when establishing a valuation for the development easement. Therefore, the appraisal process will adjust the valuation of the property once the restrictions are imposed accordingly.

The proposed new rules at N.J.A.C. 2:76-6.18 through 6.18B which describe the provisions of the grant agreement between the SADC and county may have a minor economic impact on counties. The proposed new rules identify the mutual obligations of both the SADC and county when the SADC provides a grant to the county for the purchase of a development easement. Although the SADC and county have generally adhered to these provisions to date, the SADC determined that it was appropriate to formalize the mutual obligations in a grant agreement. In some instances, if the county has not closely followed the provisions of the new rule, there may be additional administrative costs incurred by the county concerning the review, acquisition and monitoring of the development easement. The additional costs should be minimal in relation to the county's overall investment in the development easement and long term benefits to the agricultural industry in the county.

Regulatory Flexibility Statement

The majority of the land potentially subject to the programs of the State Agriculture Development Committee is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the requirements imposed by the majority of the proposed amendments and new rule are placed on the local county agriculture development boards, which, as public entities, are not small businesses. However, in the instances where requirements are imposed on the landowners, who could be construed as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the compliance requirements are not burdensome. They include basic application processes requiring minimal documentation which are necessary to protect the integrity of the program.

The proposed amendment at N.J.A.C. 2:76-6.7(a)1 requires that the Committee shall adopt a list of appraisers who are designated as state certified general real estate appraisers pursuant to N.J.A.C. 13:40A-1.2. Generally, the appraisers participating in the program are considered small businesses as the term is defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment does not impose any unduly burdensome recording, recordkeeping or compliance requirement because the majority of appraisers that are involved in appraisals of any federally regulated transactions are already required to be licensed by the State pursuant to N.J.A.C. 13:40A-1.2.

The proposed amendment imposes a licensing requirement which is uniform for small businesses and other businesses to protect the integrity of the program and, therefore, no differing standards are proposed.

Full text of the proposal 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:

...

"Agriculturally viable parcel" means a parcel that is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

["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.]

...

"Committee" means the State Agricultural Development Committee (**SADC**) established pursuant to N.J.S.A. 4:1C-4.

...

["Project area" means an area identified by a board or the Committee which is located within an ADA and is comprised of one or more development easement purchase applications approved by the board and received by the Committee, lands where development easements have already been purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs.]

...

2:76-6.5 Preliminary board review

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

(g) The board shall submit a request for a grant for the purchase of a development easement to the Committee [on or before] **within 30 days of** the date appraisal work is authorized pursuant to N.J.A.C. 2:76-6.7. The request for a grant shall be submitted on a form prescribed by the Committee. The information provided by the board shall include the following:

1.-4. (No change.)

(h)-(i) (No change.)

2:76-6.6 Preliminary Committee review

(a) (No change.)

(b) [For those applications which are] **Except for those applications submitted pursuant to (c) below, for any application which is submitted** in excess of seven per county, the Committee may grant preliminary approval only if it finds that the application is of superior quality and that there is a substantial likelihood that the land would change from productive agriculture to nonagricultural use prior to the next funding round.

(c) The Committee shall grant preliminary approval to an application which is in excess of seven per county, only if the application is for a farm which is located in more than one county and is selected by at least one other board as one of its applications not requiring Committee approval.

[(c)](**d**) The Committee shall establish a preliminary ranking of the approved applications based on the applicant's quality score and inform the board at least [30] **15** days prior to the [committee's] **Committee's** certification of a development easement value.

2:76-6.7 Appraisals

(a) The procedure for conducting and reviewing appraisals shall be as follows:

1. The Committee shall adopt a list of appraisers **who are designated as state certified general real estate appraisers (SCGREA) pursuant to N.J.A.C. 13:40A-1.2**;

i. (No change.)

2-.5 (No change.)

2:76-6.9 Landowner offer

(a) Within [30] **45** days of the [board's receipt of the certified] **Committee's certification of the** fair market value of the development easement, the board shall forward the value to the landowner and the landowner shall submit an asking price to the Committee.

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

2:76-6.10 Final board review

(a) Within [60 days of the board's receipt of the Committee's certified fair market value of the development easement] **30 days of the Committee's opening of the confidential offers pursuant to N.J.A.C. 2:76-6.9(d)**, the board shall approve or disapprove the applications and submit the following to the Committee:

1.-2. (No change.)

[3. The percent of county and local cost share funding for each application;]

[4.]**3.** The justification for the board's decision; and

[5.]**4.** A copy of the municipal governing body's resolution approving the purchase of the development easement.

(b) (No change.)

2:76-6.11 Final Committee review

(a) [Subsequent to the Committee's certification of development easement values but prior to the applicant's submission of an offer pursuant to N.J.A.C. 2:76-6.9, the] **The** Committee shall approve a maximum limit of funds available **for an easement purchase grant round** to provide grants to counties and municipalities for the purchase of development easements on farmland.

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

(d) The Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified fair market value of the development easement or the board and/or county's purchase price of the development easement, whichever is lower.

1. The percent Committee cost share shall be based upon the higher cost share percentage determined pursuant to the following two methods:

[The landowner's formula index method:]	Percent committee cost share

Discount method:

(No change.)

(or)

[The landowner's asking price method:]

Sliding scale method:

Landowner's asking price	Percent committee cost share

(No change.)

i.-ii. (No change.)

2. (No change.)

3. [The Committee shall not provide any cost share funds for ancillary costs for development easement purchases.] **Subject to available funds, the Committee shall provide a cost share grant for up to 50 percent of the cost for eligible ancillary costs for the purchase of development easements.**

i. Eligible ancillary costs shall be limited to wetlands determinations, appraisals, review appraisals, title search, title insurance and surveys on those farms from which a development easement has been purchased by the board pursuant to N.J.S.A. 4:1C-11 et seq. and this subchapter; and

ii. Ineligible costs include other local governmental expenses and administrative costs related to the acquisition of the development easement, such as staff and attorney work, clerical supplies and office space.

(e) (No change.)

(f) In order to receive a grant for the purchase of a development easement, the County Board of Chosen Freeholders shall agree to enter into a grant agreement pursuant to N.J.A.C. 2:76-6.18 through 6.18B.

[(f)](**g**) The Committee shall notify the respective boards of applications receiving final approval.

2:76-6.12 Landowner decision

(a) Within 30 days of the board's receipt of the [committee's] **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) (No change.)

2:76-6.13 Terms, contingencies and conditions of purchase

(a) Upon the landowner's acceptance of an offer to sell a development easement, the landowner shall provide evidence that current lien, easement and right-of-way holders will, as required by the

[committee] **Committee** and board, subordinate their rights to the rights and privileges granted by the sale of the development easement to the board and shall supply recordable evidence of their subordination at the time of transfer of the easement.

(b) (No change.)

(c) Upon the purchase of the development easement by the board, a statement containing the conditions of conveyance and restrictions on the use an development of the land shall be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded (see N.J.A.C. 2:76-6.15).

1. Subject to [committee] **Committee** approval, the board may establish more stringent deed restrictions for the purpose of recognizing local conditions.

(d) (No change.)

(e) The board shall be responsible for monitoring all lands from which a development easement has been purchased since June 1, 1985, pursuant to N.J.S.A. 4:1C-11 et seq. and this subchapter, to ensure compliance with the provisions of the Deed of Easement. The monitoring shall consist of the following:

1. An onsite inspection shall be performed at least once a year;

2. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30;

3. A written summary shall be provided to the Committee by July 15, verifying that the inspections were conducted during the scheduled period with a certification concerning whether the farm was in compliance with the provisions of the Deed of Easement;

4. The Board shall inform the SADC if any of the terms and conditions of the Deed of Easement were violated within 30 days of identifying such violation; and

5. Appropriate action shall be taken within the board's and/or County's authority to ensure that the terms and conditions of the Deed of Easement are enforced.

2:76-6.14 Payment procedures; schedule of payment

(a) The board and the landowner may agree upon and establish a schedule of payment which provides that the landowner may receive consideration for the easement in a lump sum, or in installments over a period of up to [10] **40** years from the date of settlement, provided that:

1. If a schedule of installments is agreed upon, the State Comptroller shall retain in the fund**, or the governing body shall retain,** an amount of money sufficient to pay the landowner pursuant to the schedule.

2. (No change.)

(b) (No change.)

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1.-"4. (No change.)

"5. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. [Grantor retains and reserves all oil, gas, and other mineral rights in the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.]

"6.-"13. (No change.)

"14. Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

i.-ii. (No change.)

iii. (_____) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, "Residual Dwelling Site Opportunity". The Grantor's request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.

In the event a division of the Premises occurs in compliance with deed restriction No. 15 below, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective divided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

(or)

No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No residential buildings are permitted on the Premises except as provided in this Deed of Easement.

For purposes of this Deed of Easement:

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures as the Premises in accordance with N.J.A.C. 2:76-6.17.

"Residual dwelling site" means the location of the residential unit and other appurtenant structures.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

"Use for agricultural purposes" as related to the exercise of a residual dwelling site opportunity and the continued use of the residential unit constructed thereto, means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the Premises 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, water management and grazing.

"15. The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Section 2 of this Deed of Easement. However, no [subdivision] **division** of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order for the Grantor to receive approval, the Grantee and Committee must find that the subdivision shall be for an agricultural purpose and result in agriculturally viable parcels. [Subdivision] **Division** means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

i. For purposes of this Deed of Easement, "Agriculturally viable parcel" means that each parcel is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

"16.-"22. (No change.)

"23. The net proceeds of a condemnation award or other disposition of the Premises following termination of this Deed of Easement, as permitted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, shall be distributed among the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Premises on the date of execution of this Deed of Easement. For this purpose, the Grantee's allocable share of the proceeds shall be the net proceeds multiplied by a fraction, the numerator of which is the fair market value of the development easement as certified by the Committee at the time of the initial acquisition and the denominator of which is the full fair market value of the unrestricted Premises as certified by the Committee at the time of the initial acquisition, which is identified as (____/____). Furthermore, the Grantee's proceeds shall be distributed among the Grantee and the Committee in shares in proportion to their respective cost share grants on the date of execution of this Deed of Easement. The Grantee shall use its share of the proceeds in a manner consistent with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

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

[(d) The deed restriction contained in N.J.A.C. 2:76-6.16(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)-(c) (No change.)

(d) The boundaries and buffers criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

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

(3) Negative consideration:

(A) Exceptions which adversely affect the applicant's agricultural operation (weight 10)[.]**; and**

ii. Percentage of boundaries buffering the individual application[; and].

[iii. The application's added buffer to the project area.]

2:76-6.17 Residual dwelling site opportunity

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

(c) The following restriction shall be attached to and recorded with the deed of the land and shall run with the land to identify the number of residual dwelling site opportunities allocated to the premises:

(_____) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, "Residual Dwelling Site Opportunity". The Grantor's request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.

In the event a [subdivision] **division** of the Premises occurs in compliance with deed restriction No. 15 below, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective [subdivided] **divided** lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

(No change in text.)

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

(f) Documentation of the status of an allocated residual dwelling site opportunity shall be as follows:

1. In the event a [subdivision] **division** of the premises occurs in compliance with N.J.A.C. 2:76-[6.15(a)13]**6.15(a)15**, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective [subdivided] **divided** lots. The Corrective Deed shall be recorded with the county clerk. A copy of the recorded Corrective Deed shall be provided to the board and Committee; and

2. (No change.)

2:76-6.18 SADC grant agreement with county: General provisions

(a) In order to receive a grant for the purchase of a development easement as approved by the SADC pursuant to N.J.A.C. 2:76-6.11, the county board of chosen freeholders shall agree to enter into a grant agreement which shall incorporate the requirements of N.J.A.C. 2:76-6.18 through 6.18B.

(b) The county by entering into a grant agreement shall accept primary responsibility for the administration and success of the acquisition of the development easement on the properties designated in a Schedule A of the agreement.

(c) The county shall award contracts and subcontracts concerning the acquisition of development easements on properties designated in Schedule A of the agreement free from bribery, graft and other corrupt practices. The county shall bear the sole responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The county shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The county shall notify the SADC immediately after such allegation or evidence comes to its attention, and shall periodically advise the SADC of the status and ultimate disposal of any such matter.

(d) The county shall award all contracts in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the rules adopted pursuant thereto, N.J.A.C. 5:34.

(e) The county, its contractors and subcontractors shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4), as well as the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules and regulations promulgated pursuant thereto.

(f) The SADC, or its duly authorized representative(s), shall have access to all records, books, documents and papers pertaining to the agreement and/or the approved development easement purchase for audit, examination, excerpt and transcript purposes. Obtaining information shall be made practicable for the SADC.

(g) A development easement acquired by the County pursuant to N.J.S.A. 4:1C-11 et seq., shall not be sold, given, transferred or otherwise conveyed in any manner except in accordance with N.J.S.A. 4:1C-32a or unless specifically permitted by law.

(h) No public body shall exercise the power of eminent domain for the acquisition of land from which a development easement has been conveyed pursuant to N.J.S.A. 4:1C-24, nor shall any public body advance a grant, loan, interest subsidy or other funds with regard to land from which a development easement has been conveyed pursuant to N.J.S.A. 4:1C-24, for the construction of dwellings, commercial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures unless the Governor declares that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative. If the Governor so declares, the provisions of N.J.S.A. 4:1C-19 shall apply.

(i) The county shall assume all risk and responsibility for, and agree to indemnify, defend and save harmless the SADC, its agents, servants, officers or employees from and against any and all claims, demands, or lawsuits that may be made by third parties against the SADC, its agents, servants, officers or employees for damages of any kind or description arising from the acquisition of the development easement on account of or resulting from the acts or omissions of county, its employees, agents, contractors or subcontractors, including, but not limited to:

1. Any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the acquisition of the development easement;

2. Any damages or injury to persons or property or county, its contractors, subcontractors, officers, agents, servants or employees, or any other person who may be about the property caused by any act of negligence of any person (other than the SADC or its officers, agents, servants or employees); or

3. Any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the SADC in connection with the acquisition of the development easement.

(j) The county shall indemnify, protect, and hold the SADC and its agents, servants, officers and employees harmless from and against any and all such losses, damages, injuries, costs or expenses and from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever (except by county) and arising or purportedly arising from the agreement or from the ownership of the development easement.

(k) The county may unilaterally rescind the agreement at any time prior to the county's receipt of the grant. After the receipt of the grant, the county may not terminate, modify or rescind the agreement without the express written approval of the SADC. Any attempt by the county to terminate, modify or rescind the agreement after receipt of a grant without the express written approval of the SADC shall constitute a material breach and subject the county to any and all appropriate penalties at law.

(l) The SADC may terminate the agreement prior to providing a grant to county, in whole or in part at any time for good cause. The term "good cause" shall include, but not be limited to, failure to comply with the terms and conditions of the agreement or the rules and regulations adopted by the SADC. Default by county shall also constitute "good cause" for termination of the agreement.

(m) Any one or more of the following events shall constitute an event of default by the county:

1. If any representation or warranty made in the agreement or in any certifications, reports, plans, financial statements or other information furnished in connection with the agreement shall prove to be false or misleading; or

2. Failure of county to observe and perform any covenant, condition or requirement of the agreement, and continuance of such failure for a period of 30 days after receipt by the county of written notice by the SADC, specifying the nature of such failure and requesting that it be remedied, or if by reason of the nature of such failure the same cannot be remedied within the said 30 days, the county fails to proceed with reasonable diligence after receipt of said notice to cure same.

(n) In the event of default by the county, the SADC shall have the right to require repayment of its entire grant on the affected property as the case may be without presentment, demand, protest or other notice of any kind, all of which shall be expressly waived by the county, anything contained in the agreement to the contrary notwithstanding.

(o) In addition to any other rights or remedies available to the SADC pursuant to law, in the event of the County's noncompliance with the terms of the agreement or violation of the provisions of this chapter, with respect to the property(ies) set forth in Schedule A of the agreement, or any other property subject to the Agriculture Retention and Development restrictions and for which the SADC has provided a grant to County, the SADC may take any of the following actions or combinations thereof:

1. Issue a Notice of Noncompliance;

2. Withhold SADC grants;

3. Terminate or annul the agreement; and

4. Demand immediate repayment of the funds advanced by the SADC.

(p) No remedy in regard to the agreement conferred or reserved by the SADC is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the SADC to exercise any remedy reserved to it in this section, it shall not be necessary to give notice other than such notice as may be provided by this section.

(q) In addition to the remedies in (m) through (o) above, if the county commits a breach, or threatens to commit a breach of the agreement, the SADC shall have the right and remedy, without posting bond or other security, to have the provisions of the agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the SADC and that money damages will not provide an adequate remedy therefor.

(r) In the event that county should default under any of the provisions of the agreement and the SADC shall require and employ attorneys or the services of the Attorney General's Office, or incur other expenses for the collection of payments due or to become due or the enforcement or performance of any obligation or agreement on the part of county contained in the agreement, the county shall on demand therefor pay to the SADC the reasonable fees of such attorneys and other expenses incurred by the SADC.

(s) The SADC shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to county if any event of default shall occur as part of the agreement.

(t) The agreement constitutes the entire agreement and supersedes all prior agreements and understandings both written and oral between the parties with respect to the subject matter of the agreement and may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(u) In the event any provision of the agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of the agreement.

(v) In the event that any provision of the agreement should be breached by the county and thereafter deemed waived by the SADC, such waiver shall be limited to the particular breach so waived by the SADC and shall not be deemed to waive any other breach by county.

(w) The agreement shall inure to the benefit of and be binding upon the heirs, successors and administrators of the county, but no part shall be assigned without the prior written consent of the SADC.

(x) The agreement shall be construed and enforced under the laws of the State of New Jersey.

(y) In the event of litigation, the county shall waive whatever right it may have to trial by jury.

2:76-6.18A SADC grant agreement with county: acquisition phase; and monitoring phase

(a) The county shall certify that the acquisition of development easements by the county as set forth in the agreement complies with the provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended, and all implementing regulations in this chapter.

(b) During the acquisition phase the county which is in the process of acquiring a development easement pursuant to the Agriculture Retention and Development Act and other implementing regulations, N.J.A.C. 2:76-6 shall:

1. Provide a copy of a survey of the respective property, certified to the county, CADB, SADC, and title company which has been performed in accordance with N.J.S.A. 45:8-27 et seq. and N.J.A.C. 13:40-1.1 through 10.1.

i. The county is encouraged to require the surveyor to delineate internal features such as residential units, agricultural labor units, other agricultural buildings or structures and easements of record. This information will be extremely helpful in setting baseline data for future enforcement of the deed restrictions by the county;

2. Coordinate the initial onsite investigation of the property identified in Schedule A of the agreement with the SADC staff to establish the necessary baseline information for completing the Deed of Easement and for future inspection and monitoring purposes;

3. Obtain clear, valid record title, marketable, and insurable by a title company authorized to do business in New Jersey pursuant to N.J.A.C. 2:76-6.13(a);

4. Provide a copy of the title commitment to the SADC;

5. Prepare a Deed of Easement in accordance with N.J.A.C. 2:76-6.15 on the Deed of Easement form adopted by the SADC;

6. Identify the county's percent cost share and cost share grant amount for the purchase of the development easement;

7. Identify the municipal percent cost share and cost share grant amount for the purchase of the development easement;

8. Identify if the landowner is providing a donation to the county concerning the sale of the development easement pursuant to N.J.S.A. 4:1C-35;

9. Inform the SADC if the purchase of the development easement will require a lump sum payment (grant) to the County or installments over a period of up to 40 years from the date of settlement pursuant to N.J.S.A. 4:1C-32(c);

10. Subject to outstanding liens, other payments necessary to cover the easement and other special circumstances which may result in escrowing of funds, issue a check to the landowner for the total purchase price of the development easement at the time of closing for the purchase of the development easement, unless the installment purchase option is utilized;

11. Purchase the development easement on all properties set forth in Schedule A of the agreement within one year of the SADC's final approval;

i. The county may request the SADC to consider extending the one year period for additional six month periods not to exceed a total of one year;

12. File and record a notice of settlement prior to the easement purchase closing;

13. Immediately and properly record the fully executed Deed of Easement and all other appropriate settlement documents with the County Clerk's office following the purchase of the development easement;

14. Provide for notification of the development easement purchase pursuant to N.J.A.C. 2:76-6.13(d)2.

15. Provide the SADC with a copy of the recorded Deed of Easement immediately upon the county's receipt of the originally recorded Deed of Easement;

16. Provide the SADC with a copy of the insured title policy immediately upon receipt; and

17. Provide the SADC with an accounting of the County's ancillary costs pursuant to N.J.A.C. 2:76-6.11(d)3.

(c) During the acquisition phase, a county which is the record owner of a development easement acquired pursuant to N.J.S.A. 4:1C-34 and this subchapter and subsequent to the acquisition of the development easement, applies to the SADC for a grant under the Agriculture Retention and Development Act, shall:

1. Provide a copy of the initial survey of the property certified to the SADC, county and title company which has been performed in accordance with N.J.S.A. 45:8-27 et seq. and N.J.A.C. 13:40-1.1 through 10.1.

i. The county is encouraged to require the surveyor to delineate internal features such as residential units, agricultural labor units, other agricultural buildings or structures and easements of record. This information will be extremely helpful in setting baseline data for future enforcement of the deed restrictions by the county;

2. Coordinate the initial onsite investigation of the property identified in Schedule A of the agreement with the SADC staff to establish the necessary baseline information for completing the Deed of Easement and for future inspection and monitoring purposes;

3. Provide a copy of the title policy for the county's original acquisition of the development easement ensuring clear, valid record title marketable, and insurable by a title company authorized to do business in New Jersey;

4. Provide a copy of the recorded Deed of Easement used to acquire the original development easement which at a minimum contained the restrictions found at N.J.A.C. 2:76-6.15(a) which were in effect at the time the development easement was acquired;

5. Identify the county's initial purchase price of the development easement;

6. Identify, if applicable, the municipal percent cost share and cost share grant amount for the purchase of the initial development easement;

7. Identify if the initial landowner provided a donation to the county concerning the sale of the development easement pursuant to N.J.S.A. 4:1C-35;

8. Provide an affidavit from the county that no new encumbrances have been imposed on the Deed of Easement subsequent to the county's acquisition;

9. Provide an affidavit from the current record owner of the premises that no new encumbrances have been imposed on the premises subsequent to the sale of the development easement;

10. In the event an affidavit cannot be provided pursuant to (c)8 and 9 above, the county shall provide a copy of an updated title commitment to the SADC which provides for a clear, valid record title, marketable, and insurable by a title company authorized to do business in New Jersey;

11. Reimburse the SADC for its respective cost share grant in the event any encumbrance(s) was placed on the property subsequent to the date the original development easement was acquired which was not disclosed by the County and/or landowner in the Affidavits provided in (c)8 and 9 above;

12. Prepare a new Deed of Easement which contains the provisions of N.J.A.C. 2:76-6.15 which were in effect at the time the development easement was acquired by the county. The document shall provide for execution by the county and current landowner of the restricted premises if necessary; and

13. Provide the SADC with an accounting of the county's ancillary costs pursuant to N.J.A.C. 2:76-6.11(d)3.

(d) During the monitoring phase the county shall:

1. Conduct an onsite inspection and monitor, at least once a year, all land from which a development easement has been acquired by the county and for which the SADC has provided a cost share grant to the county to ensure compliance with the terms of the Deed of Easement;

i. All inspections and monitoring shall be completed within the period commencing July 1 and ending June 30; and

ii. The county shall provide a written summary to the SADC by July 15, verifying that the inspections were conducted during the scheduled period with a certification concerning whether the farm was in compliance with the provisions of the Deed of Easement;

2. Inform the SADC if any of the terms and conditions of the Deed of Easement were violated within 30 days of identifying such violation;

3. Take appropriate action within the county's authority to ensure that the terms and conditions of the Deed of Easement are enforced;

4. Maintain a data base of all lands from which a development easement was acquired listing at least the following:

i. Record owner;

ii. Record owner's address;

iii. Phone number;

iv. Tax map block and lots of the premises;

v. Acres;

vi. Title policy;

vii. Final survey;

viii. Inspection dates;

ix. Copy of the recorded Deed of Easement;

x. Subsequent amendments to the Deed of Easement; and

xi. Subsequent issues impacting the premises;

5. Inform the SADC of any record ownership changes which occur on lands from which development easements have been acquired; and

6. Inform the SADC of any actions which require the SADC's review and/or approval pursuant to N.J.A.C. 2:76-1, and the Deed of Easement.

2:76-6.18B SADC grant agreement with county: SADC responsibility

(a) In furtherance of an agreement for a grant for the purchase of a development easement by a county the SADC shall:

1. Conduct a base line inspection of the properties designated in Schedule A of the agreement in cooperation with the county;

2. Review the title commitment, final survey, and other necessary closing documents deemed to be complete and accurate by the county prior to the formal purchase of a development easement;

3. Attend the formal closing for the purchase of a development easement to ensure that the SADC's interests and obligations are fully protected;

4. Provide a grant to the county for the purchase of a development easement on the properties designated in Schedule A of the agreement subject to available funds, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and N.J.A.C. 2:76-6.11, within one year of the SADC's final approval for the purchase of the development easement;

5. Consider a request by the county pursuant to N.J.A.C. 2:76-6.18A(c)11, to extend the one year period to provide a grant to the county as follows:

i. The SADC may extend the one year period for additional six month periods not to exceed a total of one year when it has determined that extenuating circumstances which are beyond the county's or landowner's control have caused the delay;

6. Enforce the provisions of the Deed of Easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and N.J.A.C. 2:76; and

7. Review and take appropriate action as required pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., this chapter and the Deed of Easement.

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Department Organization

Proposed Readoption: N.J.A.C. 3:3-2 and 3

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1; 47:1A-2; Executive Order No. 11(1974).

Proposal Number: PRN 1995-45.

Submit comments by February 2, 1995 to:
Elaine W. Ballai, Regulatory Officer
Division of Regulatory Affairs
Department of Banking
20 West State Street, CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

This proposal would readopt N.J.A.C. 3:3, Department Organization, which is scheduled to expire on January 11, 1995 pursuant to Executive Order No. 66(1978). Subchapters 2 and 3 of N.J.A.C. 3 will be readopted, but subchapter 1 will be allowed to expire since the Department is currently undergoing some modifications to its structure which will require a revised organizational description in the near future. N.J.A.C. 3:3 consists of three subchapters. Subchapter 1, proposed for expiration at this time, describes the Department of Banking's present organization, which includes divisions of regulatory affairs, supervision, administration, legislative affairs and public information. Subchapter 1 will be reserved for the future adoption of an organizational rule. Proposed subchapter 2 deals with nonpublic records, exempt from the "Right to Know Law", N.J.S.A. 47:1A-1 et seq., which defines "public records" as "those which are required by law to be made, maintained or kept on file by a State agency unless designated as nonpublic by statute or regulation." Pursuant to Governor Byrne's Executive Order No. 11, November 15, 1974 the Commissioner is empowered to designate, by regulation, those records which shall not be deemed public records. N.J.A.C. 3:3-2.1 sets forth a list of specific categories of records which are deemed nonpublic. These include all materials incident to an examination or audit of a financial institution, business plans, incorporators' financial statements and leeway investments and applications, complaint files maintained by the Department, Attorney General's correspondence with the Department, documents pertaining to ongoing investigations, memoranda of understanding between the Department and a financial institution, information regarding individual institutions obtained pursuant to surveys conducted by the Department, and certain personnel and pension records of Department employees and persons affiliated with financial institutions. N.J.A.C. 3:3-2.2 contains definitions of "independent auditor" and "Report of Examination." N.J.A.C. 3:3-2.3 sets forth conditions under which Bank Examination Reports shall be made available to independent auditors retained by the banking institution. Subchapter 3 sets forth a grievance procedure under which a complaint may be filed with the Commissioner, investigated and processed through a Coordinator, pursuant to the Americans With Disabilities Act, 42 U.S.C.A. 1201 et seq.

Social Impact

Readoption of these rules will inform the general public of the specific records designated as nonpublic under the "Right to Know Law," and the procedure utilized by the Department to enforce the Americans With Disabilities Act. N.J.A.C. 3:3 has a positive social impact in that the public is kept advised of important Department policies and practices related to these subject matters.

Economic Impact

The expiration of N.J.A.C. 3:3-1 will have no economic impact since it is not regulatory in nature, but merely describes the organization of the Department of Banking. N.J.A.C. 3:3-1 will be adopted with modifications in the near future. N.J.A.C. 3:3-2 has a positive economic impact on licensees and depositories in that N.J.A.C. 3:3-2 shields confidential business transactions and records and thereby prevents the possible illicit use of such information. N.J.A.C. 3:3-3 has a positive economic impact in that it enables persons with disabilities to redress their grievances and resolve disputes related to the Americans With Disabilities Act, which may result in enhanced employment opportunity, improved access to employment or services or other favorable economic consequences.

Regulatory Flexibility Analysis

N.J.A.C. 3:3-2 and 3 do not result in any costs to small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. because there are no recordkeeping, compliance or reporting requirements imposed on small businesses. Subchapter 2 applies to the actions the Department of Banking will take in shielding documents from public scrutiny and subchapter 3 applies to individuals seeking relief from alleged actions prohibited by the Americans with Disabilities Act.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:3-2 and 3.

(b)

DIVISION OF REGULATORY AFFAIRS

License Fees and Examination Charges; Failure to Pay

Proposed New Rule: N.J.A.C. 3:1-6.7
Proposed Amendments: N.J.A.C. 3:18-10.5 and 3:38-1.6

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8, 8.1, 17:10-10, 17:11A-39.1, 17:11B-9, 17:15A-48, 17:15B-11, 17:16C-10, 17:16C-84, 17:16D-6 and 45:22-8.

Proposal Number: PRN 1995-22.

Submit comments by February 2, 1995 to:
Rule Comments
Attn: Elaine Ballai
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to adopt a new rule, N.J.A.C. 3:1-6.7, providing that the Department will suspend the license of licensees who pay the Department with checks that are dishonored and those who fail to pay examination charges. In particular, the rule provides that if a licensee pays an examination charge, application fee, license fee or any other fee or charge with a check which is returned for insufficient funds or is not paid for any other reason, the Department will advise the licensee by letter. The licensee will then have 20 days to provide the Department with a certified or cashiers check payable to the State of New Jersey for the amount of the dishonored check plus $10.00. Failure to provide payment will result in suspension of the license.

In addition, the proposed rule provides if a licensee fails to pay an examination charge within 30 days after the bill is sent, the Department will send a second billing. The licensee will then have 20 days from the date of such letter to provide the Department with payment of the fee. If the licensee fails to provide such payment within 20 days, the Department will suspend the license of the licensee until payment is received.

Finally, the proposed amendments provide that the Department is not required to publish newspaper notice when it has a claim against the bond for an examination charge or any other fee, charge or penalty if there are no consumer claims or complaints which appear valid and which may require payment from the bond.

Social Impact

The proposed new rule will have the beneficial social impact of suspending the licenses of persons who do not have the financial responsibility to pay the State for the cost of regulating their industry. Without such a provision, these costs can be passed on to the remainder of the industry and to the taxpaying public. The proposed amendments will eliminate an unnecessary notice.

Economic Impact

It is expected that the Department will receive a positive economic impact from the proposed new rule, since licensees will be more likely to pay their examination charges and other fees. In addition, the Department will receive a positive economic impact from the $10.00 returned check fee. Those seeking to avoid these payments will incur a corresponding negative economic impact. The provision providing that the Department does not need to publish notice of its claim against the surety bond will have a positive economic impact for the State because it clarifies that the Department does not in all circumstances need to incur the publication costs.

Regulatory Flexibility Analysis

Most licensees are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements in the form of a $10.00 returned check fee are imposed. In addition, the rule requires that the licensee provide a certified or cashiers check after issuing a returned check to the Department. Since these fees are necessary from all businesses to pay for the administrative costs of regulating these businesses, no differentiation based on business size is made.

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

3:1-6.7 Failure to pay license and examination charges

(a) If a licensee pays an examination charge, application fee, license fee or any other fee or charge with a check which is returned for insufficient funds or is not paid for any other reason, the Department shall advise the licensee by letter. The licensee shall have 20 days from the date of such letter to provide the Department with a certified or cashiers check payable to the State of New Jersey for the amount of the dishonored check plus $10.00. If the Department does not receive a certified or cashiers check within 20 days of the date of this letter, the Department shall suspend the license of the licensee until payment by certified or cashiers check is received.

(b) If a licensee fails to pay an examination charge within 30 days after the bill is sent, the Department shall send a second billing. The licensee shall have 20 days from the date of such letter to provide the Department with payment of the fee. If the licensee fails to provide such payment within 20 days, the Department shall suspend the license of the licensee until payment is received.

3:18-10.5 Bonds

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

(f) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumer of their right to file claims against the bond. **The Department is not required to publish notice when it has a claim against the bond for an examination charge or any other fee, charge or penalty if there are no consumer claims or complaints which appear valid and which may require payment from the bond.** [This] **If the Department determines a notice is necessary the** notice shall be in the following form:

(No change in notice text.)

(g)-(n) (No change.)

3:38-1.6 Bonds

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

(g) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumer of their right to file claims against the bond. **The Department is not required to publish notice when it has a claim against the bond for an examination charge or any other fee, charge or penalty if there are no consumer claims or complaints which appear valid and which may require payment from the bond.** [This] **If the Department determines a notice is necessary the** notice shall be in the following form:

(No change in notice text.)

(h)-(i) (No change.)

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Volunteer Coaches' Safety Orientation and Training Skills Programs

Proposed New Rules: N.J.A.C. 5:52

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 2A:62A-6(e); Reorganization Plan No. 002-1994.

Proposal Number: PRN 1995-9.

Submit written comments by February 2, 1995 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX #(609) 633-6729

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules entitled "Governors's Council on Physical Fitness and Sports," N.J.A.C. 5:52, expired on January 2, 1995.

Under Reorganization Plan No. 002-1994, filed by Governor Whitman on November 21, 1994, the rulemaking authority of the Governor's Council on Physical Fitness and Sports has been transferred to the Commissioner of Community Affairs. Though the reorganization plan does not take effect until January 20, 1995, the 60th day following the date of filing with the Legislature, the Office of Administrative Law has determined that it would be appropriate for the Commissioner to propose readoption prior to that date so as to minimize the period of time between the expiration date of the rules and the date of filing of the readoption notice. In the event, however, that the Legislature were to disapprove the reorganization plan, the Commissioner would not have authority to readopt this chapter.

The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, the expired rules in N.J.A.C. 5:52 are proposed for adoption as new rules under the new title of "Volunteer Coaches' Safety Orientation and Training Skills Programs."

These rules were adopted, pursuant to N.J.S.A. 2A:62A-6, in order to provide minimum standards for safety orientation and training skills programs for volunteer sports coaches, managers and officials. P.L. 1988, c.87 (N.J.S.A. 2A:62A-6 et seq.) provides civil immunity for coaches, managers and officials who have successfully completed a program that meets these standards. Programs for volunteer coaches and managers are required to cover medical, legal and first aid aspects of coaching, training and conditioning of athletes, psychological aspects of coaching and general coaching concepts. Programs for volunteer athletic officials are required to cover general officiating concepts.

Social Impact

The proposed rules will insure continuity in training programs for volunteer coaches, managers and officials and in the statutory civil immunity that is contingent upon satisfactory completion of a course that meets the standards established by this rule. Without this immunity, the prospect of personal liability for volunteer coaches, managers and officials in the event of any accident during the course of an athletic event is likely to deter people from volunteering, thereby making it more difficult to organize athletic programs.

The training programs that follow the standards will also have a positive social impact by better preparing coaches, managers and officials to prevent injuries and to deal properly with those that do occur.

Economic Impact

Failure to continue these rules would impose a serious potential economic liability upon individuals who might volunteer to serve as athletic coaches, managers and officials. Readoption will have a positive economic impact upon those who participate in training programs that meet the standards since it will result in their being relieved of potential tort liability in connection with their volunteer activities.

While the programs that comply with the standards may be expected to have the positive effect of reducing the frequency and extent of sports-related injuries, they may negatively impact upon persons who are injured by limiting their ability to recover damages. There will be no further cost to the State nor any undue burden to organizations or individuals in implementing these standards.

Although it may vary, a nominal cost may be incurred by an organization sponsoring the educational program or an individual coach, manager or official participating in the program. In either case, should in no case exceed $50.00 per participant and, in many cases, it may be expected to be less.

Regulatory Flexibility Analysis

The training programs prescribed by this chapter may be offered by nonprofit organizations and national or State training organizations as well as by local recreation departments. The same minimum standards apply regardless of whether the organization offering the program might qualify as a "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14-16B et seq. Regardless of the size or nature of the organization, the health, safety and welfare of that segment of the public that participates in nonprofit voluntary athletic programs requires that the minimum standards to be followed by educational programs be applicable to all. The rules proposed for readoption impose no burdensome recordkeeping or reporting requirements.

Full text of the expired rules proposed herein as new may be found in the New Jersey Administrative Code at N.J.A.C. 5:52.

Full text of the proposed amendments to the expired rules follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

CHAPTER 52
[GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS]
VOLUNTEER COACHES' SAFETY ORIENTATION AND TRAINING SKILLS PROGRAMS

ENVIRONMENTAL PROTECTION

(a)

ENFORCEMENT
OFFICE OF LOCAL ENVIRONMENTAL MANAGEMENT

Notice of Postponement of Proposal of New Rules, N.J.A.C. 7:1H
County Environmental Health Act Rules

Take notice that the Department of Environmental Protection (Department) has decided to postpone proposing new rules at N.J.A.C. 7:1H, County Environmental Health Act rules, for which the Department published a pre-proposal in the New Jersey Register on September 6, 1994 (see 26 N.J.R. 3526(a)). During October 1994 the Department held three public workshops to discuss the pre-proposed rules with interested persons, primarily representatives of regulated industry and local health agencies. The Department received substantial written and oral comments on the increased universe of programs which would be eligible for delegation to the CEHA agencies and the potential for overlap of responsibilities between the Department and certified agencies. Specifically, commenters raised concerns related to consistency in enforcement within these programs from county to county and between the counties and the Department. The Department received requests to postpone further development of the rules until these concerns can be addressed. Accordingly, the Department has decided to postpone the proposal of the new rules until a task force is established and recommendations made to the Commissioner of the Department. The Department will select task force members from among the interested persons who submitted written and/or verbal comments to the Department and will invite them to participate shortly.

The comment period on the pre-proposed rules closed on October 25, 1994. The Department appreciates the participation of all interested persons and will consider all comments received. The Department will respond to these comments when it publishes the proposal of the revised new rules.

For information contact:

Deborah Pinto, Chief
New Jersey Department of Environmental Protection
Enforcement, Office of Local Environmental Management
401 East State Street, 4th Floor, CN 422
Trenton, New Jersey 08625-0422
(609) 292-1305

(b)

AIR QUALITY REGULATION PROGRAM
Operating Permit Fees
Proposed Amendment: N.J.A.C. 7:27-22.1
Proposed New Rule: N.J.A.C. 7:27-22.31

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 26:2C-1 et seq.
DEP Docket Number: 53-94-12/496.
Proposal Number: PRN 1995-29.

A **public hearing** concerning this proposal will be held on:

Thursday, January 19, 1995 at 10:00 A.M. at:
New Jersey Department of Environmental Protection
Hearing Room, first floor
401 East State Street
Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by February 3, 1995 to:

Janis Hoagland, Administrative Practice Officer
Attn: DEP Docket No. 53-94-12/496
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

Copies of the proposed new rule and supporting documentation will be available for inspection during normal office hours at:

Atlantic County Health Department
201 South Shore Road
Northfield, New Jersey 08225

Middlesex County Air Pollution Control Program
County Annex Building
841 Georges Road
North Brunswick, New Jersey 08902

DEP Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Horizon Center, Building 300
Route 130
Robbinsville, New Jersey 08691

The new rules will become operative 60 days after adoption. Pursuant to N.J.A.C. 1:1, adoption occurs upon signature by the Commissioner.

The agency proposal follows:

Summary

Overview

The New Jersey Department of Environmental Protection (Department) is proposing new rules at N.J.A.C. 7:27-22 (subchapter 22) to establish fees for its air pollution control operating permit program for

major sources of air contaminant emissions. Rules for the operating permit program were originally proposed on September 7, 1993, and partially adopted on September 1, 1994. That partial adoption appears in the October 3, 1994 New Jersey Register at 26 N.J.R. 3943(b). The proposed fee provisions, among others, were not included in the partial adoption, but are being reproposed here with changes. The remaining rule sections which were not adopted in September 1994 will be reproposed shortly.

The first annual operating permit fees are proposed to be due 60 days after adoption of this proposal, which should be in early May 1995. This will allow the Department to reallocate existing staff to operating permit tasks and retain consultant services to process the first operating permit applications, which the Department expects to receive between May 15 and August 15, 1995.

The proposed new rule is required by the Federal Clean Air Act, 42 U.S.C. §7401 et seq. (the CAA). Pursuant to Title V of the CAA and Federal regulations at 40 CFR Part 70 (Part 70), states must promulgate operating permit programs for certain stationary sources of air contaminant emissions. The state programs must be at least as stringent as the Federal requirements, and the states must charge a fee sufficient to cover the cost of the program. If the Department fails to implement the program within the time allowed by the CAA, the State will be subject to severe Federal sanctions, including two to one emission offsets for new major sources as of May 15, 1995, and Federal implementation of the operating permit program after November 15, 1995.

The CAA requires that the operating permit program be supported by fees. Other sources of funding are prohibited. The CAA establishes a presumption that, in order to implement an adequate operating permit program, a state will have to charge a fee which, in the aggregate, equals or exceeds $25.00 per ton of certain air contaminants emitted each year from major sources in the State. The CAA also requires that the fee be adjusted by the percentage increase in the Consumer Price Index (CPI) since 1989. Any state which charges less than this must provide the United States Enviromental Protection Agency (EPA) with a detailed analysis of its program and its financial needs, in order to obtain authorization from EPA for the lesser fee.

The Department believes that it might be more efficient to delay reproposing this fee rule, but cannot do so without severe consequences. Several ongoing activities at the State and Federal level will, when concluded, require changes to the Department's air permitting rules. First, in response to requests from New Jersey industry, the Department is currently considering several major changes to the structure and administration of the existing preconstruction permit program. Second, the State Legislature is considering bills which, if enacted, will directly affect the air permitting program. Finally, EPA has proposed amendments to its Part 70 operating permit rules, which will require changes to New Jersey's operating permit rules, probably in 1996. However, the Department must implement the operating permit program and proceed with this fee proposal now. The Department is already one year past the CAA deadline of November 15, 1993, for adopting a complete operating permit rule and program. If the complete program, including rules and fee provisions, is not submitted to EPA by May 15, 1995, the Federal two to one offset sanctions will be triggered. As part of the program submitted to EPA, the CAA requires a demonstration that the operating permit program will be fully supported by fees.

Fees are also needed to stave off a Federal takeover of the operating permit program in New Jersey after November 15, 1995. If a state does not adopt or adequately administer an operating permit program, the CAA requires EPA to take control, charge its own fees, and administer the program in that state. Without a valid fee rule, the Department will not have the resources to run the operating permit program adequately and will risk such a Federal takeover.

The operating permit program will be mostly staffed by reallocation of existing staff within the air program. Funding of that existing staff must begin in fiscal year 1995 (FY95) because of reduction in other revenue sources, and because the operating permit program tasks begin in FY95. Otherwise, the Department will be unprepared to begin implementing the program when the first operating permit applications will be received, and to demonstrate to EPA that the program is adequately administered.

Because of the considerations discussed above, the Department is proceeding with a basic operating permit program, designed to meet EPA's requirements and avoid sanctions. This fee proposal will be followed shortly by a proposal of those remaining sections of the operating permit rule which are needed to complete the program (see the October 3, 1994 New Jersey Register for the partial adoption of the main portion of the operating permits rule). By May 15, 1995, all operating permit rules should be adopted and submitted to EPA for approval. Thereafter, consistent with any State legislation, Departmental decisions on re-engineering of the preconstruction permit program, and/or finalization of EPA's Part 70 amendments, the Department will propose subsequent amendments to the permitting rules as needed.

The fee schedules being proposed will be sufficient to fund the operating permit program for fiscal years 1995 and 1996. Additional analysis of FY96 workload and the effectiveness of streamlining measures is necessary to determine if the fees will be sufficient beyond FY96. The Department has completed two detailed reports, entitled "Workload Analysis" and "Fee Determination," both dated August 9, 1993; and a supplemental report entitled "Operating Permits Fee Determination Supplement" dated November 21, 1994. These reports are available from the Department at the locations listed above where the rule is available for public inspection, or may be obtained from the Department at the following address:

NJ Department of Environmental Protection
Air Quality Permitting
CN 027
Trenton, New Jersey 08625

Annual Fees

The Department is proposing two alternative annual fees: one based on the number of pieces of equipment at a facility (equipment fee), and another based on tons per year of emissions from the facility (emissions fee). The equipment fee is proposed at $219.00 (in 1989 dollars) per piece of regulated equipment. As explained below, every year the fee will be adjusted by the CPI increase for that year. Therefore, the first equipment fee due in 1995 would be $264.38 ($219.00 increased by the CPI increases from 1989 to 1994) per piece of equipment. The emissions fee is proposed at $27.50 (in 1989 dollars) per ton of emissions. Therefore, the first emissions fee due in 1995 would be $33.20 ($27.50 increased by the CPI increases from 1989 to 1994) per ton of emissions.

Currently, the New Jersey Air Pollution Control Act (APCA), N.J.S.A. 26:2C-9.2, authorizes the Department to charge up to $500.00 per service. This does not clearly allow the Department to charge an emissions fee. The Department has historically interpreted the APCA to allow the Department only to charge a fee based on the number of pieces of equipment at a facility, which is directly related to services performed by the Department, that is, reauthorizing the operation of each significant piece of equipment. Public comments received on the September 1993 proposal (see 25 N.J.R. 3963) overwhelmingly supported the emissions fee, and it is the Department's preferred alternative. Therefore, the Department is seeking legislative amendments to the APCA to authorize the Department to charge an annual fee based on a facility's total emissions, rather than an equipment fee. The Department welcomes comments on both fee calculation methods.

In order to maximize consistency with the CAA, the Department would prefer to charge annual fees based on a facility's emissions, rather than a fee per service. Emissions are quantified in annual emissions statements required to be submitted pursuant to N.J.A.C. 7:27-21, and emissions generally correlate with the amount of resources the Department will expend in regulating major sources. In addition, an emissions fee would provide an incentive for high emitting facilities to lower emissions. However, as previously mentioned, the APCA does not expressly authorize fees based on emissions. Therefore, the Department will not charge a fee per ton of emissions unless an amendment to the APCA is enacted.

In order to be prepared for the enactment of such a legislative amendment, and to satisfy EPA's requirement for adoption of fees, the Department is simultaneously proposing two alternative annual fee rules. The first, the equipment fee, is authorized by the current provisions of the APCA, N.J.S.A. 26:2C-9(g), which authorizes the Department to charge a fee "for any of the services it performs." This alternative could legally be adopted at the close of the comment period on the present proposal. The second alternative is the emission fee, which can be adopted only if the necessary legislative amendment has been enacted. Because the fees are proposed as alternatives to one another, they are both proposed at N.J.A.C. 7:27-22.31(b) and (c). One is termed Alternative Annual Fee Calculation A and the other Alternative Annual Fee Calculation B.

Alternative Annual Fee Calculation A is an annual equipment fee, based on the number of pieces of equipment at a facility. The Depart-

ment set the proposed equipment fee at a level that would generate approximately the same amount of total annual revenue that would be generated if an annual emissions fee of $27.50 per ton (in 1989 dollars) were charged. Alternative Annual Fee Calculation B, to be adopted only if an APCA amendment is enacted to authorize it, is an emissions fee based on the number of tons of air contaminants, including fugitive emissions, emitted each year by a major facility. Both fees comply with the CAA, which requires that the fees cover the costs of the operating permit program. If an APCA amendment is passed, the Department will adopt the annual **emissions** fee in Alternative Annual Fee Calculation B rather than the annual equipment fee.

As noted above, the CAA requires that any annual fee be adjusted by the percentage increase in the CPI since 1989. The proposed rule includes a provision at N.J.A.C. 7:27-22.31(i), setting forth in detail the calculation performed to determine the percentage increase. The calculation method was obtained from EPA guidance. The first fee, due in late spring of 1995, is proposed to be $33.20 per ton, including the percentage increase in the CPI (in the case of the equipment fee, the amount would be $264.38). Each year thereafter the fee will increase by the CPI percentage increase factor. In accordance with proposed N.J.A.C. 7:27-22.31(j), the Department will annually publish the CPI percentage increase factor and the annual fee rate in the New Jersey Register.

Transition From Operating Certificates

After May 1995, the owner or operator of any facility subject to N.J.A.C. 7:27-22 will be required to submit the annual fees established by this proposed rule. However, many facilities will not be required to actually obtain an operating permit until up to four years later. Until a facility actually obtains an approved operating permit, operating certificates pursuant to N.J.A.C. 7:27-8 (subchapter 8) must be maintained for equipment within the facility as required by subchapter 8. Consequently, certificate fees will be discontinued when the operating permit is issued and the administrative tasks associated with certificates are eliminated.

Annual Fee Procedures

N.J.A.C. 7:27-22.31(e), (f) and (g) set forth procedural requirements including the timing of fee submittal. Annual fees are to be calculated by the owner or operator of the facility, using forms supplied by the Department, and submitted each year. The Department has no plans at this time to bill facility owners or operators. Rather, the owners or operators are responsible for calculating and submitting the fees without prompting. Of course, the Department may, if it deems necessary, institute a billing process at any time, or may send supplemental bills to non-payers or those who submit an incorrect fee amount.

Once calculated, the first annual fees are to be submitted by 60 days after adoption of this proposal. This is explained in N.J.A.C. 7:27-22.31(c). These first fees, which will cover Department expenses for the program in FY95, are based on emissions or equipment at the facility in 1993, and would have been submitted in 1994 if the Department had adopted its operating permit program rules within the EPA deadline. The second fee, based on emissions or equipment at the facility in 1994, will be due by December 31, 1995, and will cover the expense of the program for FY96. Thereafter, annual fees will be due by December 31 of each year for emissions or equipment at the facility during the preceding year. A definition of "fiscal year" is proposed at N.J.A.C. 7:27-22.1.

If Alternative Annual Fee Calculation A is adopted, the number of pieces of equipment at the facility, as of November 30 of the year preceding that in which the fee is due, will be used in the calculation. For example, an annual fee due on December 31, 1998 would be calculated using the number of pieces of regulated equipment at the facility on November 30, 1997.

For the emissions fee set forth at Alternative Annual Fee Calculation B, the Department requires that the fee be calculated using total actual emissions as stated on a facility's annual emissions statement, required pursuant to N.J.A.C. 7:27-21. The reporting period for the emission statement rule runs from December 1 through November 30, and the emission statement must be submitted to the Department by April 15 of the calendar year following the end of the emission statement reporting period. The annual emissions fee would be calculated based on the total actual emissions during this period, which the proposal defines at N.J.A.C. 7:27-22.1 as the "emission statement year." For example, an annual fee due on December 31, 1998 would be calculated using actual emissions during emission statement year 1997. These emissions would have occurred at the facility during the period from November 30, 1996 through December 1, 1997, and would be reported to the Department pursuant to N.J.A.C. 7:27-21 in an emission statement due to the Department on April 15, 1998.

De minimis Annual Emission Fee

N.J.A.C. 7:27-22.31(d) would establish a de minimis emission limit for the annual emissions fee. This provision would exempt facilities from paying an annual emission fee if their total aggregate emissions for the year are less than 10 tons. This emission level correlates to an annual emissions fee of approximately $332.00 based on the Consumer Price Index for 1994. This exemption level was established to minimize the fee burden on small emitters, which are generally small businesses, and because the Department's costs to process such small fees reduces useful revenue to insignificant amounts for emissions under 10 tons per year.

Changes to Workload Analysis and Fee Determination

On August 9, 1993, the Department issued two documents: Operating Permits Workload Analysis and Operating Permits Fee Determination. These documents were prepared using the most current information available at that time. Since August 9, 1993, the Department has compiled an equipment and emission inventory for 1993, and has obtained a more accurate Consumer Price Index (CPI) for 1993. The Department has received EPA guidance on the use of the CPI in fee calculations, and has in this proposal added a subsection, N.J.A.C. 7:27-22.31(i), delineating the method of calculating the CPI factor. These supporting documents to the Department's fee determinations have been supplemented to reflect this new information. These documents and their updating supplement are available for inspection at the locations for rule inspection listed above, or from the Department at the address set forth above in the Summary.

Comments to rule as proposed on September 7, 1993

The Department received comments on the 1993 fee proposal indicating that the term "equipment" was not clearly defined and could include valves, which was not intended. The Department has clarified in this proposal at N.J.A.C. 7:27-22.31(b) that a piece of equipment, for fee purposes, includes any type of equipment for which a preconstruction permit must be obtained in accordance with subchapter 8 (including "grandfathered" equipment), and does not include control apparatus. The Department is excluding control apparatus from this proposal to ensure that the fee does not create a deterrent to installing air pollution control apparatus.

Commenters also stated that some facilities with hundreds of pieces of equipment would have to pay an an operating permit application fee that would pose an unreasonable financial burden. Several commenters suggested that the application fee be dropped, and that these costs be factored into the annual fee. The Department agrees that this will simplify the administration of the fee requirements and reduce confusion. Therefore, the Department is proposing at N.J.A.C. 7:27-22.31(b) a slightly higher annual fee, which is equivalent to $27.50 per ton of emissions (in 1989 dollars), rather than $25.00; and has eliminated the application fee. The increase in annual fees will be approximately equivalent to the revenue which would have been derived from the application fee. These calculations can be found in the Operating Permits Fee Determination Supplement, dated November 21, 1994.

In addition, commenters requested that the Department establish a de minimis emission level for the annual emissions fee, so that very small emitters would not have to pay the annual fee. In response to this comment, and as mentioned above, the Department is proposing that a facility which emits a total of 10 tons per year or less of air contaminants be exempted from paying an annual emissions fee.

Changes to Alternative Annual Fee Calculation A

The annual equipment fee proposed herein is substantially higher per piece of equipment than that in the original proposal. There are two reasons for this. First, the number of pieces of equipment subject to the fee is reduced by approximately 50 percent. Second, the equipment fee was raised to compensate for the fact that this proposal does not include the application fee which was included in the original proposal.

In calcuating the annual equipment fee for the 1993 operating permits rule proposal, the Department had assumed that there would be 81,720 regulated pieces of equipment in New Jersey. Therefore, to ensure the equivalent of the $25.00 emission fee, the Department proposed an annual equipment fee of $136.00 per piece of equipment. However, for this proposal, the number of pieces of equipment which will be subject

to a fee is reduced to 45,000, almost 50 percent less than the previous total. This reduction resulted from the elimination of control apparatus from the class of regulated pieces of equipment; and from the use of updated, more accurate information for calculating the total pieces of regulated equipment in New Jersey. Because of this reduction, the Department has increased the fee per piece of equipment.

The equipment fee was also increased to account for the deletion of the application fee in response to public comments. The deletion of the application fee results in an equipment fee increase of $20.00 (in 1989 dollars) per piece of regulated equipment. After taking into account the smaller number of pieces of equipment subject to the fee, and the incremental increase caused by the deletion of the application fee, the new annual equipment fee is being proposed at $219.00 per piece of equipment (in 1989 dollars). In general, the increase in the fee per piece of equipment will be offset by the reduction in the number of pieces of equipment to which the fee applies, so most facilities' fees would be roughly the same as under the 1993 proposal.

The annual fees will cover the costs of application reviews and the ongoing costs of administering and enforcing permits once they are issued. These costs include management and tracking of information pertaining to the permit and the facility, oversight of testing and continuous emissions monitoring, processing of periodic reports, compliance certifications, and other submittals, providing for public comment, and performing inspections and Departmental audits.

A more in-depth analysis of the Department's workload projections and the calculations described above, and of the revised operating permit fees in general, may be found in the Operating Permits Fee Determination Supplement dated November 21, 1994, available from the Department at the address set forth above.

Permit Modification Fees

No fee is proposed at this time for changes or modifications to operating permits. The Department is currently preparing a reproposal of the modification sections of the operating permit rule. In the reproposal, the Department will propose to move the preconstruction requirements for major sources (now located in subchapter 8) into the operating permits rule. The Department anticipates that the fees for preconstruction review will also be moved into subchapter 22 at that time, and may be consolidated with any proposed fees for minor or significant modifications, or for other changes to operating permits. Since the first operating permits are likely to be issued in early 1997, any modification fees would be in place by then.

Submittal Schedule

The operating permit application submittal schedule, adopted September 1, 1994 at N.J.A.C. 7:27-22.5(c), separates the approximately 900 affected facilities into seven groups, by Standard Industrial Classification (SIC) code. The first group is required to submit an operating permit application by August 15, 1995 and the last group by May 15, 1998. The Department rcommends that all applications be submitted three months prior to the deadline to allow a preliminary completeness review and to ensure that the application is complete by the deadline.

Fee Analysis

In developing the fees proposed herein, the Department performed extensive analyses of current and projected workloads, administrative costs, and fee revenue. Details of these analyses and of calculations that show how the total revenue from annual equipment fees is equivalent to that which would be derived from the annual emissions fees can be found in the "Operating Permits Workload Analysis," "Operating Permits Fee Determination," and "Operating Permits Fee Determination Supplement." These reports are available for inspection during business hours at the offices of the Department and a copy may be obtained by writing to the address given above.

Because the operating permit program is new, the Department based its proposed fees on projections developed from experience with current permit programs. Accordingly, proposed N.J.A.C. 7:27-22.31(h) provides that the Department will evaluate the actual costs of the operating permit program within two years after the approval by EPA of an interim program. At that time, the actual resources expended and fees collected by the Department will be compared to the projections contained in the reports described above, and revisions to the fee schedule may be proposed.

Statement of Relationship to Federal Requirements

This rule does not exceed any standard or requirement imposed by Federal law. The CAA and EPA's Part 70 rules require that those subject to the operating permit program pay fees "that are sufficient to cover the permit program costs." 40 § CFR 70.9(a) (also see 42 U.S.C. §7661a (b)(3)). The Department has performed a detailed analysis of the workload which will result from the operating permit program. From the workload analysis, the Department has calculated the fee amounts needed to cover the program's costs.

The Department has determined that the fees proposed should cover the costs of the operating permit program until FY97. This funding should be sufficient to obtain EPA's approval of an interim operating permit program. The Department is further evaluating streamlining measures, such as electronic data submittal, and will reevaluate workload to estimate fee requirements for FY97. These evaluations will be done prior to the Department's submittal to EPA of a final, full operating permit program submittal.

Environmental Impact

The Department expects the environmental benefit of the proposed fee rule to result mainly from its effect as an incentive to reduce air contaminants in order to reduce fees. With either the equipment fee or the emissions fee, some facilities can avoid the fee altogether by reducing emissions below the applicability thresholds for operating permits at N.J.A.C. 7:27-22.2, thus avoiding both the operating permit program and its fees. With the annual emissions fee, lower emissions will result in a lower fee. Therefore, a permittee may modify a manufacturing process to emit fewer contaminants and thus reduce the annual emissions fee.

Furthermore, the fees will accurately and equitably distribute the costs of the program. Air pollution emitters, rather than citizen taxpayers, will pay for this regulation of their emissions. If the annual emissions fee is adopted, within the class of major air pollution emitters, fees will be greater for those facilities which cause greater emissions. Thus, the proposed fees will act as a deterrent to air pollution, while fairly distributing the cost of the program.

Finally, the annual emissions fee would target New Jersey's most serious pollutants. Alternative Annual Fee Calculation B (the emissions fee) would not provide a 4,000 ton per year upper limit on fees for VOC and NO_x emissions, while this cap would apply to the other air contaminants subject to the annual emissions fee. VOC and NO_x are precursors to the formation of ground-level ozone which is currently New Jersey's most serious air pollution health problem. Some major sources of NO_x emit more than 50,000 tons of NO_x per year. A 4,000 ton per year cap on emissions for fee calculation purposes would not provide an incentive for such sources to reduce NO_x emissions. The proposed fee rule, by omitting this cap, would create a greater incentive to reduce VOC and NO_x emissions, which is appropriate because greater environmental and health benefits will result from a reduction of these two pollutants.

Social Impact

The Department expects the proposed fee rule to have a positive social impact because it will help ensure that the Department will have the resources necessary to effectively develop and administer the Federally mandated operating permit program for major stationary sources. In particular, the permit fee provisions of Title V of the CAA require the State to fund the operating permit program using fees. The rule would place the costs of the operating permit program on the major facilities subject to its requirements, consistent with the "polluter pays" principle and with Federal requirements.

If authorizing legislation is passed, annual fees would be based on actual emission levels, which would create an incentive for facilities to reduce emissions. As mentioned above, this incentive may encourage a facility to engage in pollution prevention activities that create a positive environmental and health benefit. Some facilities may be able to reduce emissions below the applicability level of the operating permits program, thus avoiding not only the fees, but the entire operating permit process.

Economic Impact

The proposed new rule will impose costs on major emitting facilities. In a document published by EPA entitled "The Regulatory Impact Analysis and Regulatory Flexibility Act Screening for Operating Permits Regulations" (EPA, document No. 450/2-91-011), EPA estimates that the annualized cost for the first five year implementation period for a state agency will be $9,500 per year to issue and administer an operating

permit for a major facility. The Department compared these data to its own independently generated findings, and determined that the costs predicted by the Department's detailed workload analysis are consistent with EPA's national cost estimates.

The costs of the operating permit program to the State will be covered by fees as Federally mandated by Title V of the CAA. The Department estimates that average operating permit fees will be $12,500 in fiscal year 1995 for the average major New Jersey facility. This estimate is derived from the Workload Analysis and Fee Determination reports compiled by the Department. The $12,500 that would be charged to the average major New Jersey facility in 1995 is close to the $9,500 that was estimated by EPA in 1992 to be the national average cost for Federally mandated activities. A somewhat higher dollar cost is expected because the New Jersey 1995 estimated cost accounts for inflation, and because major industrial sources in New Jersey are generally more complex than the average major industrial source nationally. New Jersey's large chemical and pharmaceutical industry operates facilities which have many varied and complex operations, including many batch plant operations.

In developing the fee schedule, the Department carefully analyzed the projected workload for Department staff implementing the operating permit program. In this analysis, the Department included the introduction of cost saving measures, including phasing in the initial operating permits with an interim program; planning for a selective audit program for inspections and test observations; and proposing to hold consolidated hearings on groups of draft operating permits. With such planning, the originally projected staffing need was reduced by about one third, resulting in the final workload analysis. During the first two years of implementation of the operating permit program, the hiring of staff and/or contractors will be phased in to help contain the costs to fund the operating permit program.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has made the following determinations as to small businesses regarding the proposed new rules. The New Jersey Regulatory Flexibility Act defines small businesses as "any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees."

The Department estimates that the proposed new rule at N.J.A.C. 7:27-22.31 will subject to the new Operating Permit process approximately 300 small businesses that are major emitting facilities and therefore are required by the Federal CAA to be subject to the operating permit program.

The fees that N.J.A.C. 7:27-22.31 will impose on emissions or equipment will not have a significant economic effect on small businesses. The fact that small businesses for the most part will have low emissions and few pieces of equipment requiring permits will reduce the costs. As an example, a typical small business may emit a total of 25 tons of actual emissions, so that its emissions fee would be about $831.00 in 1995, after adjusting the $27.50 per ton for projected increases in the CPI. Under the equipment fee option, a typical small business might have five significant source operations, resulting in an annual equipment fee of about $1,320. Assuming 300 small businesses require operating permits, the total annual cost to average New Jersey small businesses will range from $250,000 to $400,000.

As mentioned above, the Department has proposed a de minimis emission limit for the annual emissions fee. This will minimize the effect of the rules on small business by exempting facilities that emit less than 10 tons in a given year from paying an annual emissions fee for that year.

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

7:27-22.1 Definitions

Words and terms, when used in this subchapter, have the meanings given below unless defined at N.J.A.C. 7:27-1.4 or the context clearly indicates otherwise.

. . .

"Emission statement year" means the reporting period required by the emission statement rules at N.J.A.C. 7:27-21. The reporting period runs from December 1 through November 30. Each emission statement year is designated according to the calendar year in which 11 of the 12 months of the reporting period fall. For example, the period from December 1, 1998 through November 30, 1999 is emission statement year 1999, for which an emission statement submission is due in April 2000.

. . .

"Fiscal year" or "FY" means the period from July 1 through June 30. Each fiscal year is designated according to the calendar year in which the end of the period falls. For example, the period from July 1, 1998 through June 30, 1999 is fiscal year 1999, or FY99.

. . .

7:27-22.31 Fees

(a) The owner or operator of a facility subject to this subchapter shall submit an annual operating permit fee to the Department in accordance with this section.

Agency note: The Department is proposing two alternatives for the calculation of annual fees. Each is set forth in two subsections—(b) and (c). The alternatives are referred to as ALTERNATIVE ANNUAL FEE CALCULATION A and ALTERNATIVE ANNUAL FEE CALCULATION B.

ALTERNATIVE ANNUAL FEE CALCULATION A

(b) The annual fee shall be based on the number of pieces of equipment subject to the operating permit and shall be adjusted annually in accordance with the Consumer Price Index. The annual fee for a facility shall be determined in accordance with the following procedure:

1. Determine the total number of pieces of equipment at the facility (not including control apparatus, and regardless of whether the equipment is new, existing or altered) which:

i. Constitute a significant source operation as defined at N.J.A.C. 7:27-22.1. A significant source operation is a source operation which is found on the list at N.J.A.C. 7:27-8.2(a)1 through 21, but not on the exemption list at N.J.A.C. 7:27-8.2(b)1 through 6; and

ii. Are located at the facility on November 30 of the calendar year preceding the calendar year in which the fee is due (except for fees due in 1995, which shall use the equipment figures required by (c) below); and

2. Multiply the total number of pieces of equipment determined pursuant to (b)1 by the present value of $219.00. The present value of $219.00 shall be determined as follows:

i. Multiply $219.00 by the percentage increase in the current year's Consumer Price Index for All Urban Consumers (CPI-U) relative to the 1989 CPI-U. This percentage increase shall be determined in accordance with the procedure set forth in (i) below; and

ii. Add the result of this multiplication to $219.00.

3. The dollar amount determined pursuant to (b)1 and 2 above shall be the annual fee for the facility.

(c) The annual fees which are due in 1995 shall be calculated and submitted as follows:

1. The first annual fee (for FY95) shall be submitted to the Department no later than [the date 60 days after these proposed new rules are adopted]. This fee shall be calculated using:

i. The total number of pieces of equipment at the facility on November 30, 1993 (this number should be used in the portion of the fee calculation found at (b)1ii above); and

ii. The present value of $219.00, calculated using the CPI-U for the period ending August 31, 1994, which is equal to $264.38 (this number should be used in the portion of the fee calculation found at (b)2i above).

2. The second annual fee (for FY96) shall be submitted to the Department no later than December 31, 1995. This fee shall be calculated using:

i. The total number of pieces of equipment at the facility on November 30, 1994 (this number is used at (b)1ii above); and

ii. The present value of $219.00, calculated using the CPI-U for the period ending August 31, 1995 (this number is used at (b)2i above).

ALTERNATIVE ANNUAL FEE CALCULATION B

(b) The annual fee shall be based on the facility's actual emissions for the emission statement year preceding the calendar

year in which the fee is due (except as provided at (c) below) and shall be adjusted annually in accordance with the Consumer Price Index. For example, fees due in 1998 are based on actual emissions during emission statement year 1997. The annual fee shall be determined for a facility in accordance with the following procedure:

1. Determine the facility's total actual emissions, expressed in tons, for the emission statement year preceding that in which the annual fee is due (except for fees due in 1995, which shall use the emission figures required by (c) below). The total actual emissions shall be those reported to the Department pursuant to the emission statement provisions at N.J.A.C. 7:27-21;

2. Determine the quantity of emissions of each air contaminant, expressed in tons per year as follows:

i. For VOC and NO_x, the quantity of emissions shall be the facility's total actual emissions, expressed in tons per year, as determined pursuant to (b)1 above; and

ii. For any other air contaminant, the quantity of emissions shall be the facility's total actual emissions of that air contaminant, expressed in tons per year, as determined pursuant to (b)1 above, except that if the quantity of emissions of any air contaminant exceeds 4,000 tons per year, the quantity for that air contaminant shall be 4,000 tons;

3. Sum the quantities of air contaminants determined pursuant to (b)2 above;

4. Multiply the sum of the quantities of air contaminants determined pursuant to (b)3 above by the present value of $27.50. The present value of $27.50 shall be determined as follows:

i. Multiply $27.50 by the percentage increase in the current year's Consumer Price Index for All Urban Consumers (CPI-U) relative to the 1989 CPI-U. This percentage increase shall be determined in accordance with the procedures set forth in (i) below; and

ii. Add the result of this multiplication to $27.50.

5. The dollar amount determined pursuant to (b)1 through 4 above shall be the annual fee for the facility.

(c) The annual fees which are due in 1995 shall be calculated and submitted as follows:

1. The first annual fee (for FY95) shall be submitted to the Department no later than [the date 60 days after these proposed new rules are adopted]. This fee shall be calculated using:

i. The total actual emissions at the facility during emission statement year 1993 (this number should be used in the portion of the fee calculation found at (b)1 above); and

ii. The present value of $27.50, calculated using the CPI-U for the period ending August 31, 1994, which is equal to $33.20 (this number should be used in the portion of the fee calculation found at (b)4i above).

2. The second annual fee (for FY96) shall be submitted to the Department no later than December 31, 1995. This fee shall be calculated using:

i. The total actual emissions at the facility during emission statement year 1994 (this number is used at (b)4i above); and

ii. The present value of $27.50, calculated using the CPI-U for the period ending August 31, 1995 (this number is used at (b)4i above).

END OF ALTERNATIVE FEE CALCULATION SECTIONS

(d) Notwithstanding (a) above, no annual fee is required if the total aggregate emissions from the facility, as reported on the emission statement for the relevant emission statement year, are less than 10 tons.

(e) All annual fees shall be submitted to the Department no later than December 31 each year, except fees which are due for FY95 pursuant to (c)1 above, which shall be submitted in accordance with (c)1 above.

(f) Any person submitting an annual fee shall set forth, on the annual fee form obtained from the Department at the address in N.J.A.C. 7:27-22.3(t), the calculation carried out pursuant to (b) and (c) above to determine the amount of the fee.

(g) All fee payments required by this section shall be submitted to the Department by check or money order made payable to the "Treasurer, State of New Jersey," shall be accompanied by a completed fee form, and shall be submitted to:

Department of Environmental Protection
Bureau of Revenue
CN 417
Trenton, New Jersey 08625

(h) Within two years after the approval by EPA of the Department's interim operating permit program pursuant to 40 CFR 70, the Department will review the fee requirements of this section. The Department will examine whether the fees required by this section accurately reflect its actual costs in administering the operating permit program. If not, the Department will propose revisions to this section to adjust the fee requirements as necessary.

(i) The percentage increase in the current Consumer Price Index for All Urban Consumers (CPI-U) relative to the 1989 CPI-U shall be calculated using the CPI-U data published monthly by the U.S. Department of Labor. The CPI-U data is re-published monthly in the Survey of Current Business, Bureau of Economic Analysis, U.S. Department of Commerce. The percentage increase shall be determined in accordance with the following procedure:

1. The CPI-U for 1989 is 122.15, representing the average of the monthly CPI-U for the 12 month period ending August 31, 1989;

2. The CPI-U for the current year shall be the average of the monthly CPI-U for the 12 month period ending August 31 of the current year. For example, the CPI-U for the fee which is due on December 31, 1998 shall be the average of the monthly CPI-U for the 12 month period ending August 31, 1998; and

3. The percentage increase in the current CPI-U relative to the 1989 CPI-U shall be calculated in accordance with the following formula:

$$\text{i. Percentage Increase} = 100 \times \frac{\text{Current Year CPI} - 122.15}{122.15}$$

ii. Where:

Current Year CPI is the CPI-U determined pursuant to (i)2 above; and

122.15 is the CPI-U for 1989, pursuant to (i)1 above.

(j) To assist in calculations of the annual fee required pursuant to this section, the Department will annually publish a notice in the New Jersey Register in November of the calendar year in which the fee is due, setting forth:

1. The present value of [$219.00 (if alternative annual fee calculation A is adopted) or $27.50 (if alternative annual fee calculation B is adopted)] for use in performing the calculations required pursuant to (b) above; and

2. The percentage increase, for that year, of the current CPI-U relative to the 1989 CPI-U. The Department will calculate this percentage increase in accordance with the procedure set forth in (i) above.

(a)

AIR QUALITY MANAGEMENT

Notice of Public Workshop and Request for Public Comment

Draft Consumer/Commercial Product VOC Rule

Take notice that the New Jersey Department of Environmental Protection (NJDEP) will hold a public workshop in order to accept informal comments regarding draft regulatory language designed to limit the amount of Volatile Organic Compounds (VOC) emitted from consumer/commercial products. The **public workshop** will be held on Thursday, January 12, 1995, at 10:00 A.M. in the NJDEP's public hearing room, 401 East State Street, Trenton, New Jersey.

In accordance with a Federal court order (mandating that the State carry out commitments set forth in its 1983 State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards for Ozone), the NJDEP is required to promulgate rules that will regulate the amount of VOC in consumer/commercial products as a means to reduce ambient concentrations of ground level ozone. The following include the consumer/commercial categories being considered for regulation: air fresheners, bathroom and tile cleaners, carburetor choke cleaners, cooking sprays (aerosol), dusting aids, engine

degreasers, fabric protectants, floor polishes and waxes, furniture maintenance products (aerosols), general purpose cleaners, glass cleaners, hair sprays, hair mousse, hair styling gels, household adhesives, insecticides, laundry prewashes, laundry starch products, nail polish removers, oven cleaners, shaving creams, antiperspirants, and deodorants. In developing this draft regulatory language, the NJDEP considered similar regulations passed by other states' environmental regulatory agencies.

The NJDEP hereby invites public comment on the draft language and the consumer/commercial products being considered for regulation. Persons interested in submitting oral comments on the draft regulatory language are encouraged to attend the workshop. Registration is encouraged, but not required. Persons who are interested in attending the workshop and/or receiving a copy of the draft regulatory language should contact:

Linda O'Hara
NJDEP—AQM
401 E. State St. 7W—CN 418
Trenton, NJ 08625-0418
(609) 777-1345

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

Attention: Consumer Product Rule Comments
Department of Environmental Protection
Air Quality Rule Development
401 East State Street—CN 418
Trenton, New Jersey 08625-0418

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES COMMUNICABLE DISEASE CONTROL SERVICE

Hepatitis Inoculation Fund

Proposed New Rules: N.J.A.C. 8:57-6

Authorized by: Len Fishman, Commissioner, Department of Health, and William E. Parkin, DVM, Dr. P.H., Assistant Commissioner for the Division of Epidemiology, Environmental and Occupational Health Services.

Authority: N.J.S.A. 26:4-100.13 et seq.

Proposal Number: PRN 1995-12.

Submit written comments by February 2, 1995 to:

Michael F. Lakat, Special Assistant
Office of the Assistant Commissioner
Division of Epidemiology, Environmental and Occupational Health Services
CN 369
Trenton, New Jersey 08625-0369
FAX No. (609) 588-7431

The agency proposal follows:

Summary

N.J.S.A. 26:4-100.13 et seq. (P.L. 1993, c.227) (the "Act"), enacted on August 6, 1993, establishes a fund for the payment of the costs of hepatitis B inoculations for certain health and safety workers. Under N.J.S.A. 26:4-100.13(b), the New Jersey Department of Health, Division of Epidemiology, Environmental, and Occupational Health Services (the "Division") has been directed to develop rules for the administration of the Hepatitis Inoculation Fund (the "Fund"). The Fund is a separate, nonlapsing, revolving account, the source of which is a statutorily defined percentage of proceeds collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6. The Division is to administer the Fund to assist municipalities with expenses incurred in providing hepatitis B inoculations to certain emergency medical technicians, firefighters, and police officers.

The Act sets forth an eligibility order for the reimbursement of costs of hepatitis B vaccine and the cost of professional medical services to administer the vaccine which are reasonable and customary in the locality. Reimbursable cost of the hepatitis B vaccine is based on the cost of the purchase of the vaccine at the prevailing State contract rate. Reimbursement will be provided first to municipalities having volunteer emergency medical technicians (EMT) and volunteer firefighters ("Tier I"), then to municipalities having a total of less than 100 EMTs, firefighters, and police officers ("Tier II"), and thereafter to all other municipalities having a total of more than 100 EMTs, firefighters, and police officers ("Tier III"). Municipalities shall not be reimbursed for the cost of hepatitis B inoculations for those personnel whose health insurance covers the full cost of the vaccine.

The amount available to fund reimbursable costs is dependent upon the total amount collected and deposited into the Fund and designated by the State Treasurer as available for distribution. Deposits into the Fund are subject to such contingencies as seizures of property and the rate at which forfeited property is liquidated. Given the funding source, the amount of funds for distribution cannot be estimated with any degree of reliability. It is probable that the annual deposits may be inadequate to fully fund reimbursable costs. Because of these factors, the amount of an award to reimburse costs to a municipality shall not exceed $5,000. Reimbursable costs include the cost of the hepatitis B vaccine and the cost of any professional medical services for the administration of the vaccine which are reasonable and customary in the locality. The cost of the hepatitis B vaccine will not be reimbursed at a rate greater than the cost of purchase of the vaccine at the prevailing State contract rate.

In order to streamline the disbursement process, applications for reimbursement will only be accepted from municipalities. Municipalities wishing to apply for reimbursement shall name a point-of-contact person who shall be responsible for preparing and submitting applications for reimbursement to the Division on behalf of all emergency services personnel within their jurisdiction. Applications received by the Division from individual first aid and rescue squads, fire companies, departments, and districts, and police departments or their members and/or staffs shall be disallowed.

To ensure an equal chance for receiving reimbursement, the Division will hold a lottery to determine the order in which eligible applicant municipalities will receive distributions from the Fund. Each municipality will be assigned a unique identification number and, through a random drawing, lottery standings will be determined.

As monies become available, Fund distributions shall be made in accordance with the lottery standings and shall proceed through Tier I eligibility until all eligible applicant municipalities in Tier I have been reimbursed. Upon completion of Tier I reimbursement, Fund distribution will then proceed to Tier II. Once Tier II has been completely reimbursed, Fund distribution will then proceed to Tier III.

Upon completion of Tier III reimbursement and contingent upon the availability of funds, municipalities will be eligible to reapply for reimbursement for hepatitis B inoculations administered after the first round of Fund distribution. If the Fund is exhausted prior to completion of any Tier, distribution will be suspended, pending sufficient deposits into the Fund by the Attorney General.

A brief summary of each proposed section follows:

N.J.A.C. 8:57-6.1 states that the proposed rules implement and are authorized by the Hepatitis Inoculation Fund Act.

N.J.A.C. 8:57-6.2 consists of definitions pertinent to the rules.

N.J.A.C. 8:57-6.3 sets forth the eligibility schedule for applicant municipalities.

N.J.A.C. 8:57-6.4 delineates the process for application for financial assistance from the Hepatitis Inoculation Fund and specifies the information that must be included in requests for reimbursement.

N.J.A.C. 8:57-6.5 delineates how the funds will be allocated to applicant municipalities.

N.J.A.C. 8:57-6.6 delineates the process by which municipalities will be ranked to receive reimbursement from the Fund.

N.J.A.C. 8:57-6.7 states that any monies from the Fund shall be used exclusively for the purposes specified in the Act.

N.J.A.C. 8:57-6.8 states that the State of New Jersey reserves the right to periodically audit any records pertinent to this subchapter.

N.J.A.C. 8:57-6.9 specifies the responsibilities of the Division.

Social Impact

The Hepatitis Inoculation Fund will be used to reimburse eligible costs incurred by municipalities for hepatitis B inoculations administered to certain health and safety workers. All municipalities are eligible to apply for reimbursement. The proposed new rules provide guidance and assistance in the administration of the Hepatitis Inoculation Fund Act. These rules also establish guidelines to assist municipalities in their request for reimbursement for hepatitis B inoculations pursuant to that Act.

There are approximately 30,000 police officers, 7,000 career and 32,000 volunteer firefighters, and 15,000 emergency medical services personnel in New Jersey for a total of 85,000 potentially eligible individuals.

Economic Impact

The Hepatitis Inoculation Fund is a collaborative effort among the Division of Epidemiology, Environmental, and Occupational Health Services, the Office of the Attorney General, and the State's municipal governments. Funds for financial assistance are derived from a statutorily defined percentage of monies collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6. Deposits into the Fund commenced on August 6, 1993. During the first two years after that date, 10 percent of the proceeds obtained by the Attorney General from property forfeitures and seizures shall be deposited into the Fund. After the second year and in subsequent years, five percent of these proceeds shall be deposited into the Fund.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules 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. Because the new rules apply only to the Division and to municipal governments, the rules will not have any effect upon small businesses or private industry in general.

Full text of the proposed new rules follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

SUBCHAPTER 6. [(RESERVED)] **HEPATITIS INOCULATION FUND**

8:57-6.1 Purpose and scope

The purpose of this subchapter is to establish a uniform process for allocating the Fund's resources among municipalities in accordance with the priorities set forth in the Act. The Fund shall be used exclusively to reimburse municipalities for expenses incurred in the provision of hepatitis B inoculations of emergency medical technicians—ambulance, firefighters, and police officers. The following rules are established to implement the Hepatitis Inoculation Fund Act, N.J.S.A. 26:4-100.13 et seq. (P.L. 1993, c.227), an Act providing for the payment of the cost of hepatitis inoculations for certain health and safety workers.

8:57-6.2 Definitions

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

"Act" means P.L. 1993, c.227, which establishes the Hepatitis Inoculation Fund.

"Commissioner" means the New Jersey State Commissioner of Health.

"Covered individual" means emergency medical technician—ambulance (EMTA), firefighters, and police officers.

"Department" means the New Jersey State Department of Health.

"Division" means the Division of Epidemiology, Environmental, and Occupational Health Services.

"Emergency medical technician—ambulance" or "EMT-A" means an individual trained and currently certified or recognized by the Commissioner, in accordance with the United States Department of Transportation EMT-A training course, as outlined in the standards established by the Federal Highway Traffic Safety Act of 1966, 23 U.S.C. 401 et seq. (amended) to deliver basic life support services, and who has completed the national standard curriculum, as published by the United States Department of Transportation for Emergency Medical Technician Ambulance.

"Hepatitis Inoculation Fund" or "Fund" means a separate, nonlapsing, revolving account used to reimburse municipalities for expenses incurred in the provision of hepatitis B inoculations to certain emergency services personnel. The Fund shall be administered by the Division of Epidemiology, Environmental, and Occupational Health Services. The source of this Fund is the statutorily defined percentage of proceeds collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6.

"May" means that the action referred to is discretionary.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Reimbursable costs" means the cost of hepatitis B vaccine, equal to, or less than, the cost of the purchase of the vaccine at the prevailing State contract rate, and the cost of such fees for professional medical services for administration of the vaccine.

"Shall" means that the action referred to is mandatory.

"Volunteer" means a person who gives services without any express or implied promise of remuneration.

8:57-6.3 General requirements

(a) The Fund shall provide financial assistance to municipalities in the form of reimbursement of expenses incurred in providing hepatitis B inoculations to certain emergency services personnel.

(b) Each applicant municipality shall appoint a liaison who shall be responsible for preparing and submitting an application to the Division on behalf of all emergency services personnel within its jurisdiction.

1. Applications received by the Division directly from individual first aid and rescue squads, fire companies, departments, and districts, and police departments or their members and/or staffs shall be disallowed.

(c) Funds shall be allocated to municipalities in accordance with the following tiered eligibility schedule of covered individuals:

1. Tier I: Volunteer emergency medical technicians—ambulance and volunteer firefighters;

2. Tier II: All other emergency medical technicians—ambulance, firefighters and police officers in squads or departments with less than 100 members; and

3. Tier III: All other emergency medical technicians—ambulance, firefighters and police officers.

(d) Fund distributions shall commence at Tier I eligibility and shall proceed through Tier I until all eligible applicant municipalities in Tier I have been reimbursed. Upon completion of Tier I reimbursement, Fund distribution will proceed to Tier II and upon completion of Tier II reimbursement, Fund distribution will proceed to Tier III.

(e) A municipality shall not claim expense reimbursement for a covered individual whose medical insurance pays for the full cost of the hepatitis inoculation, but may claim expense reimbursement for any portion of the cost disallowed by such medical insurance.

8:57-6.4 Application process by municipalities for reimbursement

(a) Municipalities shall submit an application for reimbursable costs in the format prescribed at (d) below no later than 90 days after the effective date of this rule. This application shall remain valid until all municipalities have been reimbursed.

(b) Reimbursable costs shall include the cost of the hepatitis B vaccine and the cost of fees for professional medical services for administration of the vaccine. Reimbursable cost of the hepatitis B vaccine shall not exceed the cost of the purchase of the vaccine at the prevailing State contract rate.

(c) Only applications for reimbursable costs from municipalities shall be honored. Requests for reimbursement from individual first aid and rescue squads, fire departments, districts, and companies, and police departments or their members and/or staffs shall be disallowed.

(d) Each application for reimbursable costs shall be in the form of a letter and shall include the following information:

1. The name of the municipality;

2. The total amount expended for inoculations of each of the individuals specified in (d)4 below;

3. The amount sought for reimbursement;

4. The composition of the municipality's emergency services personnel, including the number of volunteer emergency medical technicians—ambulance, the number of volunteer firefighters, the number of paid emergency medical technicians—ambulance, the number of paid firefighters, and the number of police officers;

5. Actual reimbursable costs incurred for inoculations of each of the individuals specified in (d)4 above, categorized according to total amount incurred for the hepatitis B vaccine and the cost of fees of professional medical services for administration of the vaccine; and

6. A statement certifying that the reimbursement applied for represents actual costs incurred and that such costs are not eligible for coverage, and have not been covered through any other source.

(e) The municipality shall maintain all records which were relied upon in making applications for reimbursement for five years after receiving reimbursement from the Division.

8:57-6.5 Funding and allocation

(a) The amount available to fund reimbursable costs is contingent upon the total amount collected and deposited into the Fund and designated by the State Treasurer as available for distribution.

(b) The amount of reimbursement per municipality shall not exceed $5,000 per reimbursement cycle.

(c) All reimbursements shall be made based on the cost of the purchase of vaccine at the prevailing State contract rate.

(d) All reimbursements may include the cost of professional medical services to administer the vaccine which are reasonable and customary in the locality.

8:57-6.6 Lottery

(a) At the close of the application period, all applications shall be reviewed for eligibility and subsequently sorted into the tiers as specified in the eligibility schedule at N.J.A.C. 8:57-6.3(c).

1. An applicant municipality which falls into more than one tier on the eligiblity schedule, for example, those which have both volunteer and paid EMT-As, shall submit applications for each eligibility category to which they are entitled, pursuant to N.J.A.C. 8:57-6.3(c).

(b) A lottery shall be held by the Division to determine the order in which eligible applicant municipalities shall receive distributions from the Fund.

1. Within 60 days of the close of the application period, all municipalities which have applied for reimbursement pursuant to N.J.A.C. 8:57-6.4 and are deemed eligible shall be included in the lottery.

2. Applications from all eligible municipalities shall be sorted into the tiers specified in the eligibility schedule.

3. All eligible municipalities shall be assigned a unique identification number by the Division. This number shall be the County-Municipality Code number as used by the New Jersey Department of the Treasury, Division of Taxation.

4. These numbers shall be written on slips of paper which are identical in size and shape to every other slip of paper.

5. The slips with the code numbers written thereon shall be placed in a suitable container.

6. To ensure random distribution of the slips, the slips shall be mixed by shaking the container, by stirring the contents of the container, or by a combination of both methods.

7. Slips shall be drawn blindly one-at-a-time from the container by staff from the Division.

i. The drawing shall commence with Tier I eligibility and shall proceed through Tier I until all eligible applicant municipalities in Tier I have been selected.

ii. The drawing shall continue with Tier II eligibility and shall proceed through Tier II until all eligible applicant municipalities in Tier II have been selected.

iii. The drawing shall continue with Tier III eligibility and shall proceed through Tier III until all eligible applicant municipalities in Tier III have been selected.

8. Upon being drawn from the container the slip shall be read aloud and another staff member shall determine which municipality was drawn. A list of the results of the lottery shall be constructed and maintained.

9. The lottery shall be witnessed by representatives of the health and safety workers who are affected by the Act and this subchapter, that is, EMTs, firefighters, and police officers.

(c) The Division shall disclose the lottery outcome, notifying applicant municipalities of their lottery standings by mail within one month of the conclusion of the lottery.

(d) Fund distributions shall be made in accordance with the lottery standings as monies become available for distribution and shall continue until all available funds are distributed.

1. Fund distributions shall commence at Tier I eligibility and shall proceed through Tier I until all eligible applicant municipalities in Tier I have been reimbursed. Upon completion of Tier I reimbursement, Fund distribution will proceed to Tier II and upon completion of Tier II reimbursement, Fund distribution will proceed to Tier III.

2. If the Fund is exhausted prior to completion of any tier, distribution shall be suspended pending sufficient deposits into the Fund by the Attorney General.

(e) The lottery standings shall remain in effect until the next succeeding lottery.

8:57-6.7 Use of hepatitis inoculation funds by municipalities

Moneys from the Fund which are distributed to the municipalities shall be used exclusively for the purposes specified in the Act and shall not supplant budgeted funding or any other available funding currently in existence.

8:57-6.8 Accounting and audit

The State of New Jersey reserves the right to periodically audit any of the records referenced in this subchapter.

8:57-6.9 Division responsibilities

(a) The Division shall:

1. Screen requests for reimbursement from municipal applicants to determine eligibility;

2. Conduct a lottery to determine municipal ranking;

3. Maintain oversight of the program; and

4. Administer the Fund on a day-to-day basis;

(b) Administrative costs of the program shall be paid from the Fund to the Division prior to any distribution to municipalities.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1995-10.

A **public hearing** concerning these proposed amendments will be held on Monday, January 23, 1995, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by February 2, 1995 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed captopril tablet could be used as a less expensive substitute for Capoten, a branded prescription medicine. Similarly, the proposed cefaclor could be substituted for the more costly branded product, Ceclor.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own

technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

The following products are proposed for **ADDITION** to the List of Interchangeable Drug Products:

ANAPROX
Naproxen sodium
275 mg
Tablet
Zenith

ANAPROX DS
Naproxen sodium
550 mg
Tablet
Zenith

CAPOTEN
Captopril
12.5 mg
Tablet
Hallmark

CAPOTEN
Captopril
25 mg
Tablet
Hallmark

CAPOTEN
Captopril
50 mg
Tablet
Hallmark

CAPOTEN
Captopril
100 mg
Tablet
Hallmark

CECLOR
Cefaclor
250 mg
Capsule
STC Pharm.

CECLOR
Cefaclor
500 mg
Capsule
STC Pharm.

CECLOR
Cefaclor
125 mg/5 ml
Suspension
STC Pharm.

CECLOR
Cefaclor
187 mg/5 ml
Suspension
STC Pharm.

CECLOR
Cefaclor
250 mg/5 ml
Suspension
STC Pharm.

CECLOR
Cefaclor
375 mg/5 ml
Suspension
STC Pharm.

DARVOCET N
Propoxyphene napsylate/
acetaminophen
100 mg/650 mg
Capsule
STC Pharm.

DARVON
Propoxyphene HCl
65 mg
Capsule
STC Pharm.

DARVON COMPOUND-65
Propoxyphene HCL/Aspirin/
Caffeine
65/389/32.4 mg
Capsule
STC Pharm.

DISALCID
Salsalate
500 mg
Tablet
Amide

DISALCID
Salsalate
750 mg
Tablet
Amide

FELDENE
Piroxicam
10 mg
Capsule
Purepac

FELDENE
Piroxicam
20 mg
Capsule
Purepac

FELDENE
Piroxicam
10 mg
Capsule
Zenith

FELDENE
Piroxicam
20 mg
Capsule
Zenith

ILOTYCIN
Erythromycin
0.5%
Ophth oint.
Sight/B&L

KEFLEX
Cephalexin
250 mg
Capsule
STC Pharm.

KEFLEX
Cephalexin
500 mg
Capsule
STC Pharm.

LANOXIN
Digoxin
0.125 mg
Tablet
Alra

LANOXIN
Digoxin
0.25 mg
Tablet
Alra

LANOXIN
Digoxin
0.5 mg
Tablet
Alra

LEVSINEX
Hyoscyamine sulfate
0.375 mg
Capsule
KV Pharm.

LOPID
Gemfibrozil
600 mg
Tablet
Watson

LURIDE
Sodium fluoride
0.5 mg/ml
Liquid
Colgate/Lyne

MELLARIL
Thioridazine HCl
10 mg
Tablet
Creighton

MELLARIL
Thioridazine HCl
15 mg
Tablet
Creighton

MELLARIL
Thioridazine HCl
25 mg
Tablet
Creighton

MELLARIL
Thioridazine HCl
50 mg
Tablet
Creighton

MELLARIL
Thioridazine HCl
100 mg
Tablet
Creighton

MELLARIL
Thioridazine HCl
150 mg
Tablet
Creighton

MELLARIL
Thioridazine HCl
200 mg
Tablet
Creighton

NALDECON SR
Naldecon SR substitute
Per tablet
Tablet
West-Ward

NAPROSYN
Naproxen
250 mg
Tablet
Mova

NAPROSYN
Naproxen
375 mg
Tablet
Mova

NAPROSYN
Naproxen
500 mg
Tablet
Mova

NAPROSYN
Naproxen
250 mg
Tablet
Zenith

NAPROSYN
Naproxen
375 mg
Tablet
Zenith

NAPROSYN
Naproxen
500 mg
Tablet
Zenith

PLAQUENIL
Hydroxychloroqine sulfate
200 mg
Tablet
Copley

PONTOCAINE
Tetracaine HCl
0.5%
Ophth soln
Sight/B&L

RESTORIL
Temazepam
7.5 mg
Capsule
Creighton

RESTORIL
Temazepam
15 mg
Capsule
Creighton

RESTORIL
Temazepam
30 mg
Capsule
Creighton

SELDANE
Terfenadine
60 mg
Tablet
Geneva

SINEMET
Carbidopa with levodopa
10/100 mg
Tablet
Geneva

SINEMET
Carbidopa with levodopa
25/100 mg
Tablet
Geneva

SINEMET
Carbidopa with levodopa
25/250 mg
Tablet
Geneva

SYNTHROID
Levothyroxine sodium
50 mcg
Tablet
Glaxo

SYNTHROID
Levothyroxine sodium
100 mcg
Tablet
Glaxo

SYNTHROID
Levothyroxine sodium
150 mcg
Tablet
Glaxo

SYNTHROID
Levothyroxine sodium
200 mcg
Tablet
Glaxo

SYNTHROID
Levothyroxine sodium
300 mcg
Tablet
Glaxo

TAGAMET
Cimetidine
300 mg
Tablet
Mova

TAGAMET
Cimetidine
400 mg
Tablet
Mova

TAGAMET
Cimetidine
800 mg
Tablet
Mova

TAGAMET
Cimetidine
200 mg
Tablet
Geneva

TAGAMET
Cimetidine
300 mg
Tablet
Geneva

TAGAMET
Cimetidine
400 mg
Tablet
Geneva

TAGAMET
Cimetidine
800 mg
Tablet
Geneva

VOLTAREN
Diclofenac sodium
25 mg
Tablet
Geneva

VOLTAREN
Diclofenac sodium
50 mg
Tablet
Geneva

VOLTAREN
Diclofenac sodium
75 mg
Tablet
Geneva

(a)

DIVISION OF HEALTH FACILITIES, EVALUATION AND LICENSING; DIVISION OF PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES

Clinical Laboratory Services

Proposed Readoption with Amendments: N.J.A.C. 8:45

Authorized By: Leonard Fishman, Commissioner, Department of Health.

Authority: N.J.S.A. 45:9-42.30 et seq. and 26:1A-33.

Proposal Number: PRN 1995-33.

Submit written comments by February 2, 1995 to:
Program Director
Clinical Laboratory Improvement Services
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The New Jersey Department of Health has historically provided public health and clinical laboratory improvement services to assure that all residents of New Jersey have access to quality, efficient and cost effective analytical laboratory services. These services are technologically complex to perform and require specially trained staff, as well as special and expensive technical equipment and reagents. The current rules on licensing and laboratory charges (fee-for-service) are scheduled to expire on February 7, 1995, pursuant to Executive Order No. 66(1978). In order to avoid expiration of those rules and to maintain the current level of quality and cost effectiveness in laboratory services, the readoption of this chapter is proposed. The most recent rule adoption relating to laboratory charges was October 19, 1992, when fees were raised. Lab charges were raised in 1990, and a new rule, delineating proficiency testing fees, was added at N.J.A.C. 8:45-1.4. Subchapter 1 contains the procedures for licensure of clinical laboratories, including the issuance and expiration of initial license and annual renewal of licenses. Licensure fees and proficiency testing fees are included, categorized by type of procedure or test. Subchapter 2 contains fees payable to the Department of Health for lab and bacteriology tests performed by the Department. There are no changes to the laboratory fee schedule at this time. There are changes proposed to N.J.A.C. 8:45-1.3, to correct the range 40-44 to 40-49, and to N.J.A.C. 8:45-1.4(a) to add "subspecialty" and "procedure" to the list heading. The changes to the proficiency testing schedule of fees are discussed below. Since 1975, the State Department of Health through the Clinical Laboratory Improvement Service (CLIS) has been responsible for annual licensure renewal and on-site inspection of laboratories performing testing on materials derived from the human body for the purpose of yielding information for assessing medical conditions or diagnosing, preventing or treating disease. To ensure the performance of accurate patient testing, certain personnel and testing standards are evaluated prior to licensure approval. Under N.J.S.A. 45:9-42.26 et seq., highly trained professionals inspect licensed laboratories to assure compliance and to maintain the performance of quality testing of state residents.

In addition, the Department has administered a proficiency testing (PT) program for licensed clinical laboratories as mandated in the New Jersey Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.37. In 1989, approval was obtained to establish a fee structure to charge laboratories by analytical discipline for participation in the State's proficiency program. This service is critical in assisting the Department in monitoring the performance of licensed laboratories in New Jersey and requires the purchase of certain materials (for example, reagents, unknown samples, and shipping materials). With both recently adopted Federal regulations for the implementation of the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) and amended Department policies, CLIS, as a Federally approved PT provider, has had to continually modify and expand their program to provide PT surveys required for compliance under both State and Federal rules. Various mandates have resulted in the elimination of certain surveys, while others have been added to meet program participants' needs. The amended fees proposed herein at N.J.A.C. 8:45-1.4 reflect the Department's cost for modifications in sample type and number required to provide an approved, comprehensive PT program to participants.

Social Impact

The Division of Public Health and Environmental Laboratories has historically provided quality public health laboratory services to New Jersey citizens for many years. These services are made available to help ensure that the citizens of New Jersey are provided with accurate and current laboratory services. The benefit of these laboratory services will be realized by clinical laboratories, physicians, clinicians and the general public from newborns to adults.

The Division of Health Facilities Licensing and Evaluation, through CLIS, monitors the quality of patient testing through both annual license renewal and enrollment in proficiency testing to assure compliance with standards. Proficiency testing is currently available from CLIS and continued monitoring of participant performance using materials with values known only to the PT provider is an established method for measuring one's ability to provide accurate patient results. Long-term successful performance by those enrolled in the Department's program assists CLIS in insuring the overall quality of work performed in New Jersey licensed laboratories. The addition of several new surveys will aid in the Department's goal to closely monitor performance in areas of critical importance to patient diagnosis and treatment.

Economic Impact

The proposed rule readoption could affect all clinical laboratories, hospitals, physicians, third party insurance payments and the general public through the continuation of certain laboratory fees. The funding impact will be experienced in two ways: (1) all agencies utilizing the Department of Health laboratory services will be required to identify funding sources for continued support; (2) the Department of Health, despite severe fiscal constraints, will be able to continue to offer quality laboratory services.

Administrative mechanisms will have to be set in place by submitting agencies to deal with the continued costs, forecasting of required laboratory services, changes in forms and ordering procedures, etc. Due to the link to third party payment system, it is difficult to assess the direct economic impact which will be felt by the general public.

Social/monetary savings are also difficult to measure. Since failure to readopt these rules could result in the Department of Health's inability to maintain some laboratory services, the social impact could be devastating. The public health cost in terms of delays in the identification of diseases, some of which result in mental retardation or death, cannot be accurately projected.

The proposed modifications regarding PT fees are applicable to all clinical laboratories voluntarily enrolled in the Department's program. The economic impact will vary with the level of service offered by each individual laboratory. Modification of fees for proficiency testing surveys previously offered by CLIS reflect provider criteria and program costs required to conform with Federal and State rules and regulations. Modifications in the type of available proficiency testing surveys reflect the current needs of program participants seeking to conform with Federal and State regulations. Thus, new services have been incorporated into the CLIS program, while others have been eliminated. However, clinical laboratories performing testing in these newly offered specialties/subspecialties or test procedures are required to enroll in a PT program that offers these services. In essence, this change merely makes these required surveys now available from CLIS.

Regulatory Flexibility Analyses

Some health care providers, such as physicians and clinical laboratories, may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No additional recordkeeping is required by these rules, but health care providers may find additional recordkeeping necessary in order to track the purchase and provision of analytical laboratory services. These rules will impose compliance requirements related to the continuation of fees for the analytical laboratory services provided by the State of New Jersey. Such fees will not entail the need for capital expenditures or additional professional services for small businesses. They will entail annual compliance costs which will vary according to the size of the health care provider and the amount of analytical testing requested from the State. Small business exemptions will not be permitted under these rules. The rules (fees) will be applied uniformly.

The proposed PT fees are applicable to all those voluntarily enrolled in the Department-sponsored PT program including hospital, independent, public health, school and physician office laboratories. As such, the rules affect those defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There can be no exemption from the fees or lesser requirements for small businesses because of the need to equitably monitor laboratory performance through proficiency testing for all licensed or federally certified laboratories to insure the public health of all New Jersey citizens.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:45.

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

8:45-1.3 Licensure fees

(a) Initial and annual renewal licensure fees shall be identical and are prescribed by the following table. Fees noted are per each specialty.

Specialty [Specialty]	Total Number of Employees of Entire Laboratory[1]								
	1-4	5-9	10-19	20-29	30-39	[40-44] **40-49**	50-69	70-89	90 or More
Urinalysis	$35	$40	$45	$50	$55	$60	$65	$70	$75
Bacteriology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Mycobacteriology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Parasitology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Mycology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Virology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Serology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Hematology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Immunohematology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Routine Chemistry	$35	$40	$45	$50	$55	$60	$65	$70	$75
Special Chemistry	$35	$40	$45	$50	$55	$60	$65	$70	$75
Toxicology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Cytology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Cytogenetics and/or Tissue Typing	$35	$40	$45	$50	$55	$60	$65	$70	$75
Collection Station only	$35	$40	$45	$50	$55	$60	$65	$70	$75

8:45-1.4 Proficiency testing fees

(a) Those laboratories enrolled in the State's Clinical Laboratory Improvement Service analytical proficiency testing program will be assessed an annual fee by [specialty] **specialty/subspecialty/procedure** according to the following table:

[Microbiology	
Bacteriology	$250.00
Gram Stain only	150.00
Throat (DAT) only	100.00
GC Culture only	200.00
Mycobacteriology (TB)	400.00
TB smears only	100.00
Parasitology	250.00
Pinworms only	200.00
Mycology	300.00
Diagnostic Immunology (Serology)	
Syphilis	100.00
Non-syphilis	150.00
Hematology	
CBC	150.00
Coagulation	150.00
Cytohematology	150.00
Hematocrit only	100.00
Immunohematology	150.00
Chemistry	200.00
Blood Gases	200.00
Toxicology	
Drugs of Abuse	150.00
Blood Leadws200.00	
Erythrocyte Protoporphyrin	200.00
Urinalysis	
Liquid Chemistry	100.00
Microscopic	100.00]
Bacteriology	**$250.00**
Throat Culture only	**150.00**
Gram Stain Only	**150.00**
Throat Screen (DAT)	**100.00**
Pinworms	**25.00**
Dermatophyte Screen	**75.00**
KOH Prep	**25.00**
Vaginal Wet Prep	**25.00**
Sperm	**25.00**
Urine Culture Screen	**75.00**
Urine Microscopy	**25.00**
Syphilis	**150.00**
Diagnostic Immunology	**340.00**
Rubella and/or Rheumatoid Factor	**280.00**
ASO and/or IM and/or hCG	**280.00**
Antinuclear Antibody	**285.00**
Endocrinology	**190.00**
Routine Chemistry	**275.00**
Lipids/Glucose Only	**175.00**
Blood Gases	**200.00**
Erythrocyte Protoporphyrin	**225.00**
Drugs of Abuse in Urine	**250.00**
CBC with Blood Cell ID	**225.00**
Hemoglobin or Hematocrit only	**125.00**
Blood Cell ID only	**100.00**
Coagulation	**225.00**
Comprehensive Blood Banking and Immunohematology	**350.00**
Limited Immunohematology	**210.00**
Monitoring Other PT Surveys	**50.00**

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services
Hospital Inpatient Reimbursement Methodology

Proposed Amendments: N.J.A.C. 10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12 through 5.15, 5.17, 5.18, 5.20, 6.13, 7.2, and 9.1

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

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b, and c; 30:4D-12, P.L. 1992, c.160; 1902(a)(13) of the Social Security Act; 42 U.S.C. 1396a.

Agency Control Number: 94-P-40.

Proposal Number: PRN 1995-32.

Submit comments by February 2, 1995 to:

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

A copy of the proposal is available at the 21 county welfare agencies (CWAs) and in the Medicaid District Offices.

The agency proposal follows:

Summary

The following amendments are proposed by the Department of Human Services, Division of Medical Assistance and Health Services (Division) to change the rate setting and reimbursement rules for inpatient acute care hospital services provided to Medicaid recipients. In

June 1993, the Division adopted rules establishing a rate setting methodology for inpatient acute care hospital services, at N.J.A.C. 10:52-5 through 9.

The following paragraphs contain summaries of each of the proposed amendments to these rules.

In N.J.A.C. 10:52-5.1, the proposed amendment would permit the Division to make system-wide adjustments to the acute care hospital inpatient rates during the rate year if a 30 day notice is given to hospitals.

In N.J.A.C. 10:52-5.3, the proposed amendment indicates that direct and indirect costs shall be allocated to inpatient and outpatient services rather than allocated to "ambulatory services" or the DRG groups. The direct and indirect costs shall be used to determine the inpatient rates per case according to patient diagnosis.

In N.J.A.C. 10:52-5.4, the standard reimbursement is changed for each DRG. It will now be based on the median cost plus five percent per case for Medicaid recipients, instead of the average cost per case.

In N.J.A.C. 10:52-5.6, the proposed amendment is to remove from reimbursement a capital component for Capital Cash Requirements and a Capital Facilities Allowance (CFA) formulation. The Division retains the schedule of rates related to each Diagnosis Related Group (DRG).

In N.J.A.C. 10:52-5.9, the proposed amendment adjusts the description of the current cost base to that recognized by the Division instead of that recognized by the Department of Health. In addition, the operating margin is deleted from the calculation of the current cost base.

In N.J.A.C. 10:52-5.12, the description of the measures of resource use and the description of the direct patient care costs in each cost center are amended.

In N.J.A.C. 10:52-5.13, there were two codification changes to conform with the existing text in the New Jersey Administrative Code.

N.J.A.C. 10:52-5.14 includes the same rate setting language as N.J.A.C. 10:52-5.4.

In N.J.A.C. 10:52-5.15, the method of determining the reasonable direct cost per case is modified to one that includes "an incentive standard multiplied by the unequalization factor, the Resident's mark-up, the deneutralization factor, and Resident's adjustment factor." The methodology for determining the rate for hospital inpatient outliers is changed in subsection (b) of this section.

In N.J.A.C. 10:52-5.17, the payment for neonatal DRGs is changed to one reflecting the appropriate "GROUPER" and the actual New Jersey patient volume rather than the "cost data." In subsection (c), for the determination of payment rates, direct patient care costs are increased by the following components: health planning fees; pediatric rate adjustment; sickle cell adjustment; continuing adjustments; outlier reversal adjustments; and poison control costs. Irvington General Affiliation adjustment is deleted because it was a two year adjustment applicable to the calendar years 1993 and 1994. The perinatal cooperative adjustment language is being deleted because the adjustment was replaced by the regional perinatal adjustment in 1993.

A new subsection N.J.A.C. 10:52-5.17(f), will eliminate any system-wide transition adjustments which were included in the rates beginning March 12, 1993.

In N.J.A.C. 10:52-5.18, the language is deleted relating to the yearly Capital Facilities Allowance and new language is added to define how this center is calculated.

In N.J.A.C. 10:52-5.20, an amendment is proposed to delete the operating margin and base the apportionment of Financial Elements on direct costs.

In N.J.A.C. 10:52-6.13, a proposed amendment deletes the word "principal" and inserts the words "depreciated expense" in describing which of the financial elements of the rate should be included in the description of "reasonable cost."

In N.J.A.C. 10:52-7.2, the section heading is changed and a statement reflecting the methodology for calculating the payment rates for DRGs with no base year experience is inserted. Language is also deleted which will eliminate the methodology for calculating low volume outliers.

In N.J.A.C. 10:52-9.1, the proposed amendment clarifies that the hospital must request a rate review within 20 calendar days after publication of the rates. New language is proposed to require the provider to identify their rate review issues and submit documentation supporting the rate review issues, in writing to the Division within 80 calendar days after publication of the rates.

Social Impact

The proposed amendments do not impact upon Medicaid recipients who require hospital inpatient services. These amendments contemplate no change in the availability of hospital services.

The proposal would impact specifically upon all hospitals providing inpatient acute care services, through an adjustment to the rate setting methodology.

The proposal's impact on hospitals is more economic than social, as indicated in the Economic Impact statement below.

The proposed amendments apply to 84 acute care general (DRG) hospitals in New Jersey which provide inpatient care for Medicaid recipients. In Fiscal Year 1993, approximately 132,000 Medicaid recipients utilized inpatient hospital services. The total amount spent (State/Federal share) in calendar year 1993, for inpatient care, in the 84 acute care general (DRG) hospitals was $676,000,000.

Economic Impact

There will be no economic impact on Medicaid recipients. It is estimated that reimbursement for inpatient acute care hospital services will be reduced Statewide by approximately 135 million dollars (Federal and State share combined) annually.

A number of modifications to the Hospital Services Manual reimbursement system are being proposed. These changes: (a) will result in reasonable and adequate rates for economically and efficiently operated hospitals; and (b) will correct certain technical errors and omissions in the current regulations.

Regulatory Flexibility Analysis

A regulatory flexibility analysis might not be necessary because most hospital providers are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since hospitals generally employ more than 100 persons full time. However, in the event that a hospital might qualify under the terms of the Act, this analysis is included. Hospitals are required to maintain sufficient records to indicate the name of the patient, dates of service, nature and extent of inpatient hospital services, and any additional information as may be required by regulation. The requirement is part of the State Medicaid Statute, N.J.S.A. 30:4D-12. With respect to reimbursement, hospitals will be required to maintain sufficient records, such as cost studies, to enable the Division to establish rates under this regulation. The reporting provisions will be similar to the regulatory requirements that existed under N.J.A.C. 8:31B. The proposed new rule does not create an additional recordkeeping or other compliance requirement or reporting requirements except for the appeal process as indicated in the Summary above. There should be no need to hire any additional professional staff other than those persons already involved in preparing cost reports and related reimbursement data.

There are no capital costs associated with this rule.

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

SUBCHAPTER 5. PROCEDURAL AND METHODOLOGICAL REGULATIONS

10:52-5.1 Derivation of Preliminary Cost Base

(a) For general acute care hospitals, the Division of Medical Assistance and Health Services (hereafter referred to as the Division or its designee), on or before March 12, 1993 and on or before January 31 of each subsequent rate year shall implement a rate. For hospitals with a fiscal year of January 1, the rate year will be the calendar year. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year will be the year the fiscal year begins and for hospitals on a fiscal year beginning between July 1 and December 31, the rate year will be the year the fiscal year ends. [The cost base (current cost base) used to set a proposed rate for each hospital shall include:

1. The reasonable direct patient care costs as defined in N.J.A.C. 10:52-5.13 through 5.19.

2. The reasonable indirect patient care costs calculated according to N.J.A.C. 10:52-5.13 through 5.19.

3. The reasonable physician costs calculated according to N.J.A.C. 10:52-5.13 through 5.19.

4. The net income from other sources as defined in N.J.A.C. 10:52-5.16(f).

5. An economic factor adjustment calculated according to N.J.A.C. 10:52-5.17.

6. A capital component, as defined in N.J.A.C. 10:52-5.18.

7. A technology factor, as defined in N.J.A.C. 10:52-5.17.]

10:52-5.3 Costs per case

Direct and indirect care costs [will] **shall** be allocated to [the Diagnosis Related Groups (DRGs) and to ambulatory services] **inpatient and outpatient services. Direct and indirect costs allocated to inpatient services shall be used** to determine [cost per visit for each hospital, and for each patient within the hospital] **inpatient rates per case according to the patient diagnosis.** This cost finding process is described in N.J.A.C. 10:52-5.9 through 5.12.

10:52-5.4 Development of standards

The Director shall develop standard reimbursement amounts for each Diagnosis Related Group based on the [average cost] **median cost plus five percent** per case for Medicaid recipients. The standards shall be adjusted to account for significant differences in teaching responsibilities and in labor market areas. These standards are developed according to criteria set in N.J.A.C. 10:52-5.13 through 5.20. Standards so developed and issued for a rate year shall remain unaffected and no adjustments, modifications or other changes to the standards shall be made **except as referenced in N.J.A.C. 10:52-5.1.**

10:52-5.6 Schedule of Rates

(a) In order to determine reasonable physician costs, hospitals shall report to the Director any significant changes in the contractual basis of any and all physician compensation arrangements which have occurred after the correct Cost Base. Failure to report these changes shall result in these costs not being recognized.

[(b) The dollar amount of indirect patient care costs so derived shall remain fixed for the rate period, unless appealed, except as adjusted for inflation or deflation as described in N.J.A.C. 10:52-5.16 through 5.20.

(c) The rates shall include a capital component for Capital Cash Requirements and a Capital Facilities Formula Allowance. Capital Cash Requirements and the Capital Facilities Formula Allowance are described in N.J.A.C. 10:52-5.18.]

[(d)](**b**) For each hospital, the Division shall implement a Schedule of Rates for each Diagnosis Related Group.

10:52-5.9 Current Cost Base

(a) A hospital's Current Cost Base is defined as the actual costs and revenues as identified in the Financial Elements in the base reporting period as recognized by the [New Jersey Department of Health] **Division** for purposes of rate setting.

(b) The Current Cost Base is used to develop the Preliminary Cost Base (PCB) and Schedule of Rates through:

1. and 2. (No change.)

[3. Calculation of the operating margin as described in N.J.A.C. 10:52-5.20(a)2;]

Recodify existing 4.-6. as **3.-5.** (No change in text.)

(c) (No change.)

10:52-5.12 Patient care cost findings; direct costs per case, physician and nonphysician

(a) (No change.)

(b) Measures of resource use are listed as follows:

[1. For each patient with a UB-PS, measures of resource use shall be calculated. These measures of resource use per patient with a reliable record shall then be multiplied by the estimated number of cases determined in (a) above, and the total inpatient estimate of each measure of resource use shall then be adjusted to the actual amount of each measure. Hospitals shall make reasonable efforts to correct unacceptable data.]

1. For each patient with a Uniform Bill (UB), measures of resource use shall be calculated to distribute costs among the UB. Measures of resource use represent services provided to patients associated with each cost center. Patient days are associated with routine service cost, emergency room admissions with emergency service cost, and ancillary and therapeutic charges with ancillary and therapeutic service cost. The measures of resource use is a ratio of admissions reported on the hospital's cost report over the hospital's UB billing data. Costs are derived from the Actual Reporting Forms and are associated with admissions. Therefore, an adjustment is made to align the measures of resource use to the inpatient cost. The adjustment is the ratio of total admissions to total UB records. This results in a total adjusted measure of resource use. The hospitals shall make reasonable efforts to correct data unacceptable to the Division or Department of Health.

Center	Measure of Resource Use	Calculation of Inpatients

(No change in table.)

(c) Cost per case allocation:

[1. The Direct Patient Care Costs of each center (after the allocation of patient care general services in N.J.A.C. 10:52-5.11 and 5.12) are separated between inpatient, outpatient, and Skilled Nursing Facility (SNF) costs. Outpatient and SNF costs are then excluded from the Preliminary Cost Base (PCB) based on gross revenue reported to the Division. The costs are then divided by the hospital's corresponding total measures of resource use to compute a cost to measure ratio, cost-to-charge, or cost-per-patient day ratio for each center. Each ratio is then multiplied by the corresponding cost center's measures of resource use of each DRG and outpatient case type to calculate costs per cost center for the hospital's case-mix.]

1. The Direct Patient Care Costs of each center (after the allocation of patient care general services in N.J.A.C. 10:52-5.11 and 5.12) are separated between inpatient, outpatient, and Skilled Nursing Facility (SNF) costs. Outpatient and SNF costs are excluded from the inpatient rates based on gross revenue reported to the Division. The total inpatient costs from each cost center are then divided by the hospital's corresponding total adjusted measure of resource use. This calculation produces ratios, including cost per patient day, cost per EMR admission, or a cost ratio per ancillary or therapeutic charge for each cost center. Each ratio is then multiplied by the corresponding cost center's measure of resource use of each DRG to calculate a cost per case for the hospital's case mix.

i. (No change.)

10:52-5.13 Reasonable cost of services related to patient care

(a) The Reasonable Cost of Services related to Patient Care includes:

1.-4. (No change.)

5. Current major moveable equipment amount pursuant to N.J.A.C. 10:52-[6.2]**6.9**.

(b) The Reasonable Cost of Services Related to Medicaid Patient Care will be adjusted by the application of economic factors pursuant to N.J.A.C. 10:52-[5.13]**5.17**.

10:52-5.14 Standard costs per case

(a) The standard to be used in the calculation of the proposed rates for each inpatient DRG is determined as the [mean] **median plus five percent** non-physician patient care costs per Medicaid case in all hospitals whose costs are included in the data base, adjusted for labor market differentials, and amount and type of Graduate Medical Education. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

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

(e) Calculation of standards shall be as follows:

1. The calculation of standards shall be based on an appropriate sample of hospitals. The cost per case of each hospital's Medicaid patients with [UB-PS] **UB** records categorized by inpatient DRGs is multiplied by each hospital's equalization factor and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of graduate medical education for the hospital pertaining to each DRG. The [mean] **median plus five percent** equalized cost of all such records in all hospitals calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases is the incentive standard for each DRG.

2. (No change.)

10:52-5.15 Reasonable direct cost per case

(a) Inpatient direct cost per case shall be determined as follows:

1. The Reasonable Direct Cost Per Medicaid Case for those hospitals receiving rates in accordance with this subchapter [determined for all hospitals,] for every DRG shall include incentives

and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

[i. The labor market standard is calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases multiplied by the amount and type of Graduate Medical Education plus the hospital current physician patient service cost per case.]

i. The incentive standard multiplied by the unequalization factor, the physician mark-up, the deneutralization factor, and Residents adjustment factor.

(b) Inpatient outliers: The costs of low length of stay outliers shall be divided by the low length of stay days to arrive at a low per diem. The costs of high length of stay outliers shall be divided between both high outlier [per diem] **cost** and the inlier rate. The [mean] high outlier cost net of the inlier rate **times the high outlier cases** shall be divided by the acute days of the patient's total stay (admission to discharge) to arrive at a high outlier per diem. High outlier cases shall be reimbursed the inlier rate plus the high per diem multiplied by the acute days of the stay.

10:52-5.17 Update Factors

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

(d) In addition, the following payment rates will be in effect for these special procedures:

1.-4. (No change.)

5. Neonate rates: payment for **neonatal** DRGs [600 through 630] **as defined by New Jersey Grouper 8.0** will be based on 1989 actual New Jersey [cost data] **patient volume.**

(e) For determination of the payment rates, direct patient care is increased for the following components:

1. (No change.)

2. Commission **and Health Planning** fees;

3. (No change.)

[4. Irvington General Affiliation adjustment;]

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

[6. Perinatal cooperative adjustment;]

Recodify existing 7.-12. as **5.-10.** (No change in text.)

[13.]**11.** Regional perinatal adjustment; [and]

[14.]**12.** Personnel health allowance;

13. Pediatric rate adjustment;

14. Sickle cell adjustment;

15. Continuous adjustments;

16. Outlier reversal adjustment; and

17. Poison Control Costs.

(f) No Statewide transition adjustment not otherwise specified in this chapter will be included in the rate.

10:52-5.18 Capital Facilities

(a) Capital Facilities, as defined in N.J.A.C. 10:52-6.18, shall be included in the rate in the following manner:

1. Building and fixed equipment:

i. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including [lease, principal,] reasonable interest as defined in (a)1i(1) below on long term debt, [and certain other debt services payments,] but excluding the expenditure of specific purpose grants for capital projects. [Capital Cash requirements for any year the Schedule of Rates is to be prospectively set shall not include the whole amount of any balloon payments. Rather, balloon payments shall be reported to the Division in a timely manner in order to examine the possibility of refinancing such payments. Capital Cash Requirements shall be reported per Uniform Cost Reporting Regulations.]

(1) (No change.)

[ii. Capital facilities indebtedness incurred on or before August 31, 1986 shall be reimbursed in accordance with the following requirements except where hospitals elect to undertake capital indebtedness on or after September 1, 1986, such hospitals shall be reimbursed in accordance with (a)1vii below.]

ii. The yearly Capital Facilities Allowance is computed using information provided by the Uniform Cost Reports. For hospitals on a calendar year basis, this amount will be the 1992 depreciation and reasonable interest expense, excluding any portion associated with major moveable equipment and any interest income reported as an expense recovery. For those hospitals on a fiscal year basis, actual year's depreciation and reasonable interest applicable to rate year 1992 shall be used excluding any portion associated with major moveable equipment and any interest income reported as an expense recovery.

(1) Requests for exceptions to this methodology may be accepted and evaluated only when a major capital project has resulted in a significant change in depreciation and reasonable interest from the most current actual reporting year to the rate year.

[iii. Capital Facility Formula Allowance: For hospitals receiving a Schedule of Rates the allowance provides funds for replacements or major renovations of the future acute care capital facility needs of the hospital's service area as determined through the planning process; that is, 20 percent of current replacement costs, less the portion of the fund target designated by the hospital's governing board at the time its initial Schedule of Rates is set, spread over the adjusted remaining useful life of buildings, building components, and fixed equipment for the target bed complement of the hospital, in accordance with the planning needs of the hospital's service area.

iv. The Capital Facilities Formula Allowance is calculated as follows:

(1) As a measure of the scope of Capital Facilities projected to be needed by a hospital when its present facilities are no longer usable, the number of target beds for hospitals receiving a rate shall be based on the following:

(A) For Pediatric and Obstetric Services (for facilities with 1,000 or more deliveries) target beds equal: (1.33) multiplied by (Most Recent Actual Year Licensed Beds) multiplied by (Most Recent Actual Year Occupancy Rate). For facilities with less than 1,000 deliveries, no target beds will be included unless the criteria are waived by the Division due to accessibility issues. However, in no case will waivers be considered for facilities with less than 500 deliveries.

(B) For all other services, target beds equal: (1.175 multiplied by Most Recent Actual Year Licensed Beds) multiplied by (Most Recent Actual Year Occupancy Rate).

(2) The number of target beds is multiplied by an estimated current construction cost per bed. This amount shall be the average construction cost per square foot multiplied by gross square feet per bed, determined in the Dodge Construction System Costs, adjusted for location of the hospital (as updated annually).

(3) The result of (a)1iv(2) above, is multiplied by 20 percent to arrive at an estimate of the money, in current dollars, a hospital should have towards a downpayment on future Capital Facilities.

(4) The available portion of the fund target, determined in accordance with N.J.A.C. 10:52-6.7 through 6.12 is subtracted from the results of (a)1iii above, (that is, the Fund Target). Any excess of the Plant Fund balance over the Fund Target is to be offset against the Current Cost Base in rate determination. Any excess of the Fund Target over the Internally Generated Plant Fund Balance is the allowance for replacements and renovations to be included in a hospital's Schedule of Rates over its remaining useful life.

v. The yearly Capital Facilities Allowance is computed using information provided by the Uniform Cost Reports as: the prospective year's depreciation and reasonable interest expense (OPTION 2), or the hospital's current yearly amount of capital indebtedness, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (any funds designated by the hospital's board for the Capital Facilities Formula Allowance against the Fund Target) divided by the adjusted remaining useful life of the hospital (OPTION 1).

(1) Hospitals must have elected the method for reimbursement under Chapter 83 of Capital Facilities Allowance by December 31, 1987.

(2) After hospitals elected or were included in either OPTION 1 or OPTION 2, they will remain on the pertinent reimbursement option for the life of the outstanding debt. This method shall continue to apply if refinancing or advance refunding of this debt occurs.

vi. Reimbursement for capital facilities indebtedness requiring Certificate of Need approval, batching and incurred on or after

September 1, 1986, shall be in accordance with the following requirements:

(1) A Statewide Capital Facilities Allowance shall be calculated as follows:

(A) Total Capital Facilities Allowance including all indebtedness whether or not requiring Certificate of Need approval (as defined in (a)1v above) and an estimate of the annual Capital Facilities Allowance which will result from capital projects approved but not yet bonded or built, for all New Jersey acute care hospitals, will be totaled and this sum divided by Total Adjusted Admissions to determine the Capital Facilities Allowance per Adjusted Admission. To initiate these provisions, Capital Facilities Allowance (plus approved projects) for 1986 and Adjusted Admissions for 1985 will be used in the calculations defined in this paragraph. Revised calculations shall be performed as needed.

(B) Hospitals shall be reimbursed their actual Capital Facilities Allowance per Adjusted Admission up to the maximum Statewide amount calculated as shown in (a)1vi(1)(A) above. All amounts included in a hospital's Capital Facilities Allowance, whether or not requiring Certificate of Need approval, shall be included in calculating the Capital Facilities Allowance per Adjusted Admission.

vii. Reimbursement for capital facilities which does not require Certificate of Need approval, or which requires Certificate of Need approval but does not require batching, incurred on or after January 1, 1988 shall be in accordance with the following requirements:

(1) The hospital's Capital Facilities Allowance per Adjusted Admission, including the new capital costs, shall be compared to the Statewide Capital Facilities Allowance per Adjusted Admission in accordance with (a)1i through vi above.

(2) Hospitals with costs per Adjusted Admission below the calculated limit shall be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)1ii through v above.]

2. (No change.)

(b) Any new capital facilities construction with a valid certificate of need from the New Jersey Department of Health will be considered for a capital facilities adjustment in rates through the review and appeal process as described in N.J.A.C. 10:52-9.

10:52-5.20 Derivation from Preliminary Cost Base

(a) Apportionment of Financial Elements based on direct costs shall be as follows:

1. (No change.)

[2. An operating margin shall be calculated and added to hospital rates as follows:

i. Standard per unit indirect reimbursement as defined in N.J.A.C. 10:52-5.16 shall be multiplied by 1.01.

ii. The standard amount in each DRG will be multiplied by 1.01.]

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

10:52-6.13 Financial elements (generally)

The financial elements of the rates shall include the reasonable cost of the following: direct patient care; [principal] **depreciation expense** and interest payments; paid taxes, excluding income taxes; education, research and training programs, not otherwise paid for by the State; preservation, replacement and improvement of facility and equipment subject to appropriate planning requirements; reasonable working capital; and where applicable and appropriate, reasonable return on investment. All non-direct costs must be allocated based upon the proportion of Medicaid recipients serviced by the hospital.

10:52-7.2 [Outliers] **Calculation of payment rates**

(a) Outliers are patients displaying atypical characteristics relative to other patients in a DRG. The [four] **three** categories of outliers are defined and the methodology for outlier payment is established as [in N.J.A.C. 8:31-3.38(c)1] **follows.**

1. High length of stay: Patients assigned to a DRG, but whose Length of Stay (LOS) is longer than the high LOS trim point.

i. The rate is the inlier rate per case plus a per diem for each acute day from the date of admission to the date of discharge. [The DRG's with three or fewer high length of stay outlier cases in the base year, the standard high length of stay per diem is the rate.]

2. Low length of stay: Patients assigned to a DRG, but whose Length of Stay (LOS) is shorter than the trim point.

i. [The billing rate] **Payment** is limited to either the lower of the inlier rate per case or the sum of the acute days multiplied by the low per diem. [For DRGs with three or fewer low length of stay outlier cases in the base year, the standard low length of stay per diem is the rate.

3. Low volume: Patients assigned to a DRG with five or fewer merged cases in the base year.

i. The rate is the standard rate per case and standard per diem if also a length of stay outlier (as described in (a)1 and 2 above).]

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

4. The payment rates for DRGs with no base year experience will be calculated using Medicaid Statewide base year costs.

SUBCHAPTER 9. REVIEW AND APPEAL OF RATES

10:52-9.1 Review and Appeal of Rates

(a) (No change.)

(b) Any hospital which seeks an adjustment to its rates must agree to an operational review at the discretion of the Department of Human Services.

1. A request for a rate review must be submitted by a hospital in writing to the Department of Human Services, Division of Medical Assistance and Health Services, Office of Budget, Fiscal Affairs and Information Systems, CN 712, **Mail Code #23,** Trenton, New Jersey [08625,] **08625-0712** within 20 **calendar** days after publication of the rates by the Department of Human Services (DHS).

i. A hospital shall identify its rate review issues and submit supporting documentation in writing to the Division within 80 calendar days after publication of the rates by the DHS.

2. (No change.)

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

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Client Information

Proposed New Rules: N.J.A.C. 10:133G

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

Authority: N.J.S.A. 9:6-8.14, 9:6-8.10a, N.J.S.A. 30:4-24.3, 30:4C-4(h), 45 CFR 205.50, 1355.21 and 1355.30.

Proposal Number: PRN 1994-488.

Submit written comments by February 2, 1995 to:

Barbara Kraeger
Operational Policy and Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Youth and Family Services submits this proposal as part of its commitment to place its policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public into the New Jersey Administrative Code.

This proposal has been reviewed by the Operations Policy to Rules (OPTR) Group prior to publication. The OPTR Group consists of representatives from private, non-profit groups which represent segments of the affected public and from other government agencies.

In order to comply with state law and federal regulations, as well as the ethical standards of the social work profession, the Division must keep information collected from and about clients confidential unless certain conditions are met. These rules specify the conditions under which information is disclosed to clients and others.

These rules will allow a client to know what information is collected, what information the client may obtain, and under what circumstances the Division will disclose information to himself or herself or others. This information can benefit clients by reassuring them that information

shared with or obtained by the Division will not be disclosed to the community by the Division. Therefore, the client may be able to talk openly during the assessment and as part of the services made available to him or her.

A summary of the proposed rules follows:

Proposed N.J.A.C. 10:133G-1.1 states the purpose of the chapter.

Proposed N.J.A.C. 10:133G-1.2 establishes the scope of the rules.

Proposed N.J.A.C. 10:133G-1.3 references the definitions used in the proposed rules.

Proposed N.J.A.C. 10:133G-2.1 states the conditions under which the Division shall or shall not disclose protective service information to a parent or guardian or to a former client.

Proposed N.J.A.C. 10:133G-2.2 states the conditions under which the Division shall or shall not disclose child welfare information to a current or former client.

Proposed N.J.A.C. 10:133G-2.3 states when the Division shall or shall not disclose information by or about a third party to a client.

Proposed N.J.A.C. 10:133G-2.4 states when a minor client may receive information.

Proposed N.J.A.C. 10:133G-2.5 states what information the Division shall disclose to an adult adoptee.

Proposed N.J.A.C. 10:133G-3.1 states when the Division shall disclose protective service information to certain persons or agencies.

Proposed N.J.A.C. 10:133G-3.2 states when the Division shall disclose child welfare information to other persons or agencies.

Proposed N.J.A.C. 10:133G-3.3 states when the Division shall or shall not disclose information about or by third parties.

Proposed N.J.A.C. 10:133G-3.4 states the procedures to be followed when a third party requests client information from the Division.

Proposed N.J.A.C. 10:133G-3.5 states when client information is disclosed within the Division, the Department of Human Services and with Deputy Attorneys General.

Social Impact

These proposed rules affect each person who is or was a client of the Division as information is gathered and recorded for each client in order to provide appropriate services. As of October 7, 1994, the Division had 47,263 children who were receiving services. These children and their families are covered by these rules. Referral sources, agencies and persons who provide the Division written reports, and agencies and persons who request information from the Division are also affected by these rules, which govern what client information the Division will disclose.

The Division anticipates a positive response to these rules because they have been reviewed by the OPTR Group which includes advocates for various segments of the regulated public.

Economic Impact

The Division does not anticipate any economic impact from the adoption of these rules. They do not require additional capital improvements or expenditures for staff or equipment on the part of the Division or any individual. While the actions of many Division staff members will be governed by these rules, the cost of tasks involved cannot be separated from their many other duties. These rules reflect current Division policy.

Regulatory Flexibility Statement

Neither the Division nor clients receiving Division services are considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed new rules do not impose reporting, recordkeeping, or compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not necessary. These new rules state the Division's policy on client information.

Full text of the proposed new rules follows:

CHAPTER 133G
CLIENT INFORMATION

SUBCHAPTER 1. GENERAL PROVISIONS

10:133G-1.1 Purpose

The purpose of this chapter is to protect the confidentiality of client information received, developed and maintained by the Division and state the conditions under which confidential information may be disclosed.

10:133G-1.2 Scope

The provisions of this chapter shall apply to each Division staff member, client, and person who discloses information to the Division, and each person to whom the Division discloses confidential client information.

10:133G-1.3 Definitions

The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this chapter by reference.

SUBCHAPTER 2. DISCLOSURE OF CLIENT INFORMATION TO A CLIENT

10:133G-2.1 Protective service information

(a) The Division shall disclose only such information to the parent or guardian as is essential to the care, treatment or supervision of the child, or the care, treatment or supervision of the parent. This includes advising the parent of the content of the protective service referral, the investigation findings, and information to develop and implement a case plan.

(b) The Division shall not disclose its records and reports of child abuse to a former client pursuant to the restrictions of N.J.S.A. 9:6-8.10a. If a former client presents an urgent or compelling reason to know child abuse information which may be found in the Division's records and reports, a Division representative may consult with the Deputy Attorney General or the Division's Office of Legal and Regulatory Liaison. A Division representative shall inform the former client that, when there is an issue before the court, he or she has a legal right to petition the Superior Court, Family Part to determine if the Division can disclose some or all of the information requested.

(c) The Division shall not disclose, confirm, or deny the identity of a protective service referral source, unless the referral source gives consent and the disclosure is not likely to endanger the life or safety of the referral source.

10:133G-2.2 Child welfare information

(a) Except as indicated in this chapter, each child welfare client is entitled to know what information is being collected, how it is used, and who has access to the information.

(b) No current or former client shall have unrestricted review of the case record or general access to the information contained therein.

(c) A client currently or formerly receiving services may inspect or copy his or her own records as they relate to financial eligibility for or receipt of benefits or assistance.

(d) The Division shall disclose to a current or former client other child welfare information from the client's record to the extent that the client makes a reasonable demonstration of the need to know. In general, the Division shall consider the client's statement of the need for the information as a reasonable demonstration, unless the Division has a compelling reason not to disclose the requested information, such as when the Division determines that disclosure of such information would be likely to endanger any person's life or safety. The determination shall be based on the Division representative's and his or her supervisor's evaluation of the nature and seriousness of the case and an assessment of the client's propensity for violence and harm. If the Division denies the disclosure of child welfare information to the client, the Division representative shall:

1. Give the client a verbal explanation of the reason for denial; and

2. Outline the reasons for denial in writing and make this a part of the client's record.

(e) Whenever there is reason to believe that a request for examination or copying of records is made in connection with a claim for compensation or damages against the State of New Jersey or State employees, the Claims Service Section, Office of the Attorney General, shall be notified prior to honoring the request. The Office of Legal and Regulatory Liaison shall notify the Claims Service Section for the Division.

10:133G-2.3 Third party information

(a) The Division shall not disclose any of the following to a current or former client:

1. Any third-party report, unless the Division receives prior written consent from the third party and release is not prohibited by law or regulation. The following statutory provisions restrict disclosure:

i. Juvenile-Family Crisis information in N.J.S.A. 2A:4A-60;

ii. HIV information in N.J.S.A. 26:5C-5 et seq.;

iii. Drug and alcohol treatment records in 42 CFR 2.1 et seq.; and

iv. Domestic violence information in N.J.S.A. 30:14-1 et seq. and N.J.A.C. 10:130-2.8;

2. Any record containing information identifying a third-party source of information, e.g., referral source, other family member, collateral contact, unless the Division receives prior written consent from the third party and disclosure is not prohibited by law or regulation;

3. Information about another person, except with the express written consent of the other person and when not prohibited by law and regulation; or

4. Information which could, if disclosed to the client, be likely to endanger any person's life or safety. This determination shall be based on the Division representative's and his or her supervisor's evaluation of the nature and seriousness of the case and an assessment of the client's propensity for violence and harm to the child and others.

10:133G-2.4 Minor client

(a) A current or former minor client may receive information contained in the Division's case record, which has not been previously disclosed, through a request made by the minor's parent, except when the circumstances in (b) below apply. Information which may be disclosed on behalf of a minor client is limited in the same manner as described in N.J.A.C. 10:133G-2.1 through 2.3.

(b) An exception to the parental request requirement may be made when:

1. The information sought is not restricted by law, regulation, or policy; and

2. The requirement of parental involvement would interfere with the child's right to privacy (for example, a female child who has had a pregnancy or abortion of which her parent has no knowledge) or interfere with other rights the child may have as a result of circumstances making him or her an emancipated minor.

10:133G-2.5 Adult adoptee

All court records and information relating to adoption proceedings are sealed upon the legal finalization of the adoption pursuant to N.J.S.A. 9:3-52. Since the Division's records contain sealed court records, the Division treats these records as confidential. The Division shall disclose to an adult adoptee non-identifying information available in the Division's records in accordance with N.J.A.C. 10:121A-5.9(b)2. The Division shall disclose identifying information to an adult adoptee about any birth family member or other person who has given his or her written consent to the Division.

SUBCHAPTER 3. RELEASE OF CLIENT INFORMATION TO PERSONS OTHER THAN THE CLIENT

10:133G-3.1 Protective service information

The Division shall disclose protective service information, with or without a client's consent, only in those circumstances and to those persons and agencies listed in N.J.A.C. 10:129-2.1 and pursuant to statute, including N.J.S.A. 9:3-54.2 and 9:6-8.10a, when the Division determines that the person or agency has made a reasonable demonstration of the need to know the information and in consideration of the risk of harm to the child and others. No person shall have unrestricted review of the case record or general access to the information contained therein.

10:133G-3.2 Child welfare information

The Division shall disclose child welfare information only with the client's prior consent, except in an emergency, in which case the Division shall advise the client of the request and disclosure at a later time. With the client's consent or in an emergency, the Division shall disclose information about that client, subject to the limitations and provisions set forth in 45 CFR 205.50, 45 CFR 1355.21, 45 CFR 1355.30 and N.J.S.A. 30:4-24.3, and only to a person or agency representative who is subject to standards of confidentiality comparable to those of the Division and only to a party who presents a reasonable demonstration of the need to know the information requested, for example, information needed to provide medical, psychological or social services to the child or family, except when restricted by law or N.J.A.C. 10:133G-2.3(a)1. No person shall have unrestricted review of the case record or general access to the information contained therein.

10:133G-3.3 Third party information

(a) The Division shall not disclose the following to a requester:

1. Third-party reports, unless the Division receives prior written consent from the third party and disclosure is not prohibited by law or regulation, such as those cited in N.J.A.C. 10:133G-2.3(a)1i, ii, iii, and iv;

2. Information identifying a third-party source of information, for example, referral source or other family member, unless the Division receives prior written consent from the third party and disclosure is not prohibited by law or regulation; or

3. Information which could, if disclosed to the client, be likely to endanger any person's life or safety. This determination shall be based on the Division representative's and his or her supervisor's evaluation of the nature and seriousness of the case and an assessment of the propensity for violence and harm.

(b) When the Division requests a third party report to process a residential placement or other service, or apply for government benefits, the Division shall inform and obtain the consent of the third party at the time of request that the information may be disclosed to others to obtain a needed service or government benefit.

(c) The Division shall disclose third party reports to an agency or person who is subject to standards of confidentiality comparable to those of the Division, such as a physician, psychotherapist, health or mental health agency, when:

1. The Division has guardianship or custody of the child;

2. Disclosure of the information is necessary for the child's or parent's care, treatment or supervision;

3. Disclosure is not prohibited by law or regulation, such as those cited in N.J.A.C. 10:133G-2.3(a)1i, ii, iii, and iv;

4. The Division has considered the risk of harm to the child and others; and

5. The third party has given its consent in accordance with (b), above.

10:133G-3.4 Requests for information

(a) Each person making an inquiry or request for client information shall put the request in writing, except as allowed in (d), below.

1. An agency shall make its request on official agency letterhead.

2. An individual person making a request shall include his or her address or telephone number which can be verified.

3. Any person requesting client information shall include a consent form signed by the client or shall indicate the reason he or she needs to know the information.

(b) The Division shall determine whether the person requesting the information can receive the information pursuant to statute and to the provisions of this chapter.

(c) No Division employee shall disclose client information over the telephone, including whether or not a person is or was known to the Division, except as authorized in (d) below.

(d) When information is urgently needed, the Division shall disclose the information after verifying the caller's identity, determining that the caller is authorized to receive the information pursuant to N.J.S.A. 9:6-8.10a or in accordance with N.J.A.C. 10:133G-3.2, and determining that the caller has made a reasonable demonstration of the need to know the information and in consideration of the risk of harm to the child and others.

10:133G-3.5 Disclosure within the Division, the Department and Department of Law and Public Safety, Division of Law

(a) Personal client information shall be disclosed within the Division only to those persons who require such information in the course of their jobs and only to the extent necessary. The Division shall obliterate the names of clients and other persons when case record materials or reports are used for training.

(b) Staff of the Office of Legal and Regulatory Affairs, the Deputy Commissioner, the Assistant Commissioner, or the Commissioner of the Department of Human Services shall have the authority to request and receive all information about Division clients.

(c) The Division shall disclose client information to a Deputy Attorney General, Department of Law and Public Safety, Division of Law, representing the Division.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Automobile Insurance: Examination of Financial Experience of Private Passenger Automobile Insurers

Proposed Repeal: N.J.A.C. 11:3-31 and Appendix
Proposed Amendments: N.J.A.C. 11:3-16.4 and 16.5

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

Authority: N.J.S.A. 17:1C-6(e); 17:23-1 et seq.; 17:29A-1 et seq.; and 17:29B-1 et seq.

Proposal Number: PRN 1995-21.

Submit written comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

N.J.A.C. 11:3-31 currently provides for private passenger automobile insurers to submit a Financial Data Report to the Commissioner of Insurance ("Commissioner") on a yearly basis. This information includes premiums written, premiums earned, losses paid, expenses, profits and other financial data. This information is required to be submitted on forms which are set forth in the Appendix to N.J.A.C. 11:3-31. This filing includes approximately 37 pages of detailed information and questions.

Experience has shown that this information is duplicative with other, more comprehensive, information being submitted by all insurers. This includes the Statutory Annual Statements received from all insurers as well as the Excess Profits Reports submitted by private passenger automobile insurers pursuant to N.J.A.C. 11:3-20.

The Department of Insurance ("Department") has determined that the filing under N.J.A.C. 11:3-31 is no longer useful. As a result, the Department believes that N.J.A.C. 11:3-31 should be repealed. Repeal of this subchapter will not only reduce the filing burden on automobile insurers but also the burden on the Department to track compliance, review, file and store these reports.

Additionally, the Department proposes to amend N.J.A.C. 11:3-16.4(b)1 and 16.5(a)3 to delete reference to N.J.A.C. 11:3-31 and the Financial Data Report in connection with the annual informational and "flex rate" filings. In doing so, the proposed repeal also eliminates the reference in N.J.A.C. 11:3-16.5(a)3 to filing a copy of all documents with the Department of the Public Advocate, which was eliminated by P.L. 1994, c.58 (enacted June 29, 1994).

Social Impact

The proposed repeal of N.J.A.C. 11:3-31 and the amendments to N.J.A.C. 11:3-16.4(b)1 and 16.5(a)3 will have no deleterious social impact upon insureds, proposed insureds, the insurance industry and the Department. For the most part, the information filed in accordance with this subchapter is generally available to the Department in other more useful formats. The Department is certain that elimination of the filing will not reduce in any way its regulatory effectiveness. In fact, the reduced burden on the Department will allow for more efficient use of resources. Also, lessening some of the reporting obligations on insurers will result in lower overall costs and will demonstrate the intention of the Department to streamline the regulatory processes in New Jersey.

Economic Impact

It is expected that savings will be realized by both insurers and the Department. Costs of compliance to insurers and costs of review and storage to the Department will be eliminated.

Regulatory Flexibility Statement

The proposed repeal imposes no additional reporting, recordkeeping or other compliance requirements on any insurer including small businesses and therefore no regulatory flexibility analysis is required. The proposed repeal and amendments eliminate a reporting requirement.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-31 and Appendix.

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

11:3-16.4 Insurer information filings due July 1 of each year

(a) (No change.)

(b) The information filing shall consist of the following documents:

1. The insurer's Excess Profits Report for each company filed pursuant to N.J.A.C. 11:3-20 [and the Financial Data Report for each company filed pursuant to N.J.A.C. 11:3-31]. In lieu of providing copies, the filer may submit a certification of an officer that the report[s have] **has** been filed and [are] is incorporated by reference.

2. (No change.)

11:3-16.5 Insurer flex rating filings

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

1.-2. (No change.)

3. The Excess Profits Report (required by N.J.A.C. 11:3-20 [and the Financial Data Report (required by N.J.A.C. 11:3-31)]. In lieu of providing copies, the filer may submit a certification by an officer that the document[s have] **has** been filed and [are] **is** incorporated into the filing by reference; [nevertheless, a complete copy of all documents required (including the Excess Profits Report and the Financial Data Report) shall be provided to the Public Advocate pursuant to N.J.A.C. 11:3-16.3(e);]

4.-5. (No change.)

(b)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Definitions
Conversion Health Benefits Plan; Individual Health Benefits Plan

Proposed Amendment: N.J.A.C. 11:20-1.2

Authorized By: New Jersey Individual Health Coverage Program Board of Directors, Kevin O'Leary, Executive Director.

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

Proposal Number: PRN 1995-2.

Submit written comments by December 9, 1994 to:
By mail/messenger:
Kevin O'Leary, Executive Director
New Jersey Individual Health Coverage Program
20 West State Street, 10th Floor
CN 325
Trenton, NJ 08625
By Fax: (609) 633-3601

The agency proposal follows:

Summary

These amendments are being proposed pursuant to the procedures of P.L. 1993, c.164, section 8 as therein authorized. Accordingly, notice of the proposal of this amendment was published in three newspapers of general circulation in New Jersey, and simultaneously mailed to all known interested parties when submitted to the Office of Administrative Law ("OAL") for publication in the New Jersey Register.

Pursuant to section 8(d), all interested persons are provided at least 20 days comment period, ending December 10, 1994. Pursuant to section 8(e), the Board may adopt these rules immediately upon the expiration of the public comment period by filing notice of the adoption with the OAL for publication in the New Jersey Register. Because of the expedited nature of this special rulemaking process, notice of the proposal may appear in the New Jersey Register after the Board has adopted the amendment.

The New Jersey Individual Health Coverage ("IHC") Program proposes amending the definitions of "conversion health benefits plan" and "individual health benefits plan" at N.J.A.C. 11:20-1.2. The definition of "conversion health benefits plan" is amended to clarify the provision of the Individual Health Insurance Reform Act ("IHC Act"), N.J.S.A. 17B:27A-2 et seq., that states that a group conversion policy issued after the effective date of the IHC Act shall be issued pursuant to the IHC Act, unless the conversion policy is subsidized by the group policy from which the conversion is made. N.J.S.A. 17B:27A-4(d). Carriers and the Department of Insurance have asked the Board to clarify what qualifies as a subsidy. The proposed amendment explains that a subsidy is either (1) a single charge or ongoing increase in premium rates chargeable to the group policy or contract, identifiable as an excess morbidity charge in the group rating formula to cover group conversion excess morbidity costs, or (2) a reduction in dividends or returns paid to a group policy or contract holder, identifiable as a charge to or reduction in the group dividend formula to cover group conversion excess morbidity costs.

The Board proposes an amendment to the definition of "individual health benefits plan" to clarify considerable confusion in the marketplace with regard to the difference between individual and group insurance. Before the enactment of the IHC Act, individuals could enroll in "group" insurance offered by trusts and associations. This coverage was called group insurance, even though, in many cases, individuals were individually underwritten according to age, gender, and health status, and paid for their own coverage. The IHC Act, as amended by P.L. 1993, c.164, eliminated the fiction of the so-called "one-life group" and defined as individual coverage all forms of coverage issued to individual "eligible persons," regardless of whether the coverage is issued by a carrier, trust, or association, or whether the master policy or contract is issued outside of New Jersey.

However, despite the change in the IHC Act, the IHC Board continues to receive information about sales of "group" health insurance to individuals and their families by representatives of certain out-of-State trusts and associations. As explained above, these trusts and associations are subject to the IHC Act to the extent they issue coverage to eligible persons and are required to sell only standardized individual health benefits plans on a guaranteed issuance, community rated basis. These trusts and associations that offer health benefits plans that are underwritten on the basis of health status, age, gender, and other factors prohibited by the IHC Act, undermine the State's health insurance reform programs and place at an unfair disadvantage those carriers and agents that are complying with the letter and spirit of New Jersey's laws.

The IHC Board has decided to provide examples under the definition of "individual health benefits plan" to illustrate the difference between individual and group insurance. The amendment should clarify that there is no such thing as a "one-life group" in New Jersey. Individual persons who seek coverage for themselves and their families must enroll in one of the standard health benefits plans authorized by the IHC Act. The amendment clarifies that the term "individual health benefits plan" includes a policy, contract, or certificate evidencing coverage by a policy or contract issued to a trust or association, issued to an eligible person described in, but not limited to, the following examples: a student; an unemployed individual or part-time employee; a self-employed person; an employer, when he or she (and dependents) is the only person seeking coverage; any person who is the sole employee seeking coverage by a health benefits plan, except as provided under N.J.S.A. 17B:27A-17 et seq.; a husband and wife who have their own business, if one spouse is seeking coverage as a dependent of the other rather than as a separate employee; and an employee who is one of several employees of the same employer who are covered by certificates, contracts or policies issued by the same carrier, trust or association, if the employer does not contribute to, and remit payment for, the coverage of such employees. By providing examples, the Board does not intend to expand the definition of "individual health benefits plan" but to provide some guidance to carriers, trusts, and associations in understanding the now clear distinction between group and individual health benefits plans.

The Board also is amending portion of the definition which provides that "individual health benefits plan shall not include a certificate issued under a policy or contract issued to a trust, or to the trustees of a fund, which trust or fund is established or adopted by two or more employers, by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, to insure employees of the employers or members of the unions or organizations" by clarifying that such arrangement must qualify as an employee welfare benefit plan that qualifies for preemption of state laws regulating insurance pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1001 et seq. The Board believes this exclusion was intended to expressly provide that employee benefits plans that are exempt from state insurance laws by virtue of ERISA would not be subject to the requirements of the IHC Act.

Social Impact

The proposed amendment to the definition of "conversion health benefits plans" affects carriers that offer conversion rights under group health benefits plan contracts. The amendment only clarifies whether such plans are subject to the IHC Act. The amendment to the definition of "individual health benefits plan" does not substantively change existing rules of the IHC Program, but provides clarification of those rules. The amendment affects all members of the IHC Program. To the extent the clarification of the definition demonstrates to trusts and associations that the coverage they are offering to eligible persons does not conform with the law, the amendment may reduce the sales of illegal individual health benefits plans.

Economic Impact

The proposed amendments should have no independent economic impact on carriers subject to the IHC Program rules because the amendments do not expand any requirements currently existing under those rules. The amendments provide clarification and guidance only and do not substantively increase or decrease the scope or burden of the rules.

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 business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments only clarify existing definitions in the IHC rules and do not change the requirements of the IHC Program in a substantive way.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in cursive brackets {thus}):

11:20-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

. . .

"Conversion health benefits plan" means a group conversion contract or policy issued on or after {November 30, 1992} **August 1, 1993** {in which no set portion or part of the premium for the contract or policy is charged to, or subsidized by, the group policy from which the conversion is made} **that is not subsidized by either:**

1. A single charge or ongoing increase in premium rates chargeable to the group policy or contract, identifiable as an excess

morbidity charge in the group rating formula to cover group conversion excess morbidity costs; or

2. A reduction in dividends or returns paid to a group policy or contract holder, identifiable as a charge to or reduction in the group dividend or return formula to cover group conversion excess morbidity costs.

...

"Individual health benefits plan" means: (a) a health benefits plan for eligible persons and their dependents; and (b) a certificate issued to an eligible person which evidences coverage under a policy or contract issued to a trust or association, regardless of the situs of delivery of the policy or contract, if the eligible person pays the premium and is not being covered under the policy or contract pursuant to continuation of benefits provisions applicable under Federal or State law. **The term "individual health benefits plan" shall include a policy, contract, or certificate evidencing coverage by a policy or contract issued to a trust or association, issued to an eligible person described in, but not limited to, the following examples: a student; an unemployed individual or part-time employee; a self-employed person; an employer, when he or she (and dependents) is the only person seeking coverage; any person who is the sole employee seeking coverage by a health benefits plan, except as provided under N.J.S.A. 17B:27A-17 et seq.; a husband and wife who have their own business, if one spouse is seeking coverage as a dependent of the other rather than as a separate employee; and an employee who is one of several employees of the same employer who are covered by certificates, contracts or policies issued by the same carrier, trust or association, if the employer does not contribute to, and remit payment for, the coverage of such employees.**

The term "individual health benefits plan" shall not include a certificate issued under a policy or contract issued to a trust, or to the trustees of a fund, which trust or fund is established or adopted by two or more employers, by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, to insure employees of the employers or members of the unions or organizations **as long as such arrangement qualifies as an employee welfare benefit plan that is exempt from state insurance regulation pursuant to the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq.**

...

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PHARMACY

Sterile Admixture Services in Retail Pharmacies

Proposed Amendments: N.J.A.C. 13:39-11.3 and 11.16

Authorized By: State Board of Pharmacy, H. Lee Gladstein, Executive Director.
Authority: N.J.S.A. 45:14-26.2.
Proposal Number: PRN 1995-18.

Submit written comments by February 2, 1995 to:
H. Lee Gladstein, Executive Director
State Board of Pharmacy
Post Office Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

On September 19, 1994, the Board of Pharmacy adopted new rules that updated and expanded Board requiremets for retail pharmacy permit holders providing sterile admixture services (see 26 N.J.R. 3878(b)).

The Board is proposing to amend N.J.A.C. 13:39-11.16 in order to more accurately and specifically define the standard for anteroom air quality.

N.J.A.C. 13:39-11.16 currently requires the air quality within the anteroom to "be better in terms of demonstrated particle count or positive room pressurization than that of adjacent areas...." The proposed amendment would define the anteroom air quality standard more precisely to be "Class 10,000 or better." A minimum Class 10,000 standard is consistent with Board research and industry standards and will provide permit holders with a better understanding of anteroom air standard requirements. Elucidation of this standard is intended to enhance compliance and provide consistency for enforcement purposes.

This proposal also amends cross-reference errors in N.J.A.C. 13:39-11.3(b).

Social Impact

The proposed amendment to N.J.A.C. 13:39-11.16 augments existing consumer protection measures by more precisely describing the environmental air quality required within the anteroom. The amendment will benefit users of sterile IV products to the extent that the clarification aids in achieving greater compliance with air quality standards in the anteroom. Achieving and maintaining sterility and overall freedom from contamination of a pharmaceutical product is essential in order to protect the health and safety of users of sterile IV products.

Economic Impact

The Board does not anticipate that this proposed amendment will create an economic impact on either retail permit holders or the public. The amendment merely clarifies existing Board and industry requirements for the environmental quality of the anteroom. A retail pharmacy that does not comply with these requirements, however, will be expected to expend the sums necessary to bring its facility into compliance.

Regulatory Flexibility Analysis

This proposed amendment will affect all retail pharmacies that currently offer sterile IV services. The majority of the 80 current permit holders would be considered "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The amendment entails no initial capital costs or continuing costs of compliance, nor does it require reporting or recordkeeping or additional professional services. The only compliance requirement is continued adherence to the anteroom air quality standard, which this amendment merely clarifies.

The intent of the clarification is to ensure that IV drug products maintain their sterility in the compounding process, for the protection of the health, safety and welfare of individuals receiving home IV therapy. Accordingly, the Board cannot provide exemptions from those requirements based upon business size, because to do so would destroy the value of the rule.

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

13:39-11.3 Supportive personnel; required supervision

(a) (No change.)

(b) The dispensing pharmacist may delegate to supportive personnel only the tasks set forth below in [(c)] **N.J.A.C. 13:39-11.4(b)2** (recording of the prescription, [(c)] **(b)**3 (selection of the drugs, container and diluent), and [(c)] **(b)**4 (compounding of sterile admixture [below]. The dispensing pharmacist shall check that each task has been performed correctly prior to any further task being performed in the dispensing process.

13:39-11.16 Anteroom

(a) The [environmental quality within the] anteroom shall [be better in terms of demonstrated particle count or positive room pressurization than that of adjacent areas, such as the main pharmacy, so as to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the clean room] **have an air quality of Class 10,000 or better.**

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

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Collection and Dissemination of Social Security Numbers

Proposed New Rule: N.J.A.C. 13:70-4.22

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-22, 23, 30, 34, 35 and 77; 47:1A-1 et seq.
Proposal Number: PRN 1995-19.

Submit written comments by February 2, 1995 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A new rule is proposed concerning requests for voluntary submission of Social Security numbers and to ensure their confidentiality. The purpose of this new rule is to ensure that any collection or use of Social Security numbers by the Commission is in conformity with applicable Federal law. Since this rule has Commission-wide applicability, any other rule concerning Social Security numbers must be construed and applied in conformity with it.

Social Impact

With certain exceptions, the Commission may not require persons with whom it deals to provide their Social Security numbers. However, the Commission is not prohibited from adopting rules providing for voluntary disclosure, providing that it complies with all requirements of Federal law. All existing rules authorizing collection of this information must be construed in conformity with this rule.

Social Security numbers will be used to conduct criminal background and credit checks necessary to carry out statutory dictates of the Racing Commission. The rule would prohibit the divulgence of any received Social Security number to anyone outside the Racing Commission, except as provided by law.

The proposed rule is expected to have a positive social impact in that the Racing Commission will be able to carry out its duties effectively without compromising the confidentiality of information entrusted to it by members of the public.

Economic Impact

The new rule is not expected to have any discernible economic impact since the only cost involved is the reprinting of forms to conform to the Federal law. There is no cost imposed by this new rule upon any member of the public who provides information to the Commission or who seeks access to information held by the Commission.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule impacts on the New Jersey Racing Commission's administrative procedures and should have no significant impact on small businesses.

Full text of the new proposed rule follows:

13:70-4.22 Collection and dissemination of Social Security numbers

(a) The Racing Commission may request Social Security numbers to be furnished for use in determining an applicant's eligibility for licensure especially as it relates to credit checks, background checks or other such investigations, including those relative to open claiming. No application shall be denied for failure to comply with such request provided that a person may be required to submit such other information as the Commission may require in order to determine an applicant's eligibility for licensure.

(b) Any form used by the Commission to request submission of a Social Security number shall include the following:

1. A statement as to whether provision of a Social Security number is mandatory or voluntary;

2. A citation of the rule (which in the case of a request for voluntary submission shall be this section) that authorizes the Commission to request the Social Security number; and

3. A statement that the Commission will use Social Security numbers as a secondary internal identifier for the following purposes: Credit checks, background checks and other such investigations.

(c) Any Social Security number submitted to the Commission shall be concealed or removed from the document before it is made available to any agency or person outside the Racing Commission. No Social Security number shall be disclosed to any outside party, orally or in writing, except as provided by law.

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Collection and Dissemination of Social Security Numbers

Proposed New Rule: N.J.A.C. 13:71-7.37

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-22, 23, 30, 34, 35 and 77; 47:1A-1 et seq.
Proposal Number: PRN 1995-20.

Submit written comments by February 20, 1995 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A new rule is proposed concerning requests for voluntary submission of Social Security numbers and to ensure their confidentiality. The purpose of this new rule is to ensure that any collection or use of Social Security numbers by the Commission is in conformity with applicable Federal law. Since this rule has Commission-wide applicability, any other rule concerning Social Security numbers must be construed and applied in conformity with it.

Social Impact

With certain exceptions, the Commission may not require persons with whom it deals to provide their Social Security numbers. However, the Commission is not prohibited from adopting rules providing for voluntary disclosure, providing that it complies with all requirements of Federal law. All existing rules authorizing collection of this information must be construed in conformity with this rule.

Social Security numbers will be used to conduct criminal background and credit checks necessary to carry out statutory dictates of the Racing Commission. The rule would prohibit the divulgence of any received Social Security number to anyone outside the Racing Commission, except as provided by law.

The proposed rule is expected to have a positive social impact in that the Racing Commission will be able to carry out its duties effectively without compromising the confidentiality of information entrusted to it by members of the public.

Economic Impact

The new rule is not expected to have any discernible economic impact since the only cost involved is the reprinting of forms to conform to the Federal law. There is no cost imposed by this new rule upon any member of the public who provides information to the Commission or who seeks access to information held by the Commission.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed new rule impacts on the New Jersey Racing Commission's administrative procedures and should have no significant impact on small businesses.

Full text of the new proposed rule follows:

13:71-7.37 Collection and dissemination of Social Security numbers

(a) The Racing Commission may request Social Security numbers to be furnished for use in determining an applicant's eligibility for licensure especially as it relates to credit checks, background checks or other such investigations, including those relative to open claiming. No application shall be denied for failure to comply with such request provided that a person may be required to submit such other information as the Commission may require in order to determine an applicant's eligibility for licensure.

(b) Any form used by the Commission to request submission of a Social Security number shall include the following:

1. A statement as to whether provision of a Social Security number is mandatory or voluntary;

2. A citation of the rule (which in the case of a request for voluntary submission shall be this section) that authorizes the Commission to request the Social Security number; and

3. A statement that the Commission will use Social Security numbers as a secondary internal identifier for the following purposes: Credit checks, background checks and other such investigations.

(c) Any Social Security number submitted to the Commission shall be concealed or removed from the document before it is made available to any agency or person outside the Racing Commission. No Social Security number shall be disclosed to any outside party, orally or in writing, except as provided by law.

(a)

NEW JERSEY RACING COMMISSION

Casino Simulcasting
Supervisors of Mutuels and Verifiers
Proposed Amendment: N.J.A.C. 13:72-9.1
Proposed Repeals: N.J.A.C. 13:72-9.3, 9.4 and 9.5
Proposed Recodification with Amendment: N.J.A.C. 13:72-9.6 as 13:72-9.3

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1995-36.

Submit written comments by February 2, 1995 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed repeals and amendments would make permanent the requirement that a supervisor of mutuels at a hub facility be an employee or designee of the New Jersey Racing Commission whose compensation shall be paid, directly or indirectly, by the hub facility. It would also eliminate the requirement that a verifier be present at a hub facility. Currently, the presence of both a supervisor of mutuels and verifier is required at a hub facility at all times when casino simulcasting is being conducted.

The initial year of casino simulcasting has evidenced the need for the supervisor of mutuels at a hub facility to be either an employee or designee of the New Jersey Racing Commission. Conversely, the year's experience has shown that the need for the presence of a verifier at a hub facility is gradually diminishing.

Social Impact

The requirement that a supervisor of mutuels at a hub facility be permanently either an employee or designee of the New Jersey Racing Commission will help to ensure the integrity of casino simulcasting as well as foster public confidence therein. There is expected to be little or no social impact from the elimination of the requirement that there be a verifier at a hub facility. A number of the functions of a verifier are now performed by computers, and the New Jersey Racing Commission no longer requires that verifiers be present at race tracks with no resulting social impact.

Economic Impact

As of the effective date of these repeals and amendments, a hub facility will no longer be required to pay the compensation of a verifier, which will result in some savings to the hub facility. In the event that future circumstances should necessitate the presence of a verifier at the hub facility, the compensation thereof would be the responsibility of the Racing Commission.

Regulatory Flexibility Statement

The proposed repeals and amendments will affect only operators of a hub facility. Currently, there is only one hub facility, and it is not a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In the event that casino licensees determine to utilize a different hub facility in the future, it is doubtful that the operator thereof will qualify as a "small business" either. Accordingly, a regulatory flexibility analysis is not required.

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

13:72-9.1 Supervisors of Mutuels

A Supervisor of Mutuels shall be present at a hub facility at all times when casino simulcasting is being conducted. [Unless determined by the Commission and Racing Commission that a longer period is necessary, for a period of one year from the date of commencement of casino simulcasting] **The** Supervisor of Mutuels shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. If a Supervisor of Mutuels is not an employee of the Racing Commission, he or she shall be licensed as a casino key employee.

[13:72-9.3 Assumption of duties of Supervisor of Mutuels

Subject to the provisions of N.J.A.C. 13:72-9.1, not less than one year after the commencement of casino simulcasting the duties of a Supervisor of Mututels as set forth in N.J.A.C. 13:72-9.2 may be assumed by qualified employees of the hub facility, who shall be licensed as casino key employees and may otherwise be required by N.J.A.C. 13:72-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of a Supervisor of Mutuels set forth in N.J.A.C. 13:72-9.2.

19:55-9.4 Verifier

There shall be assigned to each Supervisor of Mutuels in a hub facility, a Verifier, who shall be present at a hub facility at all times when casino simulcasting is being conducted. Unless determined by the Commission and Racing Commission that a longer period of time is necessary, for a period of one year from the date of commencement of casino simulcasting the Verifier shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. It shall be the duty of a Verifier to assist a Supervisor of Mutuels in carrying out the duties set forth in N.J.A.C. 13:72-9.2. If a Verifier is not an employee of the Racing Commission, he or she shall be licensed as a gaming-related casino employee.

13:72-9.5 Assumption of duties of verifier

Subject to the provisions of N.J.A.C. 13:72-9.4, not less than one year after the commencement of casino simulcasting the duties of a Verifier may be assumed by qualified employees of the hub facility, who shall be licensed as a gaming-related casino employees and as may otherwise be required pursuant to N.J.A.C. 13:72-6.6. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of a Verifier set forth in N.J.A.C. 13:72-9.4.]

13:72-[9.6]**9.3** Continued access to hub facility by Racing Commission

The Racing Commission, its employees and agents shall at all times have access to the hub facility in order to maintain the integrity of horse racing and, together with the Commission and Division, to effectuate the purposes of the Casino Simulcasting Act. [Such access shall in no way be affected by the replacement of Supervisors of Mutuels and Verifiers by employees of the hub facility, as provided in N.J.A.C. 19:55-9.3 and 9.5.]

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION

Rules of Practice and Procedure of the Office of Cable Television; Scheduling Hearings for Public Comment

Proposed Amendment: N.J.A.C. 14:17-6.17

Authorized By: Celeste M. Fasone, Director, Office of Cable Television, with the approval of the Board of Public Utilities, Herbert H. Tate, President.

Authority: N.J.S.A. 48:5A-10.

BPU Docket Number: CX 94110523

Proposal Number: PRN 1995-11.

A **public hearing** concerning the proposal will be held on Monday, January 30, 1995 at 10:30 A.M.

Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by February 2, 1995 to:

Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to the New Jersey Cable Television Act (Act), specifically, N.J.S.A. 48:5A-9 and 10, the Board of Public Utilities (Board) is empowered to promulgate rules and procedures necessary to carry out the purposes of the Act.

The Board's procedural rules presently require hearings for public input be held on petitions for rate increases in the petitioner's service territory.

The Board proposes to amend N.J.A.C. 14:17-6.17(g) to give more discretion to the hearing officer in scheduling hearings for public comment by removing the service territory location limitation, as well as permitting consolidated public hearings for more than one cable operator filing similar applications.

The amendment would also allow interlocatory appeals to the Board of decisions concerning location and scope of public input hearings.

Social Impact

As noted last year when the Board redopted and amended its procedural rules for cable, no substantive changes to rate petition procedures in subchapter 6 were included, but would be separately addressed by the Board in a rulemaking specifically responding to changes in the law governing rate regulation and adherence to rules for rate regulation still being promulgated by the FCC.

On March 30, 1994, the Federal Communications Commission (FCC) adopted rules permitting quarterly rate increases for regulated services due to external increases in certain specified costs. Under the rules and regulations of the Board, as the certified franchising authority regulating basic cable rates in New Jersey, rate increase requests are contested matters which must be heard by the agency head, or else transmitted to the Office of Administrative Law for hearing.

By creating more flexibility to schedule these hearings, the opportunity for public input will be preserved while empowering the Board and the OAL to deal with a potentially overwhelming number of cases in an effective fashion.

Economic Impact

Adoption of this rule will substantially reduce the cost of holding public hearings, since the new FCC regulations allow a potential of 240 public hearings a year on quarterly rate increases for which the Board has limited reviewing discretion under federal law. The Office of Cable Television also anticipates savings for cable operators and a reduced period for review and action as a result of the amendment.

Regulatory Flexibility Analysis

It is anticipated that the proposed amendments will affect three cable television operators which are defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and whose rates for basic cable television service are regulated by the Board.

The proposed adoption will not impose any additional reporting, record keeping or compliance requirements as it may reduce the number of hearings needed for multiple systems operators, and allow operators to share costs of public notice and the hearings.

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

14:17-6.17 Tariff filings or petitions which propose increases in charges to customers

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

(g) [At least one hearing for public comment shall be held in the affected service area in a time and place convenient for subscribers.] **An opportunity for public comment shall be afforded affected subscribers. In the discretion of the presiding hearer, public comment may take the form of a hearing in the service territory or other reasonably convenient location and/or the submittal of written comments, if doing so is in the interest of prompt disposition and judicial economy.**

1. The presiding officer shall also have the discretion to combine any public comment hearings to encompass more than one service territory served by a single cable operator or similar rate requests filed by more than one cable operator, if doing so is in the interest of prompt disposition and judicial economy.

2. Notwithstanding the provisions of N.J.A.C. 1:1-14.10(k)6 and (1), interlocutory appeals from a hearer's decision on public comment pursuant to this subsection shall be made to the Board in accordance with the terms of N.J.A.C. 1:1-14.10.

TRANSPORTATION

(b)

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

Speed Limits
Connector Roads "B" and "D" (under State jurisdiction Route U.S. 202, Route U.S. 206 and Route 28) in Bridgewater Township and Raritan Borough in Somerset County

Proposed New Rule: N.J.A.C. 16:28-1.62

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

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

Proposal Number: PRN 1995-3.

Submit comments by February 2, 1995 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation is proposing a new rule at N.J.A.C. 16:28-1.62 to establish "speed limit" zones along Connector Roads "B" and "D" (under State jurisdiction Route U.S. 202, Route U.S. 206 and Route 28) in Bridgewater Township and Raritan Borough in Somerset County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a memorandum dated August 17, 1994 from a Project Engineer with the Department's Bureau of Traffic Engineering and Safety Programs, requesting that speed limits be established for Connector Roads "B" and "D" at the Somerville Circle in Bridgewater Township and Raritan Borough in Somerset County, and as part of a review of current conditions, the Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that certain "speed limit" zones along Connector Roads "B" and "D" (under State jurisdiction Route U.S. 202, Route U.S. 206 and Route 28) in Bridgewater Township and Raritan Borough in Somerset County, were warranted.

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

Social Impact

The proposed new rule will establish 35 miles per hour "speed limit" zones on Connector Roads "B" and "D" (under State jurisdiction Route U.S. 202, Route U.S. 206 and Route 28) at the Somerville Circle in Bridgewater Township and Raritan Borough in Somerset County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28-1.62 [(Reserved)] **Connector Roads "B" and "D" (under State jurisdiction Route U.S. 202, Route U.S. 206 and Route 28)**

(a) The rate of speed designated for the certain part of Connector Roads "B" and "D" (under State jurisdiction Route U.S. 202, Route U.S. 206 and Route 28) described in this subsection shall be established and adopted as the maximum legal rate of speed thereat:

1. In Somerset County:

i. In Bridgewater Township and Raritan Borough:

(1) Connector Road "B":

(A) 35 miles per hour for its entire length for northbound traffic.

(2) Connector Road "D":

(A) 35 miles per hour for its entire length for southbound traffic.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 130 including parts of Route I-295, Route U.S. 30 and Route U.S. 206
East Windsor Township, Mercer County
Proposed Amendment: N.J.A.C. 16:28-1.69

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

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

Proposal Number: PRN 1995-4.

Submit comments by February 2, 1995 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.69 to revise certain "speed limit" zones along Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206 in East Windsor Township, Mercer County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of the local government of East Windsor Township, in a letter from the Township Manager dated August 26, 1994, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that revising certain "speed limit" zones along Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206 in East Windsor Township, Mercer County were warranted.

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

Social Impact

The proposed amendment will establish an amended "speed limit" zone along Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206 in East Windsor Township, Mercer County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28-1.69 Route U.S. 130 including parts of Route I-295, Route U.S. 30 and Route U.S. 206

(a) The rate of speed designated for State highway Route U.S. 130, including parts of Route I-295, Route U.S. 30 and Route U.S. 206 described in this subsection are established and adopted as the maximum legal rate of speed for both directions of traffic:

1.-4. (No change.)

5. Mercer County:

i. Hamilton Township, Washington Townshp and East Windsor Township:

(1) (No change.)

[(2) 50 miles per hour from Hickory Corner Road to 465 feet north of Birch Lane (Roadway Trailer Park) (milepost 67.50 to 69.12); thence

(3) 55 miles per hour from 465 feet north of Birch Lane to East Windsor Township (Mercer County)-Cranbury Township (Middlesex County) corporate line (milepost 69.12 to 70.05).]

(2) 50 miles per hour from Hickory Corner Road to Maple Stream Road (approximate mileposts 67.50 to 67.82); thence

(3) 45 miles per hour from Maple Stream Road to Rocky Brook (approximate mileposts 67.82 to 68.90); thence

(4) 50 miles per hour from Rocky Brook to 585 feet north of Birch Lane (approximate milesposts 68.90 to 69.27); thence

(5) 55 miles per hour from 585 feet north of Birch Lane to the East Windsor Township, Mercer County-Cranbury Township, Middlesex County corporate line (approximate mileposts 69.27 to 70.05).

6. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 71
City of Asbury Park, Monmouth County
Proposed Amendment: N.J.A.C. 16:28A-1.38

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

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

Proposal Number: PRN 1995-13.

Submit comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.38 to establish no stopping or standing restriction zones, time limit parking daily between the hours of 8:00 A.M. and 6:00 P.M., except Saturday and Sunday, and a loading zone on Route N.J. 71 in the City of Asbury Park, Monmouth County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the City of Asbury Park in a Resolution adopted on October 6, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing restriction zones, time limit parking and a loading zone along Route N.J. 71 in the City of Asbury Park, Monmouth County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restriction zones along with time limit parking restrictions and a loading zone on Route N.J. 71 in the City of Asbury Park, Monmouth County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28A-1.38 Route 71

(a) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1.-8. (No change.)

9. No stopping or standing in the City of Asbury Park, Monmouth County:

[i. Along the westerly (southbond) side: From the southerly curb line of Lake Avenue to a point 265 feet southerly therefrom.

ii. At taxi stands along (Main Street) west side.

(1) From a point 35 feet north of the northerly curb line of Second Avenue to a point 25 feet northerly therefrom.]

i. Along both sides:

(1) Between Seventh Avenue and the City of Asbury Park-Borough of Loch Arbour corporate line.

ii. Northbound on the easterly side:

(1) Between the Neptune Township—City of Asbury Park corporate line and 50 feet north of the northerly curb line of Lake-Springwood Avenues.

(2) Between the northerly curb line of Asbury Avenue and a point 135 feet northerly therefrom.

iii. Southbound on the westerly side:

(1) Between Lake-Springwood Avenues and the City of Asbury Park-Neptune Township corporate line.

(b) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "Time Limit Parking" zones, where parking is prohibited except as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In Monmouth County:

i.-ii. (No change.)

iii. In the City of Asbury Park:

(1) Two hours time limit parking between 8:00 A.M. and 6:00 P.M., except Saturdays and Sundays.

(A) Northbound on the easterly side, between a point 100 feet north of the northerly curb line of Lake-Springwood Avenues and Asbury Avenue.

(B) Northbound on the easterly side between a point 135 feet north of the northerly curb line of Asbury Avenue to Seventh Avenue.

(C) Southbound on the westerly side between Seventh Avenue and Lake-Springwood Avenues.

(c) The certain parts of State highway Route 71 described in this subsection are 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 Loading Zones:

1. No parking—Loading Zone in the City of Asbury Park, Monmouth County:

[i. Along the easterly (northbound) side:

(1) Main Street—Beginning at a point 35 feet north of the northerly curb line of Lake Avenue and the extending 60 feet northerly therefrom.

(2) Beginning at a point 50 feet from the northerly curb line of Sewall Avenue and extending 50 feet northerly therefrom.

ii. Along the westerly (southbound) side (Main Street):

(1) Between points 30 feet south of, and 70 feet south of the southerly curb line of Lake Avenue;

(2) Between points 25 feet south of, and 65 feet south of the southerly curb line of Asbury Avenue.]

i. Northbound on the easterly side:

(1) Beginning at a point 50 feet from the northerly curb line of Lake-Springwood Avenues and extending 50 feet northerly therefrom.

(d) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 77
Bridgeton City, Cumberland County

Proposed Amendment: N.J.A.C. 16:28A-1.41

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

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

Proposal Number: PRN 1995-5.

Submit comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.41 to establish bus stops on Route N.J. 77 in Bridgeton City, Cumberland County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the City of Bridgeton in Resolution No. 233-93 adopted on April 19, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of bus stops along Route N.J. 77 in Bridgeton City, Cumberland County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish bus stop parking restrictions along Route N.J. 77 in Bridgeton City, Cumberland County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. In the City of Bridgeton, Cumberland County:

i. Along the southbound (westerly) side:

(1) Far side bus stops:

(A)-(D) (No change.)

(E) Penn Street—Beginning at the southerly curb line of Penn Street and extending 100 feet southerly therefrom.

(2) Near side bus stops:

(A)-(D) (No change.)

[(E) Penn Street—Beginning at the northerly curb line of Penn Street and extending 105 feet northerly therefrom.

(F) Morton Street—Beginning at the northerly curb line of Morton Street and extending 105 feet northerly therefrom.]

ii.-iii. (No change.)

2.-4. (No change.)

(c)-(f) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route U.S. 206-94
Town of Newton, Sussex County

Proposed Amendment: N.J.A.C. 16:28A-1.58

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-198 and 39:4-199.

Proposal Number: PRN 1995-14.

Submit comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.58 to establish time limit parking and a loading zone along Route U.S. 206-94 in the Town of Newton, Sussex County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Town of Newton in Resolution No. 152-54 adopted on October 24, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of time limit parking and a loading zone along Route U.S. 206-94 in the Town of Newton in Sussex County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish time limit parking and loading zone restrictions along Route U.S. 206-94 in the Town of Newton in Sussex County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28A-1.58 Route U.S. 206-94[1]

(a) (No change.)

(b) The certain parts of State highway Route U.S. 206-94 described in this section are designated and established as "Time Limit 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 Time Limit Parking Zones:

1. (No change.)

2. Thirty Minute Time Limit Parking in the Town of Newton, Sussex County at all times on:

i. The west side of Route U.S. 206-94 (Water Street) beginning at a point 190 feet south of the southerly curb line of Clinton Street and extending to a point 65 feet southerly therefrom.

(c) The certain parts of State highway Route U.S. 206-94 described in this subsection shall be designated and established as "loading zones." In accordance with the provisions of N.J.S.A. 39:4-139 and 39:4-198, permission is granted to erect appropriate signs at the following established loading zones:

1. In Sussex County:

i. In the Town of Newton:

(1) Along the westerly side.

(A) Beginning at a point 40 feet south of the southerly curb line of Clinton Street and extending to a point 50 feet southerly therefrom.

[1](No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Miscellaneous Traffic Rules
One-Way Designation
Route U.S. 202
Bernardsville Borough, Somerset County
Proposed Amendment: N.J.A.C. 16:30-1.4

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-85.1, 39:4-183.6 and 39:4-198.

Proposal Number: PRN 1995-15.

Submit comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:30-1.4 to effect certain one-way movements along Route U.S. 202 in the Borough of Bernardsville, Somerset County, designating specified driveways as entrances/exits.

The amendment has been further recodified in compliance with the Department's rulemaking format.

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

This amendment is being proposed at the request of the local government of the Borough of Bernardsville, Somerset County by Resolution #94-261 adopted on Monday, October 17, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the one-way movements along Route U.S. 202 in the Borough of Bernardsville, Somerset County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish one-way movements along Route U.S. 202 in the Borough of Bernardsville, Somerset County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:30-1.4 Route U.S. 202

(a) (No change.)

(b) The certain driveways along State highway Route U.S. 202, described in this section, shall be designated as entrances/exits.

1. In Bernardsville Borough, Somerset County:

i. The railroad station (milepost 36.99):

(1) Entrance—the southernmost driveway of the railroad station shall be for entrance only.

(2) Exit—the northernmost driveway of the railroad station shall be for exit only.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage

Center Lane for Left Turn Only

Route N.J. 154

Cherry Hill Township, Camden County

Proposed New Rule: N.J.A.C. 16:30-3.14

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

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

Proposal Number: PRN 1995-6.

Submit comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:30-3.14 concerning turning movements along Route N.J. 154 to effect a "center lane for left turn only" in Cherry Hill Township, Camden County. This new rule has been further codified in compliance with the Department's rulemaking format. The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system.

This new rule is being proposed at the request of the local government of the Township of Cherry Hill in a letter from the Township Engineer dated November 9, 1993, citing traffic safety because of the numerous accesses to businesses along Route N.J. 154 in this area and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the center lane for left turn only restriction along Route N.J. 154 in Cherry Hill Township, Camden County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish a center lane for left turn only along Route N.J. 154 in Cherry Hill Township, Camden County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

Full text of the proposal follows:

16:30-3.14 Route N.J. 154

(a) Turning movements of traffic on certain parts of Route N.J. 154, described in this subsection, are regulated as follows:

1. In Camden County:

i. In Cherry Hill Township:

(1) Center lane for left turns only:

(A) Both directions of Route N.J. 154 from a point 110 feet north of the northerly curb line of Haddonfield-Berlin Road (County Road 561) to a point 225 feet south of the southerly curb line of Kresson Road (County Road 671) (approximate mileposts 0.02 to 0.27).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Center Lane for Left Turns Only

Route N.J. 34

Old Bridge Township, Middlesex County

Proposed New Rule: N.J.A.C. 16:30-3.15

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

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

Proposal Number: PRN 1995-16.

Submit comments by February 2, 1995 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:30-3.15 to effect a center lane for left turns only on Route N.J. 34 in Old Bridge Township, Middlesex County. This new rule has been recodified in compliance with the Department's rulemaking format. The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system.

This new rule is being proposed at the request of Senator Kyrillos, District 13, in a letter dated November 22, 1993 on behalf of the Township of Old Bridge in Middlesex County, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the center lane for left turns only restriction along Route N.J. 34 in Old Bridge Township, Middlesex County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish a center lane for left turns only restriction along Route N.J. 34 in Old Bridge Township, Middlesex County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Depart-

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

Regulatory Flexibility Statement

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

Full text of the proposal follows:

16:30-3.15 Route 34

(a) Turning movements of traffic on certain parts of State highway Route 34 described below are regulated as follows:

1. In Middlesex County:

i. In Old Bridge Township:

(1) Center lane for left turns only:

(A) Beginning at a point 350 feet south of the centerline of Lexington Circle and extending to a point 550 feet north of the centerline of Canyonwoods Drive (approximate mileposts 23.65 to 23.88).

TREASURY-GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY COMMERCE AND ECONOMIC DEVELOPMENT DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES, AND WOMEN AND MINORITY BUSINESSES

Goods and Services Contracts for Small Businesses and Female and Minority Businesses

Jointly Proposed Readoption with Amendments: N.J.A.C. 17:13 and 12A:10

Authorized By: Alan J. Steinberg, Esq., Assistant Commissioner, Department of Commerce and Economic Development, and James Archibald, Deputy Treasurer, Department of Treasury.

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84 (1993).

Proposal Number: PRN 1995-34.

Submit written comments jointly by February 2, 1995 to:

Penni Wild, Director
Division of Development for Small Businesses, and Women and Minority Businesses
New Jersey Department of Commerce and Economic Development
CN-835
Trenton, NJ 08625-0835
and
Lana J. Sims, Director
Division of Purchase and Property
Department of Treasury
CN-230
Trenton, NJ 08625-0230

The agency proposal follows:

Summary

The State of New Jersey's Department of Commerce and Economic Development and Department of Treasury are proposing to readopt N.J.A.C. 17:13 and 12A:10 with amendments. N.J.A.C. 17:13 and 12A:10 were adopted as emergency rules and became effective October 13, 1989. Subsequently the rules were significantly amended and resulted in the adoption of the rules as published elsewhere in this issue of the New Jersey Register. The full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:13 (12A:10) and the adopted amendments proposed on November 1, 1993 at 25 N.J.R. 4889(a) and adopted in this issue of the Register. These rules establish a set-aside program for the State's contracting agencies which bid and execute goods and services exclusive of construction-related contracts. N.J.A.C. 17:13 and 12A:10 are scheduled to expire on March 31, 1995 pursuant to a waiver executed by Governor Whitman dated October 5, 1994. The Departments have reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

These rules apply to every agency and department of the State of New Jersey that is authorized to award goods and services contracts. These rules require that each State contracting agency make a good faith effort to award at least 15 percent of its contracts and/or subcontracts to small businesses, at least seven percent of its contracts and/or subcontracts to eligible minority-owned businesses and at least three percent of its contracts and/or subcontracts to eligible female-owned businesses. These proposed rules also set forth the Department of Commerce and Economic Development's requirements and refined procedures for small, minority and female businesses to establish eligibility to compete for State contracting and subcontracting opportunities, including compulsory application for formal certification as a minority or female business within 60 calendar days following award of a State contract or subcontract.

These rules clarify the set-aside program requirements and procedures. The terms restrict set-aside eligibility to only those minority groups for which documentation of discrimination has been recorded (African-Americans, Latinos or Asian-Americans) as contained in the findings of the *Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts.*

The U.S. Supreme Court's decision in the *City of Richmond v. J.A. Croson Co.*, 488 *U.S.* 469 (1989) *("Croson")* held that any race- and gender-based remedy in contracting must be narrowly tailored. Accordingly, the Departments are proposing the following: First, these regulations will expire three years from the new date of adoption, after which the program and data will be evaluated. Second, N.J.A.C. 17:13-4.1 (12A:10-4.1) establishes that New Jersey's set-aside program not apply to professional services contracts. Professional services, as defined in N.J.A.C. 17:13-1.2 (12A:10-1.2) include, but are not limited to, attorneys, bond and financial counselors, accountants, and public relations and advertising professionals. In establishing policies and procedures for the selection of professional services, contracting entities shall continue to utilize, to the fullest extent practicable, competitive practices for the selection of professional services. Contracting entities shall establish their own procedures for competitive selection. Such practices shall be aimed at the fundamental goals that each contracting entity of the state will receive the best services at the lowest costs. Information regarding such procedures shall be made available to the public. Any selection shall provide particular consideration for New Jersey firms that are minority- or women-owned companies.

Following is a summary of the provisions of each subchapter of the chapter proposed for readoption and/or amendment.

Subchapter 1 contains provisions regarding purpose and scope and defines terms used in this chapter as well as the departments, colleges, authorities and commissions that must fulfill the set-aside goal requirements.

Subchapter 2 contains set-aside eligibility requirements for small businesses, minority businesses and female businesses. It also contains the obligation of these businesses to provide information and details penalties for failure to provide complete and accurate information to the State.

A new section, N.J.A.C. 17:13-2.3 (12A:10-2.3) is being proposed which will entitle a bidder or contractor to an administrative hearing if his or her bid is rejected due to lack of a good faith effort.

Subchapter 3 details registration procedures for small businesses and minority and female businesses as well as procedures for challenging a registered small, minority or female business. An amendment to N.J.A.C. 17:13-3.1 (12A:10-3.1) extends the deadline from September 1995 to December 1995 by which minority- and women-owned businesses must apply for Certification.

Subchapter 4 details the set-aside program goals and procedures that State agencies must follow. N.J.A.C. 17:13-4.1 (12A:10-4.1) clarifies that percentages shall be based on total dollar value of set-aside contracts and subcontracts thereunder and that dollar values shall be measured against the total dollar value of all publicly advertised contracts. The

proposed amendments to N.J.A.C. 17:13-4.1(d)4 (12A:10-4.1(d)4) establish the basis by which a contract may be awarded despite the apparent absence of a good faith effort. Subchapter 4 also amends the term "reasonable" efforts to "good faith" efforts. These words are considered synonomous and are being changed only to achieve consistency throughout the rules. The change does not represent a change in policy. The subchapter also makes clear the penalties in the event of noncompliance. Finally, this subchapter clearly states that State contracting agencies may follow Federal law or regulations regarding procurement procedures as appropriate.

Subchapter 5 describes the specific planning, reporting and review requirements of the State contracting agencies. In general, said agencies will submit a procurement and re-procurement plan for each fiscal year and quarterly updates to the Department of Commerce and Economic Development's Division for Small Businesses, and Minority and Women Businesses. It also makes clear in N.J.A.C. 17:13-5.2 (12A:10-5.2) that non-set-aside contracts awarded to small or minority or female businesses shall be counted toward an agency's attainment goal. This subchapter also describes the role of the Department of Commerce and Economic Development and the reports/data required from each State contracting agency to the Department.

Social Impact

These rules are based on the disparity findings as presented in the Final Report of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts issued on February 22, 1993 and Executive Order No. 84 (March 5, 1993) which established a narrowly tailored, remedial set-aside program to address documented discrimination.

These rules are expected to have a positive social impact on the affected businesses and on the State as a whole because it will increase access to and opportunities for small businesses and minority and female businesses, whether they are prime contractors or subcontractors. The rules also are expected to address the need to establish a system that tracks actual work performed and dollars paid to subcontractors through public contracting.

Economic Impact

The rules in this proposed readoption are expected to contribute to the long-term economic growth of the State of New Jersey and to the health and vitality of the small business, minority business and female business communities which have historically been underutilized in the public and private sectors. The growth potential of the businesses taking part in the set-aside program should be enhanced, creating job opportunities and generating additional tax revenue.

Regulatory Flexibility Analysis

The rules proposed for readoption establish additional paperwork requirements for firms bidding on State contracts, many of which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For specified contracts, bidders will be required to submit a minimum of two additional forms listing small, minority and female companies being proposed as subcontractors. Those firms failing to meet the State's goals or targets will be required to document their outreach efforts, detailing their solicitation of price quotes from small, minority or female subcontractors and/or suppliers. Prime contractors also will have to submit additional forms listing actual payments made to small, minority or female contractors. Small, minority and female businesses seeking to establish eligibility for participation in the set-aside program will be required to complete a simple registration form initially. However, all minority and female businesses must be certified in accordance with N.J.A.C. 12A:11 by December 30, 1995 in order to receive consideration after that date or must file all paperwork necessary to receive certification within 60 calendar days following the award of a contract or subcontract under these rules, whichever comes first.

It is anticipated that the additional time and cost of the paperwork required by non-set-aside bidders will be minimal and that the public benefits of this program will outweigh the cost. The time and cost associated with the certification process may be somewhat more than minimal for some minority and female businesses. However there is a need to ensure that only those businesses owned by groups for which a factual finding of discrimination has been documented benefit from the set-aside program. This need outweighs those costs. Therefore, no differing standards based on business size are offered.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:13 and 12A:10, and as adopted in this issue of the New Jersey Register.

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

17:13-1.2(12A:10-1.2) Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

...

"Professional services" includes, but is not limited to, attorney, bond and financial counselors, accountants, public relations and advertising.

...

17:13-2.3(12A:10-2.3) Right to hearing upon denial of contract

A bidder or contractor that is denied any contract or the right to bid on any contract because of a determination that it failed to make a good faith effort to solicit and award subcontracts to eligible minority and female businesses shall be entitled to an administrative hearing as provided by N.J.A.C. 17:12-3.1 through 3.6.

17:13-3.1(12A:10-3.1) Certification and registration procedures for small businesses, minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by [September 1] **December 1**, 1995, the date established by the Department of Commerce when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) (No change.)

17:13-4.1(12A:10-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15 percent of **the dollar value of** its contracts **and of all subcontracts thereunder** to be awarded to eligible small businesses, at least seven percent of **the dollar value of** its contracts **and of all subcontracts thereunder** to be awarded to eligible minority businesses and at least three percent of **the dollar value of** its contracts **and of all subcontracts thereunder** to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts [awarded by the State agency] in comparison to the total dollar value of all **publicly advertised** contracts awarded by the agency within a fiscal year.

1.-2. (No change.)

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

(d) When the State contracting agency has made a determination that a contract is suitable for sub-contract set-aside designation, the following provisions apply:

1.-3. (No change.)

4. The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a [genuine] **good faith** effort to meet the set-aside goals. **A contract or subcontract, however, may be awarded to the lowest bidder despite the absence of such good faith efforts if the next lowest bid is either:**

i. $100,000 or more higher than the lowest bid; or

ii. Fifteen percent or more higher than the lowest bid.

(e) The term "contract" as used in this chapter shall not include contracts for professional services.

17:13-4.2(12A:10-4.2) [Reasonable] **Good faith** efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a [reasonable] **good faith** effort to solicit and award subcontracts

to eligible small businesses, minority businesses or female businesses, as established in the RFP:

1.-5. (No change.)

(b) (No change.)

17:13-5.2(12A:10-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department.

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts and the percentages that were advertised and awarded as small business, minority business or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the three categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for small businesses and the contract is awarded to a small business owned by a minority woman, that contract can be counted only as a small business award and not as a minority business or a female business award. If a **registered** small business, minority business or female business is awarded a contract that was not set aside, that contract cannot be counted as a set-aside award **but shall be counted toward attainment of the agency's overall goal.**

ii. (No change.)

2.-4. (No change.)

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

(a)

DIVISION OF PURCHASE AND PROPERTY COMMERCE AND ECONOMIC DEVELOPMENT DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES, AND WOMEN AND MINORITY BUSINESSES

Minority and Female Contractor and Subcontractor Participation in State Construction Contracts

Jointly Proposed Readoption with Amendments: N.J.A.C. 17:14 and 12A:10A

Authorized By: Alan J. Steinberg, Esq., Assistant Commissioner, Department of Commerce and Economic Development, and James Archibald, Deputy Treasurer, Department of Treasury.

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84 (1993).

Proposal Number: PRN 1995-35.

Submit written comments jointly by February 2, 1995 to:

Penni Wild, Director
Division of Development for Small Businesses, and Women and Minority Businesses
New Jersey Department of Commerce and Economic Development
CN-835
Trenton, NJ 08625-0835

and

Maureen Adams, Director
Division of Building and Construction
Department of Treasury
CN-235
Trenton, NJ 08625-0230

The agency proposal follows:

Summary

The State of New Jersey's Department of Commerce and Economic Development and Department of Treasury are proposing to readopt N.J.A.C. 17:14 and 12A:10A with amendments. N.J.A.C. 17:14 and 12A:10A were adopted as emergency rules and became effective October 13, 1989. Subsequently the rules were significantly amended and resulted in the adoption of the rules published elsewhere in this issue of the New Jersey Register. The full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:14 (12A:10A) and the adopted amendments proposed on November 1, 1993 at 25 N.J.R. 4889(a) and adopted elsewhere in this issue of the New Jersey Register. These rules establish a set-aside program for the State's contracting agencies which bid and execute construction and construction-related contracts. N.J.A.C. 17:14 and 12A:10A are scheduled to expire on March 31, 1995 pursuant to a waiver executed by Governor Whitman dated October 5, 1994. The Departments have reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

These rules apply to every agency and department of the State of New Jersey that is authorized to award construction and construction-related contracts. These rules require that each State contracting agency make a good faith effort to award at least seven percent of its contracts and/or subcontracts to eligible minority-owned businesses and at least three percent of its contracts and/or subcontracts to eligible female-owned businesses. These proposed rules also set forth the Department of Commerce and Economic Development's requirements and refined procedures for small, minority and female businesses to establish eligibility to compete for State contracting and subcontracting opportunities, including compulsory application for formal certification as a minority or female business within 60 calendar days following award of a State contract or subcontract.

These rules clarify the set-aside program requirements and procedures. The terms restrict set-aside eligibility to only those minority groups for which documentation of discrimination has been recorded (African-Americans, Latinos or Asian-Americans) as contained in the findings of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts.

The U.S. Supreme Court's decision in the *City of Richmond v. J.A. Croson Co.*, 488 *U.S.* 469 (1989) *("Croson")* held that any race- and gender-based remedy in contracting must be narrowly tailored. Accordingly, the Departments are proposing the following: First, these rules will expire three years from the new date of adoption, after which the program and data will be evaluated. Second, N.J.A.C. 17:14-4.2 (12A:10A-4.2) establishes that New Jersey's set-aside program not apply to professional services contracts. Professional services, as defined in N.J.A.C. 17:14-1.2 (12A:10A-1.2) include, but are not limited to, architects and engineers. In establishing policies and procedures for the selection of professional services, contracting entities shall continue to utilize, to the fullest extent practicable, competitive practices for the selection of professional services. Contracting entities shall establish their own procedures for competitive selection. Such practices shall be aimed at the fundamental goal that each contracting entity of the State will receive the best services at the lowest costs. Information regarding such procedures shall be made available to the public. Any selection shall provide particular consideration for New Jersey firms that are minority- or women-owned companies.

Following is a summary of the provisions of each subchapter of the chapter proposed for readoption and/or amendment.

Subchapter 1 contains provisions regarding purpose and scope and defines terms used in this chapter as well as the Departments, Colleges, Authorities and Commissions that must fulfill the set-aside goal requirements. The term "professional services" is added to this section for the reasons described above. The word "proven" has been deleted from the definition for "remedial goals" to reflect the findings of the *Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts*.

Subchapter 2 contains set-aside eligibility requirements for small businesses, minority businesses and female businesses. It also contains the obligation of these businesses to provide information and details penalties for failure to provide complete and accurate information to the State.

A new section, N.J.A.C. 17:14-2.3 (12A:10A-2.3) is being proposed which will entitle a bidder or contractor to an administrative hearing if his or her bid is rejected due to lack of a good faith effort.

Subchapter 3 details registration procedures for small businesses and minority and female businesses as well as procedures for challenging a registered small, minority or female business. An amendment to N.J.A.C. 17:14-3.1 (12A:10A-3.1) extends the deadline from September 1995 to December 1995 by which minority- and women-owned businesses must apply for Certification and adds a sentence referring to the statute establishing that small businesses are not required to be certified.

Subchapter 4 details the set-aside program goals and procedures that State agencies must follow. N.J.A.C. 17:14-4.1(a)(12A:10A-4.1(a)) clarifies that percentages shall be based on total dollar value of set-aside contracts and subcontracts thereunder and that dollar values shall be measured against the total dollar value of all publicly advertised contracts. N.J.A.C. 17:14-4.1(d) (12A:10A-4.1(d)) is amended to establish that an award must be made in accordance with state contracting rules and outlines exceptions to the "good faith" efforts. Subchapter 4 is also amended for consistency purposes, all reference in the rules of "reasonable" efforts to "good faith" efforts of bidders to solicit and award subcontracts to eligible small and minority and female businesses. N.J.A.C. 17:14-4.2(c) (12A:10A-4.2(c)) is amended as a correction to include female businesses when evaluating non-remedial target programs. New language also has been added to this section that overall minority business participation shall not exceed 50 percent of the subcontracted elements in the case of non-remedial programs.

Subchapter 5 describes the specific planning, reporting and review requirements of the State contracting agencies. In general, said agencies will submit a procurement and re-procurement plan for each fiscal year and quarterly updates to the Department of Commerce and Economic Development's Division for Small Businesses, and Minority and Women Businesses. It also makes clear in N.J.A.C. 17:14-5.2 (12A:10A-5.2) that non-set-aside contracts awarded to small or minority or female businesses shall be counted toward an agency's attainment goal. This subchapter also describes the role of the Department of Commerce and Economic Development and the reports/data required from each State contracting agency to the Department.

Social Impact

These rules are based on the disparity findings as presented in the *Final Report of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts* issued on February 22, 1993 and Executive Order No. 84(March 5, 1993) which established a narrowly tailored, remedial set-aside program to address documented discrimination.

These rules are expected to have a positive social impact on the affected businesses and on the State as a whole because it will increase access to and opportunities for small businesses and minority and female businesses, whether they are prime contractors or subcontractors. The rules also are expected to address the need to establish a system that tracks actual work performed and dollars paid to subcontractors through public contracting.

Economic Impact

The rules in this proposed readoption are expected to contribute to the long-term economic growth of the State of New Jersey and to the health and vitality of the minority business and female business communities which have historically been underutilized in the public and private sectors. The growth potential of the businesses taking part in the set-aside program should be enhanced, creating job opportunities and generating additional tax revenue.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments establish additional paperwork requirements for firms bidding on State contracts, many of which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For specified contracts, bidders will be required to submit a minimum of two additional forms listing minority and female companies being proposed as subcontractors. Those firms failing to meet the State's goals or targets will be required to document their outreach efforts, detailing their solicitation of price quotes from small, minority or female subcontractors and/or suppliers. Prime contractors will also have to submit additional forms listing actual payments made to small, minority or female contractors. Minority and female businesses seeking to establish eligibility for participation in the set-aside program will be required to complete a simple registration form initially. However, all minority and female businesses must be certified in accordance with N.J.A.C. 12A:11 by December 30, 1995 in order to receive considertation after that date or must file all paperwork necessary to receive certification within 60 calendar days following the award of a contract or subcontract under these rules, whichever comes first.

It is anticipated that the additional time and cost of the paperwork required by non-set-aside bidders will be minimal and that the public benefits of this program will outweigh the cost. The time and cost associated with the certification process may be somewhat more than minimal for some minority and female businesses. However, there is a need to ensure that only those businesses owned by groups for which a factual finding of discrimination has been documented benefit from the set-aside program. This need outweighs those costs. Therefore, no differing standards based on business size are offered.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:14 and 12A:10A.

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

17:14-1.2 (12A:10A-1.2) Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

....

"Professional services" includes, but is not limited to, architects and engineers."

....

"Remedial goals" means the statutorily determined percentages of contracts awarded by each State contracting agency to eligible minority and female businesses in order to eradicate the effects of [proven] past discrimination."

....

17:14-2.3 (12A:10A-2.3) Right to hearing upon denial of contract

A bidder or contractor that is denied any contract or the right to bid on any contract because of a determination that it failed to make a good faith effort to solicit and award subcontracts to eligible minority and female businesses shall be entitled to an administrative hearing as provided by N.J.A.C. 17:12-3.1 through 3.6.

17:14-3.1 (12A:10A-3.1) Certification and registration procedures for small businesses, minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by [September 1] **December 1,** 1995, when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. **In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.**

(b) (No change.)

17:14-4.1 (12A:10A-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least seven percent of **the dollar value of** its contracts **and of all subcontracts thereunder** to be awarded to eligible minority businesses and at least three percent of **the dollar value of** its contracts **and of all subcontracts thereunder** to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts [awarded by the State agency] in comparison to the total dollar value of all **publicly advertised** contracts awarded by the agency within a fiscal year.

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

(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1.-3. (No change.)

4. The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a [genunine] **good faith** effort to meet the set-aside goals. **A contract or subcontract, however, may be awarded to the lowest bidder despite the absence of such good faith efforts if the next lowest bid is either:**

i. $100,000 or more higher than the lowest bid; or

ii. Fifteen percent or more higher than the lowest bid.

17:14-4.2 (12A:10A-4.2) Non-remedial subcontracting target program and procedures

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

(c) The State contracting agency shall set separate target levels, to be no less than the remedial target levels, for the participation of minority and female business subcontractors for each construction contract awarded pursuant to this program. The target levels shall be set according to the following procedures:

1.-4. (No change.)

5. The total dollar value of the subcontractable elements with the greatest likelihood of participation by minority **or female** businesses shall be combined. The percentage of the total dollar value of the contract that this combined amount represents shall be used **as a guide** by the State contracting agency to set a reasonable target for overall minority business participation in subcontracted elements of the contract[.] **but in no event shall exceed 50 percent of the subcontracted elements.**

6. (No change.)

(d) (No change.)

(e) The term contract as used in this chapter shall not include contracts for professional services.

Recodify (e)-(h) as (f)-(i) (No change in text.)

17:14-4.3 (12A:10A-4.3) [Reasonable] **Good faith** efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a [reasonable] **good faith** effort to solicit and award subcontracts to eligible minority and female businesses:

(b) (No change.)

17:14-5.2 (12A:10A-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department:

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts and the percentages that were advertised and awarded as minority or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the two categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for woman-owned business and the contract is awarded to a business owned by a minority woman, that contract can be counted only as a woman-owned business award and not as a minority business award. If a **registered** minority business, or female business was awarded a contract that was not set aside, that contract cannot be counted as a set-aside award **but shall be counted toward attainment of the agency's overall goal.**

2.-4. (No change.)

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organization of the Division of Taxation Office of Criminal Investigation Education and Training Requirements

Proposed New Rule: N.J.A.C. 18:1-1.9

Authorized By: Robert K. Thompson, Deputy Director, Division of Taxation.

Authority: N.J.S.A. 54:40A-22.

Proposal Number: PRN 1995-7.

Submit comments by February 2, 1995 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

The proposed new rule supplements the Division's organization rules, N.J.A.C. 18:1 to indicate that the Division's Office of Criminal Investigation is authorized to establish education and training requirements for Special Agents. N.J.S.A. 54:40A-22 authorizes the Director of the Division of Taxation to appoint Special Agents, who are declared to be peace officers. The proposed new rule requires the Director, through the Office of Criminal Investigation, to adopt requirements for basic and in-service training of all Special Agents. The requirements will include the requirements of the "Basic Training Course for State Investigators" of the New Jersey Department of Law and Public Safety, Division of Criminal Justice. The requirements will also include criminal tax fraud courses required of special agents of the U.S. Treasury, Internal Revenue Service, Criminal Investigation Division, and firearms qualification training. Exemptions will be granted to individuals who have successfully completed training courses of other law enforcement agencies with requirements equivalent to those in proposed N.J.A.C. 18:1-1.9(a)1 and 3: the training requirements of the "Basic Training Course For State Investigators" of the New Jersey Department of Law and Public Safety, Division of Criminal Justice, and the training required of special agents of the U.S. Treasury, Internal Revenue Service, Criminal Investigation Division. Although the policy and procedure set forth in the proposed rule has been in effect since the appointment of the first Special Agent in 1973, it has not been formalized in writing by the Director.

Social Impact

The proposed new rule will alert applicants to Division Special Agent positions that they will be required to undergo significant educational training, which will include police certification programs, criminal tax fraud courses and firearms qualification training. The rule should have a generally beneficial social impact by providing and maintaining high standards of proficiency in law enforcement, so as to ensure the health, safety and welfare of the citizens of New Jersey. Currently, there are eight special agents. All these agents have already substantially completed the training which is to be required in the proposed rule.

Economic Impact

The proposed new rule should have negligible economic impact, since the rule does not affect tax rules. The rule informs the public of training procedures within the Division for certain Division employees. The cost of training for one special agent is estimated at approximately $1,200 for the basic New Jersey course. All in-service and the twice a year firearms qualification should not add to administrative costs, since the Division has already allocated the necessary administrative resources to this function. Federal subsidies will also be utilized.

Regulatory Flexibility Statement

This proposed new rule 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. Therefore, a regulatory flexibility analysis is not required. The proposed new rule only applies to individuals applying for the position of Special Agent in the Division.

Full text of the proposal follows:

18:1-1.9 Training for Special Agents

(a) The Office of Criminal Investigation shall require the successful completion of certain educational and training programs for those persons appointed by the Director as special agents. The requirements shall be designed to insure the health, safety and welfare of the citizens of New Jersey by maintaining high standards of proficiency in law enforcement. The requirements shall include:

1. The completion of the "Basic Training Course for State Investigators" of the State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice, as established by the New Jersey Police Training Commission, pursuant to N.J.S.A. 52:17B-66 et seq.;

2. Completion of the twice annual firearms qualification program as established by the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General and administered by the Division of Taxation certified supervising firearms instructor/range master; and

3. Completion of criminal tax fraud investigation training, as is required for special agents of the U.S. Treasury, Internal Revenue

Service, Criminal Investigation Division, as offered at the Federal Law Enforcement Training Center, Glynco, Georgia.

(b) The Director will grant exemptions from the training requirements to any person who has successfully completed a training course of another law enforcement agency, provided that the requirements are equivalent to the training requirements established pursuant to (a)1 and 3 above.

(a)

DIVISION OF TAXATION

Corporation Business Tax
Corporation Tax Rates
Proposed Amendment: N.J.A.C. 18:7-3.6

Authorized By: Robert K. Thompson, Deputy Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1995-26.

Submit comments by February 2, 1995 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

There have been a number of recent legislative provisions enacted that affect the New Jersey corporate tax rates. P.L. 1994, c.3 discontinued the surtax on corporate net income as of January 1, 1994. P.L. 1994, c.2 decreased the maximum gross income tax rates, and P.L. 1994, c.69 again decreased the maximum gross income tax rates. These latter two changes directly affected the corporation tax, since, under N.J.S.A. 54:10A-5(c)(2), the S corporation tax rate is calculated by subtracting the maximum tax bracket rate provided under N.J.S.A. 54A:2-1 (the gross income tax) for taxable period from the tax rate provided under N.J.S.A. 54:10A-5(c)(1) (the general corporation tax rate) for the taxable period (that is, nine percent).

The proposed amendment updates the corporate business tax rule which set forth the tax rates. It enables a taxpayer conveniently to know the tax rate applicable for its fiscal or calendar year for a regular corporation, an S corporation, and for the surtax, if applicable, without performing the applicable statutory calculation to arrive at the rate.

Social Impact

The Division has been delegated the responsibility to give taxpayers guidance, and taxpayers and their advisers need to have information on which to rely. Absent a rule setting forth the manner of calculation of the tax rates, there is a possibility of uneven application of the statute involved.

Economic Impact

The proposed amendment is not intended to have any independent economic impact separate from the underlying statutes. The tax rates are set by statutes. The rules are intended as a convenience to taxpayers and are intended to facilitate taxpayer compliance with their statutory requirements and hence to decrease the amount of time and resources necessary to be expended by taxpayers in the course of complying with the act.

Regulatory Flexibility Statement

The corporation business tax applies to both large and small taxpayers, and the Division therefore discerns no basis for distinguishing between those two types of entities in the application of the proposed amendment. The Division does not believe that services beyond normal accounting services generally used by a business are required for a business to comply with this amended rule. The time required to interpret the tax law should be reduced, since an intended effect of the proposal is to make the interaction of various statutory provision easier for the public to understand by setting forth the applicable rates in a rule.

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

18:7-3.6 [Net income base] **Tax rates—corporations, S corporations and surtax**

(a) For all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent, **for a corporation that is not a New Jersey S corporation.**

(b) For a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980 and filing its New Jersey return **Form CBT-100** on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

(c) [In addition, a surtax calculated pursuant to N.J.S.A. 54:10A-5.1 and 5.2 shall be computed and added to the applicable tax.] **For a New Jersey S corporation with a fiscal year beginning after July 7, 1993 but before January 1, 1994 the tax rate for a New Jersey S corporation is two percent.**

(d) For a New Jersey S corporation whose taxable year begins on or after January 1, 1994 but before January 1, 1995 the tax rate for a New Jersey S corporation is 2.350 percent.

(e) For a New Jersey S corporation whose taxable year begins on or after January 1, 1995 the tax rate for a New Jersey S corporation is 2.42 percent.

(f) In addition, a surtax calculated pursuant to N.J.S.A. 54:10A-5.1 and 5.2 shall be computed and added to the applicable tax, provided that on and after January 1, 1994 there shall be no surtax imposed. The adjusted surtax rate for accounting periods ending between January 1 and June 30, 1994 is determined by multiplying the surtax rate for the period (.00375) by a quotient, the numerator of which is the number of complete calendar months in the taxpayer's accounting period ending before January 1, 1994, and the denominator of which is the total number of complete calendar months in the accounting period. This calculation ensures that the surtax rate is reduced proportionally for those taxpayers with a tax year ending after January 1, 1994. The surtax is then completely eliminated for fiscal year 1995 and thereafter.

$$.00375 \times \frac{\text{Months ending before January 1, 1994}}{\text{Total months in accounting period}} = \text{Adjusted Surtax Rate}$$

Example 1. A taxpayer whose tax year covers a 12-month period ending on January 31, 1994 determines the adjusted surtax rate as follows: .0035 × 11/12 = .00344. Note: For ease of computation, the calculation is rounded to the fifth decimal place.

Example 2. The adjusted surtax rates for taxpayer with accounting periods covering 12 months are listed below. Taxpayers with accounting periods covering less than 12 months must compute the appropriate rate using the formula indicated above.

Fiscal Year Ended	Adjusted Surtax Rate
1/31/94	0.00344
2/28/94	0.00313
3/31/94	0.00281
4/30/94	0.0025
5/31/94	0.00219
6/30/94	0.00188

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Roulette
Proposed Amendments: N.J.A.C. 19:46-1.7 and 19:47-5.1 through 5.4

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

Authority: N.J.S.A. 5:12-5, 69(e), 70(f), 99(a) and 100.

Proposal Number: PRN 1995-27.

Submit written comments by February 2, 1995 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

These proposed amendments would clarify the Commission's present roulette regulations by defining, in N.J.A.C. 19:47-5.1(e), the various wagers which may be made in the game of roulette, and generally revising the present roulette regulations for clarity.

The amendments would also permit casino licensees to offer two optional roulette wagers originally suggested by Marina Associates (Harrah's Casino-Hotel Atlantic City).

The first optional wager is a bet that the roulette ball will land on one of seven specific numbers (10, 11, 12, 13, 14, 15 or 33) on the roulette wheel. The wager would be made by placing a chip in the area on the roulette layout utilized for such a bet. See N.J.A.C. 19:47-5.1(f). As the proposed amendment to N.J.A.C. 19:47-5.2(a) indicates, the payout odds for this wager would be 4 to 1.

The second optional wager is a bet that the roulette ball will land on one of five adjacent numbers on the roulette wheel. As defined in N.J.A.C. 19:47-5.1(e)1i, this is a multiple straight wager: it would be a convenient way for a patron to play five simultaneous straight bets, any one of which would pay 35 to 1 if the wager wins. The wager would be made by placing a stack of five chips in the special seciton of the roulette layout which is utilized for such bets.

A casino licensee offering either of the above optional wagers would also be required to provide areas on its roulette layout for the placement of these wagers, as required by N.J.A.C. 19:46-1.7(d) and (e).

Social Impact

Because these amendments clarify the existing rules of roulette and define the different wagers, it should be easier for casino patrons to understand how the game is played, what the various wagers consist of, and how they may be made.

The proposed optional wagers do not reflect any social judgments made by the Commission. The two optional roulette wagers are not expected to have any social impact beyond that created by the authorization of an additional wager for an existing authorized game.

The implementation of these optional wagers may generate additional patron interest in the game of roulette. However, it is unclear at this time whether new or additional patrons will be attracted to Atlantic City casinos as a result of these optional wagers.

Economic Impact

The amendments which clarify the existing rules of roulette and define the various wagers are not expected to have any economic impact, since they would not make any substantive changes in the present rules of the game.

The implementation of the new optional wagers may have an economic impact, since they would require casino licensees to incur some costs in preparing to offer the wagers to the public, such as creating new layouts, training casino personnel, and revising gaming guides to include the new wagers. These costs may be offset by any increased casino revenues generated by the wagers. To the extent that these wagers may generate increased casino revenues, senior and disabled citizens of New Jersey would benefit from the additional tax revenues that would be collected. However, any attempt to quantify the effects of these optional wagers on casino revenue would be speculative at this time.

Regulatory Flexibility Statement

The proposed amendments would only affect casino licensees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility statement is required.

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

19:46-1.7 Roulette table; physical characteristics; double zero roulette wheel used as a single roulette wheel

(a) (No change.)

(b) Each roulette wheel shall be of a single zero variety or a double zero variety as described and depicted below:

1. Each single zero roulette wheel shall have 37 equally spaced [pockets] **compartments** around the wheel where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 37 equally spaced areas to correspond to the position of the [pockets] **compartments** with one marked zero and colored green and the others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission. The color of each [pocket] **compartment** shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.

2. Each double zero roulette wheel shall have 38 equally spaced [pockets] **compartments** around the wheel where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 38 equally spaced areas to correspond to the position of the [pockets] **compartments** with one marked zero and colored green, one marked double-zero (00) and colored green, and the others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission. The color of each [pocket] **compartment** shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.

(c) A doube zero roulette wheel may be used as a single zero roulette wheel, provided that:

1. If a double zero table layout is used, the "00" wager [above] **area** on the layout is obscured with a cover or other approved device which clearly indicates that such a wager is not available; and

2. Appropriate signage is posted at the roulette table to notify players that:

i. (No change.)

ii. If the roulette ball comes to rest [around the wheel] in a compartment marked double zero (00), the spin will be declared void and the wheel will be respun; and

iii. (No change.)

(d) Unless otherwise approved by the Commission, the layout of each roulette table shall have the name of the casino imprinted thereon and appear as depicted in the following diagrams according to whether the roulette wheel at such table is a single-zero or double-zero wheel:

Editor's Note: Graphics concerning the single and double **zero** roulette wheel and table layouts **for those wheels** were adopted with these rules but are not reproduced herein. Further information on these graphics may be obtained from the Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401.

(e) Notwithstanding (d) above, if a casino licensee offers an optional wager authorized by N.J.A.C. 19:47-5.1, the layout for that roulette table shall also include, in a manner approved by the Commission, designated areas for the placement of such wagers.

19:47-5.1 [Wagers] **Roulette: placement of wagers; permissible and optional wagers**

(a) All wagers at [Roulette] **roulette** shall be made by placing gaming chips or plaques on the appropriate areas of the roulette layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and that [such] **the** cash is expeditiously converted into gaming chips or plaques in accordance with the regulations governing the acceptance and conversion of such instruments.

(b) (No change.)

(c) Each player shall be responsible for the correct positioning of his **or her** wager [or wagers] on the roulette layout regardless of whether he **or she** is assisted by the dealer. Each player must ensure that any instructions he **or she** gives to the dealer regarding the placement of [his wagers] **a wager** are correctly carried out.

(d) (No change.)

(e) The permissible wagers in the game of roulette shall be:

1. "Straight" is a wager that the roulette ball will come to rest in the compartment of the roulette wheel that corresponds to a

single number selected by the player. The player shall select a number by placing a wager within the box on the roulette layout that contains the selected number.

i. A casino licensee may, in its discretion, offer to every player at a roulette table the option to make five simultaneous straight wagers by selecting five adjacent numbers on the roulette wheel.

(1) Any casino licensee offering this "five adjacent number" option shall use an approved roulette table layout that includes a replica of the roulette wheel on the layout.

(2) A player shall make a "five adjacent number" wager by placing five gaming chips or plaques, or a multiple thereof, on the number indicated on the roulette wheel replica that is the center number of the five adjacent numbers being selected. A player making a "five adjacent number" wager shall be deemed to have made a separate "straight" wager of equal value on each of the five numbers selected.

2. "Split" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to either of two numbers selected by the player. The player shall select the numbers by placing a wager on the line between the two boxes on the roulette layout that contain the two selected numbers, except that a split wager on "0" and "00" may also be placed on the line between the "2nd 12" box and the "3rd 12" box.

3. "Three numbers" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of three numbers in a single row on the roulette layout selected by the player. The player shall select a row of numbers by placing a wager on the outside line of the box on the roulette layout that contains the first number in the selected row.

i. "Three numbers" shall also include a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of the three numbers contained in one of the following groups of numbers: "0", "1" and "2"; "0", "2" and "00"; or "00", "2" and "3".

ii. The player shall select one of the "three numbers" wagers identified in (e)3i above by placing a wager on the common corner of the three boxes containing the selected numbers.

4. "Four numbers" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of four numbers in contiguous boxes on the roulette layout selected by the player. The player shall select the four numbers by placing a wager on the common corner of the four boxes containing the selected numbers.

5. "First five numbers" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of the numbers "0", "00", "1", "2" or "3". The player shall bet on the "first five numbers" by placing a wager on the common corner of the boxes on the roulette layout that contain the label "1st 12" and the numbers "0" and "1".

6. "Six numbers" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of six numbers contained in two contiguous rows of numbers on the roulette layout selected by the player. The player shall select the two rows of numbers by placing a wager on the outside common corner of the boxes on the roulette layout that contain the first number in each of the rows being selected.

7. "Column" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of 12 numbers contained in a single column on the roulette layout selected by the player. The player shall select a column of 12 numbers by placing a wager in the box on the roulette layout that is at the bottom of the column being selected.

8. "Dozen" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of 12 consecutive numbers from "1" through "12", "13" through "24", or "25" through "36" selected by the player. The player shall select the 12 numbers by placing a wager in the box on the roulette layout labeled "1st 12" ("1" through "12"), "2nd 12" ("13" through "24"), or "3rd 12" ("25" through "36").

9. "Red" is a wager that the roulette ball will come to rest in any compartment of the roulette wheel that corresponds to a number with a red background on the roulette wheel. The player shall bet on "red" by placing a wager within the red box on the roulette layout used for such wagers.

10. "Black" is a wager that the roulette ball will come to rest in any compartment of the roulette wheel that corresponds to a number with a black background on the roulette wheel. The player shall bet on "black" by placing a wager within the black box on the roulette layout used for such wagers.

11. "Odd" is a wager that the roulette ball will come to rest in any compartment of the roulette wheel that corresponds to an odd number. The player shall bet on "odd" by placing a wager within the box on the roulette layout that is labeled "Odd".

12. "Even" is a wager that the roulette ball will come to rest in any compartment of the roulette wheel that corresponds to an even number. The player shall bet on "even" by placing a wager within the box on the roulette layout that is labeled "Even".

13. "1 to 18" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of 18 consecutive numbers from "1" through "18". The player shall bet on "1 to 18" by placing a wager within the box on the roulette layout that is labeled "1 to 18".

14. "19 to 36" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of 18 consecutive numbers from "19" through "36". The player shall bet on "19 to 36" by placing a wager within the box on the roulette layout that is labeled "19 to 36".

(f) Notwithstanding (e) above, a casino licensee may, in its discretion, offer to every player at a roulette table the option to make a "seven numbers" wager. "Seven numbers" is a wager that the roulette ball will come to rest in a compartment of the roulette wheel that corresponds to any one of the numbers "10", "11", "12", "13", "14", "15" or "33".

1. Any casino licensee offering the "seven numbers" option shall use a roulette table layout approved by the Commission.

2. The player shall bet on "seven numbers" by placing a wager within the area on the roulette layout that is designated for such wager.

19:47-5.2 Roulette[;]: payout odds

(a) No casino licensee, its employees or agents shall pay off winning wagers at the game of roulette at less than the odds listed below:

Bets	Payout Odds
Straight	35 to 1
Split	17 to 1
[3-Number] **Three Numbers**	11 to 1
[4-Number] **Four Numbers**	8 to 1
[5-Number] **First Five Numbers**	6 to 1
[6-Number] **Six Numbers**	5 to 1
Seven Numbers	**4 to 1**
Column	2 to 1
Dozen	2 to 1
Red	1 to 1
Black	1 to 1
Odd	1 to 1
Even	1 to 1
[Low] **1 to 18**	1 to 1
[High] **19 to 36**	1 to 1

(b) When roulette is played on a double zero wheel and the roulette ball comes to rest [around the wheel] in a compartment marked zero (0) or double zero (00), wagers on red, black, odd, even, 1 to 18, and 19 to 36 shall not be lost but each player having such a wager shall surrender half the amount on such bet and remove the remaining half. Each casino licensee offering double zero roulette shall provide notice of this rule pursuant to N.J.A.C. 19:47-8.3.

(c) When roulette is played on a single zero wheel and the roulette ball comes to rest [around the wheel] in a compartment marked zero (0), wagers on red, black, odd, even, 1 to 18, and 19 to 36 shall be lost.

(d) When roulette is played on a double zero wheel being used as a single zero roulette wheel, as provided in N.J.A.C. 19:46-1.7(c):

1. (No change.)
2. The dealer shall announce "no spin," declare the spin void and respin the wheel if the roulette ball comes to rest [around the wheel] in a compartment marked double zero (00); and
3. (No change.)

19:47-5.3 **Roulette:** [Rotation] **rotation** of wheel and ball
(a)-(b) (No change.)
(c) Upon the ball coming to rest in a compartment [around the wheel], the dealer shall announce the number of such compartment and shall place a point marker to be known as a "crown" or "dolly" on that number on the roulette layout.
(d) If a casino licensee offers the "five adjacent numbers" wagering option authorized by N.J.A.C. 19:47-5.1, the dealer shall then move one-fifth of each winning "five adjacent numbers" wager from the roulette wheel replica on the layout to the box on the main roulette layout that contains the single number corresponding to the compartment in which the roulette ball came to rest.
[(d)](e) After placing the crown on the layout **and, if applicable, complying with the provisions of (d) above,** the dealer shall first collect all losing wagers and then payoff all winning wagers.

19:47-5.4 [Irregularities] **Roulette: irregularities**
(a) If the ball is spun in the same direction [of] **as** the wheel, the dealer shall announce "No Spin" and shall attempt to remove the roulette ball from the wheel prior to its coming to rest in one of the compartments.
(b)-(c) (No change.)

(a)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control
Conduct of CHAB Licensees
Additional Operating Conditions of CHAB Licensees
Proposed Amendment: N.J.A.C. 19:50-2.2

Authorized by: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 70q and 103.
Proposal Number: PRN 1995-28.

Submit written comments by February 2, 1995 to:
Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment conforms the Casino Control Commission's (Commission) rule concerning the operating conditions which apply to casino hotel alcoholic beverage (CHAB) licensees to the policy of the State Division of Alcoholic Beverage Control (ABC) by eliminating restrictions on combination sales on New Year's Eve. The ABC does not restrict combination sales on New Year's Eve and the Commission does not believe that the uniqueness of casino operations or the public interest require it to restrict such sales by CHAB licensees. See N.J.S.A. 5:12-103(d) and (e) and ABC Bulletin 2452, Item 4.

Social Impact

The proposed amendment is not expected to have any significant social impact. The proposed amendment conforms the Commission's rules on combination sales by CHAB licensees on New Year's Eve to the comparable ABC policy which does not restrict such sales.

Economic Impact

The current rule puts CHAB licensees at a competitive disadvantage. By eliminating restrictions on New Year's Eve combination sales, the proposed amendment will improve a CHAB licensee's ability to compete with other liquor licensees for New Year's Eve business.

Regulatory Flexibility Statement

The proposed amendment affects both casino licensees which do not qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and the few individuals or enterprises that sell alcoholic beverages in a portion of a casino hotel which they operate as a restaurant or night club. Some of these CHAB licensees may be small businesses.

Although some small businesses are affected by the amended rule, the objective of regulation of the sale, service and consumption of alcoholic beverages in casino hotels may be met only by imposing uniform compliance upon all CHAB licensees. As a consequence, no exemption for small businesses has been provided. Additionally, as noted above, the economic impact of this amendment will be favorable to all CHAB licensees.

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

19:50-2.2 Additional operating conditions of CHAB licensees
(a)-(c) (No change.)
(d) Combination sales of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited, except for:
1.-2. (No change.)
3. A combination sale [consisting of a show and a bottle of champagne in its original container (not exceeding 187 ml. for one person or 750 ml. for two persons) as] **which is** part of a New Year's Eve promotional package.
(e)-(h) (No change.)

(b)

CASINO CONTROL COMMISSION

Casino Simulcasting
Supervisors of Mutuels and Verifiers
Proposed Repeals: N.J.A.C. 19:55-9.3, 9.4 and 9.5
Proposed Amendment: N.J.A.C. 19:55-9.1
Proposed Recodification with Amendment: N.J.A.C. 19:55-9.6 as 19:55-9.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69(a), 70(j), 193 and 210.
Proposal Number: PRN 1994-432.

Submit written comments by February 2, 1995 to:
E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Arcade Building
Atlantic City, NJ 08401

The agency proposal follows:

Summary

These proposed repeals and amendments would make permanent the requirement that a supervisor of mutuels at a hub facility be an employee or designee of the New Jersey Racing Commission whose compensation shall be paid, directly or indirectly, by the hub facility. It would also eliminate the requirement that a verifier be present at a hub facility. Currently, the presence of both a supervisor of mutuels and verifier is required at a hub facility at all times when casino simulcasting is being conducted.

The initial year of casino simulcasting has evidenced the need for the supervisor of mutuels at a hub facility to be either an employee or designee of the New Jersey Racing Commission. Conversely, the year's experience has shown that the need for the presence of a verifier at a hub facility is gradually diminishing.

Social Impact

The requirement that a supervisor of mutuels at a hub facility be permanently either an employee or designee of the New Jersey Racing Commission should help to ensure the integrity of casino simulcasting as well as foster public confidence therein. There is expected to be little or no social impact from the elimination of the requirement that there be a verifier at a hub facility. Many of the functions of a verifier are

now performed by computers, and the New Jersey Racing Commission no longer requires that verifiers be present at race tracks with no resulting social impact.

Economic Impact

As of the effective date of these repeals and amendments, a hub facility will no longer be required to pay the compensation of a verifier, which will result in some savings to the hub facility. In the event that future circumstances should necessitate the presence of a verifier at the hub facility, the compensation thereof would be the responsibility of the Racing Commission.

Regulatory Flexibility Statement

The proposed repeals and amendments will afffect only operators of a hub facility. Currently, there is only one hub facility, and it is not a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In the event that casino licensees determine to utilize a different hub facility in the future, it is doubtful that the operator thereof will qualify as a "small business" either. Accordingly, a regulatory flexibility analysis is not required.

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

19:55-9.1 Supervisors of Mutuels

A Supervisor of Mutuels shall be present at a hub facility at all times when casino simulcasting is being conducted. [Unless determined by the Commission and Racing Commission that a longer period is necessary, for a period of one year from the date of commencement of casino simulcasting the] **The** Supervisor of Mutuels shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. If a Supervisor of Mutuels is not an employee of the Racing Commission, he or she shall be licensed as a casino key employee.

[19:55-9.3 Assumption of duties of Supervisor of Mutuels

Subject to the provisions of N.J.A.C. 19:55-9.1, not less than one year after the commencement of casino simulcasting the duties of a Supervisor of Mutuels as set forth in N.J.A.C. 19:55-9.2 may be assumed by qualified employees of the hub facility, who shall be licensed as casino key employees and may otherwise be required by N.J.A.C. 19:55-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of a Supervisor of Mutuels set forth in N.J.A.C. 19:55-9.2.

19:55-9.4 Verifier

There shall be assigned to each Supervisor of Mutuels in a hub facility, a Verifier, who shall be present at a hub facility at all times when casino simulcasting is being conducted. Unless determined by the Commission and Racing Commission that a longer period of time is necessary, for a period of one year from the date of commencement of casino simulcasting the Verifier shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. It shall be the duty of a Verifier to assist a Supervisor of Mutuels in carrying out the duties set forth in N.J.A.C. 19:55-9.2. If a Verifier is not an employee of the Racing Commission, he or she shall be licensed as a gaming-related casino employee.

19:55-9.5 Assumption of duties of verifier

Subject to the provisions of N.J.A.C. 19:55-9.4, not less than one year after the commencement of casino simulcasting the duties of a Verifier may be assumed by qualified employees of the hub facility, who shall be licensed as a gaming-related casino employees and as may otherwise be required by N.J.A.C. 19:55-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of a Verifier set forth in N.J.A.C. 19:55-9.4.]

19:55-[9.6] **9.3** Continued access to hub facility by Racing Commission

The Racing Commission, its employees and agents shall at all times have access to the hub facility in order to maintain the integrity of horse racing and, together with the Commission and Division, to effectuate the purposes of the Casino Simulcasting Act. [Such access shall in no way be affected by the replacement of Supervisors of Mutuels and Verifiers by employees of the hub facility, as provided in N.J.A.C. 19:55-9.3 and 9.5.]

LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Contributions, Records, and Reports

Proposed Readoption with Amendments: N.J.A.C. 12:16

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

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

Proposal Number: PRN 1995-30.

A **public hearing** on the proposed readoption and amendments will be held on the following date at the following location:

Monday, January 30, 1995
10:00 A.M. to 12:00 noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by February 2, 1995 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

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

The agency proposal follows:

Summary

Pursuant to Exeuctive Order No. 66(1978), N.J.A.C. 12:16 will expire on March 23, 1995. The Department has reviewed the rules proposed for readoption and, with the exception of the amendments described below, has determined them to be necessary and proper for the purposes for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

This chapter was originally filed and became effective prior to September 1, 1969. Subchapters 1 through 19 were repealed, with some sections replaced with new rules effective April 1, 1985. The Chapter was further amended upon readoption on March 23, 1990. A summary of the subchapters of N.J.A.C. 12:16 follows. Proposed amendments deemed necessary for the effective operation of the program are also provided. Specifically, the proposed readoption with amendments reflects various changes in the New Jersey Unemployment, Temporary Disability, Health Care Subsidy and Workforce Development Laws, enacted since the last readoption.

N.J.A.C. 12:16-1 discusses the importance of a social security number in identifying workers who are subject to the Unemployment Compensation Law. No amendments are being made to this section.

N.J.A.C. 12:16-2 requires employers to keep certain records, including payroll records, an individual worker record (including, inter alia, name, address, social security number, total remuneration paid per pay period and date of hire) for each worker and Federal and State tax returns. This subchapter also requires that records be kept at the place of business of the employing unit and be maintained for the current calender year and four preceding years. A new subsection at N.J.A.C. 12:16-2.4(b) is being added to allow inactive employers to destroy records as soon as the need for claims information has passed.

N.J.A.C. 12:16-3 lists the requirements which must be met to be granted a power of attorney for purposes of representing an employer

before the Employment Security Agency. This subchapter is not being amended.

N.J.A.C. 12:16-4 defines remuneration and addresses issues concerning what constitutes remuneration. N.J.A.C. 12:16-4.1(b) is being amended to add temporary disability payments to the list of remuneration issues. It is also being amended to remove the reference to back pay in paragraph 7 as it is a duplicate of back pay awards noted in paragraph 6.

N.J.A.C. 12:16-4.2(c) is being amended to clarify exceptions to paragraphs 2, 3, and 4. These exceptions at N.J.A.C. 12:16-4.10 have to do with the first seven days of disability payments being taxable under the Unemployment Compensation Law.

N.J.A.C. 12:16-4.3(b)2 is being amended to specify that dismissal pay, meaning separation or severance pay, is taxable if made under a contractual obligation or by business practice.

N.J.A.C. 12:16-4.4 is being amended to clarify that the regulation addresses the employer contribution to Section 401(k) plans.

N.J.A.C. 12:16-4.8(a) is being amended to clarify that reimbursement of travel expenses is not considered taxable wages.

N.J.A.C. 12:16-4.14 is being amended to clarify that the regulation addresses the employer contribution to Section 125 plans.

N.J.A.C. 12:16-5 sets forth the procedures for employer filing of quarterly contribution reports, and discusses first contributions of a newly subject employer, installment payments, voluntary payment of additional contributions and special fringe benefit agent accounts.

N.J.A.C. 12:16-5.6(d)2 is being amended to clarify the meaning of a year in which no contributions have been paid. This is intended to imply that there must have been employment subject to the law. The special rate does not apply if employment did not exist.

N.J.A.C. 12:16-6 discusses the ability of non-profit organizations to reimburse the Unemployment Trust Fund for benefits paid to its former employees. The subchapter sets forth financial security requirements, and addresses the circumstances under which the Controller, or his or her designee, can terminate an organization's election to make payments in lieu of contributions. No changes are being made to this subchapter.

N.J.A.C. 12:16-7 discusses the contributory option for governmental employers. The subchapter outlines the condition under which an employer can choose the contributory option and states when a governmental entity who chooses this option can use the surplus amount remaining in an unemployment trust fund. N.J.A.C. 12:16-7.1 is being amended to show that the conditions of this subchapter apply only to governmental employers. The amendment to N.J.A.C. 12:16-7.3 moves the word "subjectivity" to its proper place in the sentence. N.J.A.C. 12:16-7.6 is being amended to change employer to entity or instrumentality and specifies that termination is not later than February 1 or the year in which the termination is requested.

N.J.A.C. 12:16-8 sets forth the requirements for employers who wish to establish with other employers a group account for the purpose of sharing the risk of unemployment benefit costs. This subchapter describes how group accounts are established, defines those employers eligible to participate, and the liability, termination and dissolution of such arrangements. This subchapter is not being amended.

N.J.A.C. 12:16-9 discusses worker contributions to the various funds as required by State law, the statement which must be given to employees concerning their deductions and how the employer is to report and pay the worker contribution. N.J.A.C. 12:16-9.1(b) and 9.2(a) are being amended to reflect that the Workforce Development Partnership Fund and the Health Care Subsidy Fund are included in the types of contributions which must be withheld from employee wages.

N.J.A.C. 12:16-11 has been recodified as N.J.A.C. 12:16-10. This subchapter discusses excess worker deductions for situations in which a worker receives wages from more than one employer. It requires employers to provide employees with wage deduction statements.

N.J.A.C. 12:16-10.2 has been amended to include references to workforce development and health care subsidy.

It provides a credit for excess workforce development and health care subsidy contributions deducted by more than one employer.

N.J.A.C. 12:16-10.3 has been amended to provide that employers must furnish workers with information concerning any deductions made in accordance with State law on Form W-2. This includes deductions for unemployment insurance, temporary disability, workforce development and health care.

N.J.A.C. 12:16-10.4 has been amended to provide a refund for excess workforce development and health care subsidy deductions.

Proposed new rules at N.J.A.C. 12:16-11 have been added to discuss special employment situations. It clarifies the status of those employees who work for real estate managing agents.

N.J.A.C. 12:16-12 addresses concurrent employment by related employers, and describes the situation of a common paymaster.

N.J.A.C. 12:16-13 outlines the reports required to be submitted by employers. The subchapter also sets forth the penalties applicable for failure to file reports, establishes a procedure for penalty abatement and discusses wage reporting requirements. N.J.A.C. 12:16-13.4 is being amended to codify existing procedures for penalty abatement. N.J.A.C. 12:16-13.7(b) is amended to include penalty liability for each employee for whom required information is not timely reported.

N.J.A.C. 12:16-14 concerns election of coverage, which means that an employing unit can elect to become subject to the Unemployment Compensation and Temporary Disability Benefits Law, to become an employer, or to extend its coverage to individuals performing services which do not constitute employment. There are no changes to this subchapter.

N.J.A.C. 12:16-15 concerns voluntary joint accounts, which allows two or more employers to have their accounts joined for the purpose of the Unemployment Compensation Law. This subchapter also addresses the effective date, duration, modification and dissolution of such an arrangement. No changes are being made to this subchapter.

N.J.A.C. 12:16-16 requires employers to provide notice to employees that the employer has coverage under the Unemployment Compensation Law, and, if such coverage is terminated, the employers must be notified that the employing unit has ceased to be a subject employer. This subchapter is not being amended.

N.J.A.C. 12:16-17 which formerly provided fees and mileage allowances for witnesses testifying at hearings is now reserved. Its provisions are recodified at N.J.A.C. 12:16-22.5.

N.J.A.C. 12:16-18 discusses the transfer of employment experience from one employer to a successor in interest, and is being amended to clarify the procedures surrounding the transfer of employment experience from predecessors to successors.

N.J.A.C. 12:16-18.2 has been renamed and is amended to address the rate following the transfer of a predecessor's whole experience. New Rule N.J.A.C. 12:16-18.3 addresses the transfer of a predecessor's experience in part and N.J.A.C. 12:16-18.4 has been amended to address the rate following the transfer of a predecessor's experience in part.

N.J.A.C. 12:16-19 addresses benefit charges, and provides that the Department must notify the employer of benefits charged to his or her account. This subchapter is not being amended.

N.J.A.C. 12:16-20 concerns the work relief and work training programs and sets forth the characteristics required for such a program. No changes are being made to this subchapter.

N.J.A.C. 12:16-21 addresses zip code reporting, requires employers to report employee statistics concerning zip codes to the Department of Transportation. There are no changes to this subchapter.

N.J.A.C. 12:16-22 discusses hearings, and outlines the procedures for hearings involving questions of coverage, status, liability for contributions, reporting, refunds of rates of contributions. The subchapter provides for informal conferences, formal hearings, and the appeal of Commissioner decisions. This subchapter is not being amended.

Through a Departmental internal reorganization, many of the Controller's various duties concerning the administration of the Unemployment Compensation and Temporary Disability Benefits Laws have been reassigned. As a result, changes are also being made to indicate that the Controller or his or her designee is responsible for these functions. In addition, the Department is proposing, as appropriate, changes that include gender-neutral language, typographical corrections, technical clarifications and the elimination of verbiage throughout the rules.

Social Impact

This proposed readoption with amendments will enable the Department to continue its function of providing needed unemployment compensation and temporary disability coverage to all workers. These rules require employers to submit detailed reports concerning wages, contributions and benefits paid. However, since the last revision of these rules in 1989, the various law changes that have affected Department policies were not adequately conveyed to the public. The proposed readoption with amendments will make it easier for employers to conform to the appropriate laws and regulations of the Department, thereby avoiding any unnecessary penalties for the failure to provide adequate coverage for workers. This, in turn, will assure that workers receive benefits that they are due in a timely manner.

Economic Impact

The Department does not foresee any significant economic impact on employers or the general public as a result of the proposed readoption with amendments. The proposed readoption with amendments merely imposes reporting requirements on employers which are already in existence. These rules require employers to submit detailed reports concerning wages, contributions and fringe benefits paid. The proposed amendments will eliminate unnecessary expense to employers caused by their lack of knowledge of the various changes in the Unemployment Compensation, Temporary Disability, Health Care Subsidy and Workforce Development Laws, enacted since the last readoption. Any costs borne by employers in meeting these reporting requirements are outweighed by the Department's need to maintain a program which assures that workers receive benefits due in a timely and efficient manner.

Regulatory Flexibility Analysis

The proposed readoption with amendments will have minimal impact in terms of imposing additional burdens upon businesses of any type including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments merely imposes reporting requirements on employers which are already in existence. All employers are required to submit records concerning withholding, payroll records, remuneration paid, contribution reports, and zip code information to the Department, and must provide employees with certain notices and worker contribution statements. Some employers may have to employ the services of bookkeepers and/or accountants to prepare the necessary documentation.

This information must be reported by all employers as the success of the unemployment and temporary disability insurance programs is dependent on accurate information. Therefore, no lesser requirements or exemptions are available for small businesses. However, the recordkeeping and reporting costs for small businesses will be less than the costs for larger employers, as the costs are directly proportionate to the amount of workers employed. The proposed amendments will educate employers on various changes to the Unemployment Compensation, Temporary Disability, Health Care Subsidy and Workforce Development Laws and thereby eliminate confusion and unnecessary expense caused by their failure to comply with reporting requirements.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:16.

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

12:16-1.1 Ascertainment of worker's Social Security account number

Each employer shall ascertain the Social Security account number of each worker [employed by him] in employment subject to the Unemployment Compensation Law and list such number on the employer's records.

12:16-1.3 Evidence of application for Social Security account number

(a) If an employer has [in his employ] a worker engaged in employment who does not have a Social Security account number, [he shall request] the worker **shall be requested** to [show him] **provide** a receipt issued by an office of the Social Security Administration indicating that the worker has filed an application for an account number.

(b) (No change.)

12:16-1.4 (No change.)

12:16-1.5 Employer to inform worker in certain cases

An employer shall inform [his] workers that [he] **they** should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

12:16-2.1 Payroll records

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. (No change.)

2. The full name of each employee and the day or days in each calendar week on which [he performs] services for remuneration **are performed;**

3.-5. (No change.)

12:16-2.2 Individual worker records

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. [His full] **Full** name, address, and Social Security account number;

2. [His total] **Total** remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee [from his employing unit], whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;

3. [A recordation] **An entry** under the heading "special payments" **of** the amount of any special payments such as bonuses and gifts which have been paid during the pay period but which relate to employment in a prior period. The following shall be show[ed]**n** separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;

4. The date [on which he was] hired, rehired and returned to work after temporary layoff. The date [he was] separated from employment and the reason for such separation;

5. Such information as may be necessary to determine [his] remuneration on a calendar week basis.

6. (No change.)

12:16-2.4 Records [Retention] **retention**

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

12:16-3.1 Power of attorney: requirements

(a) (No change.)

(b) The power of attorney document must contain the following:

1. (No change.)

2. The signature of the employer(s) or duly authorized corporate officers;

3. (No change.)

4. The signature of a notary public and the expiration date of [his] commission;

5. (No change.)

(c) (No change.)

12:16-4.1 Remuneration defined

(a) (No change.)

(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.14.

1.-6. (No change.)
7. [Back pay, residuals] **Residuals**, [non-resident] aliens;
8.-9. (No change.)
10. Temporary disability payments;
Recodify existing 10.-13. as **11.-14.** (No change in text.)

12:16-4.2 Sick leave payments
(a)-(b) (No change.)
(c) Those types of sick leave payments deemed benefits and therefore [not] **non**-taxable are:
1. (No change.)
2. Benefits paid by an insurance carrier under an approved Private Plan **(see N.J.A.C. 12:16-4.10 for exceptions)**;
3. Benefits paid by a union under an approved Private Plan **(see N.J.A.C. 12:16-4.10 for exceptions)**;
4. Benefits paid by the employer under an approved self-insured Private Plan **(see N.J.A.C. 12:16-4.10 for exceptions)**;
5.-7. (No change.)

12:16-4.3 Fringe benefit payments
(a) Fringe benefit payments which result in a direct benefit to the employee are generally taxable. Fringe benefit payments which take the form of a reimbursement or a health benefit are usually non-taxable.
(b) Taxable fringe benefits may include:
1. (No change.)
2. Separation/**severance** pay (if made under a contractual obligation or by custom);
3.-10. (No change.)
(c)-(d) (No change.)

12:16-4.4 Section 401(k) Plans
Effective January 1, 1984, employer contributions to **a** cash or deferred arrangement under Section 401(k) of the Internal Revenue Code will be taxable to the extent that the employee could have elected to receive cash in lieu of **the employer's** making the contribution. In addition, employer contributions to an annuity contract covered under Section 403(b) of the Internal Revenue Code are taxable.

12:16-4.6 Officer's remuneration
(a) (No change.)
(b) An election to report under the Small Business Corporation provisions of [Title 26] **Section 1368** of the Internal Revenue Code whereby corporate profits may be distributed as dividends to shareholders, commonly referred to as Subchapter S or 1120S corporations, shall not affect (a) above. Remuneration paid to officers of corporations having made such an election shall be considered wages for benefit and contribution purposes if the officers perform any services.

12:16-4.7 Back pay, residuals, [non-resident] aliens
(a)-(c) (No change.)

12:16-4.8 Other remuneration
(a) Payments in kind for personal services such as meals, board, lodging or any other payment in kind received by a worker from [his] **an** employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by [his] **the** employing unit **for the purposes of determining eligibility for unemployment and disability benefits unless such payments represent reimbursement of travel and subsistence expenses incurred by the worker while away from home. This regulation shall have no bearing on the New Jersey Wage and Hour Laws and regulations or the U.S. Fair Labor Standards Laws and Regulations**.
(b) The [Assistant Commissioner for Finance and Controller of the New Jersey Department of Labor (hereinafter, cited as the] Controller[),] **or his or her designee** shall determine or approve the cash value of such payments in kind, and such cash value shall be used in determining the wages payable or paid to such worker and in computing contributions due under the law.
(c) Money value for board and room, meals and lodging shall be treated as follows:
1. (No change.)
2. The Controller **or his or her designee** shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:
i. (No change.)
ii. Meals per day—20 percent of the current taxable wage base divided by 260;
(1) If less than 3 meals per day, the individual meals shall be valued as follows:
[(2)]**(A)** Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate;
[(3)]**(B)** Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate;
[(4)]**(C)** Dinner (meals served between 4:00 P.M. and 12:00 [P.M.] **midnight**)—40 percent of meals rate; and
iii. (No change.)
(d) (No change.)

12:16-4.9 Tips and gratuities
If a worker receives gratuities and/or tips regularly in the course of [his] employment from other[s] than [his] **the** employer, the gratuities and/or tips so received, if reported in writing to [his] **the** employer, shall be considered taxable. The entire amount of charge tips are covered wages and are taxable to the maximum base even though the employee has not reported the entire amount to the employer. If the employee omits reporting tips, but the employer considers tips as part of an hourly rate for meeting the requirements of a Federal or State minimum wage law, it is considered that, in effect, tips have been reported to the employer to that extent and are therefore included as taxable wages.

12:16-4.14 Section 125 cafeteria plans
Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code [(1986)] shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of **the employer's** making the contribution.

12:16-5.1 Accrual as remuneration earned
(a) Employer's['] contributions shall accrue as remuneration is earned by workers in covered employment, but will not become due until payment or payment in kind is actually or constructively made.
(b) (No change.)

12:16-5.2 Due dates
(a) Employer's['] contributions shall be paid and contribution reports filed on a quarterly basis as follows:

Quarter Ending	Due Date
March 31	April 30
June 30	July 30
September 30	October 30
December 31	January 30

(b) Notwithstanding (a) above, the Controller **or his or her designee** is authorized to require an employer or employers to file contribution reports and pay contributions on a monthly or other basis when, in his **or her** discretion, [he considers] it **is considered** necessary to do so.

12:16-5.3 [Bases] **Basis** of contribution payments
(a)-(b) (No change.)

12:16-5.4 First contributions of newly subject employer
(a) Except as to liability by election as provided in N.J.A.C. [12:3] **12:16-14** (Election of Coverage), the first contribution payment of an employer who becomes newly liable in any calendar year shall be payable on or before the due date of the reporting period in which the subject status occurs.
(b) The first payment of such an employer becoming liable in the course of a calendar year shall include [his own] **employer** contributions with respect to all wages paid for employment from the first day of subjectivity in the calendar year. Subjectivity is defined as

the employer's contribution date as determined by the Controller **or his or her designee**. (See N.J.A.C. 12:16-5.2 with respect to due dates.)

12:16-5.5 Installment payments

The Controller **or his or her designee** may permit the payment of liability in installments, but if any installment is not paid on or before the due date, the total amount of the unpaid liability shall become payable upon notice and demand by the Controller **or his or her designee.**

12:16-5.6 Voluntary payment of additional contributions

(a) A voluntary payment of an additional contribution must be made within 30 days after the date of mailing of the **Form AC-174.1,** Notice of Employer Contribution Rate, unless, for good cause, the date of payment has been extended by the Controller **or his or her designee** for not more than an additional 60 days or October 28, whichever is earlier. A request for an extension for good cause must be made in writing to the Controller **or his or her designee** within the initial 30 day period.

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

(d) The voluntary payment of additional contributions will not affect employers having one of the following:

1. (No change.)

2. An assigned or special rate, determined by the employer's reserve balance and the unemployment trust fund reserve ratio, which rate is assigned where during the past three calendar years, there has been, at least, one calendar year with respect to which no contributions **on wages for employment** were paid.

(e) (No change.)

12:16-5.7 Payment in guaranteed funds

The Controller **or his or her designee** may require payment in guaranteed funds of any amount required to be paid under the Unemployment Compensation Law of New Jersey, the Temporary Disability Benefits Law of New Jersey or rules or regulations promulgated thereunder, in any case in which he **or she** considers such type of payment necessary or desirable.

12:16-5.8 Seamen's wages

(a) (No change.)

(b) Notwithstanding any other provisions of N.J.A.C. 12:16-5.2 (Due Dates) and 12:16-5.3 [Bases] **Basis** of contribution payments), if a work period as defined in (a) above began in one calendar quarter and ended in another calendar quarter, the total amount of wages for such work period may be reported for the calendar quarter in which such work period terminated, and contributions with respect to wages so earned paid accordingly.

12:16-5.9 Special fringe benefit agent accounts

(a) Special fringe benefit agents accounts may be approved by the Controller **or his or her designee** for the purpose of reporting payments such as vacation and holiday payments which have been negotiated in union-management contracts. Approval will only be given when it is shown that to do otherwise would create a hardship on the employer.

(b) (No change.)

(c) The primary employer will maintain [his] **its** own individual rates based on his **or her** own employment experience and is responsible for:

1.-2. (No change.)

(d) Upon auditing and verifying the [claim] **request**, the Controller **or his or her designee** will make proper transfers of taxable wages and payments to the primary employer's account and issue a refund of any net credits outstanding. The refund is to be computed at the unemployment rate of the employer or the basic rate whichever is the lesser.

12:16-6.1 Application

(a) (No change.)

(b) Any non-profit organization, as described in [N.J.A.C.] (a) above which has been paying contributions under the Unemployment Compensation Law and wishes to make such an election may do so by filing a written notice of its intention no later than February 1 of any calendar year.

(c) (No change.)

(d) Upon an employer's written notice of its intention to elect the reimbursement option, the Controller **or his or her designee** shall supply the form on which the employer will request the reimbursement option, and the form shall be completed and returned to the Controller **or his or her designee** within 30 days from the date of mailing.

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

12:16-6.2 Financial security requirements

(a) A non-profit organization electing coverage under the reimbursement option may be required to file with the Controller **or his or her designee** within 30 days after the effective date of its election, a [surety] **security** bond or to deposit with the Controller **or his or her designee** monies or securities in an amount as determined by the Controller **or his or her designee.** This amount shall not be less than the organization's taxable wages for the preceding calendar year or the estimated taxable wages for the current calendar year, whichever is the greater, multiplied by the maximum **un**employment insurance contribution rate in effect at the beginning of the calendar year.

1. If the [surety] **security** requirement is not met within the prescribed time limits, the previously issued conditional approval shall be withdrawn retroactively to its effective date, and the employer shall be liable for contributions as if such approval had not been issued.

2. The Controller **or his or her designee** may make a periodic review of the adequacy of the security furnished by the non-profit reimbursable employer to determine if any adjustment is necessary.

3. The Controller **or his or her designee** may deduct from any monies deposited under (a) above by a non-profit organization, or may sell the securities so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest or penalties.

4. The Controller **or his or her designee** may extend for good cause the applicable filing, deposit or adjustment period by not more than 90 days.

12:16-6.3 Termination

(a) If any non-profit employer fails to meet the security requirements as set forth in N.J.A.C. 12:16-6.2(a) the Controller **or his or her designee** may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for no less than 24 calendar months beginning with the first quarter in which such termination becomes effective.

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

12:16-6.4 Liability

(a) If a non-profit organization's election to make payments in lieu of contributions is terminated by the Controller **or his or her designee**, the non-profit organization shall remain liable for payments in lieu of contributions with respect to all benefits paid based on base year wages earned during the effective period of the election.

(b) (No change.)

12:16-7.1 Purpose

The purpose of this subchapter is to outline the conditions under which [an] **a governmental** employer can choose the contributory option and under which a governmental entity or instrumentality using the contributory method of financing unemployment benefits may use the surplus amount remaining in an unemployment trust fund.

12:16-7.3 Application

(a) Any governmental entity or instrumentality which is or becomes subject to the Unemployment Compensation Law and wishes to elect to pay contributions rather than to reimburse the Unemployment Trust Fund for benefits paid may do so by filing a written notice of its intention not later than 120 days immediately following

the date of its **subjectivity** (defined at N.J.A.C. 12:16-5.4(b)) [subjectivity] or not later than 30 days from the date such entity or instrumentality is notified of its subjectivity, whichever is the later.

(b) Any governmental entity or instrumentality which has been reimbursing the Unemployment Trust Fund and wishes to change its method of financing by electing to pay contributions as of January 1 of any year, may do so by filing a written notice of its intentions no later than February 1 of [such] **that same** calendar year.

(c) The employer shall furnish the Controller **or his or her designee** with a copy of the ordinance, minutes, resolutions, or other substantiating document which confirms the election of the contributory option.

12:16-7.4 Finance

(a) On or before September 1 of each year, the Controller **or his or her designee** shall review the composite benefit cost experience of all governmental entities and instrumentalities electing to pay contributions and shall recommend a contribution rate for the following calendar year to the Commissioner.

(b) The Commissioner of Labor shall establish the contribution rate for the following calendar year after considering the recommendation [of the Controller].

(c) (No change.)

12:16-7.5 Use of surplus funds

(a) A governmental entity or instrumentality using the contributory method may use the surplus in its unemployment trust fund pursuant to the following conditions:

1. The governmental entity or instrumentality must request, in writing, permission to use a portion of the surplus funds. Upon written approval of the Commissioner **or his or her designee**, the governmental entity or instrumentality may proceed with its withdrawal of funds;

2.-3. (No change.)

(b) A governmental entity or instrumentality using the reimbursable method may not use the surplus in its unemployment fund for any purpose other than payment of benefits.

1. (No change.)

i. Surplus trust funds may be diverted only after the governmental entity or instrumentality has received written approval from the Commissioner **or his or her designee.**

12:16-7.6 Termination

(a) Any governmental [employer] **entity or instrumentality** which has been paying contributions for a minimum of two calendar years and wishes to change to making payments in lieu of contributions may do so by filing a written notice of its intention no later than February 1 of [any] **the** calendar year **for which the change is requested.**

(b) When an election to pay contributions is terminated and the governmental [employer] **entity or instrumentality** resumes making payments in lieu of contributions, it may not revert to the contributory option for at least two full calendar years after such termination.

12:16-7.7 Liability

(a) (No change.)

(b) If the governmental [employer's] **entity or instrumentality** election to pay contributions is terminated, the governmental [employer] **entity or instrumentality** shall remain liable for all contributions incurred during the period of its election to pay contributions.

(c) As of the effective date of the termination of an election to pay contributions, a governmental [employer] **entity or instrumentality** shall become liable to make payments in lieu of contributions.

12:16-8.1 Establishment

(a) (No change.)

(b) The group account will be established as of the first day of any calendar quarter and will remain in effect for not less than two calendar years unless otherwise determined by the Controller **or his or her designee.**

(c) The request for establishment of a group account shall be filed by the designated group agent listing the names and New Jersey registration numbers assigned by the Controller **or his or her designee** to the employers seeking group membership. The request shall be accompanied by consent documents executed by each applicant for membership authorizing the group agent to act in its behalf for the group account. The employers shall furnish the Controller **or his or her designee** with a copy of the ordinance, minutes, resolutions or other substantiating document which confirms the intent of the employer to become a member of the group.

(d) In establishing the group account, the Controller **or his or her designee** may modify or waive the security required of any of the group members and in lieu thereof the Controller **or his or her designee** may establish a security requirement of the group as a whole.

12:16-8.3 Termination

(a) (No change.)

(b) With the approval of the Controller **or his or her designee,** membership in the group will be terminated for any member at the request of that member or at the request of the group agent. The membership will be terminated at the end of the calendar quarter in which the request for termination is received.

12:16-8.5 Dissolution

(a) Request for disssolution of a group account will require the consent of two-thirds of its active members. The effective date of dissolution will be determined by the Controller **or his or her designee.**

(b) The group agent must advise the Controller **or his or her designee** of the ratio of each member's liability to the [local] **total** liability of the group, if there is any group liability outstanding at the time of dissolution. Such liability will be due immediately from each employer in accordance with the balance of group liability remaining in its individual account as determined by the group agent.

(c) A group account may be dissolved by the Controller **or his or her designee** for reporting or payment delinquency, failure to post required bond or other security, or similar good cause.

(d) Except as required herein, the Controller **or his or her designee** is not a party to any agreement between the group, the group agent or any of its members.

12:16-9.1 Workers' contribution-trust fund

(a) (No change.)

(b) In withholding workers' contributions from their wages and in paying any contributions to the Unemployment Compensation Fund [and], the State Disability Benefits Fund, **the Workforce Development Partnership Fund, and the Health Care Subsidy Fund,** a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(c) (No change.)

(d) Such account shall be kept posted up to date by the employer so as to show at all times the amount withheld from workers, the amount of each remittance to the Controller **or his or her designee,** and the amount of workers' contributions withheld but not remitted to the Controller **or his or her designee.**

12:16-9.2 Evidence of amounts withheld furnished workers

(a) Every employer, at the time of making each payment of wages, shall furnish to each of [his] **its** workers a statement showing clearly the total amount deducted for contributions for the Unemployment Compensation Fund, [and] the State Disability Benefits Fund, **the Workforce Development Partnership Fund, and the Health Care Subsidy Fund.**

(b) The statements shall be such as can be delivered to [each] workers [in order] to enable [him] **them** to determine [for himself] whether the total amount of [his] **their** contributions is correctly computed.

(c) A notation on a paycheck or a pay envelope showing the total wages and, as a separate item, the amount deducted for contribution to the Controller **or his or her designee** for the said funds will constitute compliance with the provisions of this section.

12:16-9.3 Reporting and paying workers' contributions

(a) Every employer shall include on [his] **its** contribution report the amount of contributions due and payable on behalf of [his] **its** workers.

(b) Every contribution report shall be accompanied by a remittance for the amount of both the employer contributions and the contributions payable by the employer on behalf of [his] **its** workers.

[SUBCHAPTER 10. (RESERVED)]

SUBCHAPTER [11.] **10.** EXCESS WORKER DEDUCTIONS

12:16-[10.1]**11.1** Excess disability deductions

[(a)] If a worker receives wages from more than one employer, and[:

1. The] **the** sum of the contributions required and deducted from his **or her** wages and deposited in the State Disability Benefits Fund, plus the contributions, if any, required and deducted from his **or her** wages, toward the costs of benefits under one or more plans approved under N.J.S.A. 43:21-33, or

[2. The] **the** sum of all contributions required and deducted from his **or her** wages toward the costs of benefits under two or more such private plans, if covered only by said plans, exceeds an amount equal to one-half of one percent of the taxable wage base in any calendar year, the worker shall be entitled to a credit in the amount of the excess thereof against his **or her** New Jersey State Gross Income Tax, [if the individual establishes his right to such credit and] **if he or she** makes **a valid** claim therefor [within two calendar years after the end of the calendar year in which the wages were received] **with the Division of Taxation**.

12:16-[11.2]**10.2** Excess unemployment, **health care and workforce** deductions

(a) If a worker receives wages from more than one employer and the sum of the contributions required **and deducted** from his **or her** wages and deposited in the State Unemployment Compensation Fund or in a trust fund for the purpose of repaying benefits, exceeds [one-half of one percent of the taxable wage base in periods prior to July 1, 1986 or] five-eighths of one percent **of the taxable wage base** for periods [thereafter] **prior to January 1, 1993 and after December 31, 1997 or six-tenths of one percent for periods beginning January 1, 1996 and ending December 31, 1997,** the worker shall be entitled to a credit in the amount of the excess thereof against his **or her** New Jersey State Gross Income Tax, if he **or she** makes a **valid** claim therefor [within two calendar years after the end of the calendar year in which the wages were received] **with the Division of Taxation.**

(b) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the Health Care Subsidy Fund exceeds six-tenths of one percent for periods beginning January 1, 1993 and ending December 31, 1995, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

(c) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the Workforce Development Partnership Fund exceeds one-fortieth of one percent of the taxable wage base for periods beginning January 1, 1993 and ending December 31, 1997, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

12:16-[11.3]**10.3** Wage deduction statements

(a) Employers shall furnish to workers the following information on Form W-2[;]**:**

1. The employer registration number assigned by the Controller **or his or her designee**;

2. The private plan number, if any, assigned by the [Division] **Bureau of Private Plans; and**

[3. The amount deducted for State unemployment insurance;]

4. [The amount deducted for State disability insurance or for the cost of benefits under an approved private plan.] **Any amount deducted in accordance with State law.**

(b) (No change.)

12:16-[11.4]**10.4** Refund of excess deductions

Any worker who meets the requirements of N.J.A.C. 12:16-[11.1] **10.1** and [12:16-11.2]**10.2** but is not required to file a New Jersey Gross Income Tax return, may apply to the Controller **or his or her designee** for a refund of any excess unemployment [and], disability**, health care and/or workforce contributions** [insurance] made from his **or her** wages **if he or she makes a claim therefor within two calendar years after the end of the calendar year in which the wages were paid.**

12:16-[11.5]**10.5** Assessment for governmental reimbursable employers

(a) All governmental entities who repay benefits in lieu of contributions shall be notified of the applicable portion to be repaid to the Controller **or his or her designee** from their trust funds for the amounts of any excess unemployment insurance deductions either refunded to their employees or credited to their employees' New Jersey State Gross Income Tax.

(b) Payment to the Controller **or his or her designee** shall be made within 30 days of the date of mailing of the notice. Payments received after the 30 day period shall be liable to the assessment of interest as specified in N.J.S.A. 43:21-14(b).

SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS

12:16-11.1 Real estate managing agents

(a) An individual working for an agent of a property owner is an employee of the property owner, if the agent operates on a fee plus expenses basis. This type of arrangement gives the agent a fee plus reimbursement of all operating expenses on a dollar for dollar basis.

(b) An individual working for an agent of a property owner is an employee of the agent, if the agent operates on a flat fee basis. This type of arrangement gives the agent a flat fee rather than reimbursing expenses on a dollar for dollar basis.

12:16-13.1 Reports required

Every employer shall file such contribution and statistical reports, and reports of wages paid to individual workers as may be required by the Controller **or his or her designee**, and every employing unit shall file such reports as may be required by the Controller **or his or her designee** with respect to employment as shall be necessary to determine its status under the law.

12:16-13.3 Penalty for failure to file reports

(a) The penalty prescribed by N.J.S.A. 43:21-14(a) for delinquency in filing reports (except for such reports as may be required under N.J.S.A. 43:21-6(b)(2) of the Unemployment Compensation Law) shall be computed for each report from and including the day after such report is due through the post mark date on the envelope in which the report is received by the Controller **or his or her designee**.

(b) If an employer or employing unit who has been granted an extension of time fails to file [his] **its** report on or before the termination of the period of extension for the filing thereof, the penalty for failure to file shall be payable from the original due date as if no extension had been granted.

12:16-13.4 Penalty abatement

(a) The Controller **or his or her designee** may remit or abate unpaid penalties in whole or in part for good cause if the employer fulfills the following requirements:

1. (No change.)

2. The employer submits an affidavit together with documentation providing a reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting require-

ments of the Department. **All evidence and documentation in support of the employer's request must be submitted with the affidavit;**

3.-4. (No change.)

(b) The Department will consider the following factors in evaluating a request for penalty abatement:

1. The reason(s) for the late, inaccurate or incomplete filing;

2. The number of quarters involved;

3. The effect the late, inaccurate or incomplete filing had on the operations of the Department;

4. The employer's history of compliance;

5. Previous request(s) for abatement; and

6. Other factors brought to the attention of the Department by the employer.

(c) Penalty abatement consideration will be based upon the written submissions of the employer and the records on file in the Department, unless it is determined that a material and controlling dispute of fact exists.

(d) When abatement is granted for only a part of the penalty, the employer must make payment of all unabated penalty within 15 days of the date of notification of the decision of the Controller or his or her designee. If this condition is not met, the abatement may be rescinded.

(e) Request for reconsideration must be submitted within 30 days of receipt of the penalty abatement determination. The request must show the following:

1. New information not presented in the original application that may change the outcome, along with reasons why the information was not previously submitted; or

2. That material previously submitted was not considered.

[(b)]**(f)** All decisions made by the Controller **or his or her designee** concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.

12:16-13.5 Wages paid reportedly current

(a) The Controller **or his or her designee** may require any employer to report wages paid to every worker [in his] employed within seven days from the date of payment thereof, if the Controller **or his or her designee** deems it necessary for the effective administration of the Unemployment Compensation Law and the Temporary Disability Benefits Law. Failure to comply will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

(b) (No change.)

12:16-13.6 Reporting wages, remuneration and other information

(a) [Any] **An** employer or employing unit shall furnish the record of wages and remuneration paid to a worker, and such other information as may be required under the provisions of N.J.S.A. 43:21-6(b).

(b) (No change.)

12:16-13.7 Wage reporting

(a) For the calendar quarter commencing July 1, 1984 and each quarter thereafter, each employer shall file a report with the Controller **or his or her designee** within 30 days after the end of each quarter in a form and manner prescribed by the Controller **or his or her designee** listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns [rather than leave the column blank].

(b) Any employer who fails, without reasonable cause, to comply with the reporting requirements of this section shall be liable for a penalty in the following amount for each employee who is not included in the report or for whom the required information is not accurately **or timely** reported:

1.-2. (No change.)

3. For the third failure of any quarter, in any eight consecutive quarters, and for any failure in any eight consecutive quarters which failure is subsequent[ly] to the third failure, $25.00 for each employee.

(c) The following pertains to magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the [Director, Unemployment Insurance/Disability Insurance Financing] **Controller or his or her designee.**

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the [Director, Unemployment Insurance/Disability Insurance Financing] **Controller or his or her designee.**

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third party payroll processors who on a quarterly basis generate and file with the New Jersey Department of Labor Form WR-30 "Employer Report of Wages Paid," and Form UC-27, "Quarterly Contribution Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media directly to the Division of Unemployment Insurance/Disability Insurance Financing in a form and manner specified by the [Director] **Controller or his or her designee**, if the aggregate number of employees for all clients processed and so reported by the third party exceeds 100 in any calendar quarter.

4. Employers or third-party payroll processors may have the requirements in (c)1 through 3 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for waiver or extension to the [Director, Unemployment Insurance/Disability Insurance Financing] **Controller or his or her designee.**

5. (No change.)

12:16-13.8 Suspension of business

(a) Where a suspension of the business operations of any employer occurs in this State, such employer shall give advance notice thereof to the Controller **or his or her designee.** In the event that it is impracticable to give such advance notice, the employer shall notify the Controller **or his or her designee** within 48 hours after such suspension.

(b) Such notice shall be filed with the Controller **or his or her designee** and shall contain the following information:

1.-6. (No change.)

(c) (No change.)

12:16-13.9 Transfer of business

(a) When a transfer, in whole or in part, of the business operations of any employer occurs in this State it shall be the responsibility of the acquiring unit to notify the Controller **or his or her designee** of such acquisition within 30 days of the transfer.

(b) The successor shall supply the Controller **or his or her designee** with the name, address and, if possible, the registration number of the acquired unit.

(c) This notification, if possible, should be made on [the Controller's] Form UC-1; otherwise, a letter will be acceptable.

12:16-13.10 Withdrawal to inactive status

(a) An employer who is not eligible for termination of coverage pursuant to N.J.S.A. 43:21-8 may have [his or her] **its** account withdrawn to an inactive status upon written application to the [c] Controller **or his or her designee.**

1. (No change.)

12:16-14.1 Application for election

(a) An employing unit desiring to elect to become subject to the Unemployment Compensation and Temporary Disability Benefits Laws may request from the Controller **or his or her designee** forms for voluntary election to become an employer, or to extend its coverage to individuals performing services which do not constitute employment.

(b) The forms for voluntary election to become an employer under the Unemployment Compensation and Temporary Disability Benefits Laws or to extend coverage shall be prescribed by the Controller **or his or her designee.**

(c) The employing unit making application for voluntary election of subject status must, at the time of making such application, be exempt and have at least one individual, not a member of his **or her** immediate family, in employment who would be affected by the voluntary election.

12:16-14.2 Date of filing

The date of filing a voluntary election shall be deemed to be the date on which the written election, signed by a legally authorized individual, is received by the Controller **or his or her designee.**

12:16-14.4 Election subject to [Controller's] approval

(a) Any written election for a period prior to the date of filing shall become binding upon approval by the Controller **or his or her designee,** and notification of the approval shall be forwarded to the employer.

(b) If for any reason the Controller **or his or her designee** does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

12:16-15.1 Application **for a voluntary joint account**

(a) Two or more employers desiring to have their accounts joined for the purpose of N.J.S.A. 43:21-7 of the Unemployment Compensation Law may request from the Controller **or his or her designee** forms for making application therefor.

(b) (No change.)

(c) The form of application for the establishment of a joint account shall be prescribed by the Controller **or his or her designee.**

(d) (No change.)

12:16-15.2 Eligibility **for a voluntary joint account**

(a) A joint account shall be established only after it has been shown to the satisfaction of the Controller **or his or her designee** that the conditions of eligibility have been met **as indicated below:**

1. The employers desiring to have their accounts joined shall have filed with the Controller **or his or her designee** Form UC-38 Application [For] **for** Establishment of a Joint Account not later than May 31 of such calendar year;

2. (No change.)

3. None of such employers [was] **or their predecessors, if any, were** participating in another joint account throughout the preceding calendar year;

4. (No change.)

5. Such employers intend to maintain the common ownership or control for at least three calendar years and will notify the Controller **or his or her designee** promptly of any change in such ownership or control; **and**

6. (No change.)

12:16-15.3 Effective date: duration **of a voluntary joint account**

(a) A **voluntary** joint account shall be established only as of the first day of any calendar year and shall become effective after approval by the Controller **or his or her designee.**

(b) The **voluntary** joint account so established shall remain in force for not less than three full calendar years, subject to the provisions of N.J.A.C. 12:16-15.5 (Modifications) and 12:16-15.6 (Dissolution).

(c) Contribution rates based on such **voluntary** joint accounts shall become effective for the fiscal year which begins on the first day of July of each calendar year following the approval of the application.

12:16-15.4 Maintenance **of a voluntary joint account**

(a) Separate accounts shall be maintained for each employer participating in a **voluntary** joint account.

(b) (No change.)

(c) Such joint rate shall be the contribution rate for each employer participating in the **voluntary** joint account.

12:16-15.5 Modification **of a voluntary joint account**

(a) Another employer may be added to an existing **voluntary** joint account if all the employers involved jointly make application for a new **voluntary** joint account and comply with the requirements of this subchapter.

(b) If during any calendar year an employing unit participating in a **voluntary** joint account ceases to be an employer under the New Jersey Unemployment Compensation Law, or ceases to be owned or controlled by the same interests, such employing unit shall be separated from the **voluntary** joint accounts as of the first day of such calendar year, but shall continue for the current fiscal year with the contribution rate computed under the **voluntary** joint account.

12:16-15.6 Dissolution **of a voluntary joint account**

(a) **Voluntary** [J]joint accounts may be dissolved as of January 1 of any calendar year under any one of the conditions set forth below:

1. If at any time the Controller **or his or her designee** finds that with respect to such calendar year any one of the eligibility conditions set forth in N.J.A.C. 12:16-15.2 (Eligibility) with respect to employment, contributions, interest, penalties and assessments, and ownership or control, no longer exists and that it would not be in the best interest of the State to continue the **voluntary** joint account[.]**; or**

2. Upon written application of one or more of the employers whose accounts have been joined, if such application is filed with the Controller **or his or her designee** on or before January 31 of such calendar year and the Controller **or his or her designee** finds that the **voluntary** joint account has been in existence for at least three calendar years. The form of application for dissolution of a **voluntary** joint account shall be prescribed by the Controller **or his or her designee.**

12:16-16.1 Unemployment compensation coverage

(a) Every employer subject to the provisions of the Unemployment Compensation Law of New Jersey (including every employer who has elected to become subject pursuant to N.J.S.A. 43:21-8) shall post and maintain printed notices to [his] **its** employees informing them that [he is] **they are** covered by the Unemployment Compensation Law of New Jersey, and **that the employer** has been so registered by the Controller **or his or her designee.**

(b) Such notices [shall be of such design and in such numbers, and] shall be [posted at such places as the Controller may determine to be necessary to so inform employees] **displayed in prominent and conspicuous places at each worksite.**

(c) No such notice shall be posted by any person, employing unit or employer who has not complied with the provisions of the Unemployment Compensation Law and to whom an unemployment compensation registration number has not been assigned by the Controller **or his or her designee,** or who, in accordance with the provisions of the law, has ceased to be an employer as defined in the law.

12:16-16.2 Termination of subject status

Every employing unit which has ceased to be a subject employer, pursuant to the provisions of N.J.S.A. 43:21-8 of the Unemployment Compensation Law, shall post and maintain notice of such fact on forms supplied by the Controller **or his or her designee,** in order to inform its workers that they are not in covered employment and are not liable for contributions [to the Unemployment Compensation Fund].

SUBCHAPTER 17. [WITNESS FEES AND MILEAGE ALLOWANCES] **(RESERVED)**

[12:16-17.1 Subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller.]

12:16-18.1 Transfer of predecessor's whole experience

(a) Upon receipt of notification that a predecessor employer has transferred [his] **its** organization, trade or business, or substantially all [his] **its** assets to a successor in interest, the Controller **or his or her designee** shall transfer the employment experience of the predecessor employer to the successor in interest if the employment experience of the predecessor with respect to the organization, trade or business, or assets may be considered indicative of the anticipated employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller **or his or her designee**.

(b) Unless the predecessor employer was owned or controlled, directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such successor in interest, within four months of the date of such transfer of the organization, trade **or business, or** assets [or business], or thereafter upon good cause shown, files a written notice protesting the transfer of employment experience of the predecessor employer.

[12:16-18.2 Transfer of part of predecessor's experience by application

(a) A predecessor employer and successor in interest may jointly make application, on Form UC-47 (Joint Application for Transfer of Employment Experience), for transfer of that portion of the employment experience relating to that part of the organization, trade, assets or business acquired by the successor in interest. The employment experience will be transferred if the following conditions are met:

1. Either the predecessor or successor in interest shall report the transfer and acquisition and its intention to apply for a partial transfer of the employment experience within four calendar months after the date of transfer and acquisition.

2. Both the predecessor and successor in interest complete and file Form UC-47 within 30 days from the date of mailing thereof.

3. The employment experience of the predecessor employer with respect to the portion of the organization, trade, assets or business to be transferred may be considered indicative of the future employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller.

4. The part of the business transferred is a distinguishable and identifiable part to which may be allocated a definite portion of the predecessor's contributions, annual payrolls and benefit charges.

5. That the predecessor and/or successor in interest have furnished the information covering contributions, annual payrolls, benefit charges and other data necessary to make the transfer on the records of the Controller.]

12:16-18.2 Rate following transfer of predecessor's whole experience

(a) Any employer who acquires the organization, trade or business, or assets of another employer, shall continue to pay contributions at the rate currently assigned, for the period from the date of acquisition to the following July 1.

(b) Any employer who acquires the organization, trade or business, or assets of another employer, and the employment experience of the predecessor employer represents substantially all of the employment experience of the successor in interest and may be considered indicative of the future employment experience of the successor in interest, shall have its contribution rate determined by combining the employment experience of the predecessor employer and successor in interest as they appear on the records of the Controller or his or her designee. Such rate shall be in effect for the period from the date of acquisition to the following July 1.

(c) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of an employer shall be assigned the contribution rate of the predecessor employer for the period from the date of acquisition to the following July 1.

(d) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of two or more employers shall be assigned the rate of the predecessors, if they have the same rate. If the predecessors do not have the same rate, the successor employer shall be assigned a contribution rate based upon the combined employment experience of the predecessors as of the date of acquisition to the following July 1.

[12:16-18.3 Rate following acquisition

The employment experience transferred shall be used in determining the employer contribution rate of the successor in interest for the fiscal year beginning July 1 following the date of acquisition.]

12:16-18.3 Transfer of predecessor's experience in part

(a) A predecessor employer and successor in interest may jointly make application, on Form UC-47 (Joint Application for Transfer of Employment Experience), for transfer of that portion of the employment experience relating to that part of the organization, trade or business, or assets acquired by the successor in interest. The employment experience will be transferred if the following conditions are met:

1. Either the predecessor or successor in interest shall report the transfer and acquisition and its intention to apply for a partial transfer of the employment experience within four calendar months after the date of transfer and acquisition.

2. Both the predecessor and successor in interest complete and file form UC-47 within 30 days from the date of mailing thereof.

3. The employment experience of the predecessor employer with respect to the portion of the organization, trade or business, or assets to be transferred may be considered indicative of the future employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) The predecessor and successor in interest may choose to have the employment experience transferred either on an actual or percentage basis.

1. Under the first option, the actual portion of the organization, trade or business, or assets which have been transferred is both distinguishable and identifiable and can be supported through the furnishing by the predecessor and successor in interest of all of the information covering contributions, annual payrolls, benefit charges and other data necessary to make the transfer.

2. Under the second option, the portion of employment experience to be transferred, which is both distinguishable and identifiable from the predecessor to the successor in interest, is determined by taking a percentage of the number of employees transferred from the predecessor to the successor in interest as of the date of acquisition.

3. Only one of the options may be selected to transfer contributions, benefit charges, three and five year taxable wage average and final experience rate from the predecessor to the successor in interest.

[12:16-18.4 Assignment of contribution rates for interim periods

(a) Any employer who acquires the organization, trade, assets or business, in whole or in part, of another employer, shall continue to pay contributions at the rate currently assigned to him for the period from the date of acquisition to the following July 1.

1. When, however, the employment experience of the predecessor employer, with respect to the organization, trade, assets or business, which has been transferred, represents substantially all the employment experience of the successor-in-interest and may be considered indicative of the future employment experience of the successor-in-interest, the contribution rate of the successor-in-interest shall be determined by combining the transferred employment experience

and the employment experience of the successor-in-interest as they appeared in the records of the Controller at the close of the calendar year preceding the current fiscal year. Such rate shall be effective for the period from the date of acquisition to the following July 1.

2. A predecessor employer who continues to operate a part of his business shall continue to pay contributions at his current rate for the period from the date of transfer to the following July 1, unless the contribution rate of the successor-in-interest has been recomputed as aforementioned. In the latter event, the contribution rate of the predecessor employer shall be recomputed on the basis of his employment experience which remains on the records of the Controller at the close of the calendar year preceding the current fiscal year, after giving effect to the transfer, and such rate shall be effective from the date of transfer to July 1 following.

(b) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade, assets or business of an employer shall be assigned the contribution rate of the predecessor for the period from the date of acquisition to July 1 following.

(c) Any employing unit which becomes a subject employer by virtue of acquiring part the organization, trade, assets or business of an employer shall be assigned the basic rate of a new employer for the period from the date of acquisition to the following July 1, unless the employment experience acquired is indicative of future employment.

(d) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade, assets or business of two or more employers shall be assigned the rate of the predecessors, if they have the same rate; or, if they do not have the same rate, they shall be assigned a contribution rate based upon the combined record of the predecessors at the close of the calendar year preceding the current fiscal year.]

12:16-18.4 Rate following transfer of predecessor's experience in part

(a) A predecessor employer who continues to operate after the transfer of a portion of employment experience to a successor shall continue to use the rate assigned for the period from the date of transfer to the following July 1.

(b) The transfer of a portion of employment experience from a predecessor to a successor in interest will become effective on the date of acquisition, provided that the successor in interest is not a subject employer on its own. If the successor in interest is a subject employer on its own, the transfer will become effective the following July 1.

12:16-19.1 Employer's account charged; notice

Benefits paid shall be entered and charged against the account of the employer to whom such determination relates, and when the benefit payment is made, the [Division] **Department** shall send notification to the employer against whose account the benefits are to be charged on a quarterly basis.

12:16-19.2 Annual summary statement

[Each] **All** employers shall be furnished an annual summary statement of benefits charged to [his] **their** accounts.

12:16-22.2 Application

(a) (No change.)

(b) The form to be used for application for hearing is entitled "Request for Hearing" and is normally supplied with the written confirmation letter sent by the [Controller's] Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the "Request for Hearing" form may be secured by making a written request for the form to the Chief Auditor.

(c) (No change.)

12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller or his or her designee.

Recodify existing 12:16-22.5 as **12:16-22.6** (No change in text.)

LABOR/HEALTH

(a)

ENVIRONMENTAL HEALTH SERVICES DIVISION OF WORKPLACE STANDARDS

Asbestos Licenses and Permits

Joint Proposed Readoption with Amendments: N.J.A.C. 12:120 and 8:60

Authorized By: Peter J. Calderone, Commissioner, Department of Labor, and Len Fishman, Commissioner, Department of Health.

Authority: N.J.S.A. 34:5A-39.

Proposal Number: PRN 1995-31.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Thursday, January 26, 1995
10:00 A.M. to 12:00 noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

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

Submit written comments by February 2, 1995 to:

Deirdré L. Webster, Regulatory Officer
Office of Regulatory Services
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110
and
Joseph D. Eldridge, M.P.H.
Research Scientist
Environmental Health Services
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

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

The agencies' proposal follows:

Summary

The Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq., was enacted on October 31, 1984. This Act provides for the adoption of standards for the application, enclosure, encapsulation, removal, storage, sale, disposal and use of asbestos and asbestos containing materials. Pursuant to the Act, the Departments of Labor and Health are required to jointly adopt rules regarding asbestos licenses and permits which provide for reasonable standards for the licensing of employers, the issuance of employee permits, and the certification of the required asbestos training courses. As such, every employer and employee engaged in the application, enclosure, encapsulation, and removal of asbestos-containing materials must be licensed and permitted respectively.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:60 and 12:120 expire on May 30, 1995. These chapters were filed and became effective as emergency new rules and were adopted jointly by the Departments of Health and Labor as R.1985 d.144, effective March 1985. These chapters were readopted with amendments, jointly by the Departments of Health and Labor, effective May 3, 1985 as R.1985 d.262, and were again readopted with amendments, effective May 3, 1990 as R.1990 d.278. The Departments of Health and Labor have reviewed these rules and determined that they remain necessary, reasonable, and proper for the purpose for which they were originally promulgated, except for the proposed changes indicated below which include changes necessary to

implement recent amendments and supplements to the Asbestos Control and Licensing Act (P.L. 1994, c.21).

On April 15, 1994, amendments and supplements to the Act were approved to codify the existing policy of the Departments of Labor and Health regarding the licensing of asbestos abatement contractors, the issuance of permits to asbestos abatement workers and supervisors, the accreditation of asbestos abatement training programs, the enforcement and compliance provisions, and the assessment of fees. At the same time that the Act was being amended, changes in the Federal regulations were being enacted. In 1986, Congress enacted the Asbestos Hazard Emergency Response Act (AHERA, or TSCA Title II) which mandated a regulatory program to address asbestos hazards in schools. A part of AHERA dealt with the mandatory training and accreditation of persons who would perform asbestos-related work in schools and required the United States Environmental Protection Agency (USEPA) to develop a Model Accreditation Plan (MAP) for training those individuals. AHERA further required States to adopt State accreditation programs that are no less stringent than that described in the MAP. Subsequently, in 1990, Congress enacted the Asbestos School Hazard Abatement Reauthorization Act (ASHARA, P.L. 101-637) which amended AHERA to extend some of the training and accreditation requirements to persons performing such work beyond schools and into public and commercial buildings. The USEPA is now effecting regulatory changes to reflect these amendments.

Pursuant to P.L. 1994, c.21, and changes in the Federal State model plan, the Departments of Labor and Health are proposing rules which amend N.J.A.C. 12:120 and 8:60 to establish new standards for the licensing of contractors, the training and permitting of asbestos workers and supervisors, and the certification of asbestos training agencies. Specifically, the proposed amendments also enable the Department of Labor and the Department of Health to establish, charge and collect reasonable annual fees for licenses and permits to support anticipated enforcement and administrative costs, for the certification of training programs and the administration of required examinations. In addition, the proposed amendments modify the penalty actions for violations and expand the regulations relating to suspensions, revocations and other enforcement remedies. Furthermore, the proposed amendments provide procedures for the filing of complaints by citizens.

A summary of the subchapters of N.J.A.C. 12:120 and 8:60 follows. Proposed amendments deemed necessary for the effective operation of the program are also provided.

N.J.A.C. 12:120-1 and 8:60-1 set forth the general policy considerations in licensing and permitting of asbestos contractors and workers, respectively, and the certification of asbestos training agencies and asbestos training courses. N.J.A.C. 12:120-1.4(b)2 and 3 are amended to clarify that the chapter does not apply to a limited repair.

N.J.A.C. 12:120-2 and 8:60-2 define the words and terms used throughout the chapter. The subchapter is being amended to add definitions for "F/cc," "Friable," "Instructor," "Interactive/Participatory Teaching Methods," "Limited Repair," "PCM or Phase Contrast Microscopy," "Public or private building," "Repair," "TEM or Transmission Electron Microscopy," "Training agency," "Training course" and "U.S.E.P.A." The subchapter is also amended to delete the definition for "Experience asbestos worker" and to modify the definitions for "Asbestos-containing material," "Department of Health," "Employer," "May," "Shall," and "Supervisor."

N.J.A.C. 12:120-3 and 8:60-3 set forth the compliance and penalty procedures of the chapter. N.J.A.C. 12:120-3.2 and 8:60-3.2 are amended to include employers who directly or indirectly perform any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enter into a contract with an owner or operator who performs such services among the individuals required to comply with the provisions of this chapter. N.J.A.C. 12:120-3.3 and 8:60-3.3 are amended to provide that the Department of Health has the authority to develop, approve and administer examinations for workers and supervisors and to collect fees for the certification of courses and the administration of examinations. N.J.A.C. 12:120-3.4 and 8:60-3.4 are amended to specify the degree of crime imposed for violations of this chapter and to the Commissioner of Labor and Health's powers and remedies in enforcing their responsibilities under the Act. Section 3.5 is being amended to reflect that employers, training agencies and instructors may be assessed civil administrative penalties for violations of the Act or this chapter. N.J.A.C. 12:120-3.6 and 8:60-3.6 are deleted and their provisions are now found at N.J.A.C. 12:120-8 and and 8:60-8.

N.J.A.C. 12:120-4 and 8:60-4 set forth the procedures for applying for and processing applications for asbestos employer licenses. A proposed new N.J.A.C. 12:120-4.2 and 8:60-4.2 are being added to allow the Commissioner of Health to exempt specified asbestos-related activities from license requirements. The former N.J.A.C. 12:120-4.2 and 8:60-4.2 are recodified as N.J.A.C. 12:120-4.3 and 8:60-4.3. Paragraph (e)3 is added to include the employer's inability or unwillingness to comply with the eligibility requirements of N.J.A.C. 12:120-4.4 and 8:60-4.4 to the reasons for denying a license. Subsection (m) is added to authorize the Commissioner of Labor to waive licensing fees. The former N.J.A.C. 12:120-4.3 and 8:60-4.3 are recodified as N.J.A.C. 12:120-4.4 and 8:60-4.4 and paragraph (a)3 is amended to delete employment as a worker who has received a permit and who serves in a supervisor's capacity from the eligibility requirements for a license. The amendment also specifies the information required to complete an application for license. The former N.J.A.C. 12:120-4.4 and 8:60-4.4 are recodified as N.J.A.C. 12:120-4.5 and 8:60-4.5 and paragraph (b)7 is amended to define what constitutes a transfer of ownership. The amendment also states the Commissioner of Labor's authority to examine employer records to facilitate transfer determinations. Subsections (d) and (e) are added to reflect the Commissioner of Labor's authority to issue employer licenses under conditions deemed necessary and adopted by regulation and to grant a license only in those cases where the employer has certified that his or her supervisor has completed a training course and examination certified by the Department of Health. The former N.J.A.C. 12:120-4.6 and 8:60-4.6 are recodified as N.J.A.C. 12:120-4.7 and 8:60-4.7 and subsection (c) is amended to include the taking of air samples to be representative of the work area during visual inspections. The former N.J.A.C. 12:120-4.7 and 8:60-4.7 are recodified as N.J.A.C. 12:120-4.8 and 8:60-4.8 and subsection (e) is amended to provide that employer licenses expire one year from the date of issuance. Subsection (h) is amended to note that applicants for employer licenses may appeal the Commissioner of Labor's revocation or suspension of a license, or denial of an application for a license. The former N.J.A.C. 12:120-4.8 and 8:60-4.8 are recodified as N.J.A.C. 12:120-4.9 and 8:60-4.9 and subsection (b) is amended to provide that a license shall be renewed annually. Subsection (c) is amended to specify the fee for the renewal of a license. Subsection (j) is recodified as subsection (i) and is amended to specify the fee to replace a license. Subsection (k) is recodified as subsection (j). Subsection (l) is recodified as subsection (k) and is amended to provide that employers may appeal the Commissioner of Labor's refusal to renew a license. The former N.J.A.C. 12:120-4.9 and 8:60-4.9 are repealed and its provisions are now found at N.J.A.C. 12:120-8 and 8:60-8.

N.J.A.C. 12:120-5 and 8:60-5 set forth the requirements and procedures for obtaining an asbestos worker or an asbestos supervisor permit. A new N.J.A.C. 12:120-5.2 and 8:60-5.2 are added to allow the Commissioner of Health to exempt specified asbestos-related activities from license requirements and identify the factors which will be considered in granting an exemption. The former N.J.A.C. 12:120-5.2 and 8:60-5.2 have been recodified as N.J.A.C. 12:120-5.3 and 8:60-5.3 and subsection (b) is deleted because all asbestos workers have met these requirements. The former N.J.A.C. 12:120-5.3 and 8:60-5.3 are recodified as N.J.A.C. 12:120-5.4 and 8:60-5.4 and subsection (a) is amended to reference the topics for supervisor training and to require that all applicants complete an "Asbestos Trainee Evaluation" form. Subsections (c) and (d) are amended to clarify that applicants for worker and supervisor permits must receive a score of at least 70 percent in order to pass their respective examinations. The former subsection (e) is deleted and new text which clarifies that applicants who receive a supervisor permit may perform asbestos worker duties without possessing a separate permit has been added. Subsection (i) is amended to require that applicants who have failed to submit an application or obtain a permit within one year of completion of initial training provide evidence of successful completion of an annual refresher training course in order to qualify for an asbestos permit. Subsection (j) is amended to require that applicants who hold a valid New Jersey worker permit and wish to upgrade to a supervisor permit complete training required by N.J.A.C. 12:120-6.2(b) and 6.7 and N.J.A.C. 8:60-6.2(b) and 6.7. The former N.J.A.C. 12:120-5.4 and 8:60-5.4 are recodified as N.J.A.C. 12:120-5.5 and 8:60-5.5 and the requirement at subsection (b) which requires applicants to provide their social security numbers on permit applications is moved to subsection (c). Subsection (g) is added to authorize the Commissioner of Labor to waive the fee for permits. The former N.J.A.C. 12:120-5.5 and 8:60-5.5 are recodified as N.J.A.C. 12:120-5.6 and 8:60-5.6

and is amended to provide that a permit is automatically cancelled on the date it expires. This amendment also subjects a person who performs asbestos work while holding an expired permit to penalties under the Act. The former N.J.A.C. 12:120-5.6 and 8:60-5.6 are recodified as N.J.A.C. 12:120-5.7 and 8:60-5.7 and are amended to provide that an asbestos worker or supervisor permit contain an unique identification number supplied by the Department of Labor. The former N.J.A.C. 12:120-5.7 and 8:60-5.7 are recodified as N.J.A.C. 12:120-5.8 and 8:60-5.8. Subsection (e) is amended and subsection (f) is added to provide for the replacement of an altered, defaced, mutilated, lost or stolen permit upon written request and review of the circumstances by the Commissioner. Subsection (g) is added to specify the cost for a replacement or duplicate worker or supervisor permit. The former N.J.A.C. 12:120-5.8 and 8:60-5.8 are recodified as N.J.A.C. 12:120- and 8:60-5.9 and subsection (c) is amended to require that the Commissioner's notice of the violations which resulted in the suspension or revocation of a permit be written. Subsection (f) is added to clarify that the worker or supervisor may appeal the Commissioner of Labor's revocation or suspension of a permit or denial of an application for a permit. The former N.J.A.C. 12:120-5.9 and 8:60-5.9 are recodified as N.J.A.C. 12:120-5.10 and 8:60-5.10 and subsection (a) is amended to delete verification of an applicant's identity and eligibility to work as a requirement for application to renew a permit. Subsection (c) is amended to treat an application for renewal of a permit which has been expired for more than one year as an original application. Subsection (d) is added to clarify that the worker or supervisor may appeal the Commissioner of Labor's refusal to renew a permit. The former N.J.A.C. 12:120-5.10 and 8:60-5.10 are deleted and its provisions are modified at N.J.A.C. 12:120-8 and 8:60-8.

N.J.A.C. 12:120-6 and 8:60-6 set forth the procedures which shall be followed by the applicants and the Department of Health when applying for and processing applications for certification of training courses. This subchapter also sets forth the qualifications required to maintain and renew certification. N.J.A.C. 12:120-6.1 and 8:60-6.1 are amended to require that training courses meet the requirements set forth in this subchapter or the Federal "Asbestos Model Accreditation Plan; Interim Final Rule". N.J.A.C. 12:120-6.2(a) and (b) and 8:60-6.2(a) and (b) are amended to increase the length of the worker course from 26 to 28 hours and to increase the length of the supervisor course from 32 to 35 hours of training. These subsections are also amended to increase the number of hours devoted to hands-on training from eight to 14 hours. Subsection (c) is amended to provide that annual refresher training is increased from six to seven hours for the worker course. Subsections (d) and (f) are added to provide additional guidelines concerning hour and discipline requirements. N.J.A.C. 12:120-6.3(a) and 8:60-6.3(a) are amended to require that additional information be submitted as part of the application, to require that all training materials for non-English training courses be translated into that language, to define what constitutes the student-to-instructor, and to require a copy of all course examinations to be submitted. Subsection (e) is added to specify the fee training certification. Subsection (g) has been added to provide for the waiver of certification fees. The former N.J.A.C. 12:120-6.4 and 8:60-6.4 have been deleted and replaced by new text which outlines training agency operating requirements. A new N.J.A.C. 12:120-6.5(a)2 and 8:60-6.5(a)2 are added to require that applicants for instructor approval successfully complete the asbestos supervisor course and examination approved by the Department of Health. The minimum standards for the asbestos worker and supervisor course content are set forth at N.J.A.C. 12:120-6.6 and 6.7 and 8:60-6.6 and 6.7, respectively, and the criteria for refresher training is set forth at Section 6.8. These sections are amended by deleting the previous text and replacing these sections with new text. The topic areas are also amended by deleting the specificity in each topic area. The former N.J.A.C. 12:120-6.10 and 8:60-6.10 are deleted and thier provisions concerning training agency operating requirements are relocated to N.J.A.C. 12:120-6.4 and 8:60-6.4 as previously noted. The former N.J.A.C. 12:120-6.11 and 8:60-6.11 have been recodified as N.J.A.C. 12:120-6.10 and 8:60-6.10 and outlines the provisions for the renewal of training agency certification. A new subsection (c) is added to specify the fee for renewing training certification. The former N.J.A.C. 12:120-6.12 and 8:60-6.12 are recodified as N.J.A.C. 12:120-6.11 and 8:60-6.11 and subsection (a) is amended to include failure to submit information or notifications within the required time periods specified in the subchapter and failure to maintain required records as violations of these rules. Subsection (b) is also amended to outline the provisions by which the Department of Health may suspend or revoke an instructor's approval. N.J.A.C. 12:120-6.13 and 6.14 and 8:60-6.13 and 6.14 have been deleted and their provisions are now found at N.J.A.C. 12:120-8 and 8:60-8.

N.J.A.C. 12:120-7 and 8:60-7 sets forth asbestos work notification requirements. N.J.A.C. 12:120-7.1 and 8:60-7.1 have been amended to provide that this subchapter applies to employers who are required to possess an asbestos license pursuant to N.J.A.C. 12:120 and 8:60 and who enter a contract to perform asbestos work in New Jersey. N.J.A.C. 12:120-7.2(a) and 8:60-7.2(a) are amended to establish guidelines for determining the date of the written asbestos work notice. A new paragraph (b)8 is added to include the name, address and New Jersey Waste Hauler identification number among the items which must be included in the written asbestos work notice. A proposed new subsection (c) is added to establish criteria for when amended written asbestos work notification is required.

Proposed new rules at N.J.A.C. 12:120-8 and 8:60-8 are added to consolidate the procedures for appealing any action or inaction of the Commissioner of Labor or the Commissioner of Health, under the Act, including the revocation, suspension or refusal to renew a license or permit, or denial of an application for a license or permit; the denial, revocation or suspension of a training agency certification or instructor approval, and the assessment of a civil administrative penalty. It also provides procedures for filing a citizen complaint alleging a violation of the Act at N.J.A.C. 12:120-8.3 and 8:60-8.3.

The former N.J.A.C. 12:120-8 and 8:60-8 is recodified as N.J.A.C. 12:120-9 and 8:60-9. These rules set forth the documents incorporated by reference in the chapter, and from whom they may be inspected and obtained.

It is important to note that the Department of Labor is proposing three alternative fee structures at N.J.A.C. 12:120-4.3(h), for employer licenses, and at N.J.A.C. 12:120-5.5(e) and (f), for employee performance permits. Alternative A establishes annual fees for employer licenses and worker performance permits and an increased fee for employer license duplicates and employee performance permit. Alternative B combines increased annual fees for employee performance permits with increasing employers license fees based on the number of asbestos work projects performed in a single year. Alternative C establishes annual fees for employer licenses and worker performance permits which are lower than Alternative A, and increased fees for employer license duplicates which are higher than Alternative A. Under each alternative an increased fee will be charged for duplicates or replacements of an employer license. In evaluating the alternative fee structures, interested parties should note that the increases were developed based on a fiscal review of the costs of the asbestos control and licensing program and a review of fees charged by other states. It should also be noted that the amendments to the Act require the Department to recoup anticipated program costs. In addition, despite annual increases in the costs of the program, the Department has not increased license and permit fees since 1989. The Department will adopt its amendment to fees for licenses and permits based on the comments received on the proposed alternatives from interested parties.

Social Impact

Once readopted, these rules will continue to provide reasonable standards to regulate the asbestos abatement industry in New Jersey and ensure adequate funding of the Asbestos Control and Licensing Section administered by the Department of Labor and the Environmental Health Services administered by the Department of Health. Failure to readopt these rules would jeopardize the health and safety of asbestos abatement workers and supervisors, building occupants and the general public. Further, the assurances that asbestos work has been performed by competently trained and duly certified personnel will continue to exist.

The licensing of asbestos contractors and the permitting of asbestos workers and asbestos supervisors, upon successful completion of a certified training program, has served to reduce the public's exposure to airborne asbestos fibers by ensuring that asbestos remediation is performed by knowledgeable and competent workers, supervisors, and contractors operating in accordance with scientifically accepted engineering practices to protect human health and the environment.

Building owners contracting with licensed asbestos contractors who employ permitted asbestos workers and asbestos supervisors are assured that asbestos remediation is being performed by individuals who have received adequate training and who have demonstrated competency through State certification.

The certification of asbestos training programs has provided prospective license and permit applicants with the necessary information, competence, knowledge, and skill to safely perform asbestos remediation without endangerment to their health, to the health of building occupants and to the environment.

The public benefit derived lies in the prevention of asbestos-related diseases and disabilities that may result from unnecessary exposure to improperly performed asbestos work, and in public confidence in those who conduct asbestos work safely in accordance with the training certification and licensing program.

The proposed amendments implement recent amendments to the Asbestos Control and Licensing Act and codify existing policies and simply build upon existing licensing, permitting and certification programs in the respective Departments. The amendments continue to enhance the asbestos control and licensing program and thereby further minimize public exposure to the inherent dangers from operations which involve the remediation of asbestos-containing materials.

The compliance and enforcement activities under these rules is an indispensable part of the Departments' efforts to ensure that all asbestos abatement work meets the state-of-the-art and state-of-the-science guidelines. Failure on the part of any of the regulated parties to perform competent asbestos abatement work could result in an increase in asbestos-related disease and disability.

Economic Impact

Building owners will continue to benefit from the assurance that they are paying qualified, competent and knowledgeable licensed and permitted individuals to perform asbestos abatement work. Contractors, workers and supervisors will continue to benefit from the elimination of unfair competition from unlicensed and unpermitted individuals performing asbestos abatement work in violation of regulatory requirements. Training providers will continue to benefit by the establishment of a certification program in which they can offer Department of Health approved training courses and collect fees from individuals wishing to participate in their courses. These rules will enhance opportunities for individuals participating in the State certification program by enabling them to perform asbestos-related activities required by Federal mandates.

The general public will benefit from reductions in wage loss, insurance, medical expenses, disability compensation payments and other costs related to asbestos-related disabilities.

Employer licenses and employee permit application fees are reasonable to help offset anticipated enforcement and administrative costs. Under the proposed alternatives, the fees associated with the issuance of employers licenses and supervisor and worker permits are anticipated to generate sufficient revenue to offset the cost of the administration of the asbestos control and licensing program. Under any proposed Department of Labor alternative, approximately $400,000 of revenue is expected to be generated in the first year. Annual Training Certification fees are reasonable to help offset administrative costs associated with the training and certification program. Training providers applying for Department of Health certification will be assessed an annual fee of $500.00 per discipline, which will result in an estimated net sum of $14,000 in the first year.

The costs incurred to comply with these rules are far less than the benefits set forth above.

Regulatory Flexibility Analysis

These rules apply to asbestos abatement contractors, workers, supervisors and training agencies, a majority of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules' compliance requirements, as amended, are discussed in the Summary above. Previous experience with these rules indicates that the proposed amendments will not impose any significant additional recordkeeping and reporting requirements, beyond those costs associated with day-to-day business activities. The initial and annual costs for compliance with this chapter are limited to the fees for licenses and permits and the fees for training certification. Additional professional services are not required in order to comply with these amendments. Given the compliance and enforcement needs of the asbestos control and licensing program, the Departments are not able to provide lesser requirements or exemptions for small businesses.

Full text of the proposed readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 12:120 and 8:60.

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

12:120-1.4 (8:60-1.4) Scope

(a) This chapter shall apply to:

1. (No change.)

2. **Training,** [Examination] **examination** and issuance of permits to workers;

3. **Training,** [Examination] **examination** and issuance of permits to supervisors;

4.-6. (No change.)

(b) This chapter shall not apply to:

1. (No change.)

2. The stripping, **limited** repair, or removal of [10] **three** feet or less of asbestos-containing material from piping;

3. The stripping, **limited** repair or removal of [25] **three** square feet **or less** of asbestos-containing material from any duct, boiler, tank, structural member, or similar equipment;

4. (No change.)

5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials in all but demolition projects; [or]

6. [Private] **The licensure of private** employers subject to the **Federal** Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair[,] or remove asbestos-containing material in their own facility[.]**; or**

7. The permitting of employees subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., who apply, enclose, encapsulate, repair or remove asbestos-containing materials in their employer's own facility.

12:120-1.5 (8:60-1.5) Documents referred to by reference

The availability of standards and publications referred to in this chapter is set forth at N.J.A.C. 12:120-[8]**9** and 8:60-[8]**9**.

12:120-2.1 (8:60-2.1) Definitions

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

"Accepted engineering practices" means those practices which conform to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.

...

"Applicant" means any person seeking to obtain either an asbestos abatement worker permit, an asbestos abatement supervisor permit[,] **or** an employer license, or an agency seeking certification to conduct asbestos abatement training.

...

"Asbestos-containing material" **(ACM)** means any material [which contains] **containing** more than one percent asbestos [by weight] **which has been applied on any ceiling, wall, duct, boiler, tank, pipe, structural member, or on any other part of a building or equipment.**

...

"Commissioner" means the Commissioner of Labor or his **or her** authorized designee.

"Commissioner of Health" means the Commissioner of Health or his **or her** authorized designee.

...

"Department of Health" means the [Asbestos Control Service] **Environmental Health Services** of the New Jersey Department of Health, CN 360, Trenton, N.J. 08625-0360.

...

"Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work or directly performing the asbestos work. **In the case of a corporation, the officers of the corporation and any agents having the management of the corporation shall be deemed to be employers of the employees of the corporation for the purposes of this Act.** This term shall apply to private employers and to the State, its political subdivisions and

any boards, commissions, schools, institutions or authorities created or recognized thereby. This term also includes contractors and subcontractors.

["Experienced asbestos worker" means any person who has worked with either the application, enclosure, encapsulation, repair, or removal of asbestos-containing material and who has completed an approved New Jersey Department of Health Experienced Asbestos Worker training course prior to June 18, 1985.]

...

"f/cc" means fibers per cubic centimeter.

"Friable" means asbestos-containing material that when dry may be crumbled, pulverized or reduced to powder by hand pressure, and includes previously non-friable asbestos-containing material after that material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Instructor" means any person(s) hired by a training agency and approved by the Department of Health for the purpose of instructing a Department of Health approved asbestos training course.

"Interactive/participatory teaching method" means instruction which consists of active participation of the trainees, such as brainstorming, hands-on training, demonstration and practice, small group problem solving, discussions, problem posing, group work assignments, question and answer periods and role-playing sessions. Lecture is not considered an interactive participatory teaching method.

...

"Limited repair" means the utilization of accepted engineering practices to minimize fiber release to return three linear feet or less or to return three square feet or less of damaged asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment to an undamaged condition or to an intact state by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released.

"May" [means] **indicates** a discretionary [term] **action.**

...

"PCM" or "phase contrast microscopy" means the scientific method of air sampling analysis which enhances contrast between fibers (trapped on a filter) and the background at a magnification of approximately 400x. This method cannot distinguish asbestos fibers from other fiber types and only detects those fibers longer than five millionths of a meter and wider than one quarter of one millionth of a meter.

...

"Public or private building" means any building, including commercial buildings as defined in 40 C.F.R. Part 763, Appendix C to Subpart E, or as defined in N.J.A.C. 5:23-8.

...

"Repair" means the utilization of recommended work practices to minimize fiber release to return more than three linear feet or more than three square feet of damaged asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment to an undamaged condition or to an intact state by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released.

"Shall" [means] **indicates** a mandatory requirement.

...

"Supervisor" means any person who has completed an asbestos supervisor training course approved by the Department of Health and who has successfully passed a written asbestos supervisor examination devised and administered under the approval of the Department of Health for the position of supervisor and who possesses a valid asbestos supervisor permit issued by the Department of Labor. [Individuals who qualify under the experienced worker provision of this chapter shall also be recognized as supervisors.]

"TEM" or "transmission electron microscopy" means the scientific method of air sampling analysis whereby an electron beam is focused onto and through a sample collected on a filter, then projected onto a fluorescent screen. The changing projected images which result from the varying densities of the sample can detect the smallest diameter asbestos fibers. The images are basically shadows of the particles being examined. Typically, the sensitivity of TEM analysis is between 100 to 1,000 times greater than that of PCM analysis. When used to its fullest capabilities, TEM analysis is definitive for asbestos fibers and can provide information into the crystalline structures of individual fibers.

...

"Training agency" means a training provider approved or certified by the Department of Health to conduct asbestos training courses.

"Training course" means any asbestos training course approved by the Department of Health in accordance with the requirements of N.J.A.C. 12:120 and 8:60.

...

"U.S.E.P.A." means the United States Environmental Protection Agency.

...

12:120-3.2 (8:60-3.2) Compliance

(a) Every employer falling within the scope of this chapter, [whose employees apply, enclose, encapsulate, repair, or remove asbestos-containing materials] **who directly or indirectly performs any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enters into any contract with the owner or owner's representative for the employer to perform such work or services,** shall comply with the provisions of this chapter and shall be [duly licensed] **issued a nontransferable license** by the Commissioner of Labor.

(b) Every employee falling within the scope of this chapter [who applies, encloses, encapsulates, repairs, or removes asbestos-containing materials] **who performs the functions of application, enclosure, repair, removal or encapsulation of asbestos** shall [be required to hold a] **procure a performance permit** [for such purpose] issued by the Commissioner of Labor pursuant to this chapter.

(c) Every employer **and employee** shall take all prudent measures to comply with written recommendations made by the Commissioner of Labor or the Commissioner of Health, as the case may be.

12:120-3.3 (8:60-3.3) Interface of State agencies

(a) (No change.)

(b) The Department of Health, under the provisions of this chapter, shall:

1. (No change.)

2. Certify the course of training [and the examination thereon given to] **for** workers and supervisors;

3. Have the authority to develop, approve and administer examinations for workers and supervisors;

4. Collect fees for the certification of training courses and the administration of examinations;

Recodify existing 3.-4. as **5.-6.** (No change in text.)

12:120-3.4 (8:60-3.4) [Disorderly persons offense] **Enforcement**

(a) In accordance with N.J.S.A. 34:5A-41, any person who violates a provision of this chapter [is] **shall, upon conviction, be** guilty of a [disorderly persons offense] **crime of the third degree and, notwithstanding the provisions of N.J.S.A. 2C:43-3, shall be subject to a fine of not more than $25,000 in addition to any other appropriate disposition authorized by subsection b of N.J.S.A. 2C:43-2.** [and is liable for a fine of $1,000.00 or imprisonment not in excess of six months, or both.]

(b) The Commissioner of Labor or the Commissioner of Health, as the case may be, as an alternative to or in addition to the fines and imprisonment authorized in (a) above, may [impose administrative penalties in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5] **employ the following powers and remedies in enforcing their respective responsibilities under the Act:**

1. Whenever either the Commissioner of Labor or Health find that a person has violated any provision of the Act for which that Commissioner has the responsibility to enforce, that Commissioner may issue an administrative order to abate the violation. The administrative order must:

i. Specify the provisions of the Act which the person has violated;

ii. Give notice of the person's right to an informal conference or hearing pursuant to N.J.A.C. 12:120-8 and 8:60-8, on the matters contained in the order. Upon a request for an informal conference or formal hearing, the Commissioner of Labor or Health may grant a stay of the administrative order following review of a written request which includes a factual basis and clearly supports the appropriateness of the stay.

2. Either the Commissioner of Labor or Health may institute an action or proceeding in the Superior Court for injunctive or other relief for any violation of this Act for which that Commissioner has the responsibility to enforce and the court may proceed in the action in a summary manner.

(c) Either the Commissioner of Labor or the Commissioner of Health may assess a civil administrative penalty in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5, not to exceed $25,000 for each violation of this Act for which that Commissioner has the responsibility to enforce.

1. Each day during which the violation continues shall constitute an additional, separate and distinct offense.

2. The assessment of a civil administrative penalty shall not be levied until after the alleged violator has been notified by certified mail or personal service. The notice of assessment shall include:

i. A reference to the section of the statute violated;

ii. A concise statement of the facts alleged to constitute a violation;

iii. A statement of the amount of civil administrative penalties to be imposed; and

iv. A statement of the alleged violator's right to an informal conference or formal hearing pursuant to N.J.A.C. 12:120-8 et seq. and 8:60-8 et seq.

3. Either Department may negotiate the amount of a civil administrative penalty as it deems appropriate.

4. Payment of the assessment of a civil administrative penalty is due upon issuance of a final order by the Commissioner of Labor or the Commissioner of Health.

5. The Commissioner of Labor or the Commissioner of Health may file a civil action to recover a civil administrative penalty with costs pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(d) A person who violates an administrative order issued pursuant to subsection (b)1 above, or who violates a court order issued pursuant to subsection (b)2 above, or who fails to pay in full an administrative assessment pursuant to subsection (c) above, shall be subject, upon court order, to a civil penalty not to exceed $50,000 per day for such violation.

(e) The pursuit of any of the remedies specified in this section shall not preclude either Commissioner from seeking any other remedy.

12:120-3.5 (8:60-3.5) **Civil** [A]administrative penalties

(a) Employers, [and] training agencies **and instructors** [shall be required to pay the] **may be assessed civil** administrative penalties [as set forth in Table 3.5(a)] **not to exceed $25,000** for each violation of the Act or this chapter[.], **including, but not limited to:**

[Table 3.5(a)
Employer/Training Agency Penalties]

[Violation]	[Penalty Up To]
1. Performing as an employer without a license;	[$1000.00]
2. Allowing an employee to work without a permit;	[$1000.00]
3. Submitting false information on the application for a license;	[$1000.00]
4. Submitting false information on the application for a course certification **or instructor approval;**	[$1000.00]
5. Performing as a training agency without certification;	[$1000.00]
6. Failure to [follow required work practices] **meet license performance standards when performing asbestos abatement work;**	[$1000.00]
7. Failure to perform quality asbestos training;	[$1000.00]
8. Submitting false information on training records;	
9. Failure to fulfill notification requirements pursuant to N.J.A.C. 12:120-7 and 8:60-7;	
[8.]**10.** Other violations of the Act or this chapter.	[$500.00]

(b) Workers, supervisors, and trainees [shall be required to pay the] **may be assessed civil** administrative penalties [of Table 3.5(b)] **not to exceed $25,000** for each violation of the Act or this chapter[.], **including, but not limited to:**

[Table 3.5(b)
Worker/Supervisor/Trainee Penalties]

[Violation]	[Penalty Up To]
1. Working as an employee without a permit;	[$500.00]
2. Submitting false information on the application for a permit;	[$500.00]
3. Submitting false information on the application for an examination;	[$500.00]
4. Submitting false information to gain entrance into an examination;	[$500.00]
5. Using fraudulent means during the taking of an examination;	[$500.00]
6. Using fraudulent means to pass an examination;	[$500.00]
7. Tampering with, altering, or defacing a permit;	[$500.00]
8. Submitting false information on training records;	
[8.]**9.** Other violations of the Act or this chapter;	[$500.00]

(c) In assessing [an] **a civil** administrative penalty pursuant to this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, [shall] **may** consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1.-4. (No change.)

5. Economic benefit which the violator accrues as a result of [their] **the** violation; and

6. (No change.)

(d) In addition to other sanctions in the Act or this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall have the authority to require:

1.-2. (No change.)

3. The removal of any worker from the job site within the meaning and purposes of the Act; [and]

4. The removal of any supervisor from the job site within the meaning and purposes of the Act; **and**

5. The removal of any instructor from the training course within the meaning and purposes of the Act.

[12:120-3.6 (8:60-3.6) Hearings

(a) When the Commissioner of Labor or the Commissioner of Health, as the case may be, assesses an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5, the employer, the supervisor, the training agency, the trainee, or the worker shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) Any employer, supervisor, training agency, trainee, or worker shall have the right to an informal hearing before the Commissioner of Labor or the Commissioner of Health, as the case may be. Such hearing shall be held provided that a written request for the same is submitted within 10 days after the assessment of an administrative penalty issued pursuant to N.J.A.C. 8:60-3.5 and 12:120-3.5. When the hearing is held before the Commissioner of Labor or the Commissioner of Health, as the case may be, he or she shall state his or her findings and conclusions in writing and transmit a copy to the employer, supervisor, training agency, trainee, or worker.

(c) Any employer, supervisor, training agency, trainee, or worker shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform

Administrative Procedure Rules, N.J.A.C. 1:1, provided that a written request for the same is submitted within 10 days after the assessment of an administrative penalty under N.J.A.C. 12:120-3.5 and 8:60-3.5.

(d) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.]

12:120-4.2 (8:60-4.2) Exempted activities

The Commissioner of Health may exempt from the license requirements those designated asbestos-related activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

12:120-[4.2]**4.3** (8:60-[4.2]**4.3**) Application for license

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

(d) [Applicants] **Where applicable, applicants** shall furnish evidence of applicable full time asbestos work experience as an employer. This experience shall have been completed within five years of the filing of the application. This experience shall be listed by job name, location, time involved, and cost of the contract.

(e) No license shall be granted to an employer:

1. If [he] **the employer** is less than 21 years of age; [or]

2. If [he] **the employer** has been found to be in non-compliance with N.J.A.C. 12:120-[4.3]**3.2** and 8:60-[4.3]**3.2; or**

3. If the employer is unable or unwilling to comply with N.J.A.C. 12:120-4.4 and 8:60-4.4 within one year of the date of receipt of the application by the Division of Workplace Standards.

(f) (No change.)

(g) The Division of Workplace Standards shall be notified by the employer of any change of **business and/or home** residence. When writing, the license number shall be specified.

ALTERNATIVE A

(h) The application fee for [a biennial] **an annual** license shall be [$200.00] **$1,000. The fee for the issuance of a duplicate license shall be $100.00.**

ALTERNATIVE B

(h) The application fee for [a biennial license shall be $200.00] **an annual license shall be:**

1. $750.00 for employers that perform between 0 and 40 asbestos work projects in a single year;

2. $1,000 for employers that perform between 41 and 80 asbestos work projects in a single year; and

3. $1,250 for employers that perform over 80 asbestos work projects in a single year.

4. The fee for the issuance of a duplicate license shall be $100.00.

(i) Applicants for initial licenses shall project the number of asbestos work projects to be performed in the next year. Applicants for renewal licenses shall base their calculation on the number of asbestos work projects performed in the 12 month period immediately preceding submission of the application.

ALTERNATIVE C

The application fee for [a biennial] **an annual** license shall be **$500.00. The fee for the issuance of a duplicate license shall be $250.00.**

(i) The application fee for [a biennial] **an annual** license shall accompany the application and is nonrefundable.

(j)-(l) (No change.)

(m) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for licensing identified in (h) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for licensing shall have no bearing on the applicant's eligibility for a license.

12:120-[4.3]**4.4** (8:60-[4.3]**4.4**) Eligibility for employer license

(a) The applicant, to be eligible for a license as an employer, shall:

1. Provide evidence of having successfully completed the training course and pass the written examination for asbestos abatement supervisors devised and administered under the approval of the Department of Health as set forth at N.J.A.C. 12:120-6.2 and 8:60-6.2[.];

2. Have employed with the firm a job supervisor who holds a valid New Jersey asbestos supervisor permit; [or] **and**

[3. Have employed with the firm an experienced asbestos worker who has received a permit pursuant to N.J.A.C. 12:120-5.2(b) and 8:60-5.2(b) and who serves in a supervisor's capacity; and

4.]**3.** Disclose in and attach to the application form all information including, but not limited to, (a)4i through [ix]**x** below and such other information as shall demonstrate the applicant's reliability, [and] responsibility**, capability, competence, and knowledge to perform asbestos work safely and to minimize unnecessary health hazards to citizens**:

i. A copy of the employer's certificate of insurance specifying the name of the insurance carrier, policy number, [and] policy period under which the entire New Jersey Workers' Compensation obligation is insured**, and which specifies both the New Jersey Department of Labor, Office of Asbestos Control and Licensing, and the New Jersey Department of Health, Environmental Health Services, as certificate holders of the insured**;

ii.-vii. (No change.)

viii. Any previous and pending litigation pertaining to other State, Federal, local laws or regulations or both; [and]

ix. A list of all public and private asbestos abatement projects performed within the past five years; **and**

x. A copy of the employer's standard operating procedures which demonstrate capability, competence and knowledge. Such policies and procedures should include, but are not limited to, respiratory protection and usage, personal protective equipment, engineering methods and controls, waste handling and disposal, decontamination, safety considerations and emergency procedures, and detailed abatement procedures for specific asbestos-containing materials.

[5. Establish that the applicant is of good moral character. If the applicant is a corporation, this requirement shall apply both to the corporation and to those corporate officers who are responsible for the day-to-day operation of the corporation. Where a corporate applicant is owned by a close corporation, this requirement shall also apply to owners of more than 10 percent of the shares in the corporation.]

12:120-[4.4]**4.5** (8:60-[4.4]**4.5**) Granting of employer license

(a) A license shall be granted in accordance with (b) below, when an employer can comply with N.J.A.C. 12:120-[4.3]**4.4** and 8:60-[4.3] **4.4.**

(b) The license for an employer shall:

1.-4. (No change.)

5. Be valid for [two] **one** year[s] from the date of issuance; [and]

6. (No change.)

7. Be nontransferable.

i. [Where an employer license is issued to a close corporation, the transfer in ownership of 10 percent or more of the shares in the license shall constitute a license transfer.] **A transfer includes, but is not limited to, the sale of stock in the form of a statutory merger or consolidation, the sale of the controlling shares of the assets, the conveyance of real property, the dissolution of corporate identity, and the financial reorganization and initiation of bankruptcy proceedings.**

ii. The Commissioner shall reasonably have the right to examine and review all pertinent employer records relating to ownership to facilitate determinations on transfers.

(c) The license shall be [either an A license or a B license.] **issued by the Commissioner as:**

1. An "A" license [shall permit] **granting approval to** the employer to perform any type of asbestos work.

2. A "B" license [shall permit] **granting approval to** the employer to remove asbestos-containing material from mechanical systems, such as pipes, boilers, ducts, flues, or breeching.

(d) The Commissioner may issue employer licenses with such conditions as the Commissioner deems necessary, and as adopted by regulation, specifying the scope of work authorized by such licenses.

(e) The Commissioner shall not grant a license unless the employer has certified that the employer's supervisor has completed a training course and examination certified and approved by the Department of Health.

12:120-[4.5]**4.6** (8:60-[4.5]**4.6**) Identification of licensee

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

(c) All [commercial] vehicles **in** use[d] **commercially by an employer** [in connection with the] **performing the functions of** application, enclosure, encapsulation, repair, or removal of asbestos-containing material shall be visibly marked with the employer's New Jersey Department of Labor-issued license number.

(d) The employer shall have a New Jersey Department of Labor-issued duplicate of the original license available at each job site. [This Department of Labor-issued duplicate of the original license shall be available at a cost of $20.00.]

(e) (No change.)

12:120-[4.6]**4.7** (8:60-[4.6]**4.7**) [Work practices] **License performance standards**

(a) Every licensee shall ensure that all asbestos work performed conforms to **those license performance standards as identified at N.J.A.C. 12:120-4.4(a)3 and 8:60-4.4(a)3, including, but not limited to,** the following:

1. Accepted engineering practices **which protect human health and the environment;**

2. **Compliance with** 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A and M;

3. **Compliance with** N.J.A.C. 7:26, Non-Hazardous Waste Regulations; and

4. **Compliance with** N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities and public buildings as defined at N.J.A.C. 5:23-8.2.

(b) (No change.)

(c) Every licensee shall provide for a final inspection upon completion of the project.

1. This final inspection shall include a thorough visual inspection of the work site and [the conduct of] **clearance** air monitoring. **A sufficient number of air samples shall be taken to be representative of the work area.**

i. For abatement actions less than or equal to 160 square feet, or less than or equal to 260 linear feet, clearance air samples may be analyzed by PCM. The clearance air samples shall be considered acceptable when each of the samples analyzed indicates a fiber concentration of less than or equal to 0.01 f/cc of air.

ii. For abatement actions greater than or equal to 160 square feet, or greater than or equal to 260 linear feet, clearance air sampling shall be conducted by TEM in accordance with 40 C.F.R. 763.90(i)(3) and (4).

(d) Every licensee shall be responsible for immediately [correcting] **having corrected** at no additional charge to the customer, any violation of the standards of (a) above discovered in the work performed by the licensee.

12:120-[4.7]**4.8** (8:60-[4.7]**4.8**) Suspension or revocation of employer license

(a) (No change.)

(b) Any employer shall have his or her license suspended or revoked for:

1.-4. (No change.)

5. Any violation of N.J.A.C. [8:60 and] 12:120 **and 8:60** found to be of an extreme nature, taking into account the considerations, where appropriate, specified at N.J.A.C. 8:60-3.5(c) and 12:120-3.5(c); or

6. (No change.)

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

(e) All employer licenses shall expire [two] **one** year[s] from the date of issuance.

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

(h) In all cases where the Commissioner of Labor proposes to revoke or suspend a license, or denies an application for a license, the employer shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8.

12:120-[4.8]**4.9** (8:60-[4.8]**4.9**) Renewal of employer license

(a) (No change.)

(b) The license shall be renewed [biennially] **annually.**

(c) The application fee for renewal of a license shall be [$200.00] **the same as the application fee charged for an initial license under N.J.A.C. 12:120-4.3(h) and 8:60-4.3(h).**

(d)-(h) (No change.)

(i) [The cost of a duplicate license shall be $20.00.

(j)] The replacement cost of a license which has been altered, defaced, mutilated, or lost shall be [$20.00] **the same as the fee charged for the issuance of a duplicate license under N.J.A.C. 12:120-4.3(h) and 8:60-4.3(h).** Replacement shall be made only after review by the Commissioner.

Recodify existing (k) as **(j)** (No change in text.)

(k) In all cases where the Commissioner refuses to renew a license, the employer shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8.

[12:120-4.9 (8:60-4.9) Hearings for employers

(a) In all cases where the Commissioner proposes to revoke or suspend a license, refuses to renew a license, or denies an application for a license, the employer shall have the right to an informal hearing under (c) below or a formal hearing under (d) below or both upon receipt by the Commissioner of a request for the hearing within 10 days of receipt of notice of the proposed agency action.

(b) In the interest of protecting employee health or public health, the Commissioner of Labor or the Commissioner of Health, as the case may be, may suspend a license prior to a hearing. When the license has been suspended, the employer shall have the right to a hearing within 10 days of the notice of suspension.

(c) When an informal hearing is held before the Commissioner, he or she shall state his or her findings and conclusions in writing and transmit a copy to the employer.

(d) The employer shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 56:1F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.]

12:120-5.2 (8:60-5.2) Exempted activities

The Commissioner of Health may exempt from the permit requirements those designated asbestos-activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

12:120-[5.2]**5.3** (8:60-[5.2]**5.3**) Requirements for obtaining an asbestos worker or an asbestos supervisor permit

(a) The Commissioner shall issue a permit to each applicant who satisfies the requirements listed below. The applicant shall:

1. (No change.)

2. Successfully complete either the asbestos abatement worker or asbestos abatement supervisor training course approved by the Department of Health and pass a written examination devised and administered under the approval of the Department of Health for each respective position; **and**

i. Proof of passing the written examination shall be submitted with the permit application[; and].

3. (No change.)

[(b) The Commissioner shall issue a permit to an experienced asbestos abatement worker who satisfies the requirements listed below. The experienced asbestos abatement worker shall:

1. Be at least 18 years of age;

2. Submit to the Division of Workplace Standards evidence that the applicant has completed a minimum of 24 hours of instruction in a training course which has been approved by the Commissioner of Health as substantially complying with the asbestos training programs as set forth at N.J.A.C. 12:120-6 and 8:60-6;

3. Submit to the Division of Workplace Standards evidence of having had and passed a qualitative and quantitative respirator fit test administered by a qualified industrial hygienist or health professional;

4. Submit to the Division of Workplace Standards an application as set forth at N.J.A.C. 12:120-5.4 and 8:60-5.4; and

5. Submit to the Division of Workplace Standards an application as set forth at N.J.A.C. 12:120-5.6 and 8:60-5.6; and

6. Submit to the Division of Workplace Standards documentation of previous asbestos work experience.]

12:120-[5.3]**5.4** (8:60-[5.3]**5.4**) Procedures for completing training course and examination

(a) Each applicant required by this subchapter to complete asbestos training shall register at a training agency which has been certified by the New Jersey Department of Health to offer such training. A list of certified training agencies is available from the Department of Health.

1. The topics for worker [and supervisor] training are set forth at N.J.A.C. 12:120-6.2 and 6.6[, 6.7] and N.J.A.C. 8:60-6.2[,] **and** 6.6 [and 6.7.];

2. The topics for supervisor training are set forth at N.J.A.C. 12:120-6.2 and 6.7 and N.J.A.C. 8:60-6.2 and 6.7; and

3. Upon successful completion of the training course, all applicants shall complete an "Asbestos Trainee Evaluation" form (ASB-24).

(b) Upon successful completion of the training course, each applicant shall register [through the training agency] to take a written examination administered under the approval of the Department of Health.

1. Each applicant shall bring the following to the examination:

i. The trainee's copy of the "Asbestos Trainee Evaluation" [Form] **form** (ASB-24);

ii.-iii. (No change.)

(c) Each applicant who receives a score of at least 70 **percent** on the worker examination shall pass the examination for the worker permit.

1. If an applicant fails to pass the worker examination [after three opportunities] **within one year of completion of training** and still desires to obtain a worker permit, such applicant shall retake the entire [four-day] worker training course.

(d) Each applicant for a supervisor permit who achieves a score of at least 70 **percent** on the supervisor examination shall pass the examination for the supervisor permit.

1. If an applicant fails to pass the supervisor examination [after three opportunities] **within one year of completion of training** and still desires to obtain a supervisor permit, such applicant shall retake the entire [five-day] supervisor training course.

[(e) Each applicant for a supervisor permit who achieves a score of 60 to 69, inclusive, shall qualify for a worker permit.

1. If an applicant who scores from 60 to 69 decides not to take the supervisor examination within the remaining opportunities, such applicant shall notify the Department of Labor for purposes of obtaining a worker permit and submit to the Department of Labor the applicant's copy of the Asbestos Trainee Evaluation Form (ASB-24). If an applicant selects this option, the applicant will lose his or her opportunity to retake the supervisor examination without retraining.]

(e) Applicants who receive a permit as a supervisor may perform the duties of a worker without possessing a separate work permit.

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

(h) Applicants who do not take **or pass** the examination within one year of completion of their training shall retake the complete training prior to being examined.

(i) Applicants who [fail to pass the examination within two years of completion of their training shall retake the complete training prior to being examined] **have met the requirements as set forth in this section, but have failed to submit an application or obtain a permit within one year of completion of initial training, shall provide evidence of having successfully completed an annual refresher training course pursuant to N.J.A.C. 12:120-6.8 and 8:60-6.8 in order to qualify for an asbestos permit.**

(j) Each applicant who holds a valid New Jersey worker permit and wishes to upgrade to a supervisor permit must complete all training as set forth at N.J.A.C. 12:120-6.2(b) and 6.7 and N.J.A.C. 8:60-6.2(b) and 6.7 and the requirements of this section.

12:120-[5.4]**5.5** (8:60-[5.4]**5.5**) Procedures for completing permit application

(a) (No change.)

(b) Each applicant shall provide the following to the Division of Workplace Standards:

1. Name, address, date of birth, age, sex, height, weight, eye color, driver's license number, **and** telephone number[, social security number];

3. The name and location of the course where the applicant has successfully completed asbestos training, the date of completion, and number of hours of training[.];

i. (No change.)

ii. The applicant shall submit proof of passing the written examination[;].

3. Two recent, identical passport-size color photographs taken against a white background or backdrop with the applicant's face being not less than three quarters of an inch in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face in the photographs[.]; **and**

i. The applicant shall **legibly** print his or her name on the back of both photographs submitted.

ii. (No change.)

[iii. If a permit is issued, the Department of Labor shall laminate the second photograph on the permit.]

4. (No change.)

(c) Each applicant is requested to voluntarily provide his or her social security number in his or her permit application to assist the Commissioner in the enforcement of the provisions of N.J.S.A. 34:5A-32 et seq.

1. Each social security number collected may be used as an identifier in the Commissioner's computerized recordkeeping system to aid in the processing of permit applications.

2. Each social security number collected shall remain confidential to the Department of Labor.

[(c)](**d**) The applicant shall sign and date a statement certifying that the information contained in the application is accurate, true, and complete to the best of [their] **his or her** knowledge.

ALTERNATIVE A

[(d)](**e**) The applicant **for a worker permit** shall submit a $50.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.

ALTERNATIVES B AND C

[(d)](**e**) The applicant **for a worker permit** shall submit a **$55.00** non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.

ALTERNATIVE A

(f) The applicant for a supervisor permit shall submit a $75.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.

ALTERNATIVES B AND C

(f) The applicant for a supervisor permit shall submit a $65.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.

(g) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for permit identified in subsections (e) and (f) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for permit shall have no bearing on the applicant's eligibility for a permit, waive the fees for permits identified in subsections (e) and (f) above.

12:120-[5.5]**5.6** (8:60-[5.5]**5.6**) Length of permit

(a) Each permit issued by the Commissioner shall be [conditionally] valid for [a two] **one** year [period] **from the date of issuance.**

[1. Each permit holder shall have his permit validated annually upon the submission of evidence of satisfactory completion of a refresher training course approved by the Department of Health. The Department of Health shall establish the contents of the refresher training course.]

(b) A permit shall be automatically cancelled on the date of its expiration.

(c) Any person performing asbestos work requiring a permit under the Act or this chapter who performs such work while holding an expired permit shall be subject to the penalty provisions of the Act.

12:120-[5.6]**5.7** (8:60-[5.6]**5.7**) Contents of permit

(a) Each permit for an asbestos worker or asbestos supervisor shall be issued in writing, [be] signed by the Commissioner of Labor, and shall contain:

1.-3. (No change.)

4. The worker's or supervisor's [social security number] **unique identification number supplied by the Department of Labor.**

(b) Each permit for an asbestos supervisor shall contain, in addition to the requirements set forth at (a) above, "SUPVR" which shall indicate successful completion of the supervisor training course examination and the New Jersey Department of Health supervisor examination [or that the applicant meets the requirements for an experienced asbestos worker as set forth at N.J.A.C. 8:60-2 (12:120-2)].

12:120-[5.7]**5.8** (8:60-[5.7]**5.8**) Identification of permit holder

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

(e) An altered, defaced, mutilated, lost, or stolen permit may be replaced **upon written request** and a review of the circumstances by the Commissioner. [Replacement cost for the permit shall be $50.00.]

(f) A request for a replacement or duplicate permit shall be notarized and include:

1. The name, address and date of birth of the permit holder;

2. The worker's or supervisor's unique identification number;

3. The circumstances surrounding the loss of the permit, including when, where and how the permit was altered, defaced or multilated, lost or stolen; and

4. The altered, defaced, or mutilated permit, if applicable.

(g) The cost for a replacement or duplicate permit shall be $5.00 for a worker permit and $7.50 for a supervisor permit.

12:120-[5.8]**5.9** (8:60-[5.8]**5.9**) Suspension and revocation of permit

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

(c) Prior to suspending or revoking a permit, the Commissioner shall provide the worker or supervisor with [an oral or] written notice of the violations. This subsection shall not apply to situations set forth at (b) above.

1. (No change.)

(d) (No change.)

(e) Any applicant using fraudulent means to obtain an asbestos worker or an asbestos supervisor permit shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

1. The use of fraudulent means to obtain an asbestos supervisor permit shall invalidate any other New Jersey **asbestos** permit which the applicant may possess.

(f) In all cases where the Commissioner proposes to revoke or suspend a permit, or denies an application for a permit, the worker or supervisor shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

12:120-[5.9]**5.10** (8:60-[5.9]**5.10** Renewal of permit

(a) (No change.)

(b) The Commissioner shall renew a worker or supervisor permit if the renewal applicant has:

1. [Verified his or her identity and eligibility to work in the United States;

2.] Completed an application as set forth at N.J.A.C. 12:120-[5.4] **5.5** and 8:60-[5.4]**5.5** within [three] **one** year[s] of the expiration date of the expired permit;

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

(c) The Commissioner shall treat an application for renewal of a permit which has expired more than [three] **one** year[s] as an original application.

(d) In all cases where the Commissioner refuses to renew a permit, the worker or supervisor shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

[12:120-5.10 (8:60-5.10) Appeal procedures

(a) Any individual who is aggrieved by any Department of Labor action or inaction under this subchapter may request an informal administrative review for the purpose of resolving the dispute.

1. The aggrieved individual shall submit to the Division of Workplace Standards a written request for a review within five days from the date the individual received the notice of agency action or inaction.

2. The Department of Labor shall conduct the review within 10 days from the date the Division of Workplace Standards received the request for an informal review.

3. The Division of Workplace Standards shall notify the aggrieved individual in writing as to the time and location of the review.

4. The aggrieved individual may be represented by counsel or any other representative, or may represent himself or hersef at the review.

5. The aggrieved individual may present evidence, call witnesses and cross examine at the review.

6. The Department of Labor shall mail to the aggrieved individual its written decision in the matter within 10 days from the date of the review.

(b) Any aggrieved individual who disagrees with the Department of Labor's review decision may submit to the Division of Workplace Standards a written request for a formal hearing to be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 within 10 days from the date of the written decision.

1. If possible, the formal hearing shall be held within 30 days of the date the Division of Workplace Standards receives the written request for a formal hearing.]

12:120-6.1 (8:60-6.1) Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain and maintain **or renew** certification from the Commissioner of Health [for training agencies and] **to conduct** training courses on asbestos abatement as provided for in the Act. **At a minimum, training courses shall meet the following require-**

ments as set forth in this subchapter or 40 CFR 763, "Asbestos Model Accreditation Plan; Interim Final Rule," whichever is more stringent.

12:120-6.2 (8:60-6.2) Types of courses

(a) The asbestos abatement worker training course shall be presented over four days and shall include a minimum of [26] **28** hours of training, [exclusive of lunch and break times] **of which a minimum of 14 hours shall be dedicated to the conduct of hands-on training.** The topics which shall be presented [in the asbestos abatement worker training curriculum] are set forth at N.J.A.C. 12:120-6.6 and 8:60-6.6.

[1. All applicants for both worker and supervisor permits shall attend a certified training course which covers this curriculum.

2. The worker training curriculum shall be presented with a minimum of eight hours of hands-on practice in all phases of asbestos abatement operations including worker area preparation and removal of asbestos-like insulation from ceilings and pipes.

3. Hands-on removal training shall include wetting, scraping, cleaning, disposal, and decontamination.

4. Demonstrations not involving individual participation shall not count as hands-on training.]

(b) The asbestos abatement **contractor/**supervisor training course shall be presented over five days and shall include a minimum of [32] **35** hours of training, [exclusive of lunch and break times] **of which a minimum of 14 hours shall be dedicated to the conduct of hands-on training.** [The asbestos abatement supervisor training course shall consist of attendance of the four-day asbestos abatement worker training course specified in (a) above as well as an additional fifth day of training to include a minimum of six hours of training exclusive of lunch and break times.] The topics which shall be presented [over the fifth day of asbestos abatement supervisor training] are set forth at N.J.A.C. 12:120-6.7 and 8:60-6.7.

[1. All applicants for an asbestos abatement supervisor permit shall attend a certified training course following this curriculum unless they are qualified as experienced asbestos abatement workers.]

(c) Annual refresher training for asbestos workers shall be at least [six] **seven** hours. Annual refresher training for asbestos supervisors shall [consist of the six-hour asbestos worker refresher training course plus an additional two hours] **be at least eight hours.** The items required to be presented during refresher training are set forth at N.J.A.C. 12:120-6.8 and 8:60-6.8.

(d) The hour requirements listed in (a) through (c) above shall be exclusive of lunch and break times.

(e) Demonstrations not involving individual participation shall not be considered hands-on training.

(f) Initial and refresher training courses for both disciplines shall be specific to a single discipline and shall not be combined with training for other disciplines.

12:120-6.3 (8:60-6.3) Application for certification of training courses

(a) An applicant for certification of an asbestos abatement training course shall submit [a completed "Application for Certification as an Asbestos Training Agency" (ASB-23)] **an application** and a proposal **on forms provided by** [to] the Department of Health, specifying **the following**:

1. The name and address of the agency, institution or private firm which plans to conduct the training course, [and] the name of the responsible individual and his or her telephone number, **a list of any other states in which asbestos training certification is presently or has been held, and a statement of ownership**;

2. A description of **the** course location, [course schedule, including hours and projected dates,] **including dimensions and location of hands-on training,** and course fees;

3. (No change.)

4. [A detailed course] **Detailed** outlines of the course [curriculum] **curricula,** [including the topics] **as** set forth at N.J.A.C. 12:120-6.6 **through 6.8** and 8:60-6.6 **through 6.8** [for asbestos abatement worker training courses, N.J.A.C. 12:120-6.7 and 8:60-6.7 for asbestos abatement supervisor training courses, N.J.A.C. 12:120-6.8 and 8:60-6.8 for annual refresher training courses,] the amount of time allotted [to] **for** each topic, and [the name] **a list** of the instructors for each topic;

5. A description of the **interactive/participatory** teaching methods to be used to present each topic, including, where appropriate, [lectures,] discussions, demonstrations, hands-on training, and audio-visual materials. **Lecture is not considered an interactive/participatory teaching method.** When applicable, the name, producer, and date of production of audio-visual materials to be used shall be included;

6. (No change.)

7. Evidence demonstrating that the applicant has employed or contracted to employ a minimum of [two] **three** instructors, either on a full time or temporary basis, to satisfy the education, experience and qualifications criteria as set forth at N.J.A.C. 12:120-[6.4]**6.5** and 8:60-[6.4]**6.5**. Resumes describing special training and education and/or prior experience shall be submitted as documentation of compliance with the instructor criteria;

8.-9. (No change.)

10. A description **and the quantities** of the materials to be used for hands-on practice exercises and demonstrations including, but not limited to, hand tools, ladders, scaffolding, plastic sheeting, and other barrier construction supplies, air filtration units, water spray devices, decontamination facilities, [and] simulated asbestos material **and Material Safety Data Sheets (where applicable)**;

[11. A detailed description of the site of the training course including the address where demonstrations and hands-on practice exercises will be conducted;

12.] **11.** Any restrictions on attendance such as **literacy requirements,** English language only or other language to be used;

12. For any non-English language training course, all course materials, examinations and related course literature shall be translated into that language, with a written certification that the translation is accurate and valid;

13. Instructor-to-student ratio for the hands-on practice [experiences] **exercises** and demonstrations **shall be a maximum of 10 students per one instructor**;

14. Evidence that a no-smoking policy will be established, maintained[,] and enforced during all aspects of [asbestos abatement] training; [and]

15. A copy of the applicant's valid training agency certification previously issued by the Department of Health pursuant to this subchapter where applicable[.]; **and**

16. A copy of the written examinations to be administered to the trainees by the training agency.

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

(e) A non-refundable application fee for annual certification in the amount of $500.00 per discipline shall be forwarded with the application. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss in the transmission of the application.

(f) Certification of refresher training courses is expressly conditioned upon maintaining a certification in good standing for that discipline which the applicant is applying.

(g) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for certification of training agencies identified in (e) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for certification of training agencies shall have no bearing on the applicant's eligibility for certification.

[12:120-6.4 (8:60-6.4) Eligibility for certification of training courses

(a) Only training course certification applications meeting the requirements of this subchapter shall be approved by the Department of Health.

(b) The training agency applicant shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(c) The applicant shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials, and instructors to ensure that adequate training courses meeting the requirements of this subchapter can be conducted.

1. Class size shall be limited to no more than 25 students.]

12:120-6.4 (8:60-6.4) Training agency operating requirements

(a) Certified training agencies shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(b) Certified training agencies shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials and instructors to ensure that adequate training courses meeting the requirements of this subchapter can be conducted.

(c) Certified training agencies shall use any training materials, examinations, forms, questionnaires, surveys, informational or audiovisual aids which may be required by the Department of Health.

(d) Certified training agencies shall ensure that at least one course instructor represents them at any meeting sponsored by the Department of Health for the purpose of maintaining uniform and high quality training courses among certificants.

(e) Certified training agencies shall limit class size to 25 students for initial training courses.

(f) Certified training agencies shall limit class size to 30 students for refresher training courses.

(g) All certified training agencies shall notify the Department of Health at least two weeks in advance of the beginning of any training course. All notifications shall be in writing and shall be submitted on forms provided by the Department of Health. If any course information changes, the training agency shall notify the Department of Health as soon as that agency becomes aware of such changes.

(h) Certified training agencies shall ensure that all refresher trainees have met the requirements for obtaining a New Jersey permit as outlined at N.J.A.C. 12:120-5.3 and 8:60-5.3. Certificates of completion shall be issued only to those individuals who have met these requirements and have successfully completed the refresher course.

(i) Certified training agencies shall submit instructor documentation meeting the requirements of N.J.A.C. 12:120-6.5 and 8:60-6.5 to the Department of Health for approval prior to allowing that instructor to conduct any training course.

(j) Certified training agencies shall issue a certificate of completion to trainees upon their successful completion of an initial or a refresher training course. The certificate shall specify the following:

1. A unique certificate number;

2. The full name of the trainee;

3. Discipline;

4. The expiration date of the certificate;

5. The course completion date;

6. The name, address and telephone number of training agency;

7. The language in which the training course was given; and

8. Shall bear the signature of the course instructor.

(k) Certified training agencies shall permit entry to all training courses by representatives of the Department of Health for the purposes of course evaluation and determination of compliance with this subchapter.

(l) Certified training agencies shall limit individual classes to one language.

(m) Certified training agencies shall maintain the following records:

1. All documents specified in N.J.A.C. 12:120-6.5 and 8:60-6.5 that demonstrate the qualifications of the course instructors;

2. Student training records;

3. Daily class attendance records bearing the signature of the course instructor;

4. Copies of examinations administered by the training agency; and

5. Copies of instructor performance review records.

(n) Certified training agencies shall permit representatives of the Department to inspect and evaluate these records. Upon request by the Department of Health, training agencies shall provide copies of all training records for the purpose of inspection, evaluation and compliance.

(o) Certified training agencies shall maintain training records for a minimum of five years. The Department of Health shall be notified and be given the opportunity to take possession of all training records should an agency cease to conduct training.

(p) Certified training agencies shall notify the Department of Health, in writing, in advance of any changes in information submitted on its agency and course applications. Any course modifications made subsequently to certification shall require 10 days prior notification and shall be subject to Department of Health approval.

(q) Notwithstanding (g) above, certified training agencies shall notify the Department of Health in writing at least four weeks advance of any changes in their hands-on training site. Any changes in location and/or renovations to the site shall require a reinspection of the facility before training can be conducted at that site.

(r) Certified training agencies shall maintain a quality control plan which shall include, at a minimum, the following:

1. Procedures for periodic revision of training materials to reflect innovations in the field;

2. Procedures for annual review of instructor competency;

3. Procedures for administering the course examination to ensure the validity and integrity of the examination; and

4. Procedures for ensuring the adequacy of facilities and equipment.

(s) Certified training agencies shall cooperate fully with the Department of Health in all matters relating to the conduct of certified training courses, the administration of examinations, and the permitting of individuals pursuant to this chapter.

12:120-6.5 (8:60-6.5) Criteria for training course instructors

(a) To be eligible for certification of any training course, [two] **three** or more course instructors shall be employed. A sufficient number of instructors shall be hired to ensure that all of the education and experience criteria for instructors set forth below are met:

1. [All] **At least one** instructor[s] shall have experience in both the design, field performance[,] and evaluation of air monitoring programs, and **in** the design and implementation of respiratory protection programs.

2. All applicants applying for instructor approval after the effective date of this rule must take the New Jersey asbestos supervisor course and successfully complete the examination approved by the Department of Health.

[2.]**3.** [In order to quality to] **To** teach the sections of the course concerning the health effects of asbestos, **the instructor shall be** a qualified health professional [shall be employed].

[3.]**4.** To qualify to teach the hands-on [practice] **training** sessions, an instructor shall have **at least one year of** experience as a New Jersey asbestos abatement contractor or as a supervisor of asbestos abatement workers. This person shall have had direct experience in all phases of asbestos abatement work [including work area preparation, construction of barriers, the use of personal protective equipment, engineering controls, work practices, clean-up, disposal, and decontamination].

[4.]**5.** [An] **At least one** instructor shall have experience in designing, implementing, and evaluating either employee educational programs in occupational health and safety or vocational education programs.

[5. All translators shall have previously taken and successfully completed the asbestos worker course and shall have taken and successfully passed the asbestos worker examination.]

6. [Instructors teaching] **To qualify to teach the** smoking cessation topics, **instructors** shall have successfully completed a course in smoking cessation approved by the Department of Health.

12:120-6.6 (8:60-6.6) Criteria for topics in asbestos **abatement** worker training course[s]

(a) Training courses [for asbestos abatement workers] shall be designed and conducted to include, at a minimum, the **following** topics: [specified in (b) through (r) below.]

[(b) Introduction:

1. Goals of the training program;

2. New Jersey State Asbestos Policy—Trainees should be informed of the penalties which may be imposed for violating regulations issued to implement the Act;

3. History of asbestos use; and

4. Magnitude of asbestos problem;

(c) Recognition of asbestos:

1. Types, physical characteristics, and aerodynamics of asbestos fibers;

2. Asbestos products and their end uses;

3. Products where asbestos may be encountered; and

4. Need for specific laboratory analysis to positively identify asbestos.

(d) Health effects of asbestos:

1. Factors affecting disease development including: properties of asbestos, how asbestos enters the body (respiratory and digestive systems, abdominal and chest cavity), concentration and duration of exposure, critical dose, individual susceptibility and group susceptibility;

2. Body defenses;

3. Clinical signs of asbestos exposure based upon visible changes in x-rays including plaques and asbestos bodies;

4. Asbestos-related diseases: Asbestosis, lung cancer, mesothelioma, and digestive system cancers, including definitions, and the concepts of risk, latency, symptoms and diagnoses;

5. Health risk to family members of asbestos workers;

6. Effects of smoking; and

7. Effects of smoking cessation, various smoking cessation methodologies, and the resources available to aid in smoking cessation.

(e) Relevant Federal, State, and local regulatory requirements, procedures, and standards. Emphasis shall be directed at relevant EPA, OSHA, and State regulations concerning asbestos abatement employers, workers, and supervisors. Further emphasis shall be placed upon:

1. The scope of all relevant New Jersey regulatory requirements; and

2. The penalties imposed for violation of the Act or the rules promulgated thereunder.

(f) Purposes and methods of asbestos monitoring and testing:

1. Bulk samples;

2. Personal samples;

3. Area samples;

4. Sampling equipment demonstration: pumps, filters, calibration;

5. Interpretation of analytical results;

6. Current standards and proposed changes; and

7. OSHA regulations governing access to employee exposure and medical records.

(g) Case Studies: Typical problems and corrective measures:

1. Presentation by course instructor(s) of problems which have actually occurred during asbestos abatement operations and how these problems have been resolved;

(h) Introduction to remediation methods, removal, encapsulation and enclosure and to the principles of control which shall be applied to all asbestos application and remediation projects;

1. Protection of the worker;

2. Preparation of the workplace;

3. Minimize fiber release and work practices to minimize exposures;

4. Clean-up and disposal; and

5. Decontamination:

(i) Protection of the worker:

1. Protective clothing: disposable and non-disposable; purpose; requirements; options; who must wear; donning, removal, storage, handling and disposal; and types such as suits, booties, hoods, footwear, gloves, eye protection and hard hats;

2. Respiratory protection: purpose; types of respirators; characteristics and limitations; choosing respirators; factors affecting fit (facial hair); fit testing; methods for field testing; donning and removal; protection factors; inspection; cleaning; adjusting; use; storage; repair and replacement of parts;

3. Type "C" supplied air respirators, continuous flow or pressure demand class:

i. Description of physical characteristics; purpose; limitations; components of the respirator, including the compressed air cylinders, and quality specifications for compressed air, low air alarm, pressure regulator, manifold, lines or hoses, belt-mounted regulator, breathing hose and facepiece;

ii. A demonstration and practice exercises in donning, using, flow testing and adjusting these respirators.

4. Powered Air-Purifying Respirators (PAPR):

i. Description of physical characteristics; purpose; limitations; components of the respirator, including filters, battery, breathing hose and facepiece;

ii. A demonstration and practice exercises in donning, using, flow testing and adjusting these respirators.

5. Air-Purifying Respirators:

i. Description of physical characteristics; purpose; limitations; components of the respirator, including full/half facepiece, filters and cartridges;

ii. A demonstration and practice exercises in donning, using, fit testing and adjusting these respirators.

6. Occupational Safety and Health Administration regulations—29 CFR Part 1910.134 and 29 CFR Part 1926.58(h)—Respiratory Protection; and

7. Demonstration exercises of the above respirators, including fit testing or flow testing, donning, wearing, adjusting, filter replacing and cleaning procedures. Each trainee shall have individual, supervised personal practice using these procedures with at least one of the types of respirators listed in (i)3, 4, or 5 above. Fit testing shall be performed on each trainee using the OSHA "Irritant Fume Protocol".

(j) Preparation of the work area (hands-on practice required):

1. Occupants;

2. Furniture and equipment-clean and remove movable furniture and equipment and cover and seal unremovable equipment such as ductwork;

3. Ventilation and electric systems;

4. Flooring;

5. Enclosures: Plastic sheeting for horizontal surfaces;

6. Change area; and

7. Signs.

(k) Minimizing fibers in the air while disturbing and removing asbestos insulation (hands-on practice required):

1. Containment and glovebag techniques;

2. Wetting and scraping;

3. Vacuum cleaners equipped with High Efficiency Particulate Absolute (HEPA) Filters;

4. Specialized tools; and

5. Promptly bagging asbestos debris, and other housekeeping features.

(l) Special work practices to minimize exposure and health hazards.

(m) Personal hygiene.

(n) Proper clean-up and disposal (hands-on practice required):

1. Clean-up including techniques and sequence of activities; and

2. Disposal including bagging, drumming, storage and transport.
(o) Decontamination (hands-on practice required):
1. Decontamination areas: clean room, shower room and equipment room;
2. Direction of air flow; and
3. Sequential steps.
(p) General safety considerations:
1. Heat stress;
2. Fire safety;
3. Emergency procedures to follow in the event of fire and medical emergencies and the failure of containment barriers;
4. Gas engines;
5. Slips and falls;
6. Scaffolding;
7. Electrical hazards; and
8. Material handlings.
(q) Work procedures (hands-on practice required):
1. Trainees shall participate in simulated on-the-job activities in the following subjects: suiting up in disposable full body clothing; preparation of the work site; sealing off the work area; construction of a decontamination unit; various abatement techniques to include removal of asbestos; clean-up methods; material handling and disposal. Each trainee shall wear a respirator and other appropriate personal protective equipment during these activities. The respirator shall be one of those specified at N.J.A.C. 12:120-6.6(i)3, 4, or 5 and 8:60-6.6(i)3, 4, or 5; and
2. Trainees shall demonstrate knowledge acquired from entire course through discussion and demonstrations.
(r) Review and course evaluation:
1. Review;
2. Practice tests; and
3. Evaluation of course by participants.]
1. Background information on asbestos:
i. History of asbestos use; and
ii. Physical characteristics of asbestos.
2. Relevant Federal, State, and local regulatory requirements, procedures and standards;
3. Health effects related to asbestos exposure:
i. Effects of smoking; and
ii. Effects of smoking cessation, various smoking cessation methodologies and resources available to aid in smoking cessation;
4. Purposes and methods of asbestos monitoring and testing;
5. Case studies;
6. Personal protection of the worker (hands-on training required);
7. Preparation of the work area (hands-on training required);
8. Asbestos abatement and hazard reduction methods (hands-on training required);
9. Proper clean-up and disposal (hands-on training required);
10. Personal hygiene;
11. Decontamination (hands-on training required);
12. Additional safety hazards; and
13. Course review and course examination.

12:120-6.7 (8:60-6.7) [Additional criteria] **Criteria** for **topics in the asbestos abatement contractors**/supervisor['s] training course

(a) [The specialized course for asbestos abatement supervisors and contractors] **Training courses** shall [address] **be designed and conducted to include, at a minimum,** the following topics:
1. All of the topics pursuant to N.J.A.C. 12:120-6.6 and 8:60-6.6;
[1. Legal responsibilities and potential liabilities of various parties including, but not limited to, contractors, licensees, employers, employees, building owners and suppliers;
2. Insurance and bonding to include contractor issues:
i. Worker's compensation coverage and exclusions;
ii. Insurance coverage and exclusions; and
iii. Third-party liability and defenses.
3. Establishing a medical surveillance program;
4. Federal, State, and local recordkeeping requirements and records recommended for legal and insurance purposes;
5. The requirements as related to Asbestos Abatement Contractors as set forth at N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code;
6. How to supervise effectively;
7. Additional emphasis on work practices, including purposes, proper construction and maintenance of barriers and decontamination systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques for minimizing fiber release, use of wet methods and surfactants, use of negative pressure ventilation equipment, use and maintenance of HEPA vacuums, proper clean-up and disposal procedures;
8. Air monitoring for asbestos fibers including, but not limited to, aggressive air sampling procedures, air monitoring equipment and instrumentation, purposes of sampling, types of samples, and interpretation of results, specifically from analyses performed by polarized light microscopy, phase contract microscopy, and transmission electron microscopy;
9. Pressure differential monitoring including, but not limited to, sampling procedures, monitoring equipment and instrumentation, purposes of sampling, and interpretation of results;
10. Discussion of key elements that are included in contract specifications; and
11. Procedures for conducting a visual inspection of the worksite.]
2. Respiratory protection programs and medical monitoring programs (hands-on training required);
3. Insurance and liability issues;
4. Recordkeeping for asbestos abatement projects;
5. Supervisory techniques for asbestos abatement activities;
6. Contract specifications; and
7. Course review and course examination.

12:120-6.8 (8:60-6.8) Criteria for topics in refresher training courses

[(a) Certification for refresher training courses is expressly conditioned upon holding a certification in good standing for the asbestos abatement worker course and the asbestos abatement supervisor/contractor course.
(b) The asbestos abatement worker refresher training course shall consist of a minimum of six hours of training exclusive of lunch and break times covering:
1. Any changes in the Federal regulatory requirements applicable to workers;
2. Highlights of the New Jersey regulatory requirements applicable to workers;
3. Any new developments in applicable state-of-the-art asbestos abatement procedures; and
4. A review of the items specified at N.J.A.C. 8:60-6.6(b), (d), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (r) and 12:120-6.6(b), (d), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (r).
(c) The asbestos abatement supervisor refresher training course shall consist of a minimum of eight hours of training exclusive of lunch and break times. This refresher training shall consist of six hours of instruction covering the topics as required in (b) above, as well as an asbestos abatement supervisor-specific refresher training course consisting of two hours of training covering:
1. Any changes in the Federal regulatory requirements applicable to supervisors, contractors, or employers;
2. Highlights of the New Jersey regulatory requirements applicable to supervisors, contractors, or employers;
3. Respiratory protection programs and medical surveillance;
4. New developments in the state-of-the-art and state-of-the-science regarding monitoring for airborne asbestos fibers; and
5. A short review of the items specified at N.J.A.C. 12:120-6.7(a)1, 2, 3, 6, 8, 9, 10, and 11 and 8:60-6.7(a)1, 2, 3, 6, 8, 9, 10, and 11.]
(a) Refresher training for asbestos worker and contractor/supervisor courses shall consist of the topics designed to increase or enhance an individual's skills and knowledge necessary to perform the job tasks and job functions associated with the respective certification.

(b) Refresher training shall include, but not be limited to:

1. An overview of key health and safety practices;

2. An update on any relevant Federal, State or local regulatory changes;

3. Any new developments in applicable state-of-the-art technologies and abatement procedures;

4. Respiratory protection programs and medical surveillance; and

5. Course review.

[(d)](c) The Department of Health reserves the right to require additional refresher training course topics within one month of a certified training agency's receipt of written notice.

[(e) Certified training agencies shall issue a certificate of completion to trainees upon their completion of a refresher training course. The certificate of completion shall specify the name of the course, the certificate number, the expiration date of the certificate, the trainee's name, the trainee's social security number, the date of completion of refresher training, the location of the training, and shall be signed by the course instructor.]

12:120-6.9 (8:60-6.9) Granting of certification

(a) (No change.)

(b) An **annual** [yearly] certification shall be granted to a training agency which has demonstrated the ability to meet the requirements of this subchapter including course content, teaching methods, and instructor qualification based upon the application submission required by N.J.A.C. [8:60-6.3 and] 12:120-6.3 **and 8:60-6.3**, and such investigation as the Commissioner of the Department of Health should deem necessary.

(c) (No change.)

(d) An annual letter of [certificate] **certification** shall:

1.-6. (No change.)

[12:120-6.10 (8:60-6.10) Training agency operating requirements

(a) Certified training agencies shall use, in addition to their own, any training materials, evaluation forms, informational or audiovisual aids which may be supplied by the Department of Health.

(b) Certified training agencies shall ensure that at least one course instructor represents them at any meeting sponsored by the Department of Health for the purpose of maintaining uniform and high quality training courses among certificants.

(c) Certified training agencies shall limit class size to 25 students for the basic core curriculum.

(d) Certified training agencies shall limit class size to 30 students for the additional day of the asbestos supervisor course and for the annual refresher training course.

(e) All certified training agencies shall notify the Department of Health at least two weeks in advance of the beginning of any training course. The notification shall specify the address of the training, the times of the training, the type of training, the language in which the course is to be instructed, the expected number of trainees enrolled, and the instructors who will teach the course. If any course information changes, the certified training agency shall inform the Department of Health as soon as the agency becomes aware of such changes.

(f) All certified training agencies shall permit entry to all training courses by representatives of the Department of Health for purposes of course evaluation and determination of compliance with this subchapter.

(g) The certified training agency shall limit individual classes to not more than two languages. The language shall be the common language of the instructors and one translated language.

(h) The certified training agency shall provide to students taking the asbestos worker examination in a foreign language written materials including, but not limited to, study handouts and related literature in the same language as the New Jersey examination.

(i) All certified training agencies shall maintain student evaluation forms, daily attendance records and copies of examinations administered by the agency for any asbestos abatement course. The agency shall permit representatives of the Department of Health to inspect and evaluate these records.

(j) All certified training agencies shall notify the Department of Health in advance of any significant changes in any information submitted by the certificant on its agency and its course applications. Any course modifications made subsequently to receipt of certification shall require ten days prior notification and shall be subject to Department of Health approval. A conditional approval may be granted pending detailed evaluation of the changes. Notwithstanding this subsection, any such changes must continue to be in compliance with the substantive requirements of this subchapter.

(k) Notwithstanding (j) above, the certified training agency shall notify the Department of Health in writing at least four weeks in advance of any changes in the hands-on practice session site.

(l) All certified training agencies shall cooperate fully with the Department of Health in all matters related to the conduct of certified training courses, administration of examinations, and licensing of individuals pursuant to this chapter.]

12:120-[6.11]**6.10** (8:60-[6.11]**6.10**) Renewal of training agency certification

(a) In order to approve a training agency certification renewal application, the Commissioner of Health shall determine, based upon the application, that:

1.-2. (No change.)

3. The certificant has exhibited competence, integrity, and responsibility [during the previous certification year]; and

4. (No change.)

(b) (No change.)

(c) The annual application fee for renewal shall be $500.00 per discipline. The application fee shall be submitted with the application and shall be non-refundable. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department of Health for the loss or delay in the transmission of the application fee.

[(c)](d) Any application not complying with (b) above shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

[(d)](e) Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

12:120-[6.12] **6.11** (8:60-[6.12] **6.11**) Suspension or revocation of **training agency** certification **or instructor approval**

(a) Any certified training agency may have its **application denied,** certification suspended or revoked [for] **and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 12:120-3.5 and 8:60-3.5 for each violation listed below:**

1.-3. (No change.)

4. Submitting false information on an initial or renewal application, **trainee evaluation form, or course notification form;**

5. [Submitting false information on an "Asbestos Abatement Course Evaluation" form (ASB-25), on an "Asbestos Trainee Evaluation" form (ASB-24), or on an Application for Certification as an Asbestos Training Agency (ASB-23)] **Failure to submit information or notification within the required time periods specified in this subchapter;**

6. Falsification of training records, instructor qualifications, or other certification information;

7. Failure to maintain required records;

Recodify existing 6.-7. as **8.-9.** (No change in text.)

(b) Any instructor may have his or her application denied, approval suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 12:120-3.5 and 8:60-3.5 for each violation listed below:

1. Submitting false information on an application for approval as an asbestos training instructor;

2. Falsification of training records;

3. Failure to perform quality training;

4. Any violation of this subchapter; or

5. Any good cause within the meaning and purpose of the law.

(c) In all cases where the Commissioner of Health proposes to revoke or suspend certification or instructor approval, or denies an application for certification or instructor approval, the applicant shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

[12:120-6.13 (8:60-6.13) Hearings for applicants and certificants when certification has been denied, revoked or suspended

(a) When in the judgement of the Commissioner of Health, immediate suspension of a training agency certification is necessary to protect trainees or the public health and safety, the Commissioner of Health may suspend a certification pending the conduct of a hearing. When the certification has been suspended pursuant to this paragraph, the certificant shall have the right to a hearing within 10 days of such request.

1. A certificant shall have 10 calendar days after receipt of written notice of certification suspension pursuant to this section to request a hearing.

(b) In all cases where the Commissioner of Health proposes to revoke or suspend a certification, or denies an application for certification, the applicant shall have the right to an informal hearing under (c) below or a formal hearing under (d) below or both.

(c) An informal hearing before the Commissioner of Health may be held provided a written request is submitted within 10 days after the notice has been given that the Commissioner of Health proposes to revoke or suspend certification or proposes to deny an application for certification. When the hearing is held before the Commissioner of Health, he or she shall state his or her findings and conclusions in writing and transmit a copy to the applicant for certification.

(d) The certificant or certification applicant, as the case may be, shall have the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon submission of a written request for the hearing. The request for the hearing shall be received by the Commissioner of Health within 10 calendar days of receipt of due notice of the Commissioner of Health's proposed action.

(e) For the purposes of this section, due notice shall mean written notice mailed to the certificant or certification applicant's last filed address which specifies:

1. The intended agency action;
2. The legal basis for such action;
3. The facts supporting such legal basis; and
4. Notice of the right to a hearing:

i. The 10 day period to request a hearing; and

ii. The address to which such requests shall be sent.

(f) Where a certificant or certification applicant fails to request a hearing within the 10 day period, his right to a hearing pursuant to this section shall be deemed waived and the Commissioner of Health's proposed action shall become final.

12:120-6.14 (8:60-6.14) Examination of applicants

(a) Each applicant for a permit pursuant to N.J.A.C. 12:120-5 and 8:60-5 shall pass an examination in asbestos work and control. This examination shall be administered under the approval of the Department of Health pursuant to the procedures as set forth at N.J.A.C. 12:120-5.3 and 8:60-5.3.

1. Each applicant for an asbestos supervisor permit shall be required to successfully pass an English-language asbestos supervisor examination.]

12:120-7.1 (8:60-7.1) Purpose and scope of subchapter

(a) (No change.)

(b) This subchapter shall be applicable to all [licensed contractors who] **employers who are required to possess an asbestos license pursuant to N.J.A.C. 12:120-4 and 8:60-4 and who enter into a contract to** perform asbestos work in New Jersey.

12:120-7.2 (8:60-7.2) Notification requirements

(a) Every [licensee] **employer under the scope of this subchapter** who plans to perform asbestos work in New Jersey shall submit a written notification of intent to perform asbestos work at least 10 **calendar** days prior to beginning such work on forms specified by the Department of Health except where such work is exempted at N.J.A.C. [8:60-1.4(b) (12:120-1.4(b))] **12:120-1.4(b) (8:60-1.4(b)).**

1. The date of submission of the notice is determined to be the date as postmarked by the United States Postal Service on the transmittal envelope.

2. If the postmark is not legible, or if metered mail is used, the date of submission of the notice is determined to be the date of receipt by either the Commissioner of Labor or Health.

3. If an earlier mailing date is established by proof of mailing with a recognized United States Postal Service receipt, the date of submission of the notice is determined to be the established date.

4. The pick-up date of a recognized overnight delivery or courier service shall be deemed equivalent to a United States Postal Service postmark.

5. Facsimile transmissions of written notifications of intent to perform asbestos work are only accepted as submissions where emergency circumstances are warranted pursuant to this subchapter.

(b) The written notification required by (a) above shall include:

1.-5. (No change.)

6. The [scheduled] starting and **scheduled** completion dates of the asbestos work;

7. The name and address of the waste disposal site where the asbestos-containing material will be disposed; [and]

8. The name, address and New Jersey Waste Hauler identification number of the registered waste hauler; and

Recodify existing 8. as **9.** (No change in text.)

(c) Amended written notifications shall be submitted in accordance with and pursuant to N.J.A.C. 12:120-7.2(a) and (b) and 8:60-7.2(a) and (b). Amended notifications to the Commissioner of Labor and the Commissioner of Health are required when:

1. The starting date is delayed beyond the scheduled completion date as submitted on the initial notification;

2. The scheduled completion date will extend beyond the scheduled completion date as submitted on the initial notification;

3. The scope or description of the asbestos work to be performed for the facility changes; or

4. Any other items as required pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b) that may change.

(d) The Commissioner of Labor or the Commissioner of Health, as the case may be, may allow less than 10 **calendar** days prior notification where emergency circumstances [require] **warrant less than a 10 calendar day prior notification.**

1. To enable the Commissioner of Labor or the Commissioner of Health to determine whether a waiver of the 10 calendar day prior notification may be granted, the notifying party shall:

i. Submit a written explanation from the facility owner or from the third party environmental engineer representing the facility owner to both the Commissioner of Labor and the Commissioner of Health which details:

(1) The unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action; and

(2) The impact upon the facility owner should a waiver of the 10 calendar day prior notification not be granted.

ii. By facsimile transmission or express delivery, submit a written notice for the emergency circumstance pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b).

2. A request for a waiver of the 10 calendar days prior notification may be reviewed for approval by the Commissioner of Labor or Health when received by facsimile transmission or express delivery. Only after the Commissioner of Labor or Health has determined and has authorized that the emergency circumstance warrants a waiver, may the asbestos work proceed as notified.

[(c)](e) [The written] **Written** notifications required **pursuant to this subchapter** [by (a) above] shall be submitted to:

New Jersey Department of Labor
[Office of] Asbestos Control and Licensing Section
28 Yard Avenue, Station Plaza 4
CN [0]054
Trenton, NJ 08625-0054
and
New Jersey Department of Health
Environmental Health Services
CN 360
Trenton, NJ 08625-0360

[12:120-7.3 (8:60-7.3) Penalties

Any licensee who fails to comply with the requirements set forth in this subchapter shall be liable for a penalty of up to $500.00 as provided for at N.J.A.C. 8:60-3.5(a) and 12:120-3.5(a).]

SUBCHAPTER 8. APPEALS AND COMPLAINTS

12:120-8.1(8:60-8.1) Scope of subchapter

This subchapter shall apply to the procedures for appealing any action or inaction by the Commissioner of Labor or the Commissioner of Health, under the Act, including, the revocation, suspension or refusal to renew a license or permit, or denial of an application for a license or permit; the denial, revocation or suspension of a training agency certification or instructor approval; and the assessment of a civil administrative penalty. It shall also apply to the procedures for filing a citizen complaint alleging a violation of the Act.

12:120-8.2(8:60-8.2) Appeals

(a) Any individual who is aggrieved by any action or inaction of the Commissioner of Labor or the Commissioner of Health or his or her designee, under this chapter, shall have the right to an informal conference under (c) below or a formal hearing under (d) below or both upon receipt by the Commissioner of Labor or Health, as the case may be, of a written request within 10 calendar days of receipt of notice of the proposed agency action.

(b) In the interest of protecting employee or public health and safety, the Commissioner of Labor or the Commissioner of Health may suspend a license, permit, instructor approval or training agency certification prior to a hearing. When the license, permit, training agency certification or instructor approval has been suspended, the aggrieved person shall have the right to a hearing within 10 calendar days of the notice of suspension.

(c) Upon receipt of the written request, an informal conference shall be held before a designee of the Commissioner of Labor or Health, as the case may be, within 30 calendar days. The designee of the Commissioner of Labor or Health as the case may be, shall render a decision within 45 calendar days of the conference. Such decision shall state the findings and conclusions and shall be transmitted to the aggrieved person.

(d) Any party who disagrees with the decision of the Commissioner of Labor or Health's designee may submit a written request for a formal hearing in accordance with subsection (d) below.

(e) Upon receipt of the written request, a formal hearing shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) For purposes of this section, due notice shall mean written notice mailed to the aggrieved person's last filed address which specifies:

1. The intended agency action;

2. The legal basis for such action;

3. The facts supporting such legal basis; and

4. Notice of the right to an informal conference or formal hearing;

i. The 10 calendar day period to request such informal conference or formal hearing; and

ii. The address to which such requests shall be sent.

(g) When an aggrieved person fails to request an informal conference or formal hearing within the 10 calendar day period, his or her right to an informal conference or formal hearing pursuant to this section shall be deemed waived and the proposed agency action shall become final.

12:120-8.3(8:60-8.3) Citizen complaints

(a) Any person who believes a violation of the provisions of the Act has occurred may file a citizen complaint petitioning the Commissioner of Labor or Health to bring an enforcement action. The citizen complaint shall specify:

1. The alleged violation;

2. The facts constituting the alleged violation; and

3. The name and address of the citizen filing the complaint.

(b) Upon receipt of a citizen complaint, the Commissioner responsible for enforcement of the provision allegedly violated shall:

1. Give notice of the citizen complaint to the alleged violator within 10 calendar days;

2. Give notice to the complaining citizen and the alleged violator of the scheduling of an enforcement investigation inspection within 30 calendar days of the date of the complaint filing;

3. Afford the complaining citizen or his or her representative an opportunity to be present during the enforcement investigation inspection, provided the complaining citizen shall hold the State harmless from all legal liabilities arising out of the enforcement investigation including, but not limited to, litigation resulting from any potential exposure to asbestos;

4. Afford the complaining citizen access to all public records regarding the Commissioner's investigation; and

5. After investigation, the Commissioner shall render a final decision on the appropriate disposition of the complaint within 90 calendar days of the date of receipt of the citizen complaint.

(c) A public employee who files a citizen complaint pursuant to this section shall:

1. Have the right to accompany the Commissioner on an enforcement investigation inspection;

2. Receive payment of normal wages for the time spent during normal working hours on the inspection; and

3. Have all protections and rights as set forth under N.J.S.A. 34:6A-45.

SUBCHAPTER [8.]9. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:120-[8.1]**9.1**(8:60-[8.1]**9.1**) Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1.-6. (No change.)

7. 40 C.F.R. 1910.134—Respiratory Protection; [and]

8. 29 C.F.R. 1926.58(h)—Respiratory Protection[.]; **and**

9. 40 C.F.R. Part 763—Asbestos Model Accreditation Plan; Interim Final Rule.

12:120-[8.2]**9.2**(8:60-[8.2]**9.2**) (No change in text.)

12:120-[8.3]**9.3** (8:60-[8.3]**9.3**) Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:120-[8.1]**9.1** and 8:60-[8.1]**9.1**.

CFR—Code of Federal Regulations
Copies available from:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

N.J.A.C.—New Jersey Administrative Code
Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, NJ 08625-0386

N.J.S.A.—New Jersey Statutes Annotated
Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, NJ 08625-0386

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

Equine Advisory Board Rules

Readoption with Amendments: N.J.A.C. 2:34

Proposed: October 3, 1994 at 26 N.J.R. 3919(a).
Adopted: November 28, 1994 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: December 5, 1994 as R.1995 d.7, **without change**.

Authority: N.J.S.A. 5:5-88 et seq.

Effective Date: December 5, 1994, Readoption;
January 3, 1995, Amendments.
Expiration Date: December 5, 1999.

Summary of Public Comments and Agency Responses:
The New Jersey Palomino Association commented in favor of the amendments. The Equine Advisory Board, by written communication, thanked them for their support.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:34.

Full text of the adopted amendments follows:

2:34-2.1 Qualifications for year-end and non-racing breeder awards

(a) With the exception of non-parimutuel racing, in order to qualify for year-end non-racing breeder awards, a horse must enter at least three different New Jersey horse shows under three different judges. Futurities must be held with a minimum of three judges. Furthermore, there must be at least two horses entered, shown and judged in each class.

1.-2. (No change.)

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

2:34-2.2 Conduct of the New Jersey Bred All Breed Horse Show

(a) The New Jersey Bred All Breed Horse Show, or any other show conducted by the New Jersey Department of Agriculture, shall be governed as follows:

1.-5. (No change.)

6. Foals dropped later than two months prior to show date will not be accepted as entries. No horse under three years of age may compete in under saddle classes, except when approved by their National Association rules and regulations.

7.-12. (No change.)

13. Each breed will be judged according to the rules and regulations of its national breed association. All classes must conform to the specifications of the National Association list of classes. Those breeds which do not have a national affiliation will be judged by their New Jersey State organization rules.

14.-22. (No change.)

(b) (No change.)

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Secondary Mortgage Loan Act Rules

Adopted Amendments: N.J.A.C. 3:18-1.1, 1.3, 3.2, 7.4 and 8.1

Adopted New Rules: N.J.A.C. 3:18-12

Adopted Repeal: N.J.A.C. 3:18-8.2

Proposed: October 3, 1994 at 26 N.J.R. 3920(a).
Adopted: November 30, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: December 8, 1994 as R.1995 d.14, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:11A-34 et seq., specifically N.J.S.A. 11A-54a and 45(p).

Effective Date: January 3, 1995.
Expiration Date: December 24, 1997.

Summary of Public Comments and Responses:
The Department of Banking received three comment letters:

1. David B. Ward Esq., representing New Jersey Financial Services Association;

2. Bruce Blum, President, and Eileen Kean, Executive Vice President, Independent Insurance Agents of New Jersey; and

3. Barry J. Zadworny, Senior Vice President, Roma Federal Savings Bank.

COMMENT: It is suggested that N.J.A.C. 3:18-12.2 be amended to add a category of insurance to indemnify a lender for loss incurred as a result of being unable to foreclose on a real estate loan by reason of legal impediment. Such insurance is sometimes referred to as "mortgage impairment insurance." Commenter believes that such insurance would be less costly to the borrower, while providing protection to the lender.

RESPONSE: The purpose of title insurance is primarily to protect the borrower from unanticipated claims which may adversely affect his or her title to the purchased real estate. Although it may be more expensive than mortgage impairment insurance the borrower is afforded protection from adverse claims on his or her title, and the lender is also protected. On the other hand, mortgage impairment insurance is for the sole benefit of the lender and does not protect the borrower. It should also be noted that N.J.S.A. 17:46B-30.1 prohibits a lender from acting as insurance producer for a title company and from making the selection of a particular title company or insurance producer a condition precedent to the granting of a mortgage loan. The Department will therefore not include the sale of mortgage impairment insurance as an approved activity.

COMMENT: In order to clarify that life insurance products sold under N.J.A.C. 3:18-12.2 are not credit life insurance products, the phrase "which are not loan related" should be added in N.J.A.C. 3:18-12.2(a)1 and 12.2(a)3.

RESPONSE: The Department agrees that the suggested language will clarify the issue as suggested, and will add the phrase to each of the cites. This change will also provide consistency with the other paragraphs in that subsection.

COMMENT: Attention is directed to an erroneous citation in N.J.A.C. 3:18-12.3(b). It should read "Prior to commencing the conduct of any business activities other than those permitted by N.J.A.C. 3:18-12.1 and 12.2" ....

RESPONSE: The Department thanks commenter for calling our attention to this oversight and will correct the citation.

COMMENT: It is suggested that N.J.A.C. 3:18-12.4(a) and (c) be amended to make it clear that the prohibition contained in these subsections is intended to apply to the non-credit insurance products and other activities authorized by N.J.A.C. 3:18-12, since a licensee is permitted to be a beneficiary of credit insurance.

RESPONSE: The Department believes that it is not necessary to further clarify N.J.A.C. 3:18-12.4(a) or (c) with respect to credit insurance. The law governing purchase of credit insurance is clearly spelled out by N.J.S.A. 17:11A-49(a) which states that a borrower shall not be compelled to purchase credit life or accident and health insurance or credit involuntary unemployment insurance in connection with a secondary mortgage loan, and it goes on to cite the conditions under which such insurance may be offered. However, there is an agency initiated change: at N.J.A.C. 3:18-12.4(c). N.J.A.C. 3:18-12.4(c) may be misleading in that it may be understood to exclude a lender from receiving the proceeds of an insurance payout in the case, for example, of a property which is destroyed by fire. It is common practice to include the lender, if any, as lien holder on a fire insurance policy. The insurance company's check in such cases is made payable to both the property owner and lien holder jointly. N.J.A.C. 3:18-12.4(c) will be amended to clarify this point by adding the phrase "except as otherwise permitted by law".

COMMENT: Commenter objects to the Department's action to allow licensees to engage in other business activities which he believes are not related to the secondary mortgage loan business. He states that the purpose of the Secondary Mortgage Loan Act was to correct abuses in the industry. He perceives no authority to permit non-real estate activities.

RESPONSE: The Department disagrees with commenter's interpretation of the law. In addition to the broad regulatory power conferred upon the Commissioner by N.J.S.A. 17:11A-54(a), N.J.S.A. 17:11A-45p gives the Commissioner express authority to promulgate regulations which authorize a licensee to engage in other business activities, not limited by any specific language. There is therefore no basis on which to interpret this section as limiting the other business activities only to real estate related activities.

COMMENT: Commenter objects to allowing lenders to sell insurance products because of unfair competition with the insurance industry and because he believes that lenders, because of their unique position in granting credit, may exert undue influence over a consumer. He states that a consumer will elect to purchase insurance from the lender to protect his source of credit, without regard to availability of the insurance product from less expensive providers. Commenter believes, in addition, that the anti-tying provision in N.J.A.C. 3:18-12.4 is weak; the alternative, he suggests, is to prohibit a licensee from selling any type of insurance to a consumer who has applied for a loan with the lending institution. Commenter also objects to the modification to N.J.A.C. 3:18-8.1(b) which removes the requirement that other business activities conducted by the licensee be located separate and apart from the licensed activity of the secondary mortgage loan office. He contends that other business activity should be located separately by permanent partition, with privacy.

RESPONSE: The Department is not aware of any practice by licensees which would result in what commenter refers to as "unfair competition," nor is there any evidence that consumers will feel compelled to accept a lender's insurance product rather than that of another provider who may be less expensive. The Department believes it is more likely that healthy competition will result in better rates and services for consumers. Complaints, if any, related to tying loans to sales of insurance products in violation of N.J.A.C. 3:18-12 will be handled as appropriate. With regard to the suggested physical separation of other businesses from the licensee's secondary mortgage loan business, the Department believes that such requirement is neither practical, nor would it cure any deficiencies which commenter seeks to correct. It is expected that the licensee will observe all laws and rules applicable to any of the activities which he or she pursues.

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

3:18-1.1 Definitions

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

. . . .

"Business activities" means solicitation, negotiation and/or sale or purchase of goods or services, by licensees, their agents or employees, of, with and to secondary mortgage loan borrowers or applicants.

1. "Approved business activities" means those activities set forth in N.J.A.C. 3:18-12.1 and 12.2 and substantially similar activities as may be approved by the Commissioner pursuant to N.J.S.A. 17:11A-45p, and N.J.A.C. 3:18-12.3.

. . . .

3:18-1.3 Exceptions to license requirement

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

(d) Any employer who provides secondary mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, is not required to be licensed.

(e) A municipality, its officer, employee or any agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act", N.J.S.A. 52:27D-301 et al., or in fulfillment of a regional contribution agreement with a municipality that has received such certification, employs or proposes to employ municipally generated funds, funds obtained through any State or Federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated, is not required to be licensed.

(f) (No change in text.)

3:18-3.2 Permitted charges

(a) A licensee may charge a borrower only the following fees incident to a secondary mortgage loan, in addition to interest:

1.-2. (No change.)

3. A returned check fee in an amount not to exceed $20.00 which the licensee may charge to the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account;

4.-5. (No change.)

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

3:18-7.4 Insurance

Any licensee who advertises the availability of any of the types of insurance permitted by these rules, shall specifically state that such insurance is optional.

3:18-8.1 Branch offices

(a) (No change.)

(b) A licensee may conduct its secondary mortgage loan business in the same office in which it conducts other licensed activities, unless otherwise prohibited. However, a licensee may not establish a branch office within an establishment which is primarily devoted to social or recreational activities, or which impairs the ability of the public to gain access to the licensee.

(c)-(g) (No change.)

SUBCHAPTER 12. APPROVED BUSINESS ACTIVITIES; INSURANCE

3:18-12.1 Approved business activities

(a) A licensee may engage in certain other types of business and conduct such business in the same office, room or place of business where the licensee conducts the business of making secondary mortgage loans under the Secondary Mortage Loan Act, as follows:

1. Automobile security plans which provide protection against automobile emergencies and which provide for full or partial reimbursement of certain costs incurred as the result of such emergencies, such as towing, lost key service, emergency transportation, stolen automobile expenses, bail bonds, emergency treatment expense, legal defense, and similar or related items, which may include extended warranties, travel discounts and service items, among other things;

2. Home security plans, which provide protection against home emergency situations and provide full or partial reimbursement of certain costs incurred because of home emergencies, such as medical costs, health insurance deductibles, pharmacy service, extended war-

ranties, lost or stolen key protection, credit card liability coverage, and which may include life-saving training, home security training and protection services and products, among other things;

3. First mortgage lending in accordance with all applicable State and federal law and regulation;

4. Sales finance agreements pursuant to N.J.S.A. 17:16C-1 et seq.;

5. Consumer loans pursuant to N.J.S.A. 17:10-1 et seq.;

6. Income tax preparation services;

7. Commerical or business loans, including installment sales financing contracts for commercial purposes; and

8. Credit card agreements, which may include additional services or goods which are or may be offered in connection with credit cards or credit card agreements.

3:18-12.2 Approved insurance sales

(a) Upon obtaining any necessary license or authorization, a licensee may offer for sale the following types of insurance products:

1. Single premium accidental death, dismemberment or loss-of-sight insurance policies ***which are not loan related***;

2. Life or disability insurance which is not loan related;

3. Single-premium life insurance policies ***which are not loan related***;

4. Involuntary unemployment insurance which is not loan related;

5. Homeowners' or renters' insurance which is not loan related; and

6. Property or casualty insurance which is not loan related.

(b) Insurance products offered under this section are subject to licensing and regulation as may be required by the New Jersey Department of Insurance or other applicable law.

3:18-12.3 Other business activities; approval process

(a) Commencing *[60 days from the effective date of this subchapter]* ***March 4, 1995***, no secondary loan licensee may conduct any business activity other than the business of making secondary mortgage loans, except those businesses specifically permitted by N.J.A.C. 3:18-12.1 and 12.2, without approval from the Commissioner obtained as specified in this section.

(b) Prior to commencing the conduct of any business activities other than those permitted by N.J.A.C. 3:18-***12.1 and*** 12.2, a secondary mortgage loan licensee shall notify the Commissioner of its intention to do so. Such notice shall contain a detailed description of the proposed activity and a statement of the perceived public need for such activity.

(c) Within 30 days from the date of the Commissioner's Notice of Acceptance to the secondary mortgage loan licensee, if the Commissioner does not disapprove of that activity, the activity shall be deemed approved.

(d) The Commissioner shall approve a business activity provided:

1. It is not made a condition for the extension of credit to the borrower or customer;

2. It is conducted in conformity with all applicable law and regulations; and

3. It provides a service deemed to be in the public interest by the Commissioner.

(e) Secondary mortgage loan licensees who have obtained, prior to the effective date of this subchapter, approval from the Commissioner to conduct businesses other than those specified in N.J.A.C. 3:18-12.1 and 12.2 must, *[within 60 days from the effective date of this subchapter]* ***by March 4, 1995***, obtain approval as specified in this section.

3:18-12.4 Prohibitions

(a) A licensee shall not require a borrower to purchase insurance or to engage in any other business activity conducted by the licensee as a condition for the extension of credit to a borrower or to any other person.

(b) A licensee shall not secure credit transactions with secondary mortgages where the primary purpose of the loan is to finance the costs of another business activity conducted by the licensee, or where a substantial majority of the proceeds of the loan is used to pay the cost of a business activity conducted by the licensee.

(c) A licensee shall not be made a beneficiary of an insurance policy purchased by the borrower from the licensee ***except as otherwise permitted by law***.

(d) A licensee is prohibited from engaging in the secondary mortgage loan business at a location which is utilized by a banking institution or savings and loan association as a main branch or any other office, except that no licensee shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution, or savings and loan association, where the office and operations of the licensee are separate and apart and distinct from the offices and operations of the banking institution or the savings and loan association, and when employees of the banking institution or the savings and loan association are not employed by or soliciting for the licensee.

3:18-12.5 Books and records; separation

The books, accounts and records which pertain to each business activity conducted by the licensee shall be maintained separate and apart from the books, accounts and records of the licensee's secondary mortgage loan business. All such records shall be readily available for inspection by the Department.

3:18-12.7 Suspensions or revocation of authority

The Commissioner may, by written directive and after the licensee has had an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and F and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, suspend or revoke a licensee's authority to engage in any of the business activities specified in N.J.A.C. 3:18-12.1 and 12.2 if it is determined that the licensee has violated any of the conditions heretofore set forth or has otherwise demonstrated unworthiness to be so authorized.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD
Local Authorities
Readoption: N.J.A.C. 5:31

Proposed: October 17, 1994 at 26 N.J.R. 4128(a).

Adopted: December 14, 1994 by the Local Finance Board, Beth Gates, Chair.

Filed: December 15, 1994 as R.1995 d.27, **without change.**

Authority: N.J.S.A. 40A:5A-1 et seq. (P.L. 1983, c.313).

Effective Date: January 3, 1995.

Expiration Date: January 3, 2000.

Summary of Public Comments and Agency Responses:
No comments were received from the public.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:31.

(b)

DIVISION OF CODES AND STANDARDS
Planned Real Estate Development
Community Associations
Adopted Amendment: N.J.A.C. 5:26-8.2

Proposed: November 7, 1994 at 26 N.J.R. 4277(a).

Adopted: December 9, 1994 by William M. Connolly, Director, Division of Codes and Standards, Department of Community Affairs.

Filed: December 9, 1994 as R.1995 d.17, **without change.**

Authority: N.J.S.A. 45:22A-35.

Effective Date: January 3, 1995.
Expiration Date: February 7, 1996.

Summary of Public Comment and Agency Response:

A comment was received from Joan Swartz.

COMMENT: Association boards should not be given the option of holding meetings in an adjacent municipality, rather than at the development, because the need to drive to a meeting, especially at night, would impose a hardship on unit owners, particularly those who are senior citizens or disabled.

RESPONSE: If there is a suitable meeting room at the development, the rule, with or without the amendment, does not give the board the option of holding the meeting elsewhere. If there is not a suitable meeting room, however, the board already has the right, indeed the obligation, to hold the meeting at a suitable location elsewhere in the municipality in which the development is located. In most cases, unit owners already have to drive in order to attend a meeting elsewhere in the same municipality. It would therefore not appear to be the case that allowing the meeting to be held in a suitable location in an **adjacent** municipality would impose any significant additional burden on unit owners who already have to drive in order to attend a meeting elsewhere in the **same** municipality. In fact, given all the variations in New Jersey municipal geography, a suitable location in an adjacent municipality may well be closer to the development than a suitable location, assuming there is one, in the municipality.

Full text of the adoption follows:

5:26-8.2 Powers and duties

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

(d) All meetings of the association that are required by law to be open to all unit owners shall be held at a location within the development or, if there is no suitable meeting room within the development, at a suitable meeting room either elsewhere in the municipality in which the development is located or in an adjoining municipality.

1. (No change.)

ENVIRONMENTAL PROTECTION

(a)

STATE PARK SERVICE

Notice of Increase of Berth and Launch Ramp Use Fees at State Marinas
Notice of Administration Change
N.J.A.C. 7:2-17.1 and 17.4

Take notice that, pursuant to N.J.S.A. 13:1L-19 and N.J.A.C. 7:2-17.5, the Department is increasing certain fees for services provided at the Forked River State Marina, Leonardo State Marina, and Liberty State Park, effective April 1, 1995. The changes will be reflected in the State Park Service Code at N.J.A.C. 7:2-17.1(f) and 17.4(a) and (b) as indicated below.

The seasonal berthholder permit fees at the Forked River State Marina and Leonardo State Marina are increased from $40.00 per foot to $45.00 per foot. At both Leonardo State Marina and Liberty State Park, the daily and annual fees for boat launching are increased from $8.00 to $9.00 and from $90.00 to $100.00, respectively.

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

7:2-17.1 Day use fees for services and facilities provided by the State Park Service

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

(f) The daily or annual fee for boat launching at designated State parks and marinas is as follows:

Area	Daily Fee	Annual Fee
1. Leonardo State Marina	[$8.00]**$9.00**/launch	[$90.00]**$100.00**
2. Liberty State Park	[$8.00]**$9.00**/launch	[$90.00]**$100.00**

(g)-(n) (No change.)

7:2-17.4 Fees for services provided by the State Park Service at State marinas

(a) Fees for services provided by the State Park Service at the Forked River State Marina are as follows:

1. Pleasure seasonal berthholder permit fee [$40.00]**$45.00**/foot:

Berth Size	Summer (April 1 to October 31)	Winter (November 1 March 31) Occasional Electricity
i. Thirty feet	[$1,200.00]**$1,350.00** minimum	$18.00/foot length overall
ii. Thirty-five feet	[$1,400.00]**$1,575.00** minimum	$18.00/foot length overall
iii. Forty feet	[$1,600.00]**$1,800.00** minimum	$18.00/foot length overall
iv. Forty-five	[$1,800.00]**$2,025.00** minimum	$18.00/foot length overall
v. Fifty feet	[$2,000.00]**$2,250.00** minimum	$18.00/foot length overall
vi. Over fifty feet	[$40.00]**$45.00**/foot length overall	$18.00/foot length overall
vii. T-Head	Fee equal to corresponding berth size rate[; and] **or $45.00/foot length overall**	
viii. Dockside	Fee equal to corresponding berth size rate[;] **or $45.00/foot length overall**	

2.-3. (No change.)
(b) Fees for services provided by the State Park Service at the Leonardo State Marina shall be as follows:
1. Pleasure seasonal berthholder permit fee [$40.00]**$45.00**/foot.

Berth Size	Summer (April 1 to October 31)	Winter (November 1 to March 31) Occasional Electricity
i. Thirty feet	[$1,200.00]**$1,350.00** minimum	$18.00/foot length overall;
ii. Forty feet	[$1,600.00]**$1,800.00** minimum	$18.00/foot length overall; and
	[$2,000.00]**$2,250.00** minimum	$18.00/foot length overall;

2.-3. (No change.)
(c) (No change.)

(a)

ENFORCEMENT

Air Administrative Procedures and Penalties Readoption with Amendments: N.J.A.C. 7:27A

Proposed: September 6, 1994 at 26 N.J.R. 3566(a).
Adopted: November 28, 1994 by Robert C. Shinn Jr., Commissioner, Department of Environmental Protection.
Filed: December 2, 1994 as R.1995 d.5, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1D-1 et seq. and 26:2C-1 et seq., particularly 26:2C-8 and 26:2C-19.
DEP Docket Number: 38-94-08/101.
Effective Date: November 2, 1994, Readoption.
January 3, 1995, Amendments.
Operative Date: January 27, 1995, Amendments.
Expiration Date: December 2, 1999.

On September 6, 1994, the New Jersey Department of Environmental Protection (Department) proposed to readopt with amendments the Air Administrative Procedures and Penalties rules at N.J.A.C. 7:27A. The Department proposed minor changes to N.J.A.C. 7:27A-3.8, 3.9, 3.10, and 3.11 to make the penalties reflect more accurately the particular circumstances and severity of violations.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing was held on October 6, 1994 at the Department's public hearing room at 401 East State Street in Trenton, New Jersey. Three people spoke at the public hearing. Irene S. Kropp, Administrator for the Office of Enforcement Coordination, served as hearing officer. Administrator Kropp recommended that the proposed rules be adopted with the changes described in the Summary of Agency-initiated Changes below. The Department accepts the recommendation. The record of the public hearing may be inspected, or obtained upon payment of the Department's usual charges for copying by contacting Janis E. Hoagland, Esq., Office of Legal Affairs, Department of Environmental Protection, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402.

Summary of Public Comments and Agency Responses:

Eight people submitted written comments regarding the penalty rules being adopted herein during the comment period, which closed October 14, 1994. The following persons submitted oral and/or written comments:

1. Wayne D. DeFeo, Director, External and Regulatory Affairs, Browning-Ferris Industries
2. Thomas J. Detweiler, Associate Director, Chemical Industry Council of New Jersey
3. Maureen A. Healey, Director, Federal Environment and Transportation Issues, The Society of the Plastics Industry, Inc.
4. John A. Maxwell, Associate Director, New Jersey Petroleum Council
5. Helen E. Pettit, Administrative Coordinator, Middlesex County Utilities Authority
6. Glenn Roberts, Director, Government Relations, Flavor and Extract Manufacturers' Association of the United States, Fragrance Materials Association of the United States
7. Amarjit Sidhu, Manager, Air Emissions and Control, American Automobile Manufacturers Association
8. Rebecca Stanfield, Energy Advocate, New Jersey Public Interest Research Group

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

1. COMMENT: The commenters support the Department's efforts to amend the existing rules to more accurately reflect the particular circumstances and severity of violations. One commenter specifically expressed support for the distinction between penalties for emissions of air contaminants that cause or have the potential to cause injury or environmental harm and penalties for emissions of air contaminants which do not cause or have the potential to cause injury or environmental harm. The commenters support the proposed amendments and urge the Department to proceed with the adoption. (1, 3, 4, 7)

RESPONSE: The Department appreciates the commenters' support.

2. COMMENT: The proposed amendments do not incorporate the provisions of N.J.S.A. 26:2C-19.1 through 19.5 which provide for affirmative defenses for violations which are the result of equipment malfunctions, maintenance, start-ups or shut-downs. The application of that law will impact the penalty provisions of this proposal. (2, 6)

RESPONSE: The Department has provided public notice in the December 5, 1994 issue of the New Jersey Register that draft regulations implementing N.J.S.A. 26:2C-19.1 through 19.5 are available for review by interested persons. See 26 N.J.R. 4725(a). The Department requests that interested persons participate in a public workshop to help develop the regulations. In the meantime, the affirmative defense is available pursuant to the statute.

3. COMMENT: The Department states in the rule proposal Summary that it has considered, and subsequently rejected, a penalty ranking system which utilizes the severity of an odor as a basis in the determination of penalties. However, the commenters believe that the Department's inspectors have been using such a system since 1988 in accordance with the "Revised Air Pollution Complaint Investigation Guidelines," which require inspectors to rate odors on a scale of 0 to 5. Odors characterized as "1" or "very light" pursuant to the Department's guidelines should be presumed, in the absence of other factors, to not warrant enforcement actions and penalties. Odors characterized as "2" or "light" pursuant to the Department's guidelines should receive a mitigating factor of a 20 percent reduction. An odor with intensity of "2" is defined in the Department's guidelines as "not necessarily objectionable" and it would therefore seem reasonable that such a violation would warrant a twenty percent reduction factor. One commenter stated that imposing a quantitative value on an odor violation should be a primary issue for inclusion in this rulemaking; many enforcement actions have resulted in unfairness by application of the existing penalty structures which do not account for the strength and duration of the odor. (2, 5, 6)

RESPONSE: As the Department has previously stated in the Notice of Action on Petition for Rulemaking published in the New Jersey Register (24 N.J.R. 3764(b)), the scale to which the commenters refer is designed for use in documenting conditions; it facilitates the identifica-

tion and characterization of an odor. The threshold determination as to whether a violation has occurred must be based upon the statutory definition of air pollution. The Air Pollution Control Act (Act) defines air pollution as "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property." N.J.S.A. 26:2C-2. N.J.A.C. 7:27-5.1 recites this definition verbatim. Not every odor will rise to the level of a violation of the Act, because, pursuant to the definition of air pollution in the Act and rules, not every odor unreasonably interferes with the enjoyment of life or property. (Obviously, an odor which is described as not detectable could not constitute a violation.) However, even a light odor could unreasonably interfere with enjoyment of property. Therefore, the scale alone cannot be used to determine whether an odor meets the statutory definition of air pollution. The Department believes that the rules as adopted adequately distinguish those odors that do not constitute a violation from those that do. The definition of an odor of such duration or concentration as to constitute a violation of the Act is dictated by the statute. Thus, any odor which unreasonably interferes with the enjoyment of life or property, including one accurately characterized as level one, constitutes a violation. To provide otherwise by rule or to enforce a different standard would be contrary to the express language of the statute.

As discussed in the rule proposal Summary (see 26 N.J.R. 3568), the Department initially believed that the incorporation of odor severity in the calculation of penalties would result in more fair and equitable penalty assessments. The Department relies on the expertise of its inspectors to establish the relative severity of an odor. However, it has acknowledged that the five-level odor scale could be considered too subjective for the purpose of calculating a penalty.

An inspector uses the five-level scale to verify the intensity of an odor when investigating a complaint. The intensity of an odor is only part of the Department's proof that an odor has unreasonably interfered with the complainant's enjoyment of life or property, and hence, has exceeded the statutory standard. The inspector must also verify the presence and the source of the odor and concur that the odor unreasonably interferes with the enjoyment of life or property. The nature of the scale when used for the purpose of characterizing the otherwise unquantifiable intensity of an odor does not present significant problems of reliability or fairness since the amount of a penalty is not determined based on the scale. Penalties are based instead on remedial measures taken and magnitude of the problem.

4. COMMENT: It is the commenters' understanding that the Department currently only takes an enforcement action against a facility if the inspector is able to verify the existence and source of an odor and if the inspector agrees with the complainant that an odor is present to an extent that violates the existing law and regulations. However, the Department states that "the primary basis for establishing that a violation has occurred is ... the assertion by one or more complainants that an odor unreasonably interfered with the enjoyment of life or property, supported by the Department's determination of the presence and source of the odor." This statement should be modified to include the requirement that the inspector not only has to verify the presence and source of the odor but that the inspector must concur that the odor exceeds the statutory standard. (2, 6)

RESPONSE: The Department agrees with the commenter that in addition to verifying the presence and source of an odor, the Department inspector must also concur that the odor exceeds the statutory standard.

5. COMMENT: The commenters state that a 20 percent reduction from the base penalty for emissions of air contaminants which are or tend to be injurious to human health is given if fewer than three complaints are received and a 15 percent reduction is given if three to five complaints are received. However, with regard to penalties for emissions of air contaminants which are not or do not tend to be injurious to human health, no penalty reductions are noted and, in fact, there is a 10 percent increase to the base penalty if three to five complaints are received. In addition, for emissions which are not or do not tend to be injurious, there is no category for "less than three" complainants. A similar inequity exists with the "nature of air contaminant" factors. It is inequitable to provide greater reduction factors for those emissions of air contaminants which are physically harmful than for those that are merely "irritating." (2, 6)

RESPONSE: The penalties for emissions of air contaminants which are or tend to be injurious to human health and the penalties for emissions of air contaminants which are not or do not tend to be injurious to human health are calculated differently because the Department considers the impact of the respective violations to be different. When calculating a penalty for emissions of air contaminants which are or tend to be injurious, the Department starts with the statutory maximum because such violations are the most serious. The maximum penalty amount is reduced if it is demonstrated that the seriousness of the violation has been mitigated or if other factors render the violation less severe. When calculating a penalty for emissions of air contaminants which are not or do not tend to be injurious to human health, the Department starts with a base penalty that is much less than the statutory maximum because the base penalty is the fair penalty for most violations of this type. The base penalty is then increased or reduced based on factors which demonstrate the severity or impact of the violation. Therefore, the factors used to adjust the penalties for emissions of air contaminants which are or tend to be injurious and for those which are not or do not tend to be injurious are different because they are applied differently.

6. COMMENT: The commenter supports the distinction between penalties for injurious emissions and penalties for nuisance emissions; however, the proposed amendments should include the criteria the Department intends to employ when classifying an air emission as injurious versus nuisance. (5)

RESPONSE: The criteria that the Department will use in classifying an emission are inherent in the description of the violation. That is, those emissions which are or tend to be injurious to health or welfare, animal or plant life or property will be assessed a higher penalty than those emissions which unreasonably interfere with the enjoyment of life and property and are not, or do not tend to be, injurious.

7. COMMENT: The use of the term "maximum penalty" for emissions of air contaminants which are or tend to be injurious suggests that the Department will establish the initial penalty somewhere within the range of $0 to $10,000 for the first offense, $0 to $25,000 for the second offense, and $0 to $50,000 for the third offense. The standards or criteria which the Department uses to establish the initial penalty should be provided in the rule. (5)

RESPONSE: As explained in footnote 7 at N.J.A.C. 7:27A-3.10(g)5.2(a), when calculating the penalty assessment for emissions of air contaminants which are or tend to be injurious, the Department will apply the applicable reduction factors to the maximum penalty, and not, as the commenter states, to an amount less than the maximum penalty.

8. COMMENT: The proposal provides for a 15 percent reduction from the maximum or base penalty for the immediate implementation of measures to "effectively mitigate the effects of the violation." This phrase should be more clearly defined. In addition, one commenter recommends providing additional mitigating factors for steps taken prior to the violation to reduce or eliminate such violations, since facilities that have been working diligently to control odors deserve appropriate consideration as compared with facilities that have failed to make efforts at control. (5, 6)

RESPONSE: The measures taken to mitigate the effects of the violation must in some concrete way lessen the impact of the violation in order to be considered effective. Facilities which are taking measures which could reasonably be expected to prevent a recurrence of the same type of violation but which have not yet completed all measures may receive an additional 10 percent reduction in accordance with N.J.A.C. 7:27A-3.10(e)5.2(a)i(1)(B)2.

9. COMMENT: The proposal provides for a reduction from the maximum or base penalty based on the full implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation. It should be clarified that the scope of "full implementation" will be determined by the facility and not by public interest groups, concerned citizens or others. Facilities must be afforded the latitude to determine the most cost effective solution to an emission problem. (5)

RESPONSE: Based on information provided by the facility, the Department will determine if the "full implementation" reduction factor is applicable. The rule provides that such a factor shall be applied if the facility implements measures that can reasonably be expected to prevent a recurrence of the same type of violation. The Department will evaluate whether the measures taken are effective; it will not determine what those measures should be. If, however, a permit is required from the Department for implementation of such measures, the process must undergo a standard Department review.

10. COMMENT: For emissions of air contaminants that are not or do not tend to be injurious, the proposal provides for a 50 percent

reduction from the base penalty if the pending violation is the first violation of N.J.A.C. 7:27-5.2(a) for the facility within the five calendar years immediately preceding the date of the pending violation. The Department appears to be acknowledging that unforeseen emissions can occur despite the installation of and proper operation of appropriate control devices. If an event is unforeseen, a time limit is wholly inappropriate and the 50 percent reduction should be afforded whenever an emission event is unforeseen. One commenter suggested that the 50 percent reduction be applied if the pending violation is the first violation within the preceding one year, rather than five years. (5, 6)

RESPONSE: In adopting the one-time additional reduction, the Department recognizes that a permittee, otherwise operating in accordance with a permit or certificate issued by the Department, may not be aware that control or abatement measures not specifically required by the permit or certificate may be necessary to prevent either emission of odors or other emissions which unreasonably interfere with the enjoyment of life or property in violation of N.J.A.C. 7:27-5.2. After the initial violation, the permittee is on notice that additional control or abatement measures are necessary. It is the responsibility of the permittee to choose and implement the necessary control or abatement measures to prevent odor emissions or other violations of N.J.A.C. 7:27-5.2. The permittee will not receive an additional penalty reduction if the permittee implements a measure which does not adequately prevent odor emissions or other violations of N.J.A.C. 7:27-5.2. If, however, the violation is due to some unforeseen event or equipment malfunction, maintenance, start-up conditions or shutdown, recent amendments to N.J.S.A. 26:2C-1 et seq. provide an affirmative defense to liability for penalties. As noted in the response to Comment 2 above, the Department has requested that interested persons participate in the development of regulations to implement the affirmative defense. In the meantime, the affirmative defense is available pursuant to the statute.

11. COMMENT: The commenter encourages the Department to consider the emission of air contaminants which are not injurious as minor violations for purposes of the Fast Track Compliance legislation now before the Legislature. (6)

RESPONSE: The Department is in the process of developing a grace period policy for minor violations within the Air Program. Additionally, the Department is working with the Governor's office and the Legislature to codify this policy. Such an approach might allow the Department to suspend a monetary sanction upon the discovery of a minor violation, thus affording the violator a reasonable period within which to achieve compliance. Determining whether a violation is minor may involve answering questions such as: "Was the violation purposeful or reckless?" "Does the violation pose a minimal risk?" and "Has the person been a chronic offender?" Violations such as the emissions of air contaminants which are not injurious might pose minimal risk and be considered minor violations.

12. COMMENT: Penalties for failure to notify the Department of a "release of an air contaminant which might reasonably result in citizen complaints, but which does not pose a potential threat to public health, welfare or the environment" should only be assessed in those instances where the strength and duration of the air contaminant unreasonably interfere with the enjoyment of life or property and results in the Department receiving verifiable citizen complaints. The commenter believes this to be the existing policy of the Department and, if so, recommends that it be embodied within the regulation. Another commenter suggested that the term "potential threat" be better clarified since some facilities such as wastewater treatment facilities are an acknowledged potential threat to public health by virtue of the existence of large quantities of chlorine and other chemicals on site. In addition, the regulations should provide a definition of sufficient notice. (2, 5)

RESPONSE: In practice, unless the Department receives a citizen complaint, it is usually impossible for the Department to assess a penalty for failure to notify the Department of a release of an air contaminant which does not pose a potential threat to public health, welfare or the environment. The Department is working with the Legislature to amend the Act by deleting the provision requiring notification to the Department of releases which do not pose a potential threat. If the statutory requirement is amended, the Department will propose to amend N.J.A.C. 7:27A-3.11 accordingly. Additionally, the Department intends to propose amendments to N.J.A.C. 7:27 in 1995 which will establish reporting standards for specific types or categories of releases. Such standards will define sufficient notice.

The phrase "potential threat" refers to the release of an air contaminant. Therefore, simply because a facility stores chemicals on-site does not subject the facility to a penalty under this provision. Such a facility might be subject to penalties if there were an emission of air contaminants that was not reported in accordance with N.J.S.A. 26:2C-19(e).

13. COMMENT: The Department has failed to adequately address the distinction between knowing or willful violations and those which are accidental or unforeseen. The Department must acknowledge the absurdity of a legal system that treats all air emission violations with the same degree of enforcement action as if they were wanton assaults. The Water Pollution Control Act regulations are structured to distinguish between unforeseeable and willful violations and it is therefore inconsistent for the Department to propose these regulations without including similar provisions. (5)

RESPONSE: It has been the Department's experience that many violations of the Act are in fact foreseeable and are the result of improper facility operation and maintenance or failure to properly use pollution control equipment. The penalty amounts have been established accordingly. However, if the Department determines that a violation was knowing or willful, the Department can, pursuant to N.J.A.C. 7:27A-3.5(e) adjust the amount of the penalty assessed based on extenuating or mitigating factors. Additionally, for violations which are not foreseeable, recent amendments to N.J.S.A. 26:2C-1 et seq. provide an affirmative defense to liability for penalties for certain air pollution control violations due to malfunctions, start-up conditions, shutdown conditions and necessary equipment maintenance. As noted in the response to Comment 2 above, the Department has requested that interested persons participate in the development of regulations to implement the affirmative defense. In the meantime, the affirmative defense is available pursuant to the statute.

14. COMMENT: Reducing penalties to a level that many polluters will accept as a cost of doing business is unwise. The commenter believes that the penalties must be high enough to deter future violations. (8)

RESPONSE: The Department does not believe that it has established any penalty amount at a level that a violator will accept as a cost of doing business. In accordance with the adopted penalty rules, if a violator is a repeat offender, higher penalties will be assessed for subsequent offenses. If it is apparent that a penalty has still not served as a deterrent for a specific violator, the Department has the discretion pursuant to N.J.A.C. 7:27A-3.5(e) to increase the amount of the penalty.

15. COMMENT: If the Department is going to encourage remedial action, it should do so as a permit condition, rather than waiting until after the facility is operational. The Department should adopt a mechanism by which it ensures the continued implementation of any remedial measures taken by a violator. (8)

RESPONSE: If the Department is aware of the need for control or abatement measures, it does require such as a permit condition. However, as was stated in the proposal, the Department recognizes that there are times when a permittee and the Department may not be aware that control or abatement measures not specifically required by the permit or certificate may be necessary to prevent the odor emission or other emissions which unreasonably interfere with the enjoyment of life or property in violation of N.J.A.C. 7:27-5.2. Providing that the permittee is operating in accordance with a permit or certificate issued by the Department, such a violation could be subject to an additional one-time reduction factor. Further, as stated in the proposal, after the initial violation the permittee is on notice that additional measures are necessary and the 50 percent reduction would not apply to subsequent violations. Therefore, the Department has provided in these rules an incentive to the permittee to continue implementation of remedial measures.

16. COMMENT: The commenter is concerned that the amendments to N.J.A.C. 7:27A-3.10 which establish new penalties for violations of emission limits do not provide a sufficient deterrent effect. The current penalties range from $10,000 for the first offense to $50,000 for the fourth and each subsequent offense for those emissions which are or tend to be injurious. The penalties may be reduced by the Department using factors related to remedial measures taken after the violation occurs and the magnitude of the effects of the pollution. The Department proposes to provide a new range of base penalties for those emissions that tend to be less harmful to human health or welfare ranging from $1,000 for the first offense to $15,000 for the fourth and each subsequent offense. These new base penalties would also be subject to mitigating factors. (8)

RESPONSE: As explained in the response to Comment 5, the Department considers those emissions of air contaminants which are, or tend to be, injurious to be more serious violations than those emissions which

would unreasonably interfere with the enjoyment of life or property but which are not, or do not tend to be, injurious. The Department has established the penalty amounts accordingly. The commenter states that the Department will assess the lesser penalty amount for emissions which "tend to be less harmful to human health or welfare." The Department notes that this statement mischaracterizes the rule. If there is a potential for the emission to cause harm, that is, be, or tend to be, injurious to health or welfare, animal or plant life or property, the Department will assess the higher penalty amounts provided for at N.J.A.C. 7:27A-3.10(g)5. The new, lesser penalties apply to emissions that would interfere with the enjoyment of life or property and which are not, or do not tend to be, injurious to health or welfare, animal or plant life or property.

17. COMMENT: The Department has amended N.J.A.C. 7:27A-3.11 which establishes maximum penalties for failure to notify the Department of releases of air contaminants in violation of the Act. The Department proposes to reduce the current maximum range of penalties from $10,000 to $2,000 for the first offense, $25,000 to $4,000 for the second offense, $50,000 to $10,000 for the third offense and $50,000 to $30,000 for the fourth and each subsequent offense. The Department further proposes to reduce penalties for failure to notify the Department of emissions which may reasonably result in citizen complaints, but do not pose a threat to public health, welfare or the environment, by adopting penalties from $200.00 for the first offense to $3,000 for the fourth and each subsequent offense. These drastic reductions notify violators that the Department is not serious about requiring facilities to notify the Department of releases to the environment. The delay that results from a violator's failure to notify may have tragic consequences to human health and the environment. (8)

RESPONSE: Under the previous penalty structure, the Department could reduce the maximum penalty amounts by a certain percentage based upon the magnitude of the problem and the implementation of remedial measures for failure to notify the Department of release of air contaminants in a quantity or concentration which poses a potential threat to public health or the environment. Application of these reduction factors resulted in a penalty assessed in an amount much less than the maximum. The Department no longer considers the magnitude of the problem and remedial measures taken to be relevant in the penalty determination. Therefore, the reduction factors have been eliminated and the penalty amounts have been adjusted accordingly. The Department believes that the penalties adopted for failure to notify the Department of releases which do not cause harm, but may result in citizen complaints, and the penalties adopted for failure to notify the Department of releases which pose a potential threat reflect the seriousness of the respective violations. Any failure to notify the Department of a release that is a potential threat will result in the assessment of a higher penalty. If the Department believes that a violation warrants a greater penalty amount than determined under N.J.A.C. 7:27A-3.11, then the Department may, in its discretion, increase the penalty amount assessed in accordance with the factors under N.J.A.C. 7:27A-3.5(e).

18. COMMENT: The proposed amendments dramatically reduce penalties for failure to pay fees, which are necessary for the Department to operate, and for non-submittal or failure to maintain records of test data, which are essential to Department and citizen enforcement of the program. The proposed reductions will make it increasingly difficult to obtain prompt submission of the fees and information necessary for the Department to do its job. (8)

RESPONSE: The Department believes that the previous penalty amounts were in some cases excessive, since a violator could incur a daily penalty of up to $10,000 for the first offense. The penalties adopted herein reflect more accurately the amount the Department considers equitable and fair under such circumstances.The Department also has additional options available to it to collect a fee. For example, if a permittee fails to pay a renewal permit fee, the Department will not issue the renewed permit. Such a permittee runs the risk of liability for a violation for operating equipment without a valid permit. The reduction in penalty amounts for failure to submit information is consistent with penalties assessed by the Department under N.J.A.C. 7:27A for similar types of violations. Specifically, the penalty amounts are consistent with recently adopted penalties for violation of N.J.A.C. 7:27-8.4(c)5. The Department has found that the penalty amounts provide both a sufficient incentive for the submittal of information and a deterrent to discourage noncompliance.

Summary of Agency-Initiated Changes:

In N.J.A.C. 7:27A-3.10(g)(1)(B)1 and 2, referring to N.J.A.C. 7:27-5.2(a), the terms "maximum penalty" are being amended to "base penalty." This change will make the terms consistent with that used in the same penalty table at N.J.A.C. 7:27A-3.10(g), referring to N.J.A.C. 7:27-5.2(a).

In N.J.A.C. 7:27A-3.11(a), the first offense penalty amount for failure to immediately notify the Department of release of air contaminants in a quantity or concentration which might reasonably result in citizen complaints, but which does not pose a potential threat to public health, welfare or the environment has been changed from $100.00 to $200.00 to correct a printing error. The correct penalty amount was noted in the proposal under the summary of proposed amendments to N.J.A.C. 7:27A-3.11. See 26 N.J.R. 3568.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:27A.

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]*):

7:27A-3.8 Civil administrative penalty for failure to pay a fee

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

(c) To assess a civil administrative penalty pursuant to this section:

1. The Department shall identify the civil administrative base penalty pursuant to (d) below; and

2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (e) below.

(d) The base penalty shall be as follows:

1. An amount equal to one-third of the unpaid fee or $50.00, whichever is greater, for the nonpayment of a fee due in any calendar year; or

2. An amount equal to two-thirds of the unpaid fee or $100.00, whichever is greater, for the nonpayment of a second fee in the same calendar year as in (d)1 above, but not the same fee as in (d)1 above; or

3. An amount equal to the unpaid fee or $250.00, whichever is greater, for the nonpayment of a third and each subsequent fee due in the same calendar year as in (d)1 above, but not the same fee as in (d)1 or 2 above.

(e) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (d) above by the amount obtained by multiplying the base penalty dollar amount by 0.1 percent for each day that the fee is past due.

7:27A-3.9 Civil administrative penalty for failure to provide information or test data or to maintain a permanent record of information or test data

(a) The Department may assess a civil administrative penalty against each violator who fails to provide the Department with or who fails to maintain a permanent record of information regarding smoke, opacity, or emission data; any other stack or test data; or any other records or information required by the Department pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day smoke, opacity or emission data; any other stack or test data; or any other records or information required by the Department pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto is not provided after it is due, or is not maintained, shall constitute an additional, separate and distinct offense.

(c) Except as provided in N.J.A.C. 7:27A-3.10, the amount of the civil administrative penalty for offenses described in this section shall be as follows:

1. For the nonsubmittal of or the failure to maintain records of any smoke, opacity or emission data:

i. $2,000 for the first offense;

ii. $4,000 for the second offense;

iii. $10,000 for the third offense; and

iv. $30,000 for the fourth and each subsequent offense.

2. For the nonsubmittal of or the failure to maintain records of any stack or test data not included in (c)1 above:

i. $1,000 for the first offense;

ii. $2,000 for the second offense;

iii. $5,000 for the third offense; and

iv. $15,000 for the fourth and each subsequent offense.

3. For the nonsubmittal of or the failure to maintain any records or information not included in (c)1 or 2 above:

i. $500 for the first offense;

ii. $1,000 for the second offense;

iii. $2,500 for the third offense; and

iv. $7,500 for the fourth and each subsequent offense.

(d) (No change.)

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty of not more than $10,000 for the first offense, not more than $25,000 for the second offense, and not more than $50,000 for the third and each subsequent offense for each violation of the Act or of any rule promulgated pursuant to the Act listed in (g) below.

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

(e) For any violation of N.J.A.C. 7:27-5.2 where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, the assessed penalty shall in no case be reduced by more than 95 percent of the maximum civil administrative penalty pursuant to (g)5 below, or shall in no case exceed the maximum civil administrative penalty set forth at N.J.S.A. 26:2C-19(b).

(f) For any violation of N.J.A.C. 7:27-5.2 where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, the Department may, in its discretion, assess the maximum civil administrative penalty set forth at N.J.S.A. 26:2C-19(b) for any release of air contaminants that causes persons exposed to the release to suffer acute health effects resulting in death or serious personal injury.

(g) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-4. (No change.)

5. The violations of N.J.A.C. 7:27-5, Prohibition of Air Pollution, and the civil administrative penalty amounts for each violation, per source, are set forth in the following tables:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-5.2(a), the emission of air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property				
Maximum Penalty per Violation	$10,000[7]	$25,000[7]	$50,000[7]	$50,000[7]
i. The maximum penalty may be reduced by applying the following factors:				
(1) Remedial Measures Taken				
(A) Immediate implementation of measures to effectively mitigate the effects of the violation:	15% Reduction from the maximum penalty			
(B) Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation				
1. Full implementation	20% Reduction from the maximum penalty			
2. Partial implementation	10% Reduction from the maximum penalty			
(2) Magnitude of Problem				
(A) Population Affected				
Less than three complainants:	20% Reduction from the maximum penalty			
Three to five complainants:	15% Reduction from the maximum penalty			
Six to 10 complainants:	5% Reduction from the maximum penalty			
Greater than 10 complainants:	0% Reduction from the maximum penalty			
(B) Nature of Air Contaminant[9]				
Particulates & other air contaminants:	15% Reduction from the maximum penalty			
VOC, NO_x or other criteria pollutant:	5% Reduction from the maximum penalty			
EHS, TXS or NESHAPS:	0% Reduction from the maximum penalty			
(C) Amount of Air Contaminant Emitted in Any One Hour				
Less than 22.8 pounds:	15% Reduction from the maximum penalty			
22.8 pounds or greater:	0% Reduction from the maximum penalty			
(D) Area Covered (Air contaminant)				
Less than 1/2 square mile:	15% Reduction from the maximum penalty			
1/2 square mile or greater:	0% Reduction from the maximum penalty			

(E) Off-site Property Damage

No:	15% Reduction from the maximum penalty
Yes:	0% Reduction from the maximum penalty

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[7]For instance, for the first offense, if the violator takes remedial measures to mitigate the effects of the violation, the Department may reduce $1,500 (15%) from the maximum penalty. Further, if the violator takes measures that can reasonably be expected to prevent a recurrence of the same type of violation, the Department may reduce an additional $2,000 (20%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional $2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOC, NO_x, criteria pollutant, EHS, TXS, or NESHAPS the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than ½ square mile, the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional $1,500 (15%) from the maximum penalty. Summing the total penalty reduction percentages results in a total reduction of 115%. However, an assessed penalty may not be reduced by more than 95% of the maximum penalty; therefore, the maximum reduction for the first offense penalty of $10,000 would be $9,500 resulting in an assessed penalty of $500.00.

[9]VOC (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
NO_x (N.J.A.C. 7:27-19) Criteria pollutant (N.J.A.C. 7:27-13)
TXS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-5.2(a), the emission of air contaminants in such quantities and duration as would unreasonably interfere with the enjoyment of life or property and which are not, or do not tend to be, injurious to health or welfare, animal or plant life or property				
Base Penalty per Violation	$1,000[1]	$2,000[1]	$5,000[1]	$15,000[1]
i. The base penalty may be reduced or increased by applying the following factors, as applicable. The civil administrative penalty for each violation is calculated by summing the base penalty and the increase or decrease from the base penalty for each of the applicable factors in i(1) through (4) below.				
(1) Remedial Measures Taken				
(A) Immediate implementation of measures to effectively mitigate the effects of the violation:	15% Reduction from the base penalty			
(B)1 Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation				
1. Full implementation	20% Reduction from the *[maximum]* **base** penalty			
2. Partial implementation	10% Reduction from the *[maximum]* **base** penalty			
(2) Population Affected				
(A) Three to five complainants:	10% increase to the base penalty			
(B) Six to 10 complainants:	15% increase to the base penalty			
(C) Greater than 10 complainants:	20% increase to the base penalty			
(3) Nature of Air Contaminant[2]				
(A) VOC, NO_x or other criteria pollutant:	15% increase to the base penalty			
(B) EHS, TXS or NESHAPS:	20% increase to the base penalty			
(4) Compliance History				
(A) Upon a showing by a violator within 14 calendar days of receipt of the notice of violation from the Department that, at the time of the pending violation:				
1. The violator was in full compliance with the terms and conditions of all Department permits and certificates related to the pending violation:				
2. The violator was in full compliance with all air pollution control permits and certificates for the facility where the violation is pending, except for the violation of N.J.A.C. 7:27-5.2(a) and N.J.A.C. 7:27-8.3(j); and				

3. The pending violation is the first violation of N.J.A.C. 7:27-5.2(a) for the facility within the five calendar years immediately preceding the date of the pending violation:	50% reduction from the base penalty

[1]For instance, for the first offense, if the violator takes immediate remedial measures to mitigate the violation, the Department may reduce $150.00 (15%) from the base penalty. Further, if the violator takes measures that can reasonably be expected to prevent a recurrence of the same type of violation, the Department may reduce an additional $200.00 (20%) from the base penalty. Further, if there are less than three complainants related to the violation there is no increase to or reduction from the base penalty. Further, if an air contaminant emitted is not a VOC, AAQS, EHS, TXS, or NESHAPS there is no increase to or reduction from the base penalty. Further, if this is the first violation of N.J.A.C. 7:27-5.2(a) for the facility within five years immediately preceding the date of the pending violation and the violator can demonstrate that it was in full compliance with the terms and conditions in all Department permits and certificates related to the pending violation and with all air pollution control permits and certificates, the Department may reduce an additional $500.00 (50%) from the base penalty. Therefore, the minimum assessed penalty for the first offense under this section would be $150.00. In this example, all of the reductions were taken to the fullest extent to result in the minimum penalty.

[2]VOC (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
NO_x (N.J.A.C. 7:27-19)
Criteria pollutant (N.J.A.C. 7:27-13)
TXS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)

6.-25. (No change.)

7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)

(a) The Department shall determine the amount of the civil administrative penalty for violations in this section on the basis of the provision violated and the frequency of the violation as follows:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment	$2,000	$4,000	$10,000	$30,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which might reasonably result in citizen complaints, but which does not pose a potential threat to public health, welfare or the environment	*[$100]***$200*	$400	$1,000	$3,000

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Fees for the Registration of Nonionizing Radiation Producing Sources

Adopted New Rules: N.J.A.C. 7:28-48

Proposed December 6, 1993 at 25 N.J.R. 5422(a) (see also 26 N.J.R. 793(b)).

Adopted: November 28, 1994 by Robert J. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: December 2, 1994 as R.1995 d.6, **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. 26:2D-1.

DEP Docket Number: 60-93-11/142.

Effective Date: January 3, 1995.

Expiration Date: July 30, 1995.

The New Jersey Department of Environmental Protection (Department) herein adopts portions of the registration and fee rule proposed on December 6, 1993 (see 25 N.J.R. 5422(a)) applicable to all owners of radiofrequency and microwave heaters, sealers and industrial ovens whose nonionizing radiation emissions are regulated pursuant to N.J.A.C. 7:28-42, Radio Frequency Radiation. This registration program will collect information and raise funds to enable the Department to ensure that the radiofrequency and microwave heaters, sealers and industrial ovens do not emit radiofrequency radiation in excess of the exposure standards in N.J.A.C. 7:28-42.

The proposed rules covered two categories of nonionizing radiation producing sources: (1) broadcasting, communications and navigational/radar sources with the potential to exceed the regulatory limits specified in N.J.A.C. 7:28-42, and (2) all radiofrequency and microwave heaters, sealers and industrial ovens. In the Summary of the proposal (see 25 N.J.R. 5423), the Department also solicited comments from the amateur radio community concerning the radiofrequency radiation emitted from these sources and whether they should be subject to the registration and fee regulation. However, the Department did not propose to assess everyone in the amateur radio community a fee under the rules. Rather, the Department was attempting to gather information to determine which amateur stations emit the greatest amount of radiation, and which amateur stations have the potential to exceed the regulatory limits of N.J.A.C. 7:28-42.

After receiving many critical comments on the proposal from the broadcast and communications industries, and considering the issues raised, the Department has decided to reevaluate the proposed inspection program and associated fee structure for broadcasting and communications sources. For similar reasons, the Department has also decided to reevaluate the registration and fee structure for navigational and radar sources. The Department emphasizes, however, that although the registration and fee program is not being adopted at this time for broadcast, communications, navigational and radar sources, these sources continue to be subject to the substantive radiofrequency regulations at N.J.A.C. 7:28-42, which have been in effect since 1984. At this time, the Department is adopting only those provisions of N.J.A.C. 7:28-48

applicable to the radiofrequency and microwave heaters, sealers and industrial ovens, because these sources, as a group, represent the greatest radiofrequency radiation hazard to New Jersey's citizens.

The public comment period for N.J.A.C. 7:28-48 opened on December 6, 1993, with the publication of the notice of proposal in the New Jersey Register and in the Courier Post, the Star Ledger and the Trenton Times. The Department also mailed the proposal to individuals and groups who had previously expressed interest in receiving the document, including all New Jersey radio and television stations, some major stations in the New York metropolitan area and the Delaware Valley, satellite earth stations, cable TV stations, microwave communications carriers, communications consultants, and cellular phone companies.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing was held by the Department on January 11, 1994, in Trenton. The hearing officer was Gerald P. Nicholls, Ph.D., Director of the Division of Environmental Safety, Health and Analytical Programs. Dr. Nicholls recommended that the rules be adopted, with the changes described in the Summary of Public Comments and Agency Responses, below. The Department agrees with the recommendation. Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's usual copying charge, by contacting:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The public comment period was originally scheduled to close on January 20, 1994, but the Department extended the comment period until February 22, 1994, as requested by several commenters.

Summary of Public Comments and Agency Responses:

Review of the comments revealed eight major issues, which are summarized generally below. Consideration of specific comments from the communications industry that refer exclusively to communications sources, with the exception of the general comments below, is being deferred, since the Department is not adopting the portions of the rules applicable to those sources at this time. The Department is continuing to review the comments regarding communications sources in its effort to develop a cost effective inspection program for these sources. Should the Department propose to require registration of and assess fees for communications sources at a later time, the Department will develop a new rule proposal and will respond to all comments raised in response to this proposal regarding communications sources therein. Comments which discuss both communications sources and radiofrequency and microwave heaters, sealers and industrial ovens are addressed below in the specific comments and responses following the summary of the eight general issues. Comments which pertain only to radiofrequency and microwave heaters, sealers and industrial ovens are likewise addressed in the specific comments and responses.

The eight general issues are as follows:

A. Duplication of effort with the Federal government and cost/effectiveness of enforcement: A number of commenters from the broadcast, satellite earth station, and land-mobile/microwave communications industries commented that the imposition of fees on these industries was unnecessary because the Federal government already regulates radiofrequency and microwave emissions from these sources and the fee regulation would impose burdensome costs with little health and safety benefit.

The Department has carefully considered and investigated this issue. The Department has found that there is no duplicative regulation and enforcement in this area. The U.S. Environmental Protection Agency (USEPA) has performed studies of radiofrequency radiation exposures but does not have any regulatory standards controlling public exposure in place or in development. The Occupational Safety and Health Administration (OSHA) has prepared guidelines governing worker exposures but the Department is aware of only one regulatory standard that is in place. (See 29 C.F.R. §1910.97; 29 C.F.R. §1910.147.) That regulation, at 29 C.F.R. §1910.147, is called lockout/tagout and sets minimum performance requirements for the control of hazardous energy that occurs during unexpected energization of a source, and is intended to protect a worker who actually climbs an antenna tower and services related equipment by requiring the locking or tagging of switches or buttons which could result in the start up of machines or equipment which could release stored energy. With regard to other workers who may be exposed to radiofrequency or microwaves, there are no enforceable OSHA standards in effect, but rather guidelines only.

The Federal Communication Commission (FCC) regulates communications operations but its mandate is to control the use of the frequency bands involved, primarily to avoid electromagnetic interference. The FCC did not promulgate, and does not enforce, radiofrequency or microwave radiation exposure standards. However, in its licensing and license renewal process, the FCC considers radiofrequency exposures from broadcasting antennas and satellite earth station antennas pursuant to its obligations under the National Environmental Policy Act (NEPA). (See 47 C.F.R. §1.1301 et seq.) In accordance with NEPA, an environmental assessment (EA) or environmental impact statement (EIS) must be prepared if a facility seeking licensure or license renewals from the FCC would cause exposure of workers or the general public to radiofrequency radiation in excess of the 1982 American National Standards Institute Standard for radiofrequency radiation (ANSI Standard, C95.1-1982). (See 47 C.F.R. §1.1307(b).) In practice, a facility will not be required to prepare an EA if it submits self-certification to the FCC demonstrating that it does not emit radiation in excess of the ANSI Standard. The purpose of the NEPA requirement is to ascertain, during the license or renewal process, when the FCC-licensed facilities will have a significant impact on the quality of the human environment; the Federal regulations implementing NEPA do not establish any enforceable regulatory standards concerning radiofrequency radiation. Moreover, according to officials at the FCC, inspectors do not measure radiofrequency radiation levels or otherwise enforce the ANSI Standard at these licensed facilities. Thus, the Department's proposal in N.J.A.C. 7:28-48 differed substantially from the regulatory requirements of NEPA by requiring the inspection of sources to determine actual emissions. For the reasons stated above, the Department has therefore concluded that there is no duplication with Federal regulations.

The Department does not agree that the proposed inspection program would be unduly burdensome to the communications industry. However, in evaluating the cost-effectiveness of the program and having reviewed the FCC Office of Science and Technology Bulletin No. 65, upon which the FCC radiofrequency planning is based, and Departmental and USEPA (EPA Report 520/1-85-014, The Radiofrequency Radiation Environment: Environmental Exposure Levels and RF Radiation Emitting Sources, July 1986) surveys conducted over the years, the Department agrees that the FCC planning process has been useful in limiting radiofrequency exposures from sources subject to NEPA, namely, broadcast and satellite earth station operations. The Department therefore expects that exceedances of the New Jersey exposure limits for the general population from communications sources will be infrequent, and if they occur, that they will not be significantly above the exposure levels corresponding to a specific absorption rate (SAR) of 0.4 watts per kilogram upon which the New Jersey limits in N.J.A.C. 7:28-42 are based. In addition, with regard to worker exposures, the Department believes that the OSHA lockout/tagout provision for workers servicing antennas at 29 C.F.R. §1910.147 precludes the Department from regulating the workers who perform repair or maintenance on communications towers. With respect to other workers, for example, those workers in studios that may be in proximity to transmitters and may be exposed to radiofrequency radiation, the Department intends to gather specific information from the Federal government and the communications industry on the extent of exposure of these workers.

In light of the need for additional information regarding worker exposures and the expected degree of compliance of the broadcasting and communications facilities with N.J.A.C. 7:28-42 regarding exposure of the general public, the Department has concluded that it is appropriate to defer adoption of the rules requiring the registration program and imposition of fees on the entire communications industry. The Department intends to gather more information about potential worker and public exposures and investigate more cost-effective approaches to the enforcement of N.J.A.C. 7:28-42. Such approaches may include the posting of warning signs in certain areas, and measurement of radiofrequency radiation levels, the results of which would be reported to the Department by the communications industry to establish the basis for Department inspections of specific facilities. The Department may discuss these and other measures with the New Jersey Commission on Radiation Protection (the Commission), which is the State body responsible for promulgating radiation protection standards.

In deciding to defer imposition of fees on communications sources under these new rules, the Department has carefully considered the potential public harm that might arise from any delay in the enforcement

of the standards applicable to the communications industry. It has examined the basis for the current standard in N.J.A.C. 7:28-42.4 which is identical to the 1982 ANSI Standard. This standard is based on limiting the value of the SAR in humans to 0.4 watts per kilogram. The SAR is a generally accepted measure of potential harm from exposures to radiofrequency and microwave radiation. The standard was established by applying a safety factor of 10 to a SAR of 4, which was the level at which reliable laboratory evidence of physical and behavioral harm had been observed. As stated above, since any exceedances by communications facilities are expected to be only slightly above the 0.4 SAR level, the Department believes that there will not be any significant adverse health impacts on the public from radiofrequency emissions from communications, navigational and radar sources during the period it will be reconsidering its enforcement approach for these sources.

B. Federal preemption: Many commenters expressed concern that the Department's authority to regulate the radiofrequency emissions from communications sources was preempted by Federal agencies and commissions, such as the FCC, OSHA and the Interstate Commerce Commission (ICC).

The Department does not believe that N.J.A.C. 7:28-48 is preempted by the FCC, OSHA, or the ICC. Pursuant to 47 U.S.C.A. 556 (a), the Federal Communications Act of 1934 (the "Act") does not "affect the authority of any State ... regarding matters of public health, safety and welfare, to the extent consistent with the express provisions of this subchapter." The Department believes that both N.J.A.C. 7:28-42 and 48 are consistent with the Act. Moreover, the FCC, the agency charged with enforcing the Act, has ruled that state and local radiofrequency radiation exposure standards are not preempted by the Act. *In the Matter of National Association of Broadcasters Petition for Issuance of a Declaratory Ruling to Preempt State and Local Regulation of RF Radiation Standards that Affect Communication Services to the Public,* FCC 90-10 (1990).

The Department also does not believe that N.J.A.C. 7:28-48 is preempted by the ICC. Congress enacted the Interstate Commerce Act, 49 U.S.C.A. §1 et seq., for the purpose of providing a completely integrated interstate regulatory system over motor, railroad and water carriers. The Department does not believe that the powers of the ICC are implicated by N.J.A.C. 7:28-48 because this regulation does not attempt to regulate interstate transportation.

The matter of OSHA preemption is addressed in detail above in Issue A. The Department does not believe it is preempted by OSHA except in the case of workers servicing antennae and related equipment, who would be subject to the lockout/tagout provision of 29 C.F.R. §1910.147.

C. The FCC has sole authority over radio transmissions: Some communications companies commented that Congress intended the FCC to have sole authority to regulate and license all radio transmitters and operators in the United States and that the Department's proposed regulation must yield to overlapping Federal regulations. Other commenters echoed similar concerns, remarking that the establishment of an interstate communications system and the regulation and control of that system is a Federal objective dictated by Congress in the Federal Communications Act of 1934. Therefore, the registration and licensing of interstate communications facilities is clearly within the jurisdiction of the FCC. Some commenters stated that the courts have ruled that the FCC is the regulator of radio transmissions and antennas and that the State has no right, capacity or authority to attempt to regulate and tax what is already regulated by the Federal government. Finally, the American Radio Relay League remarked that the Department's proposed system of registration and fees imposed on Federally regulated communications facilities located in New Jersey is facially void as preempted by the comprehensive regulatory and licensing scheme of the FCC pursuant to Federal statute and regulations.

The primary legal mandate of the FCC is the regulation of broadcasting for the purpose of allocating transmission bands, avoiding interference, and otherwise facilitating communications. The Department does not believe that the Federal Communications Act of 1934 (the "Act") was enacted with the intent to preempt all state regulations. The Act specifically provides that states may enact laws regarding public health, safety and welfare. Only those that are inconsistent with the Act are preempted. 47 U.S.C.A. §§556(a) and (c). The Department believes that its radiofrequency radiation regulations in N.J.A.C. 7:28-42 and 48 are consistent with the FCC's implementing regulations in 47 C.F.R. §1.1301, and therefore, are not preempted.

N.J.A.C. 7:28-48 was proposed pursuant to the Department's statutory authority at N.J.S.A. 26:2D-9(l). As adopted, N.J.A.C. 7:28-48 sets up a fee structure that will allow the Department to fund a program specifically tailored to registering and inspecting radiofrequency and microwave heaters, sealers and industrial ovens for compliance with the substantive radiofrequency radiation standards at N.J.A.C. 7:28-42.

D. Consequences of the FCC's adopting the 1992 ANSI Standard: Several commenters were concerned as to what would happen if the FCC adopted the 1992 revision of ANSI C95.1-1982 and the State still had the 1982 ANSI Standard as its rule. The attempt to comply with two different standards could create confusion and an additional expense for the regulated community. It could also be a major stumbling block for the Clinton Administration's telecommunications "superhighway" in which there would be no room for disparate radiofrequency radiation regulations.

If the FCC's regulations setting forth its guidelines for evaluating the environmental effects of radiofrequency radiation at 47 C.F.R. §1.1307 (b) are amended in accordance with the March 11, 1993 Notice of Proposed Rulemaking (See Federal Register, Vol. 58 Pg. 19393, April 14, 1993), then the Department would recommend that the Commission amend N.J.A.C. 7:28-42 in order to be consistent with the Federal standards. The FCC has yet to adopt the 1992 ANSI/IEEE Standard; therefore, at the present time, the Department's radiofrequency radiation regulations are consistent with those used by the FCC in the NEPA process.

E. The Department could better structure its Nonionizing Radiation Program: One communications company commented that the Department should conserve its resources by inspecting only those facilities that pose a real danger and are not currently regulated by the Federal government or where Federal regulations do not already provide the desired levels of safeguard. Another communications organization commented that they felt that the devices with the least environmental impact have generated the greatest public concern and this has led the Department to spend an inordinate amount of time addressing these sources. They suggested that the Department should spend more time focusing on those sources which can cause the most injury. An engineer in the broadcast industry commented that radiofrequency sources used in the telecommunications industry should be treated differently from those used in noncommunications industries by virtue of the fact that they are not regulated by any Federal agency.

The Department carefully considered these commenters' suggestions in deciding to adopt only that portion of N.J.A.C. 7:28-48 addressing radiofrequency and microwave heaters, sealers and industrial ovens. In particular, the Department has decided to concentrate initially on those sources that represent the greatest health hazard to New Jersey's citizens, namely, radiofrequency and microwave heaters, sealers and industrial ovens. The Department believes, based on information provided by the Food and Drug Administration (FDA) (U.S. Department of Health and Human Services, Public Health Service, FDA, Concepts and Approaches for Minimizing Excessive Exposure to Electromagnetic Radiation from RF Sealers, HHS Publication FDA 82-8192, July 1982), the National Council on Radiation Protection and Measurements (NCRP Report No. 119, A Practical Guide to the Determination of Human Exposure to Radiofrequency Fields, December 31, 1993) and the National Institute for Occupational Health and Safety (NIOSH) and OSHA (NIOSH/OSHA, Current Intelligence Bulletin 33, Radiofrequency (RF) Sealers and Heaters: Potential Health Hazards and their Prevention, December 4, 1979), that the levels of radiofrequency radiation received by workers operating these devices will, in a great number of cases, substantially exceed the SAR of 0.4 watts per kilogram upon which the Department's standards in N.J.A.C. 7:28-42 are based. Further, according to the FDA, NIOSH and OSHA, SAR levels of 4 to 40 are frequently encountered by operators of heat sealers (NIOSH/OSHA, 1979; FDA, Letter from John C. Villforth, Director, Center for Devices and Radiological Health, FDA, Department of Health and Human Services, to all RF Sealer Manufacturers and Other Interested Persons, May 15, 1985). There is clear scientific evidence regarding the health detriments at these SAR levels, including lethality, birth defects, fetal malformations, reduced body weight, fatigue, behavioral disruption, and temporary infertility in laboratory animals. The chart below summarizes the biological effects from various SARs.

SUMMARY OF RADIOFREQUENCY RADIATION CRITERIA AND HEALTH IMPACTS

Specific Absorption Rate (SAR)[1] Level (Watts/kg) for Whole Body Exposures	Impact/Effect	Source of Information
4-40	Frequent exposures at heat sealers to these levels	NIOSH/OSHA(1), FDA(2)
Above 30	Lethal to lab animals	EPA citations(3)(4)
Above 15	Birth defects detected in lab animals[2]	EPA(4)
8-10	Fetal malformations, severe birth effects	NIOSH(5)
2-30	Death, embryonic & fetal resorption, severe heat stress, excessive increases in core temperature, reduced body weight, agitation, fatigue, behavior disruption	EPA(4)
4-8	"Behavioral disruption"[3] "Severe heat stress"	ANSI(6) EPA(4)
4.8-6	Temporary infertility in rats, reduced fetal mass	EPA(4)
4.0	Lethality in lab animals	NIOSH(5)
4.0	Reliable evidence of "hazardous effects," behavioral disruption in animals	EPA(6)(7)(8), EPA(4)
2.5-5.0	Decreases in operant or learned behavioral responses in rats and rhesus monkeys	EPA(4)
1-4	"Adverse human health effects"	EPA(4)
1	Exposures to AM radio tower climbers	Tell(10)
1	Significant changes in body temperature	EPA(4)
0.4	Exposures to persons near RF broadcasting sources in publicly accessible areas[4]	EPA(4)(9)
0.4	Basis for 1982 ANSI, 1987 IRPA and 1986 worker limit and N.J. limit for worker and public exposures	ANSI(6), IRPA(12) N.J.A.C. 7:28-42 & NCRP (13)
0.4-1.0	Onset of human thermoregulatory responses	EPA(4)
0.08	Public exposure limit in new 1992 ANSI/IEEE Standard and in 1986 NCRP guideline and revised 1987 IRPA guideline while occupational limit remains at 0.04 Watts/kilogram[5]	ANSI/IEEE(11) IRPA(12) NCRP(13)

[1]SAR = Specific Absorption Rate, which is the amount of energy absorbed in watts per unit body weight in kilograms.

[2]This effect has implications for female heat sealer workers.

[3]Onset of behavioral effects at SAR of 4 was primary basis for developing the ANSI Standard, to which ANSI then applied a safety factor of 10 to arrive at the final limits in ANSI C95.1-1982.

[4]EPA predicts that 1,100 broadcast sites nationwide exceed 0.4 SAR, the basis of the limits in the 1982 ANSI standard.

[5]A two-tiered standard was developed because the general population is unaware of radiofrequency radiation exposure and often cannot take measures to control it; may contain individuals who are ill, aged, pregnant or very young; and is much larger than the occupationally exposed segment of the population.

References:

1. NIOSH/OSHA (1979). NIOSH/OSHA Current Intelligence Bulletin 33, Radiofrequency (RF) Sealers and Heaters: Potential Health Hazards and their Prevention, December 4, 1979.

2. FDA (1985). Letter from John C. Villforth, Director, Center for Devices and Radiological Health, FDA, Department of Health and Human Services, to all RF Sealer Manufacturers and Other Interested Persons, May 15, 1985.

3. EPA (1984). EPA Report No. 600/8-83-026F, Biological Effects of Radiofrequency Radiation, Edited by Elder, J. A. and Cahill, D. F.

4. EPA (1986). EPA, Federal Radiation Protection Guidance; Proposed Alternatives for Controlling Public Exposure to Radiofrequency Radiation; Notice of Proposed Recommendations, Federal Register, July 30, 1986, pp. 27318-27339.

5. NIOSH (1985). National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, Radiofrequency/microwave occupational exposure standard and rationale, external review draft.

6. ANSI (1982). ANSI, American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 Khz to 100 GHz, C95.1-1982.

7. ANSI (1966). United States of America Standards Institute, Safety level of electromagnetic radiation with respect to personnel, ANSI C95.1-1966.

8. ANSI (1974). ANSI, Safety level of electromagnetic radiation with respect to personnel, ANSI C95.1-1974.

9. Tell (1980). Tell, R. A. and Mantiply, E. D., Population exposure to VHF and UHF broadcast radiation in the United States. Proc. IEEE, Vol, 68, No. 1 January. pp 1-12.

10. Tell (1991). Tell, Richard, Induced Body Currents and Hot AM Tower Climbing: Assessing Human Exposure in Relation to the ANSI Radiofrequency Protection Guide, prepared for the FCC in 1991.

11. IEEE (1992). Institute for Electrical and Electronics Engineers, Inc., IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 Khz to 300 Ghz, IEEE C95.1-1991, New York, NY, 1992.

12. IRPA (1987). International Non-Ionizing Radiation Committee of the International Radiation Protection Association, Guidelines on limits of exposure to radiofrequency electromagnetic fields in the frequency range from 100 Khz to 300 Ghz, Health Physics, Vol. 54, No. 1, 1988, pp. 115-123.

13. NCRP (1986). NCRP, Biological effects and exposure criteria for radiofrequency electromagnetic fields, NCRP Report No. 86, Bethesda, MD, 1986.

In addition to the scientific evidence summarized in the chart of documented harm to laboratory animals from exposure to high levels of radiofrequency radiation, and predictions of effects in humans at likely exposure levels, the Department believes that a large number (about 2,000 radiofrequency and 400 microwave heaters, sealers and industrial ovens) of these units exist in New Jersey, that in most cases their locations are unknown to government agencies, and that many operators of these devices may be women of child bearing age exposed eight hours a day to this radiation. N.J.A.C. 7:28-48 provides a mechanism by which the Department can determine the locations of these sources and conduct inspections, thereby protecting the individuals who work with these sources.

Although the Department is currently deferring the adoption of rules at N.J.A.C. 7:28-48 applicable to communications, navigational and radar sources, it is investigating alternative enforcement approaches and fee structures for these sources. The Department will continue to consider the commenters' suggestions and attempt to focus efforts only on those communications sources with the greatest potential to violate the provisions of N.J.A.C. 7:28-42, that is, those exceeding a 0.4 SAR level.

F. The Department needs to collect more data: A communications company commented that if the Department asserts that more data is necessary to assess the actual level of compliance with State standards, then a short term study of antenna sites should be undertaken by the Department to determine if there is a compliance problem, as opposed to the institution of a permanent fee structure and bureaucracy to enforce compliance with standards that are already being complied with. One individual commented that the Department needs to do more work in determining the prevalence and intensity of radiation producing devices before assessing fees, since the Department admits that primarily it has been a clearinghouse for information. Perhaps a "one-time fee" should be assessed before commencing with a full-scale program requiring initial and annual fees from the regulated community. A municipal organization commented that instead of beginning a fee program and requiring every source to register, the Department should first investigate all the complaints it received which the Department was not able to investigate.

The Department is sensitive to the concerns of the regulated community and will collect more data on the current level of compliance of communication sources with N.J.A.C. 7:28-42, Radio Frequency Radiation if funding becomes available. With funding, the Department might investigate previously received complaints in cases where the Department suspects that the limits in N.J.A.C. 7:28-42 are being exceeded. It might also request radiofrequency radiation measurement data from the communications industry. After completing its research and information

gathering, the Department might then be able to propose a mechanism different than the traditional registration/inspection process for assuring compliance with N.J.A.C. 7:28-42. It must be emphasized that, although the fee regulation at N.J.A.C. 7:28-48 adopted herein applies only to radiofrequency and microwave heaters, sealers and industrial ovens, all broadcasting, communications, radar and navigational sources remain subject to the substantive radiofrequency radiation standards at N.J.A.C. 7:28-42, which have been in effect since 1984.

G. The complexity of radiofrequency fields from amateur radio antennas: In response to the Department's request for comments on ways to enforce N.J.A.C. 7:28-42 against amateur radio antennas, many amateur radio operators commented that it would be difficult to predict radiofrequency radiation fields from amateur radio stations because amateur radio operators often have more than one antenna; change the antenna(e) configurations frequently; change power levels; operate on a variety of frequency bands; and broadcast intermittently.

The Department estimates that potential exceedances of the N.J.A.C. 7:28-42 standards would involve less than one percent of the entire amateur radio community, based on conversations with various Federal government organizations and several amateur radio operators. The Department finds merit in these comments and, consistent with its approach regarding the broadcast industry, is deferring the imposition of fees on amateur radio antennas while it concentrates on sources with the greatest potential to exceed the limits specified in N.J.A.C. 7:28-42.

H. Fees for amateur radio operators: The Department received a number of comments that amateur radio operators should be exempt from this fee rule because amateur radio operators provide volunteer emergency services; they are non-profit; operators go through intense training; amateur radio use is not just a hobby but a source of enjoyment and education for both children and adults and encourages children to enter science fields; and amateur radio operators are already regulated by the FCC. Many amateur radio operators commented that the Department was going to assess a fee of $500.00 per antenna, which seemed too high. Amateur radio operators remarked that they could not afford to pay a fee of several hundred dollars and that these fees would be an economic hardship and would force many operators, especially those who are retired and on fixed incomes, to give up their licenses. Indirectly, the fees would serve to reduce the population of amateur radio operators and may even be the beginning of the end of amateur radio in New Jersey.

The Department did **not** propose any fee for amateur radio operators; rather, it invited comments from the amateur radio community concerning the possibility of requiring registration of amateur radio sources in the future. (See 25 N.J.R. 5422, 5423.) Although no fee is being charged to amateur radio operators to enforce N.J.A.C. 7:28-42 at this time, the Department reserves the right to investigate this subject further and devise an appropriate enforcement program if such a program appears necessary. While the Department recognizes that amateur radio provides a valuable service to the community, both in educational and emergency services, the Department notes that the standards in N.J.A.C. 7:28-42 apply to any source which has the capability of exceeding the limits specified therein. Amateur radios are such sources; therefore, they must comply with the regulatory standards.

Recalculation of fees adopted for radiofrequency and microwave heaters sealers and industrial ovens

For the reasons set forth below, the Department does not believe that the changes in the rule being made on adoption are so substantial as to effectively destroy the value of the original notice of proposal. (See N.J.A.C. 1:30-4.3.) Moreover, it must be emphasized that, although the Department is adopting only a portion of N.J.A.C. 7:28-48, all sources described in the proposal remain subject to the substantive regulatory requirements at N.J.A.C. 7:28-42 because they are fixed radio frequency devices radiating in the frequency range of 300 kHz to 100 GHz.

The Department has recalculated the fees applicable to radiofrequency and microwave heaters, sealers, and industrial ovens to ensure that the owners of these sources pay only for the services that the Department provides them. The Department used the same methodology it used in developing the fees set forth in the proposal; namely, for each category of source, the Department estimated the inspection costs, non-inspection costs and fixed program costs. These three components, added together, yielded the fee. (In recalculating the initial registration fees, a fourth component, registration costs, was included.) In both the proposal and the adoption of N.J.A.C. 7:28-48, the Department calculated the fees for each category of source independently of the other source categories; in other words, the fees that were proposed for the broadcasters were not related to the fees for the radiofrequency heaters or sealers.

As recalculated, the fees for the radiofrequency and microwave heaters, sealers and industrial ovens are actually lower than originally proposed ($5.00 less per source for radiofrequency heaters and sealers and $10.00 less per source for microwave heaters, sealers and industrial ovens for the annual registration fee; and $5.00 less per source for the radiofrequency heaters and sealers and $15.00 less per source for the microwave heaters, sealers and industrial ovens for the initial registration fee). The slight decrease in the fees is due to the expected decrease in total program expenses because fewer sources are subject to N.J.A.C. 7:28-48 as adopted.

In analyzing how to apportion the lower expenses among these sources, the Department used the same estimates it described in the proposal. (See 25 N.J.R. 5424.) The Department determined the number of sources to be inspected, how often these sources would be inspected, and the amount of time needed to inspect them. The Department estimated that there are 2,000 radiofrequency heaters, sealers and 400 microwave heaters, sealers and industrial ovens. These sources are to be inspected once every 10 years, or 240 sources per year. Each year the Department expects to inspect radiofrequency heaters and sealers located at 50 facilities, and microwave heaters, sealers and industrial ovens located at 20 facilities. The estimated time to inspect each source remains at 44.5 hours per facility for the radiofrequency heaters and sealers and 20.5 hours per facility for the microwave heaters, sealers and industrial ovens. (See 25 N.J.R. 5426.)

For N.J.A.C. 7:28-48 as proposed, the Department estimated that personnel costs for inspection and noninspection activities would be $419,162.00. For the rule as adopted, since there are fewer sources to inspect, the Department has determined that it will not need to hire the Radiation Physicist III and the Senior Environmental Specialist. The revised personnel costs for enforcing N.J.A.C. 7:28-48 are estimated as follows:

Staff Costs	
Research Scientist I	$ 60,900.00
Radiation Physicist I	54,600.00
Environmental Specialist (Enforcement) (approx. 1/4 of a full-time staff person)	12,154.00
Deputy Attorney General V (approx. 1/6 of a full-time staff person)	6,093.00
Technician, Management Information Systems	26,250.00
Total Salaries	$159,997.00
Fringe Benefits	51,759.03
Indirect Costs	68,176.30
Total Personnel Costs for Inspection and Non-inspection Services	$279,932.33

The original projected program costs to regulate 800 businesses or 1,090 facilities totaled $91,432 in the first year and $83,366 in subsequent years. In administering N.J.A.C. 7:28-48 as adopted, the revised projected program costs to regulate 700 facilities or 592 businesses are as follows:

Program Costs (Other Than Salaries)

	Initial	Annual
Printing, postage & office supplies	2,270	2,270
Vehicular	9,000	9,000
Instruments & related supplies	5,000	1,000
Instrument calibration	2,192	4,000
Travel	5,175	5,175
Training	4,313	4,313
Telephones	690	690
Shipping charges	345	345
Professional services	2,860	2,860
Data processing/hardware, software	10,800	4,696
Data processing/maintenance	477	477
Reference books & related literature	658	658
Office furniture	1,553	0
Photographic supplies	286	286
Total Initial Program Costs	$45,619	
Total Annual Program Costs		$ 35,770
Total **Initial** Nonionizing Radiation Program Costs To Regulate 592 Businesses or 700 Facilities		$325,551
Total **Annual** Nonionizing Radiation Program Costs To Regulate 592 Businesses or 700 Facilities		$315,702

Annual Renewal Fees

As discussed above, the fees in N.J.A.C. 7:28-48 have been recalculated based on inspection costs, non-inspection costs and annual program costs to be incurred by the Department for each source subject to the regulation. With regard to the annual renewal fees, inspection costs have been recalculated for each source category because the above-mentioned change in staffing required to implement the down-scaled inspection program results in a change in the salary component of the fee.

Inspection costs are based on the time to travel to and from a site, the inspection of all of the sources at a facility, the drafting of the inspection report and the associated administrative expenses (photocopying, paper, mailing). This number was then divided by 10, since each facility is scheduled to be inspected once every 10 years. For facilities with multiple sources, if all of the sources at a particular facility can be inspected in the same day, travel time to and from the site is reduced on a per source basis, thus there is a per source cost savings for multiple sources at one location. The second component of the annual renewal fee is the annual program costs, which includes, among other things, equipment calibration and computers. The revised annual program costs are less than those originally projected due to the fact that the program will be smaller; hence, less equipment and supplies will be needed. As discussed in the proposal, the Department believes that there is a direct correlation between the time spent inspecting a particular type of source and the annual program costs. In other words, if the Department spends a certain amount of time inspecting a category of source, that category should bear that proportionate amount of the program costs.

The Department has recalculated the total amount of personnel time expected to be spent on inspection and non-inspection activities as 6,336 hours. The Department estimates that 2,636 hours will be spent on actual inspection, and 3,437 hours will be dedicated to non-inspection activities. The Department then estimated the percentage of time that will be spent inspecting each category of source per year, as follows:

Radiofrequency heaters and sealers = 2,225/2,635 = 84.44 percent

Microwave heaters, sealers and industrial ovens = 410/2,635 = 15.56 percent

This percentage, the Department believes, is directly related to the program costs to be incurred for each category of source because it expects to use more equipment, computers and supplies for more frequently inspected sources than for less frequently inspected sources. The Department used the same formula as it did in the proposal to apportion the annual program costs among the two categories of sources that are subject to N.J.A.C. 7:28-48:

$$\text{Annual program costs} = \frac{\text{PTI} \times \text{APC}}{\text{NS}}$$

where PTI is the percentage of time spent on inspections per category of source; APC is the annual program costs ($35,770); and NS is the total number of sources per category.

The third component of the annual renewal fee is the non-inspection-related personnel expenses, such as answering public inquiries, attending conferences, making presentations and budget preparation. The non-inspection expenses still include the services of a Deputy Attorney General (DAG) and an environmental enforcement specialist, who will provide assistance to the Department in enforcing N.J.A.C. 7:28-48, but who will be devoting less time to these activities than would have been required under the full rules as proposed. The Department believes that the non- inspection services are general activities and that the amount of time that staff will spend on these activities should be apportioned equally among the radiofrequency and microwave categories of sources. The Department has calculated that the non-inspection costs of administering N.J.A.C. 7:28-48 as adopted equals the total non-inspection costs divided by the total number of sources, that is, $151,850.91 divided by 2,400, to give $63.27 per source. The non-inspection cost is a fixed cost per source, and will be assessed for each regulated source. On adoption, the non-inspection costs per source are $68,004 less than they were on proposal. (See 25 N.J.R. 5427.)

The inspection, annual program and non-inspection costs added together equal the annual renewal fee. The Department estimates that the annual renewal fee will generate $317,500.00, an amount that will be used to enforce the provisions of N.J.A.C. 7:28-42.

Initial Registration Fees

In recalculating the initial registration fees for the rule as adopted, the Department took into consideration the following components: registration costs, inspection costs, non-inspection costs and initial program costs. The registration costs are the same as those proposed since the staff required to review and process the paperwork, namely, the Research Scientist and the Technician, are the same.

The Department analyzed the number of facilities subject to the rule as adopted, and projected the number of hours required to register all of the sources located at these facilities for each source category. The Department estimated that approximately 2,005.9 hours will be spent per year on registration activities such as copying and mailing registration forms and Radiation Assessment Document forms, technical review and evaluation of the forms, and the establishment of a file for that facility. (As proposed, registration activities were estimated to require 2,966.3 hours to perform.) Each facility will support, through assessed fees, the registration services that it receives.

The second component of the initial registration fee is inspection costs. These costs, which are the same as those for the annual renewal fee, are based on the Department's estimates of the time for travel to and from a site, conduct an inspection of all of the sources at the facility, draft the inspection report, and perform all of the administrative activities associated with the inspection.

The third component of the initial registration fee is the initial program costs. As in the calculation of the annual program costs, the Department believes that the time spent registering and inspecting each category of sources is directly related to that category's share of the initial program costs. For example, if the Department spends 85 percent of its time registering and inspecting radiofrequency heaters and sealers, this category should pay 85 percent of the initial program costs.

The Department recalculated the amount of time it expects to spend on inspection and registration related activities for the first year of the program as 4640.9 hours (2635 inspection hours + 2005.9 registration hours). As for the proposal, the Department then estimated the percentage of time that will be spent inspecting and registering each category of source as follows:

Radiofrequency heaters and sealers = 3,943.5/4640.9 = 84.97 percent

Microwave heaters, sealers and industrial ovens = 697.4/4,640.9 = 15.03 percent

Using the following formula, which is the same one used for the proposal, the Department apportioned the initial program costs between the radiofrequency and microwave heaters, sealers and industrial ovens:

$$\text{Initial program costs} = \frac{\text{PTIR} \times \text{IPC}}{\text{NS}}$$

where PTIR is the percentage of time spent on inspections and registrations per category of source; IPC is the initial program costs ($45,619); and NS is the total number of sources per category.

Finally, the fourth component of the initial registration fee is the non-inspection costs, which the Department calculated in the same manner as for the proposal. The Department calculated that the non-inspection costs of administering N.J.A.C. 7:28-48 as adopted equal the total non-inspection costs divided by the total number of sources, that is, $63,227.75 divided by 2,400, to give $26.34/source. The non-inspection component cost per source is lower than that calculated for the proposal by $8.35.

The registration, inspection, initial program and non- inspection costs added together equal the initial registration fee. The Department estimates that the initial registration fee under the rule as adopted will generate $326,500. In subsequent years, the Department projects this fee program will produce $317,500 per year. The projected income for the first year is higher than for the subsequent years because some of the initial program costs necessary for program start-up, such as the purchase of computers, are only purchased the first year and are not incurred yearly.

A copy of the Department's calculations of both the initial registration fee and annual renewal fee under the rule as adopted is available for inspection by the public at the Bureau of Environmental Radiation, 729 Alexander Road, Princeton, New Jersey (609-987-6372). The Department requests that interested persons telephone to make an appointment to review the documents.

The following persons submitted either oral or written comments during the comment period.

1. A petition signed by 54 individuals from California, some of whose names are illegible.
2. Jonathan Allen, Ph.D., Physicist
3. Marc L. Azar, Amateur Radio Operator
4. William M. Azar, Amateur Radio Operator
5. Steven T. Baldisserotto, P.E., Senior Engineer/Environmental Management, Bell Atlantic Corporation
6. Henry L. Baumann, Executive Vice President and General Counsel, National Association of Broadcasters
7. Michael W. Begala, Amateur Radio Operator
8. Larry Beilin
9. Richard L. Bilon, Amateur Radio Operator
10. Raymond W. Blackford, Radio Engineer
11. Roy P. Boland, Amateur Radio Operator
12. Cephas Bowles, General Manager, Newark Public Radio, Inc.,/ WBGO-FM
13. Eileen Broesder, Amateur Radio Operator
14. Robert G. Buus, P.E., Consultant, Amateur Radio Operator
15. James S. Cafiero, State Senator, Frank A. LoBiondo, Assemblyman, John C. Gibson, Assemblyman, 1st District, on behalf of Michael Ward
16. Frank Carine, Amateur Radio Operator
17. Lorraine Carine, Amateur Radio Operator
18. Mark H. Charles, Assistant General Counsel, Westinghouse Broadcasting Company, Inc.
19. Jim Colonna, VP Engineering, ICG Satellite Services, Inc.
20. Ralph I. Conn
21. Lou Cornacchia, Scinetics Corporation
22. Thomas A. Cosgrove III, Amateur Radio Operator
23. Frederick J. Day, Esq., Executive Director for Government Relations, Industrial Telecommunications Association, Inc.
24. Karl D. Dean, Regional Field Supervisor/North Atlantic Region, Continental Insurance
25. Robert A. DeCesare, Amateur Radio Operator
26. Pat Delsi, Owner, WSSJ; Chairman, New Jersey Broadcasters Association
27. Charles T. Dennis, Amateur Radio Operator
28. Thomas J. Dowling, Amateur Radio Operator
29. William G. Dressel, Jr., Assistant Executive Director, New Jersey State League of Municipalities
30. Stan Edinger, AT&T
31. Patrick Egan, Amateur Radio Operator
32. Garry N. Ellis
33. Rich Enright, Bell Atlantic Metro Mobile
34. George W. Falter
35. Ed Fitzpatrick
36. Benjamin J. Friedland, President, Morristown & Erie Railway, Inc., representing New Jersey Short Line Railroad Association
37. S. Thomas Gagliano, Esq., Giordano, Halleran & Ciesla, counsel to Bell Atlantic Mobile
38. Tom Giesel, Amateur Radio Operator
39. Thomas E. Goode, Staff Attorney, Utilities Telecommunications Council
40. James Haag, Amateur Radio Operator
41. William R. Haldane, Amateur Radio Operator
42. Robert W. Hartley, Amateur Radio Operator
43. Deborah Johnson Harwood, Corporate Counsel, Pacific Telecom, Inc.
44. Charles A. Hecht, Broadcast Engineering Consultant
45. Suzanne E. Helton, Regulatory Affairs Manager, ABB Sanitec, Inc.
46. Daniel F. Hirschfeld, Amateur Radio Operator
47. Eugene F. Holben, Amateur Radio Operator
48. Tim Holt, Amateur Radio Operator
49. Yvonne Holt, Amateur Radio Operator
50. Lawrence Housman, Amateur Radio Operator
51. Richard Huber, Site Manager, Hainesville Tower Company
52. Alexander P. Humphrey, Satellite Operator, GE American Communications, Inc.
53. Christopher D. Imlay, Esq., Booth, Freret & Imlay, counsel to The American Radio Relay League, Incorporated
54. John P. Janka, Esq., Latham & Watkins, counsel to Hughes Space and Communications Company
55. Christopher A. Johnson, Amateur Radio Operator
56. Ronald J. Johnson, Department of the Army, Military Affiliate Radio System (MARS)
57. Stephen Jones, Amateur Radio Operator
58. Chad K(illegible), Amateur Radio Operator
59. James S. Kaplan, Sales Engineer, Broadcast Engineer, Amateur Radio Operator, RF Specialties of Washington, Inc.
60. John S. Kennedy, Amateur Radio Station KB8GYS
61. Harvey Klein, Amateur Radio Operator
62. Henry Kooyenga, Amateur Radio Operator
63. Lucille Kooyenga
64. Waltrand Kreuser, Amateur Radio Operator
65. Robert C. LaGasse, Executive Director, International Microwave Power Institute
66. Clifford W. Langan, P.E., Amateur Radio Operator
67. James H. Laskey, Esq., Norris, McLaughlin & Marcus, counsel to MCI Telecommunications Corporation
68. Ian Lifchus, Amateur Radio Operator
69. Robert M. Lima
70. Christopher D. Linne
71. Ron Lloyd, Amateur Radio Operator
72. Gerald Logan, Jr., Amateur Radio Operator
73. Vivian G. Lopez, Esq., Amateur Radio Operator
74. Wallace Wah-Ki Luke, Amateur Radio Operator, Radio Station WA2NVG, U.S. Army MARS AAR2AZ
75. John A. Magliacane, Dept. of Engineering and Technology, Advanced Technology Center, Brookdale Community College
76. William Maier, Amateur Radio Operator
77. Lawrence J. Makoski, Amateur Radio Operator
78. Dinah D. McElfresh, Executive Director, Electromagnetic Energy Policy Alliance
79. Kathleen S. McGovern, Vice President, CSC Management Group
80. Bruce A. McLeod
81. Paul G. Meinschein, Amateur Radio Operator
82. Gerald E. Miller, Jr., Amateur Radio Operator
83. Vernice Miller, Site Coordinator, Tele-A-Page Communications, Inc.
84. Merton M. Minter III, Esq., Amateur Radio Operator
85. Charles Moizeau, Amateur Radio Operator
86. Richard M. Montgomery, Ph.D., Amateur Radio Operator
87. James A. Montllor, Amateur Radio Operator
88. Richard S. Moseson, Northern New Jersey Section Manager, American Radio Relay League
89. Sheldon R. Moss, Marketing Coordinator, National Association of Business and Educational Radio
90. Daniel E. Mullin, Bell Atlantic Metro Mobile
91. Frank W. Napurano, President, WDVR-FM
92. Terri B. Natoli, Esq., Donelan, Cleary, Wood & Maser, P.C., counsel to GTE Spacenet Corporation, James F. Rogers, Latham & Watkins, counsel to Hughes Network Systems, Inc.
93. Don Neumullar, Chief Engineer, Newark Public Radio, Inc./ WBGO-FM
94. James V. Nickel, Vice President, Engineering, Motorola Communications and Electronics, Inc.
95. Stan Olochwoszcz, Amateur Radio Operator
96. Philip V. Otero, GE American Communications
97. Mark H. Parr, Paging Network of New Jersey
98. Russell E. Paul, Esq., counsel to New Jersey Broadcasters Association

99. Paul C. Pawlowski, Herold and Haines, counsel to Cellular One Telephone Company
100. Philip B. Peterson, Amateur Radio Operator
101. Anthony R. Pezzuto, Amateur Radio Operator
102. Jacob Pianko, Amateur Radio Operator
103. Steve Pierro, Amateur Radio Operator
104. Joseph Donald Powers, Engineer and Consultant to the Broadcast Industry
105. William Prentice, Vice President, The Marcus Group, Inc. Public Affairs Counsel to New Jersey Broadcasters Association
106. Jean Priestley, Emergency Coordinator, Amateur Radio Emergency Service for Camden County
107. Rose Purdy, Amateur Radio Operator
108. Walter Reigelsperger, Amateur Radio Operator
109. John B. Richards, General Counsel, Land Mobile Communication Council
110. Philip H. Roberts, President, New Jersey Broadcasters Association
111. Michael Rose, Broadcast Counsel, CBS-Inc.
112. Martin C. Rothfelder, McManimon & Scotland, counsel to Nextel Communications, Inc. and Comcast Cellular Communications, Inc.
113. Alan W. Rowe, Amateur Radio Operator
114. Harris Ruben
115. Charles E. Sackermann, Jr., Business Agent, The Alpine Tower Company
116. Jeffrey L. Sheldon, General Counsel, Utilities Telecommunications Council
117. Robert C. Shelton, Jr., Attorney at Law
118. J.A. Shissias, General Manager, Environmental Affairs, PSE&G
119. Dr. Jim Sinclair, P.E., First Vice President, New Jersey Business & Industry Association
120. Thomas H. Slook, Amateur Radio Operator
121. Gene F. Smith, Amateur Radio Operator
122. Bill Sohl, President, Mount Olive Town Council
123. John Stoakes, Amateur Radio Operator
124. John Stricko, Page Net
125. Joseph Strockbine, Amateur Radio Operator
126. David J. Struebel, Amateur Radio Operator
127. Richard Swetits, General Manager, WHTG Radio
128. Thomas J. Tompkins, Amateur Radio Operator
129. Barry D. Umansky, Deputy General Counsel, National Association of Broadcasters
130. John Urban, President, Edwards & Kelcey, Inc.
131. William Wadsworth, Amateur Radio Operator
132. Gerald H. Wagman, Amateur Radio Operator
133. Michael M. Ward, Amateur Radio Operator, comments forwarded by Senator Cafiero and Assemblymen LoBiondo and Gibson
134. Sanford Weinberger, Director, New Jersey Army MARS, Dept. of the Army
135. Walt Werner, Amateur Radio Operator
136. Larry H. Will, P.E., Asst. Director of Engineering, New Jersey Network
137. Bobbie Williams, Amateur Radio Operator
138. Robert W. Willis, Amateur Radio Operator
139. Matt Wilson, Amateur Radio Operator
140. Lawrence W. Winward, Amateur Radio Operator
141. Joseph C. Wirth, Amateur Radio Operator
142. Charles J. Yashinovitz
143. Louis A. Zanoni, President, WZBN TV25
144. John Zimmerly, High Frequency Heating Committee

The following individuals' names were illegible:

145. W. "Unclear"
146. Wolfgang "Unclear"

A summary of the comments timely received and the Department's responses follow. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General Comments

1. COMMENT: If the sources that the Department is intending to regulate are such a hazard, why have none of the other states come up with this fee scheme? (84)

RESPONSE: It is not possible to address this comment for each and every state without contacting all of them, but there could be a variety of reasons why other states have not assessed fees. One possibility is that other states' radiation protection programs are funded by a general appropriation, and thus, all of a state's taxpayers support the effort of the radiation program inspectors. Hence, fees collected from the regulated community would not be necessary. Another possibility is that the other states' radiation protection programs have not promulgated standards and thus have no regulations to enforce. New Jersey has had regulatory standards in place for 10 years as established by the Commission at N.J.A.C. 7:28-42; however, the Department has lacked the resources to fully enforce the standards because the radiation program is not funded by a general appropriation. Still another explanation of why other states do not assess fees is that there may not be as large a plastics industry in other states and as many radiofrequency heaters and sealers as there are in New Jersey. Antennae from broadcasting and communications sources could be located in more remote locations in some of the more rural states, and therefore there may not be the potential for exposure to nonionizing radiation that exists in densely populated New Jersey. There is an abundance of scientific evidence demonstrating the deleterious health effects from radiofrequency radiation (see chart in the discussion of Issue E, above) and the New Jersey State legislature has determined that New Jersey citizens should be protected from exposure to this kind of radiation. (See Radiation Protection Act, N.J.S.A. 26:2D.)

2. COMMENT: An examination of the legislative history of the Radiation Protection Act (N.J.S.A. 26:2D-1 et seq.) makes it apparent that the intention of the State legislature was to address nuclear radiation exposure, not exposure to radiofrequency radiation. (16, 17, 53, 73, 81, 82, 98, 128, 131, 138)

RESPONSE: N.J.S.A. 26:2D-7 states that the Commission has the power to formulate, adopt, promulgate, amend and repeal codes, rules and regulations as may be necessary to prohibit and prevent unnecessary radiation in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.). In N.J.S.A. 26:2D-2, "unnecessary radiation" is defined as the "use or presence of electromagnetic radiation including microwave, infrared, visible, ultraviolet, X-ray, and gammaray; sonic, infrasonic, or ultrasonic waves; and particle radiation including alphas, betas, high energy electrons, neutrons, protons and other atomic or nuclear particles in such a manner as to be or tend to be injurious or dangerous to the health of the people or the industrial or agricultural potential of the State, or to the ecology of the State and its wildlife." Since radiofrequency and microwave radiation are forms of electromagnetic radiation, radiofrequency radiation is clearly within the regulatory authority of the Commission.

3. COMMENT: If the State is relying on the Radiation Protection Act, N.J.S.A. 26:2D et seq., as its authority to regulate industries, the State legislature should amend the Radiation Protection Act to clarify what is meant by unnecessary radiation. What does "unnecessary" mean? (16, 17, 73, 81, 82, 128, 131, 138)

RESPONSE: As noted in the response to Comment 2 above, the Act says that unnecessary radiation means the use or presence of electromagnetic radiation, which includes radiofrequency and microwave radiation, in such a manner as to be or tend to be injurious or dangerous to the health of New Jersey's citizens. The Commission determined that any radiation field that is in excess of the radiation limits in N.J.A.C. 7:28-42 in an area where a worker or member of the general public is or may be exposed to it would be injurious. However, some uses of radiation are considered necessary, and indeed beneficial, for example, in the medical field for the diagnosis and treatment of cancer. Regulation of such beneficial use radiation would not be considered "unnecessary radiation" pursuant to the Radiation Protection Act. In the case of radiofrequency radiation, it is not necessary for a radiofrequency heat sealer to leak and expose its operator to levels above the State's radiation limits in order to melt or seal a product. The Commission has promulgated scientifically supportable standards throughout N.J.A.C. 7:28 which it believes protects the public from "unnecessary radiation." The commenters should express their concerns to directly to the Legislature if they seek a change in the definition of "unnecessary radiation" in the statute.

4. COMMENT: Several commenters questioned the Department's claims that, based on numerous inspection requests, many New Jersey citizens have been and continue to be exposed to radiation levels that exceed the radiation limits in N.J.A.C. 7:28-42. The commenters suggested that this was capriciousness disguised as a scientifically arrived at conclusion. (16, 17, 73, 81, 82, 128, 131, 138) Another commenter observed that, in the Social Impact statement, the Department claims that it has received an unspecified number of reports and complaints of accidental exposures at radar and station antennae, and that these

exposures may exceed the State standards. From this information, the Department has drawn the conclusion that the public may be unknowingly exposed to radiofrequency radiation in excess of the limits at various locations accessible to the public. (5)

RESPONSE: The Department has a firm basis for believing that the public is being exposed to levels of radiofrequency radiation in excess of the radiation limits in N.J.A.C. 7:28-42. In addition to the complaints received by the Department, there is ample information from many sources, such as the following (which are fully cited in the list of references for the chart in the discussion of Issue E above): NIOSH/OSHA, 1979; FDA, 1985; NIOSH, 1985; Tell, 1980; Tell, 1991. Another source of information is the NCRP Report No. 119, A Practical Guide to the Determination of Human Exposure to Radiofrequency Fields, December 31, 1993. Nevertheless, the Department agrees with the commenters that more scientific data measuring exposure to New Jersey residents would be useful. With regard to communications sources, the Department will be conducting further studies, as discussed previously. However, with respect to radiofrequency and microwave heaters, sealers and industrial ovens, the Department feels that there is ample cause for concern now and thus is adopting the portions of the rule applicable to these sources.

5. COMMENT: The Department indicated in the Summary that a small number of inspections have been conducted. What were the results of the inspections and were any levels found that exceeded the radiation limits in N.J.A.C. 7:28-42? (16, 17, 73, 81, 82, 128, 131, 138)

RESPONSE: Persons interested in reviewing the surveys and results are invited to make an appointment with the Department to do so. Over a 10 year period, the Department has performed approximately 25 surveys. Most of these surveys were performed at the request of outside agencies and they do not represent a statistically valid sampling. Other surveys contain a limited number of sampling points. In general, at least three site surveys of communications sources showed clear violations of the radiation exposure limits in N.J.A.C. 7:28-42. Two other sites exhibited localized areas exceeding the radiation limits in N.J.A.C. 7:28-42; these would require more extensive surveying before it could be determined that there was a violation of the standards.

6. COMMENT: How will this fee rule protect the public? One would receive the same amount of radiation from a registered source as from one that was not registered. (88)

RESPONSE: The registration process is only one component of the overall enforcement program. The registration forms will assist the Department in identifying sources. Owners of registered sources will be required to complete a Radiation Assessment Document form, which will enable the Department to determine which sources pose the greatest hazard and, therefore, which sources should be inspected first. Such inspections should help ensure compliance with the provisions of N.J.A.C. 7:28-42 (that is, exposure to a source that has been inspected should not exceed the radiation limits specified in N.J.A.C. 7:28-42).

7. COMMENT: This fee rule, as proposed, does not foster the goal of protecting the public from exposure to radiofrequency radiation (16, 17, 73, 81, 82, 128, 131, 138)

RESPONSE: The rule as adopted will enable the Department to collect fees from the sources that emit the highest levels of radiofrequency radiation. These sources are the radiofrequency and microwave heaters, sealers, and industrial ovens, which generally expose workers, not the general public, to radiofrequency radiation. Although the Department is limiting its effort, at this time, to collect fees from owners of radiofrequency and microwave heaters, sealers and industrial ovens, all sources described in the proposal remain subject to the exposure limits established in N.J.A.C. 7:28-42. Compliance with these standards will protect the public as well as workers from exposure to radiofrequency radiation. The Department will continue to reassess the inspection program and assessment of fees for communications sources.

8. COMMENT: It is in the self-interest of owners/operators of devices governed by N.J.A.C. 7:28-42 to comply with the regulations to avoid lawsuits. (14)

RESPONSE: The Department agrees that avoidance of lawsuits is one motivation for compliance with the radiation protection standards. The establishment of the registration and inspection program will reinforce compliance across the regulated community.

9. COMMENT: There is no statutory authority for the promulgation of the proposed fee regulation, and the Department is acting far beyond the scope of any legislative authority. (98)

RESPONSE: The Department disagrees with this comment. Pursuant to the Radiation Protection Act at N.J.S.A. 26:2D-9(l), the Department has the power in accordance with a fee schedule adopted as a rule or regulation in accordance with the Administrative Procedure Act, (N.J.S.A. 52:14B-1 et seq.) to establish and charge fees for any of the services it performs. The Department has exercised this power in adopting this fee regulation to support the registration and inspection of radiofrequency and microwave heaters, sealers and industrial ovens.

10. COMMENT: This fee regulation cannot be legally implemented because this is a tax and only the Governor and legislature can impose a tax. (53, 98, 130, 133)

RESPONSE: The fees established in N.J.A.C. 7:28-48 are not a general revenue raising tax. They are adopted pursuant to the Department's authority to establish and charge fees for the services that it performs; in this case, the fees will be used to fund the program to enforce the radiofrequency radiation standards in N.J.A.C. 7:28-42. (See N.J.S.A. 26:2D-9(l).) The method of calculating the fees was set out in detail in the Summary to the proposal at 25 N.J.R. 5422, 5426-5428.

11. COMMENT: The proposed fees might be increased in the future. (90)

RESPONSE: If the cost of the services the Department performs in enforcing N.J.A.C. 7:28-42 increase due to salary increases, equipment needs, or related other expenses, then the Department might need to propose to amend the rules in order to increase the fees to cover such increased costs. However, such a reassessment of fees is not envisioned for at least several years. The regulated community and public would receive notice of any such proposal and would have an opportunity to comment on it, in accordance with the Administrative Procedure Act. Before proposing higher fees, however, the Department would exhaust all reasonable cost-savings measures.

12. COMMENT: Several commenters expressed concern that the fees are too high. (8, 12, 13, 37) Other commenters observed that the fees seemed excessive based on the number of hours necessary to inspect and analyze a facility. (51, 89, 115, 119)

RESPONSE: The Department based the fees on reasonable estimates of the inspection and noninspection services to be performed, the number of hours required to perform these services, and the costs, including salary and non-salary expenses, it expects to incur. The time estimate for inspections was based on the Department's experience surveying radiofrequency radiation sources. Time estimates for registration were based on information provided by other programs with similar registration requirements. A copy of the Department's calculations is available for inspection by the public at the Bureau of Environmental Radiation, 729 Alexander Road, Princeton, New Jersey (609-987-2104). The Department requests that interested persons telephone to make an appointment to review the documents.

13. COMMENT: The Department's inspection time seems to be overinflated by a factor of 10. Localized areas of high exposure could be estimated in advance and then verified by calibrated instrumentation to define areas restricted for human occupancy. (14)

RESPONSE: While it is true that some localized areas of high exposure can be mathematically predicted, leakage will often occur around radiation producing devices, especially radiofrequency and microwave heaters, sealers and industrial ovens, and emanate into locations that are not easily avoidable by the operators of these devices. Also, due to the complex addition and subtraction of interacting electromagnetic waves in multiple source environments and in areas that readily reflect electromagnetic waves, it can sometimes be very difficult to predict where such elevated exposure areas will occur. Therefore, the Department has concluded that actual physical inspections of sources will be necessary to measure radiation exposures. The Department does not feel that it has overestimated the inspection times. It should be noted that the total time to perform an inspection is based not only on the on- site inspection time, but also includes the time to travel to and from the site, the time needed to write and review the inspection report and the time needed to perform other related administrative tasks.

14. COMMENT: This fee rule is a clear attempt by the State to regulate interstate commerce and this is unconstitutional. (75) Federal pre-emption exists in that the proposed fee rule places an undue and unnecessary burden on interstate commerce and therefore is a violation of the Commerce Clause of the United States Constitution. (37, 92, 109)

RESPONSE: The Department does not agree that N.J.A.C. 7:28:48 violates the Commerce Clause of the United States Constitution. This regulation sets up a registration program, which includes a fee provision, that will enable the Department to enforce its radiofrequency standards in N.J.A.C. 7:28-42 for the legitimate and legislatively mandated purpose

of protecting the citizens of New Jersey from excessive exposure to radiofrequency radiation.

15. COMMENT: A program to enforce the provisions of subchapter 42 will not allay the fears of the general public about nonionizing radiation; their fears are not founded in fact. (74)

RESPONSE: As mentioned previously, the Department's primary purpose in adopting N.J.A.C. 7:28-48 is to enforce the scientifically-based radiation protection standards in N.J.A.C. 7:28-42 that have been in place since 1984. The Department believes that, in general, the public will see this action as a positive initiative. The fees will provide the Department with the resources necessary to perform inspections of the radiofrequency and microwave heaters, sealers and industrial ovens. The fees will also provide some resources to answer questions from the public regarding nonionizing radiation relative to the sources being assessed fees. Such outreach and educational activities are part of the non-inspection-related personnel expenses incurred by the Department and are detailed above in the discussion of "Recalculation of fees adopted for radiofrequency and microwave heaters, sealers and industrial ovens."

16. COMMENT: The exemption in N.J.A.C. 7:28-48.10(a)3 should focus on potential whole body exposure, not on the level of radiation emissions. Otherwise, the rule may require the registration of facilities which emit radiation of a certain level but which do not have the possibility of exceeding the exposure standard that the Department is trying to enforce. Thus, the rules should provide an exemption if the source is operational, but does not, as operated, transmit radiofrequency radiation in a manner that can result in whole body exposure to radiofrequency radiation in excess of the limits of N.J.A.C. 7:28-42. (112)

RESPONSE: N.J.A.C. 7:28-42.3(a)2 provides that the radiofrequency radiation limits in N.J.A.C. 7:28-42.4 may be exceeded if the exposure conditions can be shown by laboratory procedures to produce specific absorption rates (SARs) below 0.4 watts/kilogram as averaged over any one gram of tissue. Thus, an exemption already exists in N.J.A.C. 7:28-42 for sources transmitting radiofrequency radiation that are not capable of exposing an individual to levels in excess of the limits specified in N.J.A.C. 7:28-42, or more accurately, will not result in an SAR equal to or greater than 0.4 watts/kilogram averaged over one gram of tissue in the exposed individual. The Department would like to stress at this point that communications sources, although not covered by N.J.A.C. 7:28-48 as adopted, are still subject to the limits specified in N.J.A.C. 7:28-42, which are based on a SAR of 0.4 watts/kilogram.

17. COMMENT: The controlled versus uncontrolled situations should be taken into account, as they are in the 1992 ANSI Standard. (37, 89, 115, 119) Controlled situations should be treated differently than uncontrolled ones because workers are usually knowledgeable about the hazards that they work with and take steps to minimize their exposure to radiation. (89, 115, 119) The proposal should make a distinction between public and occupational exposures to sources of nonionizing radiation. (51, 79, 83, 89, 119) For the uncontrolled public exposure situations, the State's regulations should be revised to ensure that adequate security provisions are in place and enforced, which will restrict public access at these facilities. (5)

RESPONSE: The Department agrees that these suggestions and comments merit consideration. The 1992 ANSI Standard makes a distinction between uncontrolled and controlled exposures. An uncontrolled exposure is the exposure of an individual in an environment where the person has no knowledge or control of the exposure. A controlled exposure is the exposure of a person who is aware of the potential for exposure as a condition of employment. If the Commission decides to modify N.J.A.C. 7:28- 42, the Department will recommend that these suggestions be considered.

18. COMMENT: In sources used in industry and research, there may be changing radiofrequency fields. Thus there may be a need to reinspect these sources more often; otherwise it would be hard to guarantee compliance with the limits in N.J.A.C. 7:28-42. (2)

RESPONSE: This is a good point. However, routinely inspecting the sources more often than every 10 years would not be cost-effective. Pursuant to N.J.A.C. 7:28-48.6, notification to the Department is required if there are changes to the information provided in the Radiation Assessment Document. If the Department has reason to believe any source is exposing individuals to levels of radiofrequency radiation in excess of the limits specified in N.J.A.C. 7:28-42, more frequent inspections could be performed on a particular source.

19. COMMENT: The use of the words "nonionizing radiation" is too complex to understand and has caused confusion. Some municipalities do not know if this applies to sources in their possession. The rule should be renamed fees for antennas or radio antennas. (29, 122)

RESPONSE: Since radiofrequency and microwave heaters, sealers and industrial ovens are the only sources covered by the fee rule as adopted, the use of the word antennas or radio antennas would be inappropriate. In the Summary of the proposed fee rule, it was clearly stated what sources are to be regulated by this rule; therefore, the Department does not believe that it is necessary to rename the regulation.

Departmental authority to regulate the workplace

20. COMMENT: Workplace issues should be delegated to the State's Department of Labor, Division of Occupational Safety and Health. (65)

RESPONSE: The Department believes it has sufficient authority to enforce the radiation protection standards of N.J.A.C. 7:28-42 pursuant to the Radiation Protection Act N.J.S.A. 26:2D-1 et seq.

21. COMMENT: The Department should not adopt this fee rule because of OSHA oversight in this area. Specifically, OSHA addresses emissions from radiofrequency and microwave heaters and sealers by enforcing the guidelines established in ANSI C95-1990 and users are required to meet those standards. Furthermore, OSHA's random sampling method of inspections is more effective and appropriate than the Department's planned inspections of once every 10 years. (144) The Department appears to be admitting that the majority of overexposures are occupationally based and therefore already addressed by OSHA. (16, 17, 29, 81, 82, 122, 128, 131, 138) The fee rule comes "dangerously close" to covering situations preempted by OSHA. (16, 17, 81, 82, 86, 87, 128, 131, 138)

RESPONSE: The Department has researched issues raised by these comments. In general, if there is not an OSHA standard in effect pursuant to 29 U.S.C.A. §655, there is nothing under the Occupational Safety and Health Act that prevents a State agency from asserting jurisdiction under State law over any occupational safety or health issue. Since the OSHA regulations addressing nonionizing radiation at 29 C.F.R. §1910.97 are merely guidelines, not enforceable standards, the Commission and the Department believe that it is appropriate to regulate in the area of nonionizing radiation pursuant to the State Radiation Protection Act. The only OSHA regulation which may preempt New Jersey's program regulating workforce exposures to radiofrequency radiation is that pertaining to the control of hazardous energy (lockout/tagout) at 29 C.F.R. §1910.147. Essentially, the Federal rule covers the servicing and maintenance of machines and equipment in which unexpected energization or start-up of the machines or equipment, or release of stored energy, could cause injury to employees. For purposes of sources regulated by N.J.A.C. 7:28-42, the Federal rule would apply to maintenance workers inadvertently exposed to radiofrequency radiation. It would not apply to workers during day-to-day operations of radiofrequency radiation producing devices.

Department's fulfilling of its statutory duties pursuant to the Radiation Protection Act

22. COMMENT: The enabling legislation, that is, the Radiation Protection Act, requires that the Department encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects of health exposure to radiation and related problems as it may deem necessary or advisable for the discharge of its duties under the act. N.J.S.A. 26:2D-9(f). The Department has not deemed any of the above activities necessary or advisable, since the Department says, in the proposal Summary, that its activities "have been limited to acting primarily as a clearinghouse for scientific information." (5, 16, 17, 73, 81, 82, 128, 131, 138)

RESPONSE: The Radiation Protection Act requires the Department to conduct the above referenced activities, but as a practical matter it cannot perform them without funding to provide for staff and equipment. The Department will use the fees collected from the radiofrequency and microwave heaters and sealers pursuant to N.J.A.C. 7:28-48 as adopted to support the activities listed in N.J.S.A. 26:2D-9(f) as they pertain to these regulated sources.

23. COMMENT: The fee rule goes against one of the Department's guiding principles of consistently applying and vigorously enforcing environmental laws and standards in a fair, timely and predictable manner. If the Radiation Protection Act is to be used as the statutory authority for the proposed rules, it must be noted that the Department has extensive duties and should therefore consider a comprehensive approach to fulfilling its duties. Piecemeal attempts such as the proposed

fee rule only serve to create an uncertain, unpredictable regulatory climate. (118)

RESPONSE: In 1984, the Commission adopted regulations governing exposure to radiofrequency radiation at N.J.A.C. 7:28-42. At the time, there was general radiation appropriation funding from the Department of Treasury available for fulfilling the regulatory duties as the commenter suggests, including funding for one person to perform nonionizing radiation activities. Therefore, it was not necessary to include fees in N.J.A.C. 7:28-42 when it was promulgated. As appropriations began to decrease, the Department began working on a fee regulation in order to secure dedicated funds for nonionizing radiation enforcement activities. No general appropriation funds exist at this time to support an enforcement program for N.J.A.C. 7:28-42; therefore, the statutory authority in N.J.S.A. 26:2D-9(l) is the only mechanism by which the Department is able to fund enforcement of the existing nonionizing radiation protection standards.

24. COMMENT: The Radiation Protection Act requires the Department to provide the Commission with the necessary personnel to carry out its duties. The Department has not done so but instead seeks to impose a new system of fees to perform its responsibilities and to measure, once every 10 years, levels of nonionizing radiation emitted. (16, 17, 73, 81, 82, 128, 131, 138)

RESPONSE: In 1984, there was one person in the Department's Radiation Protection Program dedicated to nonionizing radiation activities and who provided support to the Commission regarding nonionizing radiation matters. That person was funded through a general appropriation, which no longer exists. Therefore, it is now necessary for the Department to charge fees for the services it performs for the Commission and the public. The Department has selected a 10 year inspection cycle to keep fees low but still permit adequate enforcement. If at some time the Department feels that this inspection cycle is too infrequent and does not ensure the health and safety of the users of the sources for which fees are assessed pursuant to N.J.A.C. 7:28-48, the Department may decide that certain sources should be inspected more often. In that case, the Department might need to propose a fee increase.

Potential increase in size of State government

25. COMMENT: The adoption of this fee regulation is inconsistent with the Whitman Administration's policies since State government should be looking at ways to reduce size by eliminating, not adding, unnecessary staff. (91, 99)

RESPONSE: The Department believes that the enforcement of N.J.A.C. 7:28-42 is necessary to protect both workers and the public from excessive exposure to radiofrequency radiation. However, the Department's decision to adopt only the portions of proposed N.J.A.C. 7:28-48 that address the radiofrequency and microwave heaters, sealers and industrial ovens reflects, in part, the concern regarding expansion of the size of government unnecessarily. The Department will take a closer look at devising a method for ensuring that communications sources are in compliance with N.J.A.C. 7:28-42, possibly in cooperation with the Federal government and without unduly burdening that industry. The Department stresses, however, that although N.J.A.C. 7:28-48 is not being adopted in its entirety, all sources described in the proposal have been and continue to be subject to the nonionizing radiation protection standards in N.J.A.C. 7:28-42.

26. COMMENT: The proposed fee regulation contradicts the current State administration policy of not expanding bureaucracy unnecessarily and not increasing the Department's budgetary dependency on fees charged to the business community and the public. (99) This rule would increase the size, cost and influence of government. (142)

RESPONSE: For the reasons stated in the discussion of Issue E, the Department feels that the adoption of this rule is essential from a worker safety standpoint. At this time, the Department will register, inspect and collect fees from only those sources that present the greatest radiation hazard, namely, radiofrequency and microwave heaters, sealers, and industrial ovens. This fee rule will not increase the influence of State government because the sources covered by this rule are already regulated by the Department. Furthermore, it is likely that staff for this program will be drawn from other Department programs that are downsizing; there should thus not be any overall increase in the size of government.

Ten year inspection cycle

27. COMMENT: The fees are too high, considering that the Department is only going to perform an inspection once every 10 years. (79, 83, 89, 115, 119)

RESPONSE: In an effort to keep the costs low for the regulated community while protecting the public and workers from exposure to radiofrequency radiation in excess of the radiation limits in N.J.A.C. 7:28-42, the Department divided the total costs to administer this program by 10. The Department believes that a 10 year cycle effectively balances costs versus health and safety considerations. If at some time the Department feels that this inspection cycle is too infrequent and does not ensure the health and safety of the users of the sources for which fees are assessed pursuant to N.J.A.C. 7:28-48, the Department may seek to inspect these sources more often.

28. COMMENT: One inspection every 10 years is not enough to ensure health and safety. (14, 37, 110) A 10 year inspection cycle indicates that there is no urgent health problem. (65)

RESPONSE: The 10 year inspection cycle is a frequency of inspection that the Department has used before. Specifically, when the Department first began its inspection of X-ray equipment, a 10 year inspection cycle was used. (Based on Departmental experience with X-ray machine inspection, the inspection cycle was modified to one year for machines at hospitals, two years for those in physicians' offices, three years for dental machines, and so on.) If the Department receives complaints or if it otherwise learns that a facility covered by this rule may be out of compliance with N.J.A.C. 7:28-42, the Department may inspect that facility more frequently. Also, if the Department receive complaints of suspected overexposures, it will give inspections of such sources a high priority. Owners of registered sources will be required to complete a Radiation Assessment Document form which will enable the Department to determine which sources pose the greatest hazard. Inspections will be prioritized, based on which sources have the greatest potential to expose either workers or the public to levels of radiofrequency radiation in excess of the radiation limits specified in N.J.A.C. 7:28-42. As mentioned in the response to Comment 27, if at some time the Department feels that this inspection cycle is too infrequent and does not ensure the health and safety of the users of the sources for which fees are assessed pursuant to N.J.A.C. 7:28-48, the Department may seek to inspect these devices more often.

29. COMMENT: The Department has failed to justify its renewal fees in light of the fact that the technical manpower will not be required for the renewal process. (37, 89, 115, 119)

RESPONSE: The Department has calculated the annual renewal fee by dividing the actual cost of the inspection by 10. In other words, under the rule as adopted, it will cost the Department $757.54 to inspect a radiofrequency heater. Instead of charging this entire fee up front, the Department has spread this cost over 10 years. The Department believes that this fee calculation is fair to the regulated community, and will not place an excessive economic burden on these sources.

Compliance and enforcement

30. COMMENT: How will the Department handle sources found not to be in compliance with the radiation limits in N.J.A.C. 7:28-42? The Department should establish some procedures or guidelines for such events. (118) Does the Department intend to embargo sources that exceed the radiation limits in N.J.A.C. 7:28-42? (16, 17, 73, 81, 82, 118, 128, 131, 138) People will find a way to circumvent, either legally or illegally, this rule. (80)

RESPONSE: If the Department determines that an owner of a source of nonionizing radiation is not in compliance with the provisions of N.J.A.C. 7:28-48 or 7:28-42, it will take appropriate enforcement action. The Department may bring a civil action in the Superior Court to prevent a violation of the rules, and it may institute a penalty action against a violator pursuant to the penalty enforcement law, N.J.S.A. 2A:58-1 et seq. The Department also has the authority to embargo a source if it finds or has probable cause to believe that the source is a radiation hazard or is a threat to public health or welfare. The Department feels that the possible attempts by some owners of sources regulated by N.J.A.C. 7:28-48 to circumvent the rule should not preclude the Department's adoption of N.J.A.C. 7:28-48.

31. COMMENT: A company will have to divert much of its expertise to compliance and this will discourage companies from operating in the State. (2) The cost of compliance will place an undue burden on businesses. (14, 32, 39, 116)

RESPONSE: Since N.J.A.C. 7:28-42 has been in effect since 1984, owners of sources of nonionizing radiation covered by these rules should already be in compliance or be able to readily come into compliance. In the case of radiofrequency and microwave heaters, sealers and industrial ovens (heat sealers), the Department believes that the cost of compliance will be minimal. The Department believes that there may be several individual heat sealers that are old and may need to be replaced because they will be found on inspection to be out of compliance with N.J.A.C. 7:28-42. However, for the most part, such heat sealers have already been purchased from manufacturers in the United States or elsewhere with protective shields already included, which if used properly, would prevent operators from receiving radiofrequency exposures in excess of the limits specified in N.J.A.C. 7:28-42. For various reasons, the Department believes that such protective shields are being removed from the heat sealers at the operational location. Simply reinstalling this shielding would readily bring these heat sealers back into compliance with the standards without substantial plant refurbishment or purchases of new equipment. While there initially may be some operator retraining needed to acclimate the operator to the shield, the Department is not aware of any long term impact on productivity accruing from the use of these machines with the proper shielding as installed by the manufacturer. The Department thus has no reason to believe that the cost of compliance with N.J.A.C. 7:28-48 as adopted will be overly burdensome or discourage companies from operating in this State.

32. COMMENT: Why is only "half" a person doing enforcement, what will the rest of the staff be doing, and are they needed? (110)

RESPONSE: For the rule as proposed, the Department estimated that 1/3 of an Enforcement Specialist would be needed for enforcement. (For the rule as adopted, this time estimate has been reduced to 1/4 of an Enforcement Specialist.) The responsibilities of that person will be to process administrative orders, notices of prosecution, and perform other related enforcement activities. However, the day-to-day enforcement of N.J.A.C. 7:28-42 and 48 will be handled by the staff in the Nonionizing Radiation Program, who will be doing the actual inspections and discovering the violations of the radiation limits in N.J.A.C. 7:28-42. Also, if enforcement action is taken for a violation and the violator requests an adjudicatory hearing, a Deputy Attorney General will be assigned to litigate the case if it is not settled prior to the hearing. Enforcement of N.J.A.C. 7:28-42 and 48 is a team effort, and the costs for the individuals performing these duties were detailed in the proposal. It should be noted that since the Department will only be enforcing against the radiofrequency and microwave heaters, sealers and industrial ovens under the rule as adopted, the personnel costs to administer and enforce N.J.A.C. 7:28-42 and 48 are decreased.

33. COMMENT: Any fees should apply to those not in compliance with the law and if New Jersey wants to decrease the health risks associated with these transmissions, it should develop mechanisms that punish the transgressors, not ones that spread costs to service providers who have been in compliance and already pay taxes and fees. (90, 137)

RESPONSE: The Department agrees that this would be desirable. However, there is no definitive way to determine if a source is in compliance without performing an inspection of that source, and there is a cost to the Department for performing the inspection.

Program funding

34. COMMENT: The non-technical activities mentioned in the fee rule, such as public information, giving presentations and writing further regulations, should be funded out of a general fund, because these activities benefit the public at large. (52, 96)

RESPONSE: The Department does not disagree with this comment conceptually; however, there currently is no general fund to pay for such non-inspection costs. That is why the Department apportioned this cost equally among all sources (See 25 N.J.R. 5427.) Since the non-technical activities conducted by the nonionizing radiation section will deal with nonionizing radiation issues and topics, these activities are appropriately funded by fees collected from nonionizing radiation sources.

35. COMMENT: There is no requirement that a program within the Department must fund itself from its own revenues. If nonionizing radiation is proven to be hazardous, why not fund it from a tax on something that is known to be a hazard, such as gasoline, which in turn results in vehicle emissions? (85) By creating a source of revenue, the Department will promote self-funded regulatory oversight. (5)

RESPONSE: The response to Comment 23 explains why the Department must collect fees to support this program. Mechanisms of funding other than fees, such as taxes, are, of course possible, but are outside the Department's authority to implement.

Effect of rule on New Jersey's economic situation

36. COMMENT: The fees imposed by N.J.A.C. 7:28-48 could have a dampening effect on much of New Jersey's business community. (115) This fee rule will slow economic growth in the State and businesses will think twice about relocating or expanding in New Jersey. It may even cause people to move out of the State. (46, 75, 80) These fees will increase the cost of doing business in New Jersey. (16, 17, 29, 81, 82, 100, 122, 128, 131, 138)

RESPONSE: The Department believes that N.J.A.C. 7:28-48 should have no measurable adverse impact on the competitiveness of the industries that own or operate radiofrequency sources. However, in response to these comments and other considerations, the Department has reassessed its enforcement strategy for communications sources, and has decided to focus on those sources that pose the greatest health risk, that is, radiofrequency and microwave heaters, sealers and industrial ovens. In deciding to assess fees only against the latter sources, the Department weighed the increased safety and protection to workers of enforcing N.J.A.C. 7:28-42 against the impact on the sources' owners of the relatively small fees, and determined that on balance, the increase in worker safety outweighs the small increase in fees. This fee rule should result in a negligible increase in the cost of doing business in New Jersey.

37. COMMENT: The cost of this fee rule to the regulated community will eventually be passed on to the consumer. (13, 14, 16, 17, 29, 39, 81, 82, 99, 115, 122, 128, 130, 131, 138)

RESPONSE: With regard to radiofrequency and microwave heaters sealers and industrial ovens, the costs of the fees may be passed on to consumers, but the fees are low enough that the ultimate impact on consumers, if any, will be small.

Impact on businesses and small businesses

38. COMMENT: The Department has underestimated the number of businesses that will have to register and, hence, the paperwork and monitoring burden will limit the Department's effectiveness in implementing its Nonionizing Radiation Program. (37, 51, 79, 83, 89, 115, 119)

RESPONSE: The Department has based its estimate of the number of businesses affected by the fee rule as adopted on telephone conversations with NIOSH, members of the New Jersey Advisory Committee on Nonionizing Radiation and other programs within the Department. The fee structure was based on the number of sources and the costs of registering and inspecting this number of sources when it developed the regulation. As adopted, the fees raised will enable the Department to hire enough staff and equipment such that there will be no paperwork or monitoring burden on the Department as a result of the implementation of this program.

39. COMMENT: The Department had not done a fair economic impact analysis. (67) The cost of paying the fees and complying with the burdensome recordkeeping will be disruptive and destructive to small businesses. It will cause businesses to leave the State or force the closure of small businesses. (37, 51, 115)

RESPONSE: The rule as adopted will apply only to radiofrequency and microwave heaters, sealers and industrial ovens. The Department feels that the health and safety benefit of enforcing the provisions of N.J.A.C. 7:28-42 outweigh the minimum amount of recordkeeping required and the relatively small initial and annual fees that will be incurred by the businesses affected by the fee rule. It should be noted that a recordkeeping requirement in N.J.A.C. 7:28-48.3(d) has been deleted from the rule on adoption, which will further reduce the recordkeeping requirements placed on businesses.

Scope of the regulated community

40. COMMENT: The sources that the Department covers in this fee rule are easily identifiable sources of revenue (45), sources that could afford to pay the fee rather than the sources that represent the greatest danger (14), and sources that are licensed by the FCC and therefore easy to find (114). The measures set forth in N.J.A.C. 7:28-48 are impractical because they apply to all types of radiation producing sources without regard to the true extent of the possible hazard that a radiation producing source presents to the public or those in the workplace. (89, 119)

RESPONSE: As proposed, N.J.A.C. 7:28-48 applied to communications, navigational and radar sources that had the potential of exposing either the worker or the general public to levels of radiofrequency radiation in excess of the radiation limits specified in N.J.A.C. 7:28-42, and all owners of radiofrequency and microwave heaters, sealers and industrial ovens. The Department believed these sources would be most

likely to expose individuals to hazardous levels of radiofrequency radiation. Based on the comments received from the communications industry and a reassessment of the relative health risks from the communications sources versus the industrial heaters, sealers, and microwave ovens, the Department has decided to concentrate on the radiofrequency and microwave heaters, sealers and industrial ovens because they present the greatest health risk.

41. COMMENT: The Department is presuming that all the sources emitting radiation over a certain limit expose people. This is not true, since devices can be turned off during maintenance. Therefore, these sources are really not exposing people to unnecessary radiation. Perhaps the regulations should be revised to require on-site safety guidelines and safe work practices for maintenance workers. (5)

RESPONSE: For communications sources, the OSHA lockout/tagout provision at 29 C.F.R. 1910.147 is designed to prevent the exposure of workers during tower maintenance activities. However, even though radiofrequency and microwave heaters, sealers and industrial ovens can be turned off for maintenance, many of these devices leak radiation while operating, thus exposing their operators to unnecessary radiation. The workers are not afforded any protection by 29 C.F.R. 1910.147. However, the commenter's point is well taken and the Department will consider addressing safety guidelines and safe work practices for maintenance workers in another rule in the future.

Risks from nonionizing radiation

42. COMMENT: Many commenters asserted that nonionizing radiation is not a proven health hazard to humans or the environment and that the acute and long term effects of radiofrequency radiation are still under investigation. This makes adoption of the fee rule premature since the science does not support the need for active enforcement of the limits in N.J.A.C. 7:28-42. Furthermore, since the Department has failed to prove that excessive exposure to radiofrequency radiation is a health hazard and substantial risk to New Jersey's citizens, the Department is in effect imposing a tax which will needlessly alarm the public. (1, 3, 4, 5, 7, 8, 14, 16, 17, 24, 29, 30, 35, 40, 41, 45, 46, 47, 50, 55, 56, 57, 58, 59, 64, 66, 68, 72, 73, 75, 76, 80, 81, 82, 85, 86, 87, 88, 101, 102, 103, 107, 108, 117, 118, 100, 121, 122, 123, 125, 128, 131, 132, 133, 135, 138, 140, 141, 145, 146)

RESPONSE: The biological effects of radiofrequency radiation at levels that exceed current State radiation limits are summarized in the chart in the discussion of Issue E above. A substantial scientific consensus has been built, nationally and internationally, on the adverse health effects, beginning in 1966, when the first ANSI standard on radiofrequency radiation limits was published. Since then, the ANSI Standard has been revised twice, in 1982 and in 1992. The 1982 ANSI Standard was adopted by the Commission in 1984 as N.J.A.C. 7:28-42. The new IEEE C95.1-1991 Standard (adopted by ANSI in 1992) reflects a two-tiered approach, with even lower exposure levels for the general public than the previous ANSI Standard. Both the National Council on Radiation Protection (1986) and the International Radiation Protection Association (1987) have promulgated guidelines regarding exposure to radiofrequency radiation that are more conservative than the 1982 ANSI Standard. Since 1970, 12 countries have adopted radiofrequency radiation regulations. Furthermore, the sources covered by the rule as adopted, namely, the radiofrequency and microwave heaters, sealers and industrial ovens, have been shown to expose their operators to radiation levels well above any recommended or regulatory limits, and thus they pose a substantial health impact.

43. COMMENT: There is no evidence that athermal fields are hazardous. (2)

RESPONSE: An athermal effect is an effect not attributable to changes of temperature when radiofrequency radiation energy is imposed on or absorbed by a medium or a system (NCRP, Biological effects and exposure criteria for radiofrequency electromagnetic fields, NCRP Report No. 86, Bethesda, MD, 1986). Athermal effects can occur in tandem with thermal effects. (The Department assumes that the commenter is referring to exposure to radiofrequency fields that will not cause a rise in body temperature.) Increases in core body temperature of roughly 1oC occur at specific absorption rates (SARs) of one to four watts/kilogram. Exposures to radiofrequency radiation resulting in the activation of the body's thermoregulatory responses occur at a SAR of 0.4 watts/kilogram (EPA, Federal Radiation Protection Guidance; Proposed Alternatives for Controlling Public Exposure to Radiofrequency Radiation; Notice of Proposed Recommendations, Federal Register, July 30, 1986, pp. 27318-27339.). N.J.A.C. 7:28-42 prohibits the exposure of workers and the general public to levels of radiofrequency radiation that will result in a SAR greater than 0.4 watts/kilogram. Therefore, by enforcing the provisions of N.J.A.C. 7:28-42, the Department is focusing on those sources that will produce primarily thermal effects. The Department considers the inspection of such sources a priority to ensure that they are brought into compliance with N.J.A.C. 7:28-42.

Comments regarding the ANSI Standard

44. COMMENT: Three positive comments were received regarding the Department's use of the ANSI standard: one commended the Department for using the 1982 ANSI standard, one commended the Department for having adopted the 1982 ANSI Standard in 1984, and one noted that in the 1992 ANSI/IEEE Standard, it is stated that "no verified reports exist of injury to human beings or of adverse health effects on the health of human beings who have been exposed to electromagnetic fields within the limits of frequency and SAR specified by the previous 1982 ANSI standard and that the ANSI/IEEE standard concludes that the 1982 exposure limits should be safe for all. (18, 78, 94, 111)

RESPONSE: The Department thanks the commenters for their support of the Department's continued use of the 1982 ANSI Standard as the basis for its radiofrequency radiation protection limits.

45. COMMENT: The Department should be using the 1992 ANSI Standard, which is a two-tiered standard. (The 1992 ANSI Standard covers a wider frequency range and sets exposure limits for the public at a level five times more conservative than the 1982 ANSI Standard.) (5, 16, 17, 65, 81, 82, 86, 87, 92, 128, 131, 138) The release of the 1992 ANSI Standard makes the underlying basis of the Department's proposed fee rule obsolete and will only serve to increase public confusion, since the Department's substantive nonionizing radiation standards are based on the 1982 ANSI Standard. (136) If the Department proceeds with enforcement of N.J.A.C. 7:28-42, which is based on the 1982 ANSI Standard, this registration and inspection program will be technologically outdated before it even goes into effect. (92) The Department should be assessing fees for the enforcement of the 1992 ANSI Standard, which is very different from the 1982 one and is based on 10 years of additional research. (92, 109)

RESPONSE: This fee rule, as adopted, addresses all radiofrequency and microwave heaters, sealers and industrial ovens. These sources will be inspected for compliance with the regulatory limits in N.J.A.C. 7:28-42, which are based on the 1982 ANSI standard. The primary basis for both the 1982 and 1992 ANSI Standard, a SAR of 0.4 watts/kilogram, is essentially unchanged. However, there are several differences between the two standards. One of the major differences is that the 1992 ANSI Standard covers a wider frequency range. There is also a major difference in the recommended radiation limits between workers and the general public. The difference is based on consideration of the potential differences in exposure times for the public versus workers, that is, approximately 168 hours versus 40 hours per week, rather than on new scientific study results. In addition, in an uncontrolled population, there are individuals such as the elderly, sick or very young, who may be more sensitive to the stress induced by exposure to radiofrequency radiation than members of the workforce, who generally are in good health and are being monitored for radiation exposure and changes in health status. While at most frequencies, the public exposure limits in the 1992 ANSI Standard are more stringent than the 1982 ANSI Standard, the exposure limits for workers in the 1992 ANSI Standard are similar to the 1982 limits. Since the fee rule adopted herein focuses on worker exposures, the Department does not believe that enforcing the provisions of N.J.A.C. 7:28-42 is technologically outdated, nor does it believe that enforcement of N.J.A.C. 7:28-42 will lead to public confusion. Since the worker limits in the 1992 ANSI Standard are similar to the limits in N.J.A.C. 7:28-42 and exposures to nonionizing radiation will be reduced from current high levels due to enforcement of N.J.A.C. 7:28-42, the Department does not believe that a delay in implementing the inspection program would be appropriate. In the meantime, the Radiation Protection Commission will consider amending N.J.A.C. 7:28-42 in order to be compatible with the 1992 ANSI Standard.

46. COMMENT: What effect will the anticipated FCC adoption of the 1992 ANSI standard would have on the Department's radiofrequency radiation regulation, which is essentially the 1982 ANSI Standard? This could put the Department in direct conflict with the FCC. The Department should defer this fee rule until the FCC adopts the 1992 ANSI standard, which is a two-tiered standard for workers and the public. Also, the Department's adoption of this fee rule is unnecessary, since the FCC is planning to adopt the 1992 ANSI Standard which will be more strict than what the State has now. (6, 23, 37, 39, 78, 89, 91, 109, 115, 116,

119, 129, 136) If the State and the FCC were to have disparate standards, it could be more costly for companies to comply with two standards. (39, 116)

RESPONSE: The FCC has not yet adopted the 1992 ANSI Standard as the guidelines and methods for evaluating the environmental effect of radiofrequency radiation from FCC-regulated facilities pursuant to the National Environmental Policy Act (NEPA) of 1969. (See Federal Register, Vol. 58 Pg. 19393, April 14, 1993.) Under the FCC's current NEPA rules at 47 C.F.R. §1.1307(b), the FCC evaluates a facility based on the 1982 ANSI Standard, which is consistent with the provisions of N.J.A.C. 7:28-42. At the present time, there is no conflict between the FCC's rules and New Jersey's rules. The Commission will, however, consider whether it wishes to amend N.J.A.C. 7:28-42 in order to make it compatible with the 1992 ANSI Standard. Any such action would be consistent with the FCC's Notice of Proposed Rulemaking.

47. COMMENT: The ANSI Standard is not scientifically well founded. (14, 59, 81, 82, 86, 87, 128, 131, 138)

RESPONSE: Several hundred studies in the biomedical literature were used by the ANSI C95-IV Subcommittee in developing the 1982 ANSI Standard. These studies underwent rigorous scrutiny by the C95-IV Subcommittee. The scientific studies considered in developing the Standard had to be relevant, replicated, and have measured the energy imparted to the absorbing body used in the experiment (dosimetry). After a list of studies meeting all three criteria was compiled, each study was evaluated individually by the C95-IV Subcommittee's scientists, who evaluated them in terms of reliability and evidence of adverse health effects. In conclusion, the 1982 ANSI Standard represents a consensus in the scientific community as to an acceptable scientific standard.

48. COMMENT: The ANSI standard is not based on human studies and therefore should not be used to limit the exposure of New Jersey's citizens to radiofrequency radiation. (5, 16, 17, 73, 81, 82, 118, 128, 131, 138)

RESPONSE: As in the case of many health standards, the ANSI exposure criteria are largely based on reported threshold levels for biological effects. The ANSI Standard was developed primarily using animal studies. Some human studies were entered into the database to develop the ANSI standard. Before the development of the 1982 ANSI Standard, the field of dosimetry had advanced to the point where reliable techniques were available to determine, as a function of frequency, the incident power density that would limit the whole-body averaged SAR to a specific value. (Dosimetry is the calculation and measurement of the energy absorbed by irradiated objects.) SARs were calculated for various shapes and sizes of humans from a small child to a tall adult. Therefore, both animal and human data went into developing the 1982 ANSI C95.1 Radiofrequency Protection Guide (RFPG).

49. COMMENT: The ANSI Standard does not have a frequency-dependent time limit for exposures to radiofrequency radiation. (66)

RESPONSE: The 1982 ANSI Standard does average exposure over a predetermined period of time. Exposures, absorption rates (SAR) and input power are averaged over a six-minute time period. Because the ANSI Standard is not flat but rather a frequency-dependent standard, the six-minute time averaging at different frequencies is dosimetrically correct.

50. COMMENT: The ANSI Standard exempts low power devices under seven watts and neither the existing rule at N.J.A.C 7:28-42 nor the proposed fee rule at N.J.A.C. 7:28-48 say that the Department is exempting low power devices under seven watts. (16, 17, 73, 81, 82, 128, 131, 138)

RESPONSE: When the Commission adopted the 1982 ANSI Standard at N.J.A.C. 7:28-42, it determined that most of the devices that were seven watts or less were hand-held or mobile. By regulating only fixed radiofrequency devices (see N.J.A.C. 7:28-42.1(a)) and thereby excluding all mobile sources from N.J.A.C. 7:28-42, the Commission felt that low power devices under seven watts would be exempted.

51. COMMENT: The Department has derived an "admittedly" ten-fold reduction from the ANSI standard for its rule. The ANSI Standard is already based on worst case conservatism for an additional margin of safety. (16, 17, 73, 81, 82, 128, 131, 138) The 1982 ANSI standard is too stringent. (2)

RESPONSE: When the Commission adopted the 1982 ANSI standard in 1984 as N.J.A.C. 7:28-42, it adopted the same frequency-dependent limits as the ANSI Committee did, that is, exposure limits based on an SAR of 0.4 watts/kilogram. The Commission did not further reduce the exposure limits recommended by ANSI by a factor of 10.

52. COMMENT: The proposed rule is flawed because it is based on the 1982 ANSI Standard, which was designed for worker exposures only. (126) The Department is inappropriately using the 1982 ANSI Standard for both workers and the public because the ANSI Standard was developed for occupational exposures. (16, 17, 29, 81, 82, 122, 128, 131, 138)

RESPONSE: In the Scope and Purpose Section of the American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 Khz to 100 Ghz, ANSI C95.1-1982, it is stated that "these recommendations are intended to apply to nonoccupational as well as to occupational exposures."

53. COMMENT: The differences in the 1982 versus the 1992 ANSI Standard are problematic. For instance, the 1992 Standard warns that there is no practical equipment for making power density measurements in the near field region. Also, changes in the new Standard include measurements of contact body current and induced body current resulting from proximity to nearby transmitters. (136)

RESPONSE: The Department recognizes that there are several changes from the 1982 to the 1992 ANSI Standard and will recommend that the Commission consider amending N.J.A.C. 7:28-42 to be compatible with the 1992 ANSI Standard. However, for the reasons cited in the discussion of Issue E above, the Department believes that enforcement of the 1982 ANSI Standard with respect to worker exposures is appropriate since the 1982 Standard is similar to the 1992 Standard for workers. Enforcement of it will result in significant reductions in worker exposures to radiofrequency radiation. With regard to the inability to make measurements in the near field, the Department can still determine compliance with N.J.A.C. 7:28-42 in the far field. As far as measurements of contact body currents and induced body currents are concerned, until the Commission decides to amend N.J.A.C. 7:28-42 to be compatible with the 1992 ANSI Standard, companies are free to use the 1992 ANSI Standard to limit the induced or contact body currents of employees from exposure to radiofrequency radiation.

Workplace environment and worker safety

54. COMMENT: Anyone who enters an area where radiofrequency radiation exceeds the limits specified in N.J.A.C. 7:28-42 knows and accepts any adverse health risks. (56)

RESPONSE: Since N.J.A.C. 7:28-42 currently does not contain posting requirements, the Department does not believe that all individuals are cognizant of their entrance into a radiofrequency radiation field in excess of the radiation limits in N.J.A.C. 7:28-42 and the hazards associated with this exposure. Posting requirements may be appropriate additions to consider if the Commission updates N.J.A.C. 7:28-42.

55. COMMENT: A good engineer is able to estimate where the high magnetic field levels are, and should be able to keep people out of those areas. The Department's efforts to survey and find hot spots is a redundant effort. (14)

RESPONSE: A good engineer may be able to estimate where high magnetic fields are, but the Department does not believe that such estimates are being made, based on complaints it has received from workers in industries using radiofrequency radiation. The Department believes that its survey of the workplace will ensure that the radiation limits specified in N.J.A.C. 7:28-42 are not being exceeded.

56. COMMENT: The text of the rule does not mention how the inspections will result in an improvement in worker safety. (52, 96)

RESPONSE: The purpose of the Department's inspection of the workplace is not only to find whether workers are being exposed to levels of radiation in excess of the radiation limits of N.J.A.C. 7:28-42, but also to find out the cause of the overexposure. Once the cause is found, steps can be taken by the owner to correct the problem. For example, if a worker is unknowingly exposed to a high radiation field in a certain area, the radiation field could be either be reduced or access restricted so that overexposures do not recur. Also, owners of radiofrequency radiation emitting devices will be more likely to comply with the provisions of N.J.A.C. 7:28-42 if they know that penalties may be assessed in the event of noncompliance.

Specific Comments Applicable to Radiofrequency and Microwave Heaters, Sealers and Industrial Ovens

57. COMMENT: Heat sealers are essentially unregulated after they are installed in the workplace. How does the Department propose to regulate them? (98) Radiofrequency heaters and sealers pose a very significant danger to operators and possibly to the public. It is wholly appropriate that the State address this area, but, to be effective, these devices should be inspected once a year to assure continued compliance.

(10) The Department should be concentrating its efforts on radiofrequency heaters and sealers since there are little or no Federal regulations in this area and these sources are a hazard to the worker and the public. (104)

RESPONSE: Radiofrequency and microwave heaters, sealers and industrial ovens are of special concern because the Department believes that these sources greatly exceed the radiation limits specified in N.J.A.C. 7:28-42 and because operators may stand in front of them for eight hours a day. The installation and operation of these sources is not inspected or regulated by any Federal agency. This is why the Department is requiring the registration of all radiofrequency and microwave heaters and sealers. The Department chose a 10 year planned inspection cycle for radiofrequency and microwave heaters and sealers in order to keep the fees from being overly burdensome. However, if in the future, the Department determines that this inspection cycle is too infrequent and does not ensure the health and safety of the users of these devices, the Department may seek to inspect them more often. The Department does not believe the public is exposed to hazardous levels of radiofrequency radiation from these devices, but will takes this comment into consideration when performing inspections.

58. COMMENT: The fees for radiofrequency and microwave heaters and sealers are unjustified since there is only a perception that radiofrequency and microwave devices pose a hazard. The Department is responding to a only a small group of people who feel that microwave and radiofrequency equipment represents a health hazard. By singling out all microwave and radiofrequency heating devices for registration, the Department will promote unfounded fears that this technology is harmful to workers. Furthermore, there is no documentation to suggest that this group of sources has caused any health threat to the workforce. (65) If these devices are exposing workers to levels of radiofrequency and microwave radiation 8,000 times the limits in N.J.A.C. 7:28-42 (as the Department has claimed), why has the Department not heard about ill effects? (14)

RESPONSE: There are many Federal reports of surveys that document high levels of radiation emitted by these devices and discuss the potential adverse health impacts on their operators. The National Council on Radiation Protection and Measurements recently published a report reaffirming the high radiofrequency radiation to which the operators of such devices may be exposed. (NCRP Report No. 119, A Practical Guide to the Determination of Human Exposure to Radiofrequency Fields, December 31, 1993) Based on complaints received by the Department from operators of these devices, the Department believes that many workers are probably being exposed to high levels of radiofrequency radiation which result in adverse health effects but that these exposures go unreported because the workers are unaware that the radiation is causing the health problem. The program established by this rule will enable the Department to verify whether these overexposures are in fact occurring. The Department believes that the inspection program established pursuant to N.J.A.C. 7:28-48 will reduce the exposure of workers to nonionizing radiation.

59. COMMENT: Industrial radiation devices are placed in screened radiofrequency chambers so that there is no radiation leakage outside the chamber. (56)

RESPONSE: While it is true that some radiofrequency heaters and sealers leaking excessive amounts of radiofrequency radiation are placed in a screened radiofrequency chamber, in most cases, an operator is required to be in the shielded room with the unit. Therefore, the operator is still being exposed to excessive amounts of radiofrequency radiation.

60. COMMENT: The registration procedure for radiofrequency and microwave heaters, sealers and industrial ovens will place an undue burden on the users of this equipment, in terms of administrative costs, for a questionable benefit. Manufacturers already file an annual report with the FDA on any new equipment, listing type, power level, frequency of operation and also location. (144)

RESPONSE: The registration requirements of N.J.A.C. 7:28-48 are limited to completing a one-page registration form requesting general information about the owner and the source(s) and completing a Radiation Assessment Document ("RAD") containing technical information on the source(s). Most likely, owners will have on hand the information needed to complete the RAD form. This information will assist the Department in establishing an inspection schedule. The fees in N.J.A.C. 7:28-48 were calculated, in part, to cover the Department estimates it will incur in reviewing the registration and RAD forms. The Department has considered the public health and safety concerns associated with human exposure to radiofrequency radiation and has concluded that any burden associated with completing the forms and paying the relatively low fees is outweighed by the benefits of enforcing the radiofrequency radiation standards in N.J.A.C. 7:28-42.

61. COMMENT: This fee rule should not be adopted because the fees will place a burden on the users of this equipment for administrative costs and would place the users of this technology at a competitive disadvantage with those industries not using radiofrequency and microwave radiation to melt or seal products. (61, 65) This fee regulation would place laboratories in New Jersey at a competitive disadvantage with other laboratories that are certified by the Department but are located outside of New Jersey. (61)

RESPONSE: With respect to the economic impact of these fees on the plastics industry and other industries using these devices, the Department believes the fees are low enough so that they will not place any users of these devices at a competitive disadvantage with other competing laboratories or companies. The annual renewal fee, under the rule as adopted, for a microwave heater, sealer or industrial oven is $125.00 and for a radiofrequency heater, sealer or industrial oven, $160.00. The fee schedule provides that the renewal fees, per source, for additional radiofrequency and microwave heaters, sealers and industrial ovens located at a single facility are lower than the fee for the first such source. It is not expected that these relatively small fees will impose a large economic burden on the owners of these sources.

Microwave disinfection units

62. COMMENT: Microwave disinfection units (MDUs) in hospitals use the same technology as microwave ovens in the home; therefore, they should also be exempt. Furthermore, MDUs are regulated devices and have been proven to be safer than the non-regulated home ovens. They are registered with the FDA and conform to FCC standards. (45)

RESPONSE: While both devices (the home oven and the MDU) use the same wavelength and the same basic principle of operation, the risks from their operation are quite different. The MDU is larger, the intensity of the microwave radiation is higher and there are more opportunities for leakage than from the home microwave oven. Although the manufacturers of MDUs are registered with the FDA, the registration is merely a reporting requirement. The FDA does not inspect these units for compliance with radiation protection standards. With regard to FCC jurisdiction over MDUs, the FCC requires only that MDUs do not cause interference with communications sources in the same frequency bands. Again, the FCC does not inspect these sources. Therefore, there is no duplication of effort between the State inspection program being established pursuant to N.J.A.C. 7:28-48 and Federal agencies regarding MDUs.

63. COMMENT: Contrary to the Department's opinion, there is enough information available to predict radiation levels emitted by MDUs. These devices are checked for leakage on a daily basis and have not been found to leak. (The commenter offered to send records of the results of these daily monitorings to the Department to review.) Thus, they do not exceed the limits specified in N.J.A.C. 7:28-42, and should be exempt from the rule. (45)

RESPONSE: The Department did review the manual operating procedures in a guide for one of the MDUs. There seems to be some opportunity for exposure to microwave radiation if standard operating procedures for the manual mode are not properly followed. Since the Department has a responsibility to ensure the safety of the workers operating such devices by enforcing N.J.A.C. 7:28-42, the Department must be able to inspect these units. It must, therefore, charge a fee to cover the cost of the inspections. The Department welcomes any survey reports on these units.

64. COMMENT: Since facilities using MDUs are already spending thousands of dollars each year registering with the Department's Division of Solid Waste and guaranteeing the safety and efficacy of these units, the fees charged pursuant to this new rule will only serve as a deterrent to hospitals in carrying out the recommendations of the Department's Solid Waste Management State Plan, that is, to encourage in-State, independent handling of medical waste. Fees for MDUs used in hospitals will increase health care costs, since the fees as well as the burden of compliance will eventually be passed on to the health care consumer. (45)

RESPONSE: Companies are required to register with the Department's Division of Solid Waste, but information is sent to the Department only when a new technology in this area is developed. Site-specific information is not collected. In addition, Solid Waste does not inspect these devices for compliance with N.J.A.C. 7:28-42. The Department

believes that the fees in N.J.A.C. 7:28-48 are minimal, and should not deter hospitals from using this technology nor should they significantly increase health care costs.

65. COMMENT: This fee rule is in direct conflict with the spirit of reducing excess regulation and paperwork by the Department because the use of these MDUs is supported by the Department's Solid Waste Management State Plan for managing medical waste. (45)

RESPONSE: It is true that the Department's Solid Waste Management Plan supports the use of MDUs in managing medical waste. However, these devices must be used safely so as not to expose the operators to levels of radiation in excess of the standards in N.J.A.C. 7:28-42. The Department does not believe that the safe use of MDUs for purposes of medical waste management is at all inconsistent with the Solid Waste Management Plan.

66. COMMENT: The Department had not taken into account the additional costs to owners of MDUs of personnel which will have to be assigned for oversight, legal interpretation, paperwork and data gathering in order to comply with N.J.A.C. 7:28-48. (45)

RESPONSE: The Department believes that paperwork will need to be completed only once and should take a minimum amount of effort. Such paperwork will entail the completion of a one page registration form and the Radiation Assessment Document (RAD). The only data gathering that should be necessary would be the information needed to complete the registration form and the RAD.

Microwave ovens

67. COMMENT: The fees for microwave ovens used in the laboratory will duplicate laboratory certification fees. There should be an exemption for State-certified laboratories in New Jersey that pay a laboratory certification fee. (61)

RESPONSE: There is little overlap in the tasks performed by the Office of Quality Assurance (OQA) staff with regard to laboratory performance and the tasks performed by Radiation Protection Programs staff pertaining to microwave ovens used in laboratories. The laboratory certification program ensures accurate and precise laboratory analyses. The radiation protection program ensures the health and safety of laboratory workers by inspecting microwave ovens for compliance with N.J.A.C. 7:28-42.

68. COMMENT: The Department is charging a fee for the registration of microwave ovens. (1, 70, 114)

RESPONSE: The Department is not assessing fees for microwave ovens used in the home or for those used in preparing food in restaurants, canteens and eating establishments. The Department feels that this would be an unreasonable burden on the consumer and the restaurant industry. In addition, it would not be feasible for the Department to inspect every home and restaurant microwave oven in the State. However, microwave ovens used in a laboratory or in the food industry but not for preparation of food for immediate consumption must be registered.

69. COMMENT: Why is the Department exempting (home) microwave ovens from this rule? (100) By not including home microwave ovens, is the Department saying that these devices are not a threat to the public? (45) Home microwave ovens may be more of a hazard than radiofrequency and microwave heaters and sealers. (14) A survey recently done by a consultant around a major satellite earth station revealed that the levels of microwave radiation around the facility were less than the normal leakage from a microwave oven. Therefore, in all fairness, the fee rule should be applicable to all microwave sources. (43)

RESPONSE: Microwave ovens used in the home are not covered by the rule because the Department feels this would be an unreasonable burden on consumers. In addition, it would not be feasible for the Department to inspect every home microwave oven in the State. The Department does recognize that home microwave ovens can present a hazard and that they are still subject to the radiation limits specified in N.J.A.C. 7:28-42. However, radiofrequency and microwave heaters and sealers used in industry and hospitals represent much more of a hazard than home microwave ovens because they are used more frequently and operators may be positioned in front of them for eight hours at a time. The Department agrees with the commenters that microwave radiation exposure levels to the public around a satellite earth station facility are expected to be low. The Department will consider techniques to reduce occupational exposures to microwave radiation from satellite earth stations as part of its reassessment effort regarding broadcast/communications sources.

70. COMMENT: The exemption from registration for microwave ovens in restaurants, canteens, eating establishments and those for consumer use should be written into the regulation. (16, 17, 65, 73, 78, 81, 82, 86, 87, 128, 131, 138)

RESPONSE: While the Department intended that microwave ovens used for food preparation would be exempted pursuant to N.J.A.C. 7:28-48.10(a)3, and stated this in the proposal Summary (see 25 N.J.R. 5425), for clarity and in response to these comments, the Department is adding an express exemption for microwave ovens at N.J.A.C. 7:28-48.10(a)6.

Summary of Changes on Adoption:

The Department is adopting the proposed fee rule with the following changes:

1. At N.J.A.C. 7:28-48.1(a), the Department is removing the phrase "fixed nonionizing radiation producing sources (or fixed radiofrequency sources) that have the potential of exceeding the radiation limits in N.J.A.C. 7:28-42 and for" because registration fees and reporting requirements are not being imposed on broadcasting, communications and navigational/radar sources at this time, as discussed in the Summary of Public Comment and Agency Responses, above.

2. At N.J.A.C. 7:28-48.2, the Department is removing the following definitions because they apply only to broadcasting, communications and/or navigational/radar sources: "antenna array," "broadcasting antenna," "fixed antenna of a land-mobile communications system," "meteorological purposes," "navigational aids," "point-to-point communications antenna," "radar" and "satellite earth station antenna." The Department is also amending the definition of "nonionizing radiation producing source" by deleting reference to the term "antenna," because it applies only to broadcasting, communications, navigational and radar sources.

3. At N.J.A.C. 7:28-48.2, in the definition of "Radiation Assessment Document," the Department is removing the phrase "effective radiated power, antenna patterns and geographical coordinates" since it applies only to broadcasting, communications and navigational/radar sources. In its place, the Department is inserting the phrase "duty cycle of each source, the source operator's position in relation to each source and any additional information," which more appropriately describes the data relevant to radiofrequency and microwave heaters, sealers and industrial ovens.

4. The Department is deleting N.J.A.C. 7:28-48.3(a), because it applies to broadcasting, communications, navigational and radar sources, and reserving the subsection in case it decides to require registration and to assess fees for these sources in the future.

5. The Department is deleting N.J.A.C. 7:28-48.3(d). The New Jersey State Legislature's Office of Legislative Services (OLS), at the direction of the Assembly Regulatory Oversight Committee, reviews existing and/or proposed rules of executive departments and agencies for consistency with statutory authority. As proposed, N.J.A.C. 7:28-48.3(d) required the owner of a nonionizing radiation producing source to retain on-site a copy of the registration form that the owner must file with the Department. OLS determined that this provision was inconsistent with the enabling statute, N.J.S.A. 26:2D-9(h), which requires that records concerning sources of radiation be kept in a manner prescribed by codes, rules, or regulations of the Radiation Protection Commission. The Department agrees with the conclusion of OLS, that since the recordkeeping requirement in N.J.A.C. 7:28-48.3(d) was proposed to be promulgated by the Department, rather than by the Commission, the provision is inconsistent with the statute. The Department is therefore not adopting N.J.A.C. 7:28-48.3(d).

6. N.J.A.C. 7:28-48.3(f), is recodified as N.J.A.C. 7:28-48.3(e) and the phrase "the source emits or has the potential to emit nonionizing radiation in excess of the limits set forth in N.J.A.C. 7:28-42, or" is deleted because this phrase applied to broadcasting, communications and navigational/radar sources.

7. The Department is deleting N.J.A.C. 7:28-48.5(b) because it applies to broadcasting, communications, navigational and radar sources. The Department is reserving the subsection in case it decides to require registration and to assess fees for these sources in the future.

8. At N.J.A.C. 7:28-48.7(b), the Department is deleting the following source categories and corresponding fee amounts because it is not assessing fees on these sources at this time: broadcasting antennas, satellite earth station antennas, point-to-point communications antennas, fixed antennas of land-mobile communications systems and navigational aids and radar. The Department is amending the fees for radiofrequency heaters and sealers and microwave heaters, sealers and industrial ovens, as explained in the Summary of Public Comments and Agency

Responses, above. At N.J.A.C. 7:28-48.7(c) and (e)2, "and Energy" is being deleted from the Department's name to reflect the recent reorganization of the Department.

9. The Department is deleting N.J.A.C. 7:28-48.10(a)2 and 3, because they apply to broadcasting, communications, navigational and radar sources. The Department is reserving these paragraphs in case it decides to require registration and to assess fees for these sources in the future.

10. In response to the request of many commenters, the Department is adding an exemption at N.J.A.C. 7:28-48.10(a)6 for microwave ovens used to cook food for customers' consumption in locations such as, but not limited to, restaurants, canteens, and other eating establishments, and microwave ovens purchased by consumers for use in the home. The Department intended to exempt these sources because it would be an administrative burden to register all of these sources. The exemption has been added in order to codify and clarify the Department's original intention to exclude these sources. (See the proposal Summary at 25 N.J.R. 5425 (December 6, 1993).)

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 48. FEES FOR THE REGISTRATION OF NONIONIZING RADIATION PRODUCING SOURCES

7:28-48.1 Scope, purpose and general provisions

(a) This subchapter establishes initial registration fees and annual renewal fees for *[fixed nonionizing radiation producing sources (or fixed radiofrequency sources) that have the potential of exceeding the radiation limits in N.J.A.C. 7:28-42 and for]* all radiofrequency and microwave heaters, sealers and industrial ovens, and imposes reporting requirements on the owners of these sources. The fees collected by the Department will support a program that will assure the compliance of the regulated sources with the applicable provisions of N.J.A.C. 7:28-42.

(b) Each owner of a nonionizing radiation producing source that is subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner of a nonionizing radiation producing source, each owner is jointly and severally liable for complying with all the requirements of this subchapter.

(c) If an owner fails to comply with any of the Department's requests made pursuant to this subchapter, the Department may assess a penalty in accordance with N.J.S.A. 26:2D-13.

7:28-48.2 Definitions

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

*["Antenna array" means a nonionizing radiation producing source composed of two or more discrete antennas, used for the purpose of concentrating the radiating radiofrequency radiation in a desired direction. For the purpose of this subchapter, an antenna array is considered one source of nonionizing radiation.

"Broadcasting antenna" means an antenna whose purpose is to transmit audible and/or visual information over a wide area for the entertainment or informational purposes of an audience. Included in this definition are amplitude modulated (AM) and frequency modulated (FM) radio, and ultra high frequency (UHF) and very high frequency (VHF) television (TV) antennas.]*

"Controlling interest" means the interest held by the person or persons who owns more than 50 percent of the voting stock or other equity interest in an owner; it also means the interest held by a person or persons who owns 50 percent or less of the voting stock or other equity interest in an owner and who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies in an owner.

"Dispose" or "disposal" means the discarding or destroying of a nonionizing radiation producing source.

["Fixed antenna of a land-mobile communication system" means the fixed antenna and associated electronic components of a land-mobile system used to transmit voice information from mobile telephones or two-way radio via radiofrequency radiation.]

"Gigahertz" (GHz) means 1,000,000,000 hertz or cycles per second.

"Kilohertz" (kHz) means 1,000 hertz or cycles per second.

["Meteorological purposes" means the use of a source of nonionizing radiation to detect meteorological targets such as raindrops, cloud droplets, ice particles, snowflakes, atmospheric nuclei, or other airborne targets, such as, but not limited to, insects and birds.]

"Megahertz" (MHz) means 1,000,000 hertz or cycles per second.

"Microwave heater, sealer and industrial oven" means any source which uses microwave radiation between the frequencies of 300 MHz and 100 GHz to heat, melt, dry, cure, sanitize, disinfect or alter the chemical composition of materials such as, but not limited to, plastics, rubber, glue, wood, dyes or food.

"Microwave radiation" means, for the purposes of this subchapter, nonionizing radiation between the frequencies of 300 MHz and 100 GHz. (By convention, microwave radiation describes all the frequencies between 300 MHz and 300 GHz. Microwave radiation is a subset of the radiofrequency radiation spectrum.)

["Navigational aids" means sources of nonionizing radiation used for the purpose of regulating or aiding traffic, whether in the air, on land, or in water, and radar sources.]

"Nonionizing radiation" means radiation which does not have the capability of ionizing the medium through which it is passing.

"Nonionizing radiation producing source" or "source" means, for the purposes of this subchapter, any equipment, machine*[,]* ***or*** device *[or antenna]* capable of emitting nonionizing radiation between the frequencies of 300 kHz and 100 GHz.

"Owner" means a person who has title to a radiation source or who possesses a radiation source as a lessee, bailee or pursuant to the terms of a registration issued by the Department, by a Federal agency, or by any other state.

"Person" includes an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, municipality, any state or other legal entity; and any legal successor, representative agent, or agency of the foregoing.

*["Point-to-point communications antenna" means an antenna which transmits information via radiofrequency radiation to another antenna within line-of-site.

"Radar" means an electronic system that transmits radiofrequency waves through the air and then receives them after they have been reflected by an object in the path of the beam for the purposes of determining one or more of the following characteristics of the object: range, azimuth, elevation, and/or object identification.]*

"Radiation Assessment Document" means a form or series of forms issued by the Department requiring information such as, but not limited to, radiation frequency, *[effective radiated power, antenna patterns and geographical coordinates]* ***duty cycle of each source, the source operator's position in relation to each source and any additional information*** which will be used to predict radiation levels in the areas surrounding nonionizing radiation producing sources.

"Radiofrequency radiation" means, for the purposes of this subchapter, nonionizing radiation between the frequencies of 300 kHz and 100 GHz. (By convention, radiofrequency radiation described all the frequencies below 300 GHz, with microwave radiation as a subset of the radiofrequency radiation spectrum.)

"Radiofrequency heater and sealer" means any source, including induction and dielectric heaters, which uses radiofrequency radiation between the frequencies of 300 kHz and 299 MHz to heat, melt, dry, cure, sanitize, disinfect or alter the chemical composition of materials such as, but not limited to, plastics, rubber, glue, wood, dyes or food.

"Registration" means the submission by the owner and receipt by the Department of the completed registration form and Radiation Assessment Document, and the payment of fees.

["Satellite earth station antenna" means an antenna whose purpose is to transmit radiofrequency radiation from earth to a satellite in space.]

"Transferee" means a person who obtains either:

*[i.]**1.* Ownership of a nonionizing radiation producing source; or

*[ii.]**2.* A controlling interest in the owner of such a source.

"Transferor" means a person who sells or otherwise transfers either:

*[i.]**1.* A nonionizing radiation producing source; or

*[ii.]**2.* A controlling interest in the owner of such a source.

7:28-48.3 Registration of a nonionizing radiation producing source

(a) *[No owner shall operate a nonionizing radiation producing source listed in (a)1 through 5 below, which has the potential of exceeding the radiation limits specified in N.J.A.C. 7:28-42, unless the owner completes the registration form and it is received by the Department 60 calendar days after the effective date of this subchapter. Thereafter, no owner shall operate a nonionizing radiation producing source, which has the potential of exceeding the radiation limits specified in N.J.A.C. 7:28-42, unless the owner completes the registration form and it is received by the Department 30 calendar days after the owner takes possession of any of the sources listed below:

1. Radio and television broadcasting antennas;
2. Transmitting satellite earth station antennas;
3. Transmitting point-to-point communications antennas;
4. Fixed antennas of land-mobile communications systems; or
5. Radar and other sources of nonionizing radiation used for navigational and/or meteorological purposes.]* ***(Reserved)***

(b) No owner shall operate a nonionizing radiation producing source listed in (b)1 or 2 below unless the owner completes the registration form and it is received by the Department *[60 calendar days after the effective date of this subchapter]* ***by March 4, 1995***. Thereafter, no owner shall operate the sources listed in (b)1 or 2 below unless the owner completes the registration form and it is received by the Department 30 calendar days after the owner takes possession of any of the sources listed below:

1. Radiofrequency heaters and sealers; or
2. Microwave heaters, sealers and industrial ovens.

(c) An owner shall register on forms made available by the Department. The registration form shall include the following information:

1. The owner's name, address and telephone number;
2. The type of source(s);
3. The number of source(s);
4. The location of source(s);
5. The frequency or frequency range of radiation emitted from each source; and
6. Any additional information which is reasonably necessary to identify the source or the owner of the source.

[(d) An owner shall retain a copy of the completed registration form, which has been submitted to the Department, at the facility at which the nonionizing radiation producing source is located.]

*[(e)]***(d)*** An owner shall produce immediately, upon request by the Department, a copy of the completed registration form.

*[(f)]***(e)*** If an owner of a nonionizing radiation producing source fails to register that source with the Department, and the Department has reason to believe that *[the source emits or has the potential to emit nonionizing radiation in excess of the limits set forth in N.J.A.C. 7:28-42, or]* the source is a radiofrequency or microwave heater, sealer, or industrial oven, the Department may require the owner to provide information on the source and may conduct an inspection of the source, facility and any documents or records pertaining thereto.

7:28-48.4 Amendments to the registration of a nonionizing radiation producing source

An owner shall notify the Department in writing within 30 calendar days of any change in the information on the registration form.

7:28-48.5 Radiation Assessment Document

(a) An owner shall submit to the Department a Radiation Assessment Document, on forms made available by the Department, no later than 60 calendar days after the owner's receipt of the bill for the initial registration fee.

(b) *[For sources listed in N.J.A.C. 7:28-48.3(a), the Radiation Assessment Document shall include the following information:

1. The owner's name, address and telephone number;
2. The type of antenna(s);
3. The number of antenna(s);
4. The geographical coordinates of each antenna;
5. The frequency or frequency range of radiation emitted from each antenna;
6. The effective radiated power of each antenna;
7. The gain of each antenna; and
8. Any additional information which is reasonably necessary to assess compliance of the antennas with the provisions of N.J.A.C. 7:28-42.]* ***(Reserved)***

(c) For sources listed in N.J.A.C. 7:28-48.3(b), the Radiation Assessment Document shall include the following information:

1. The owner's name, address and telephone number;
2. The type of source(s);
3. The number of source(s);
4. The location of each source;
5. The frequency or frequency range of radiation emitted from each source;
6. The duty cycle of each source;
7. The source operator's position in relation to each source; and
8. Any additional information which is reasonably necessary to assess compliance of the sources with the provisions of N.J.A.C. 7:28-42.

7:28-48.6 Amendments to Radiation Assessment Documents

An owner shall notify the Department in writing within 30 calendar days of any change in the information contained in the Radiation Assessment Document.

7:28-48.7 Initial registration fee and annual renewal fee for nonionizing radiation producing sources

(a) An owner shall remit to the Department the initial registration fee or annual renewal fee no later than 30 calendar days after the owner's receipt of the bill issued by the Department.

(b) An owner shall pay the fees for initial registration and annual renewal as follows:

Source Category	Initial Registration Fee	Annual Renewal Fee
*[1. Broadcasting antennas:		
i. For one AM broadcasting antenna array at one location:	$ 510.00	$ 450.00
For each additional AM broadcasting antenna array at the same location, add:	235.00	195.00
For each FM or TV broadcasting antenna at the same location, add:	440.00	400.00
ii. For one FM or TV broadcasting antenna at one location:	510.00	450.00
For each additional FM or TV broadcasting antenna at the same location, add:	235.00	195.00
For each AM broadcasting antenna array at the same location, add:	440.00	400.00
2. Satellite earth station antennas, per location		
One antenna	$ 470.00	$ 405.00
Two antennas	685.00	585.00
Three antennas	1,005.00	875.00
Four antennas	1,315.00	1,150.00
For each additional antenna at the same location, add:	185.00	150.00
3. Point-to-point communications antennas, per tower, installation or location		
One antenna	$ 280.00	$ 220.00
Two antennas	425.00	350.00
Three antennas	570.00	480.00
Four antennas	715.00	605.00
For each additional antenna at the same location, add:	130.00	115.00

4. Fixed antennas of land-mobile communications systems, per location		
For one source (each single antenna, antenna array or base station is considered one source)	$ 285.00	$ 235.00
For each additional source at the same location, add:	145.00	130.00
5. Navigational aids and radar (each antenna or antenna array is considered one source), per location		
One source	$ 295.00	$ 215.00
Two sources	510.00	350.00
Three sources	740.00	535.00
Four sources	935.00	665.00
For each additional source at the same location, add:	185.00	120.00
6. Radiofrequency heaters and sealers, per location		
One source	$ 185.00	$ 165.00
Two sources	310.00	295.00
Three sources	430.00	415.00
Four sources	580.00	565.00
Five sources	700.00	680.00
Six sources	820.00	805.00
Seven sources	950.00	930.00
Eight sources	1,060.00	1,040.00
For each additional source at the same location, add:	100.00	100.00
7. Microwave heaters, sealers and industrial ovens, per location		
One source	$ 140.00	$ 135.00
Two sources	250.00	250.00
Three sources	380.00	370.00
Four sources	490.00	480.00
Five sources	600.00	590.00
Six sources	720.00	700.00
Seven sources	845.00	820.00
Eight sources	960.00	935.00
For each additional source at the same location, add:	90.00	95.00]*
***1. Radiofrequency heaters and sealers, per location**		
One source	**$ 180.00**	**$160.00**
Two sources	**305.00**	**285.00**
Three sources	**415.00**	**395.00**
Four sources	**565.00**	**545.00**
Five sources	**675.00**	**650.00**
Six sources	**795.00**	**770.00**
Seven sources	**910.00**	**890.00**
Eight sources	**1,010.00**	**990.00**
For each additional source at the same location, add:	**90.00**	**90.00**
2. Microwave heaters, sealers and industrial ovens, per location		
One source	**$ 125.00**	**$125.00**
Two sources	**220.00**	**225.00**
Three sources	**325.00**	**330.00**
Four sources	**415.00**	**425.00**
Five sources	**505.00**	**520.00**
Six sources	**600.00**	**615.00**
Seven sources	**705.00**	**615.00**
Eight sources	**805.00**	**830.00**
For each additional source at the same location, add:	**80.00**	**85.00***

(c) An owner remitting an initial registration fee or annual renewal fee shall mail a check or money order, payable to "Treasurer, State of New Jersey," to the Department at the following address:

State of New Jersey
Department of Environmental Protection*[and Energy]*
Bureau of Revenue
CN-417
Trenton, NJ 08625-0417

(d) An owner who fails to remit the initial registration fee or annual renewal fee within 30 calendar days after the owner's receipt of the bill shall be assessed a late charge, which is 20 percent of the amount of the billed fee.

(e) The registration of an owner who fails to submit an annual renewal fee within 60 calendar days after the owner's receipt of the bill shall be considered expired.

1. Any owner whose registration has expired pursuant to this subsection shall, upon a written request transmitted to the Department within 30 calendar days of the expiration of the registration, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. Requests for hearings shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection *[and Energy]*, CN 402, Trenton, NJ 08625-0402.

(f) An owner who allows the registration of a source to expire by failing to remit the annual renewal fee within 60 calendar days after the owner's receipt of the bill shall be required to file a new registration form along with the appropriate initial registration fee listed in (b) above.

(g) Fees submitted to the Department are not refundable.

7:28-48.8 Sale of a nonionizing radiation producing source or transfer of a controlling interest; termination of registration upon sale of nonionizing radiation producing source or upon transfer of controlling interest

(a) A person who sells or otherwise transfers either a nonionizing radiation producing source, or a controlling interest in the owner of such a source, shall notify the Department in writing at least 30 calendar days before the sale or transfer occurs. The transferor shall include the following information in the notice:

1. The name and address of the transferee; and

2. The date of the proposed sale or transfer.

(b) Unless the procedures set forth in either (c) or (d) below are followed, the registration of a nonionizing radiation producing source shall terminate upon the sale of the source or upon the transfer of a controlling interest in the person who owns the source.

(c) The registration of a nonionizing radiation producing source shall not terminate upon the sale of the source or upon the transfer of a controlling interest under (b) above, and shall be transferred to the transferee, if the transferee certifies to the Department in writing that it will assume all of the transferor's liabilities in connection with:

1. Any deficiencies in the operation of source that would result in a violation of any of the provisions of N.J.A.C. 7:28-42; and

2. All penalties arising in connection with the source from occurrences or circumstances existing before the date of the sale or transfer.

(d) The registration of a nonionizing radiation producing source shall not terminate upon the sale of the source or upon the transfer of a controlling interest under (b) above, if the transferor takes the actions required of the transferor under the following procedure:

1. The transferor shall notify the Department in writing of the proposed sale or transfer, prior to the sale or transfer in accordance with (a) above;

2. The Department may, in its discretion, perform an onsite audit of the nonionizing radiation producing source. If the Department performs such an audit, it shall be completed within 90 calendar days after receipt of notice under (d)1 above;

3. Within 45 calendar days after the deadline for completion of the audit in (d)2 above, based on the audit and/or a review of Department records, the Department shall either:

i. Issue to the transferor a notice stating that there are no deficiencies in the operations of the nonionizing radiation producing source and that no violations exist; or

ii. Issue to the transferor a report of all deficiencies and one or more notices of prosecutions or administrative orders; and

4. The transferor corrects all deficiencies and pays all the penalties noted in (d)3 above.

(e) If the registration of a nonionizing radiation producing source continues pursuant to the procedures set forth in either (c) or (d) above, the transferee shall operate its nonionizing radiation produc-

ing source in compliance with this subchapter and all applicable provisions of this chapter.

(f) If the registration of a nonionizing radiation producing source terminates pursuant to (b) above, the transferee shall submit an initial registration form and the appropriate initial registration fee within 30 calendar days after it takes possession of the nonionizing radiation producing source or assumes a controlling interest in the owner of such a source, unless it is the intent of the transferee to dispose of the source. If the transferee operates the nonionizing radiation producing source before it submits the completed initial registration form, the transferee shall be in violation of N.J.A.C. 7:28-48.3.

7:28-48.9 Disposal of a nonionizing radiation producing source

(a) Whenever an owner disposes of a nonionizing radiation producing source, as listed in N.J.A.C. 7:28-48.3(a) and (b), the owner shall give written notification to the Department within 30 calendar days after such disposal. The owner shall provide to the Department a complete description of the final disposition of the source.

(b) The registration of a nonionizing radiation producing source shall terminate upon the disposal of the source.

7:28-48.10 Exemption from registration and payment of initial registration fee and annual renewal fee

(a) An owner of a nonionizing radiation producing source is exempt from registration and payment of initial registration and annual renewal fees if:

1. The source is not operational, and does not emit nonionizing radiation;

2. *[The source is operational, and detects radiofrequency radiation but does not transmit radiofrequency radiation (receive-only sources);]* ***(Reserved)***

3. *[The source is operational, but does not transmit radiofrequency radiation in excess of the limits specified in N.J.A.C. 7:28-42;]* ***(Reserved)***

4. The source is used for display purposes only, and does not emit nonionizing radiation; *[or]*

5. The source is possessed, used or stored by the United States Government*[.]***; or***

6. The source is a microwave oven used to cook food for customers' consumption in locations such as, but not limited to, restaurants, canteens, and other eating establishments, or a microwave oven purchased by a consumer for use in the home.

CORRECTIONS

(a)

THE COMMISSIONER

Fiscal Management

Readoption with Amendments: N.J.A.C. 10A:2

Proposed: November 7, 1994 at 26 N.J.R. 4229(a).
Adopted: December 9, 1994 by William H. Fauver, Commissioner, Department of Corrections.
Filed: December 9, 1994 as R.1995 d.21, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10; Executive Order No. 93(1993); and N.J.S.A. 2C:46-4.

Effective Date: December 9, 1994, Readoption; January 3, 1995, Amendments.
Expiration Date: December 9, 1999.

Summary of Public Comments and Agency Responses:

The Department received one timely written comment on the proposed readoption with amendments from Lance Ashwood, Northern State Prison. The comment and the response of the Department of Corrections is as follows:

COMMENT: The commenter stated, "We the prisons of NORTHERN STATE PRISON feel that this proposal should be denied due to the hardship it will inflict on prisoners in the state of New Jersey. The institutional pay scale are very low as it is and most of us prisoners rely on state pay for various reasons to name a few;

(A) To send monetary supplements to our families

(B) Purchase of the following materials:

1. religious
2. academic
3. rehabilitation (due to limited programs)

(C) Special diet food's (for those who are regimented, religious, or health conscious)

(D) Correspondence Fees—stamps and envelopes etc.

(E) Exceptional Legal Fees

(F) Special Hygiene Products

(G) Savings to re-enter society

(H) etc. etc. etc.

In the State of New Jersey we have adequate law to ascertain fines, restitution and child support, therefore it would be unconstitutional to target prisoners of the State of New Jersey accounts while they are already being deterred from further criminality and in the process of rehabilitation. On behalf of the prisoners of the State of New Jersey, please abolish this proposal and deem it unconstitutional to pass as law." [sic]

RESPONSE: The specific issues related to the readoption with amendments the commenter seeks to have addressed are unclear. However, the commenter stated that a hardship will be inflicted on inmates because the pay scales are low and it would be unconstitutional to target the accounts of inmates. The rules proposed for readoption with amendments set forth at N.J.A.C. 10A:2 are consistent with the intent of N.J.S.A. 2C:46-4 regarding fines, assessments and restitution; collection and disposition. This legislation clearly states that inmate fines, assessments and restitution shall be collected by the Department of Corrections from any income the inmate receives as a result of labor or from any personal account established for the benefit of an inmate pursuant to regulations promulgated by the Commissioner of the Department of Corrections. The Department of Corrections disagrees that an undue hardship will be created for inmates because amendments at N.J.A.C. 10A:2-2.2(f) state that only those inmate funds in excess of a $15.00 balance can be deducted. This $15.00 balance will ensure that the inmate has funds to expend for his or her personal needs.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10A:2.

Full text of the adopted amendments follows:

SUBCHAPTER 1. INTRODUCTION

10A:2-1.1 Purpose

(a) The purpose of this chapter is to establish policies and procedures for:

1. Controlling and depositing funds held in trust for inmates;
2. Appropriating expenditures of inmate welfare funds;
3. Reporting the loss of funds by burglary, theft, embezzlement or mysterious disappearance when discovered by a correctional facility;
4. Processing inmate claims for lost, damaged or destroyed personal property;
5. Withdrawing of restitution from an inmate's account for loss or damage to State property;
6. Distributing financial aid to persons released on parole or upon expiration of sentence;
7. Receiving and giving gifts; and
8. Processing grants.

10A:2-1.2 Scope

(a) N.J.A.C. 10A:2-2, 3, 5, 6, 7 and 8 shall be applicable to the Division of Operations, New Jersey Department of Corrections.

(b) N.J.A.C. 10A:2-9 and 10 shall be applicable to all administrative units within the New Jersey Department of Corrections.

10A:2-1.3 Definitions

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

"Gift" means money or material(s) donated to a correctional facility or administrative unit for a specified or unspecified purpose

by a person(s) or organization(s) without an expectation of compensation.

"Grant" means a specific amount of funds or services given to an administrative unit or correctional facility by a funding source to be used over a specific period of time for a specific purpose.

"Inmate personal property" means items owned by an inmate which have been approved for retention in his or her possession while incarcerated in a correctional facility. Inmate personal property may also be property held by a correctional facility on behalf of an inmate and handled in accordance with N.J.A.C. 10A:1-11.

"Loss of funds" means funds received by a correctional facility or an administrative unit, from any source, which are unaccounted for as a result of theft, larceny, embezzlement or mysterious disappearance.

"Restitution" means a disciplinary sanction recommended by a Disciplinary Hearing Officer, Adjustment Committee, or a court ordered indemnification which requires the inmate to compensate the correctional facility or victim(s) of a criminal act for any loss, damage or injury perpetrated by the inmate.

10A:2-1.4 Forms

(a) The following forms related to fiscal management shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY;
2. 943-II CERTIFICATION OF INMATE CLAIM;
3. 943-III REVIEW OF INMATE CLAIM;
4. 947-I MONTHLY REPORT OF GIFTS RECEIVED;
5. 947-II ANNUAL REPORT OF GIFTS RECEIVED;
6. 950-I FISCAL REPORT OF GRANTS RECEIVED;
7. 950-II REPORT OF PROGRESS OF PROJECTS FUNDED BY GRANTS.

(b) The following form related to fiscal management shall be obtained from the business office of the correctional facility:

1. STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE.

(c) The following forms related to financial aid upon release from correctional facilities shall be obtained from the Bureau of Parole, New Jersey Department of Corrections:

1. 814.06 FINANCIAL AID PROGRAM RECEIPT;
2. 814.07 REQUEST FOR REPLENISHMENT OF FUNDS;
3. 814.08 FINANCIAL AID ACCOUNT.

10A:2-2.2 Group deposits and deductions

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

(d) Deductions of funds either earned or unearned from inmate accounts shall be made by the Business Manager to pay court ordered penalty assessments, restitution, fines, or other revenue obligations as permitted by N.J.S.A. 30:4-91.4, N.J.S.A. 2C:43-3.1, N.J.S.A. 2C:46-1, N.J.S.A. 2C:46-4, or N.J.S.A. 30:4-92.

(e) (No change.)

(f) Only inmate funds in excess of a $15.00 balance can be deducted to pay court ordered penalty assessments, restitution, fines, or other revenue obligations.

10A:2-3.1 Sources of income for inmate welfare funds

(a) Money for inmate welfare funds shall be derived from the following sources:

1.-3. (No change.)

4. Income from inmate trust fund investments.

10A:2-3.2 Accountability and expenditure

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

(e) The Assistant Commissioner, Division of Operations, shall be contacted when there are questions regarding the use of inmate welfare funds.

Recodify existing N.J.A.C. 10A:2-5.2 as 10A:2-5.1 (No change in text.)

10A:2-5.2 Reporting the loss of funds

(a) Within 48 hours after the loss is discovered, a written report of the loss shall be submitted to the Assistant Commissioner, Division of Administration, with a copy to the Office of the Commissioner.

(b) The Assistant Commissioner, Division of Administration, shall prepare and submit a request to the Bureau of Risk Management, Department of Treasury, for appropriate reimbursement.

(c) If the loss is not covered by the Bureau of Risk Management, Department of Treasury, the loss shall be referred to the Deputy Commissioner, Division of Administration, who will determine the appropriate source of funds to dispose of the loss claim.

10A:2-6.1 Filing a claim at an adult or juvenile institution or satellite unit

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

(h) If the Superintendent recommends approving a claim, the Superintendent shall complete Form 943-III REVIEW OF INMATE CLAIM and request that the Business Manager of the correctional facility complete STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE and have said INVOICE presented to the inmate for his or her signature.

(i) The signed STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE along with Forms 943-I, 943-II, 943-III and the Custody Operations' investigative report shall be submitted by the Superintendent to the Assistant Commissioner, Division of Operations, for review.

(j) The Assistant Commissioner, Division of Operations, shall review the claim and determine whether to approve or disapprove the claim.

(k) If the Assistant Commissioner, Division of Operations, disapproves the claim, he or she shall sign and date Form 943-III and return the entire packet of documents to the Superintendent.

(l) If the Assistant Commissioner, Division of Operations, approves the claim, he or she shall sign and date Form 943-III and submit the entire packet of documents, listed in (i) above, to the Chief, Bureau of Accounts, to be reviewed for compliance with the requirements of this section.

(m) When a claim is not in compliance with the requirements of this section the Chief, Bureau of Accounts, shall return the entire packet to the Assistant Commissioner, Division of Operations with the reasons therefor.

(n) When a claim is in compliance with the requirements of this section, the Chief, Bureau of Accounts, shall indicate "Compliance" on Form 943-III and submit the entire packet to the Deputy Commissioner for approval or disapproval.

(o) Claim packets approved by the Deputy Commissioner shall be returned to the Chief, Bureau of Audits and Accounts, for payment. Disapproved claim packets shall be returned to the Assistant Commissioner, Division of Operations, with the reason(s) for disapproval noted.

10A:2-6.2 Filing a claim at an adult community service center

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

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I, Form 943-II, 943-III, and STATE OF NEW JERSEY PAYMENT VOUCHER-VENDOR INVOICE signed by the inmate and the investigative report to the Chief, Bureau of Community and Professional Services, within the Division of Operations, for review.

(f)-(h) (No change.)

(i) If the Assistant Commissioner disapproves the claim, he or she shall sign and date Section IV on Form 943-III and return the entire package of documents to the Chief, Bureau of Community and Professional Services, who will return these documents to the Superintendent.

(j) If the Assistant Commissioner approves the claim, he or she shall sign and date Section IV on Form 943-III and submit the entire packet of documents listed in (e) above, to the Chief, Bureau of Accounts, to be received for compliance with the requirements of this section.

(k) (No change.)

(l) When a claim is in compliance with the requirements of this section, the Chief, Bureau of Accounts, shall indicate "Compliance" and submit the entire packet to the Deputy Commissioner for approval or disapproval.

(m) Claim packets approved by the Deputy Commissioner shall be returned to the Chief, Bureau of Audits and Accounts for payment. Claim packets disapproved by the Deputy Commissioner shall be returned to the Assistant Commissioner, Division of Operations, with the reason(s) for disapproval noted.

Recodify existing N.J.A.C. 10A:2-6.5 through 6.7 as 10A:2-6.3 through 6.5 (No change in text.)

Recodify existing N.J.A.C. 10A:2-7.2 through 7.6 as 10A:2-7.1 through 7.5 (No change in text.)

Recodify existing N.J.A.C. 10A:2-9.3 through 9.5 as 10A:2-9.1 through 9.3 (No change in text.)

10A:2-9.4 Gifts of computers

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

(c) Each request to provide an inmate organization with a microcomputer and/or software, as a gift, shall be reviewed by the Institutional Computer Security Manager to ensure that the request is consistent with the rules outlined in this subchapter and internal management procedures of the Department of Corrections and the correctional facility.

(d)-(h) (No change.)

10A:2-9.5 Gifts of vehicles or vehicle parts

(a) Prior to accepting a gift of a vehicle or vehicle parts, the proposal shall be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner, Division of Administration. The vehicle and vehicle parts must benefit the Department of Corrections and funds must be designated for the costs associated with the operation and maintenance of the vehicle.

(b) Upon review of the proposal of a gift of a vehicle or vehicle parts, by the Assistant Commissioner, Division of Administration, the Assistant Commissioner shall approve or disapprove the proposal.

(c) The written approval or disapproval of the proposal of a gift of a vehicle or vehicle parts shall be returned to the Superintendent or Administrative Unit Head.

10A:2-9.6 Gifts for capital construction

(a) Prior to accepting a gift for capital construction, the proposal of the gift shall be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner, Division of Administration.

(b) Upon review by the Assistant Commissioner, Division of Administration, the proposal of a gift for capital construction shall be submitted to the Commissioner, Department of Corrections, with a recommendation for approval or disapproval.

(c) The Commissioner's written approval or disapproval of the proposed gift for capital construction shall be returned to the Assistant Commissioner, Division of Administration.

(d) The Assistant Commissioner, Division of Administration, shall be responsible for notifying the Superintendent or Administrative Unit Head of the Commissioner's approval or disapproval of the proposed gift for capital construction.

10A:2-9.7 Gifts for research purposes

Gifts for research purposes shall not be accepted until the research project has been reviewed and approved by the Commissioner, Department of Corrections, in accordance with N.J.A.C. 10A:1-10, Research.

10A:2-9.8 Gifts of medical supplies or medical equipment

(a) Prior to accepting gifts consisting of medical supplies or equipment, the Superintendent or Administrative Unit Head shall submit notification of the availability of these gifts to the Supervisor, Health Services Unit, Office of Institutional Support Services (O.I.S.S.).

(b) The Supervisor, Health Services Unit, O.I.S.S. shall submit the notification regarding the gifts of medical supplies or equipment to the Assistant Commissioner, Division of Administration, for approval or disapproval.

(c) The written approval or disapproval of the gift of medical supplies or equipment shall be returned to the Supervisor, Health Services Unit, O.I.S.S.

(d) The Supervisor, Health Services Unit, shall designate the appropriate placement of such supplies and equipment.

(e) The Supervisor, Health Services Unit, O.I.S.S. shall be responsible for accepting the gifts of medical supplies or equipment and for notifying the Superintendent or Administrative Unit Head receiving the gifts in order that arrangements for the transportation of the gifts to the correctional facility or unit may be made.

Recodify existing N.J.A.C. 10A:2-9.11 as 10A:2-9.9 (No change in text.)

10A:2-9.10 Use of gifts to purchase supplies or equipment

(a) (No change.)

(b) If supplies or equipment cannot be purchased from a vendor currently under State contract, the Superintendent or Administrative Unit Head shall secure competitive price quotations consistent with the current State of New Jersey procurement policy as delineated in the Department of the Treasury's Circular Letters.

Recodify existing N.J.A.C. 10A:2-9.13 as 10A:2-9.11 (No change in text.)

Recodify existing N.J.A.C. 10A:2-10.2 through 10.4 as 10A:2-10.1 through 10.3 (No change in text.)

10A:2-10.4 Reports

The Superintendent or agency head shall complete Form 950-I FISCAL REPORT OF GRANTS RECEIVED and Form 950-II REPORT OF PROGRESS OF PROJECTS FUNDED BY GRANTS and submit these forms to the Assistant Commissioner along with the Annual Report.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Professional Fees and Investments; Prohibition of Kickbacks

Adopted Amendment: N.J.A.C. 13:35-6.17

Proposed: December 6, 1993 at 25 N.J.R. 5441(a).
Adopted: November 23, 1994 by the Board of Medical Examiners, Fred M. Jacobs, M.D., J.D., President.
Filed: December 6, 1994 as R.1995 d.8, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with the proposed amendments to N.J.A.C. 13:35-6.17(e) and (h) not adopted.

Authority: N.J.S.A. 45:9-2 and 45:9-22.5.

Effective Date: January 3, 1995.
Expiration Date: September 21, 1999.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendments to N.J.A.C. 13:35-6.17. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register at 25 N.J.R. 5441(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Department of Health and other interested parties. The official comment period ended on January 6, 1993. However, due to the extensive nature of the public comment received on certain topics, the Board agreed to accept additional written comments until February 22, 1994. A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Charles A. Janousek, Executive Director, 140 East Front Street, Trenton, New Jersey 08608.

The Board received more than 200 written comments regarding the proposals. A list of the commenters follows:

Comments Received Regarding Corporate Practice Regulations

N.J.A.C. 13:35-6.17
Consumers

Isabelle M. Dudash
Ana Paula Mendez
John Cece, M.D.
Marjorie Bailey
Craig B. Dwyer
Leroy W. Gunston
Anita Weinstein
Marché Micheil
Dawn M. Velasquez
Michael Y. Wong
Michael Shaughnessy
Alexander & Carol Olah
Vincent J. Finaldi
Mr. & Mrs. C.L. Maniad
John Scillieri, M.D.
Ruth Hiler
Robert R. Dawson, Th.D.
Leona Dolan
Marie A. Gioia
Christine Egan
Phyllis K. Masarik
Heidi H. Calderone
Cidel Maximes
Helen F. Hoffman
Patricia M. De Piano
Judith A. Huber
Evelyn Barone
Paul & Theresa Onorate
Joseph Matthews
Nancy M. Hodulik
Ennette Boyiatgis
Rabbi Asher Herson
Deborah Freneui
Alicia M. Bostedo
Charlotte Drumheller
Robert Lufe
Charlene M. Reilly
Trish Schulte
Margaret Hollins
Margaret Smith
Meisha Waton
Walter Fedorzyk
Marie Fedorzyk
Judy Vazzano
Julia Fender
Anne Bator
Elizabeth Menzies
Donna M. Kleinshmidt
Joseph Lorent
Jeffrey A.
Brian R. Veprek
Nanci Deverin
Gladys B. Hebenstreit
Marie Coppala
Margaret Conevay
Agnes Vazzano
Philip DeRitis
Helen M. Kearney
Fran DeRitro
Joe Vazzano
Doris J. Caridad
Russell C. Caridad
John D. Wilgucki, D.O.
Robert Chamria
Anita Ellen Caridad
William B. Hagedorn
Edgar G. Braunstein, M.D.
Theodore R. Apuoelu
Francisca Perera
Leonard Dietz
Miguel Hovgaly
Julia M. Krause
Brian R. Kemey
Anna Van Chief
Harry Effert
Jalon J. Boylan
Ebi V. Boylan
Hesnobani
Antonietta Freschi
Elizabeth Morales
Peter DelBert
Bruna Dietz
Antoniette Dietz
Enes Bolleia
Joseph Tohimguh
Gabriela Bancroft
J. Bancroft
Mercedes Guardado
Ialiados Guardado
John Laterra
David D. Smith
Jane Scott
Edgar Ng
Rosa J. Rojas
Vincent Ruhima
Osvaldo Bernardo
Ulric Lee
Margaret DeGibbliv
Marie DeGiulia
Leticia Corardo
Sangita Shrivastav
Charles Bolloia
Angela Treschi
Carol De Mariv
Sylvia Mora
Lois Tohinguh
Joyer Laterra
Gioroida I. Govjuly
Preston H. Yang
Francis D'Ambra
Linda Szemict
Dorene L. Credle
Jvann Naugle
William R. Morley
Helen Morley
Mrs. John McNee
Mr. John McNee
Marcy Nardini
Kennett Brown
Jadich Hutchinson
Don Tortvet
Helen V. Brown
Barbara L. Baber
Wendy Marandola
Patricia Everingham
Irma Warsham
June Tang
R.A. Munjan
Deborah L. Curtis
Michelle Giora
Tracy S. Brown
Jessie Maiber
William Robinson
Toni Brown
Michael T. Brown
Ken Brown, Jr.
Raleigh Z. Pwarel III
Rabbi Asher Herson
Florence L. Heftman
Lorrie M. Russo
Laura Iskza

Comments Received Regarding Corporate Practice Regulations

N.J.A.C. 13:35-6.17(h)5.

Joseph M. Gorrell
John D. Fanburg
Roy Carman, M.D.
Brian J. Boyle, D.O.
Joseph F. Binns, M.D.
Ivan A. Friedrich, M.D.
Kenneth P. Rubin, M.D.
Vincent S. Panella, M.D.
Ronald M. Minzter, M.D.
Edmund A. Abramovitz, FACHE
Joel P. Goldfarb, M.D.
Kent S. Lerner, M.D.
RJ Sollitto, DPM
Beth Derby
John H. Hajjar, M.D.
Glenn A. deBrueys
Anthony DeGennaro, M.D.
Stephen J. Margulis, M.D.
Ira M. Trocki, M.D.
B.R. D'Ascoli, M.D.
Steven A. Chomsky, M.D.
William H. Constad, M.D.
Thomas G. Stackhouse, M.D.
David J. Medford, M.D.
Malcolm H. Bloch, M.D.
Michael Soda, M.D.
Mamie Bowers, M.D.
Ruby Huttner, M.D.
James M. Parolie, M.D.
Seth Rubin, M.D.
Corrado Altomare, M.D.
Thomas McGuigan, DPM
Albert Johnson, M.D.
James N. Dwyer, M.D.
Allen J. Kern, M.D.
Paul Vessa, M.D.
Thomas J. Nordstrom, M.D.
Jeffery Landes, M.D.
David T. Rosen, M.D.
Stanley Sheft, M.D.
John Spurlock, M.D.
Peter Pyatak, M.D.
Mitchell S. Schwartz, M.D.
Jordan D. Burke, M.D.
Richard B. Eihaugler, M.D.
Aaron S. Kaplan, M.D.
Ervin Moss, M.D.
James R. Morris
Leon J. Huppert, M.D.
Steven L. Rodis, M.D.
Robert S. Levine, M.D.
Jeffrey Miller, DPM
Bruno J. Casatelli, DPM
David A. Mortman
John R. Kingsley, M.D.
Albert W. Shay
Albert C. Neumann, M.D.
Thomas J. Tamburelli
W.W. Braden III
Steven K. Mishkin, M.D.
Judith Boehm, R.W.
Ramon Silen, M.D.
Edward H. Brenner, M.D.
Arthur Falgione, M.D.
Walter J. Kahn, M.D.
Thomas Graziano, DPM
Kenneth Zahl, M.D.
Ezra S. Kazan, M.D.
Elena Ng, M.D.
Martin S. Schnieder, M.D.
Michael A. Ietta, M.D.
Burton A. Scherl, M.D.
David M. Inkeles, M.D.
Theodore F. Pearlman, M.D.
Terence W. Murphy, M.D.
Michael Schmidt, M.D.
Deane Penn, M.D.

Comments Received Regarding Corporate Practice Regulations

N.J.A.C. 13:35-6.17
Ophthalmology

Orazio L. Giliberti, M.D.
Niki A. Silverstein, M.D.
David S. Hoffman, M.D.
D.A. Benedetto, M.D.
Edwin Trayner, M.D.
Ronald M. Minzter, M.D.
Edward P. Seigel, M.D.
Michael J. Yaros, M.D.
Gerald Dunham, M.D.
Martin Schneider, M.D.
Roman G. Kernitsky, M.D.
Steven K. Mishkin, M.D.
Elena M. Ng, M.D.
Carl B. Guterman, M.D.
Scott S. Aksman, M.D.
Elliot S. Grand, M.D.
William B. Potter, M.D.
Edward H. Brenner, M.D.
Thaddeus R. Leoniak, M.D.
Walter D. Mazzanti, M.D.
Jeffrey S. Kaiden, M.D.
Lawrence V. Najarian, M.D.
Sharad R. Saraf, M.D.
Herbert L. Glatt, M.D.
Robert S. Shapiro, M.D.
Joseph P. Calderone, Jr., M.D.
Neil H. Dorfman, M.D.
Lawrence H. Coppock, O.D.
Anthony M. Interdonato, M.D.
Dr. Tasneem Shamim
Alan G. Salz, M.D.
Alan E. Tasoff, M.D.
Edward P. Siegel, M.D.
Richard L. Kaiden, M.D.
Boyd H. Seidenberg, M.D.
Joseph Kaspareck, M.D.
Michael J. Spedick, M.D.
Jacqueline S. Lustgarten, M.D.
Walter J. Kahn, M.D.
Raymond E. Adams, M.D.
Douglas E. Mazzuca, D.O.
Mark W. Leitman, M.D.
Alden Leifer, M.D.
William C. Brown, Jr., M.D.
John K. Lim, M.D.
Frederick C. Shaw, M.D.
Ivan H. Jacobs, M.D.
Martin E. Corwin, M.D.
Kenette Sohmer, M.D.
Douglas E. Mazzuca, D.O.
W.P. Liebesman, M.D.
Ronald J. Blitzer, M.D.
Thomas I. Rozanski, M.D.
Neil M. Krosney, M.D.
Marvin L. Talansky, M.D.
Aaron Kaplan, M.D.

Vivian Chen, M.D.	Daniel L. Wachtel, M.D.
Stephen H. Uretsky, M.D.	Mark A. Friedberg, M.D.
Laurel Feiner, M.D.	S. Jerome Holtz, M.D.
Joel Confino, M.D.	Michael J. Spedick, M.D.
Joseph L. Katz, M.D.	James G. Nachbar, M.D.
Bernard Susskind, M.D.	William C. Brown, Sr., M.D.
Omar F. Almallah, M.D.	C. Stuart Littwin, M.D.
Frederick C. Blades, M.D.	Peter J. Cetta, M.D.
Steven L. Rodis, M.D.	Lawrence Frieman, M.D.
David J. Ludwick, M.D.	Robert E. Schnitzer, M.D.
Cary M. Silverman, M.D.	Randall W. Smith, M.D.
Ronald D. Klug, M.D.	Saul M. Tischler, M.D.
Stuart E. Wunsh, M.D.	John Jacobson, M.D.
Edward M. Solomon, M.D.	Ian M. Schorr, M.D.
James C. Tassini, M.D.	Joel E. Kopelman, M.D.
Stephen M. Felton, Ph.D., M.D.	Norman H. Smith, M.D.
Sander M. Cohen, M.D.	Ezra S. Kazam, M.D.
Claude Gerstle, M.D.	R. David Reynolds, M.D.
Daniel Fishkoff, M.D.	Richard B. Einaugler, M.D.
Arnold I. Young, M.D.	Michael Munoz, M.D.

N.J.A.C. 13:35-6.17(a)2 Expands the exemptions from the term "financial interest" to cover certain contractual arrangements with hospitals

COMMENT: The New Jersey Hospital Association supported the change which it had first suggested in its petition for rulemaking.

RESPONSE: The Board considered that petition and deems the suggestions contained therein to be appropriate and thus has adopted them.

N.J.A.C. 13:35-6.17(c) Recognizes permissibility of participation in continuing medical education programs sponsored pursuant to the standards of the American Medical Association and the American Osteopathic Association

COMMENT: The New Jersey Podiatric Medical Society asked the Board to consider including a reference to that organization within this section so that licensed podiatric physicians attending continuing medical education programs sponsored by it will be treated in a manner similar to that applicable to plenary licensees.

RESPONSE: The Board had never intended to exclude this organization. It considers this omission to have been inadvertent and accordingly is amending this provision upon adoption. The Board does not consider the amendment upon adoption to be a substantive change warranting republication.

N.J.A.C. 13:35-6.17(e) Deletes the 10 percent over cost cap on charges for dispensed goods allowing recoupment of reasonable associated costs, requiring recordkeeping to substantiate price and barring profit

This provision generated more than 200 comments. Although most comments were submitted by ophthalmologists, strenuously objecting to both the new and the old rule construct, similar sentiments were echoed by orthopedists and dermatologists. The following recitation of comments reflects the themes presented in letters from numerous individuals and their professional associations. In light of the comments received the Board has determined not to adopt the proposed amendments to this section. The Board will endeavor to study the issue further and to elicit the views of the regulated community as to the feasibility of any other proposal which may effectuate the concerns of the Board. Accordingly individualized responses will not be submitted herein since the Board is not adopting the proposed amendments. The Board points out that the April 1992 stay on the 10 percent cap is still in effect.

The following represents a summary of the comments presented.

COMMENT: The rule is un-American, anti-capitalistic and simply not fair.

COMMENT: The rule is *ultra vires* (beyond the Board's authority) and represents an unwarranted intrusion into the scope of medical practice.

COMMENT: The rule places a discriminatory burden on doctors, thus adversely affecting physician recruitment and retention in New Jersey. Specifically, it has a disproportionate impact on New Jersey physicians, as distinguished from those in other states who are not similarly limited. It also has a disproportionate impact on ophthalmologists while not imposing similar burdens on optometrists and opticians. Other commenters noted that it had a disproportionate impact on certain specialties and not others.

COMMENT: Because dispensing doctors will likely cease offering this service if they are not permitted to make a profit, the rule adversely affects patients, especially the elderly (low vision in particular), the non-ambulatory and children. Some commenters noted that patients, many of whom have difficulty travelling, will be inconvenienced and forced to travel unnecessarily to alternative dispensers. Others suggested that they would lose the freedom to obtain follow up services that ophthalmologists typically provide. Other patients noted that they felt they would receive a reduced quality of service since ophthalmologists are better trained to detect serious eye disorders. Some patients also felt they would be deprived freedom of choice and would have to obtain services from "highway optometry centers" even though studies show that patients express more satisfaction with physician dispensers. A number of commenters included an excerpt from an August 1993 article in Consumer Reports to that effect. Other patients also indicated that they felt they received a higher quality product where the dispensing doctor is responsible for quality control.

COMMENT: The rule will adversely affect the employees of physicians causing a loss in jobs.

COMMENT: The rule would lead to price increases; since without competition from ophthalmologists, optometrists will have a "lock on the market" and will be able to charge more for their products.

COMMENT: The rule generates a substantial administrative burden for those who choose to continue dispensing. Several commenters noted that the recordkeeping requirements were onerous if not impossible to meet, thus resulting in increased costs and further fostering non-compliance. It was also suggested that the accounting tasks necessary to determine pricing policies are too difficult to undertake.

COMMENT: The rule puts doctors at a disadvantage when negotiating the terms of participation in many managed health care plans, since some require participating practitioners to offer a complete eye care package (professional services and the provision of a product). Unlike optometrists—competitors, ophthalmologists would be unable to recoup monies through a marked up product charge to compensate for a discounted professional service. Thus, this measure would run counter to the trends in health care reform. (Some commenters reported that Medicare allows for the recoupment of a profit on products dispensed.)

COMMENT: The rule fails to recognize the unique attributes of contact lenses. Some commenters suggested that dispensing of contacts ought to be exempted from the restriction because it is so integral to the professional service. It was also noted that dispensing requires intensive physician supervision. Other commenters distinguished this product because it was a cosmetic or luxury device.

COMMENT: The rule calls for a remedy unwarranted by a substantial showing of abuse. Some writers suggested that rather than banning dispensing for profit, enforcement efforts should be focused on a case-by-case basis on those who fail to disclose financial interest, deprive patients of information necessary to exercise their freedom to choose among providers or engage in price gouging.

COMMENT: The rule is difficult to understand.

COMMENT: Several orthopedists noted that the unnecessary travel to secure devices could jeopardize the care of orthopedic patients. It was also noted that supply houses routinely charge two to three times the cost of the item.

COMMENT: A sizable number of employees noted a concern that the rule would result in a loss of jobs and an infringement on their right to work.

COMMENT: Many patients wrote to complain that if ophthalmologists were to be driven from the eyewear marketplace, they would be unnecessarily inconvenienced. In addition, many fear that the services from alternative providers would not be of the same quality and that prices would go up when optometrists are the sole dispensers. Several commentors noted problems that they have had with "highway chains."

COMMENT: The Opticians Association supported the rule amendment.

COMMENT: The Coalition of Opticians noted that although the rule was grounded on a good philosophy, it was not enforceable. This organization expressed its concern that the Board already had an "abysmal" track record on enforcement and that this rule with its reliance on a construct allowing "reasonable costs associated with the dispensing" would be totally unenforceable. The Coalition supported a ban on all dispensing.

COMMENT: The Board of Ophthalmic Dispensers noted that the rule would encourage the employment of unlicensed personnel to perform tasks that ought to be done by licensed opticians.

COMMENT: An accounting firm wrote that a "cost plus" basis of seven to 24 percent would be easier to administer and enforce, also noting that the Board ought not to drive this service out of the market because of patient need.

COMMENT: Several commenters suggested the need for further discussion and study. The Medical Society of New Jersey asked for the creation of a task force to address the issue. A number of ophthalmologist groups have asked for an opportunity to appear before the Board to discuss their concerns.

N.J.A.C. 13:35-6.17(h)5 Authorizes licensees at certificate of need exempt premises to charge a facility fee only to Medicare patients

Almost 100 comments were received on this proposed amendment. All but one expressed concern that this additional language would result in the closure of office surgical suites. While the provision may initially have been intended to assure that the quality of care delivered in those settings was subject to Board jurisdiction and standards, the result that it will create was unintended. Accordingly, the Board is not adopting the proposed amendment to this subsection. The following represents a summary of the comments presented:

COMMENT: There is no justification set forth in the prefatory material appearing in the New Jersey Register.

COMMENT: This proposal will have an adverse impact on patients who will be forced to seek these surgical services in hospital settings.

COMMENT: The provision will result in increased health care costs.

COMMENT: The rule will authorize providers to charge higher fees to medicate beneficiaries, in violation of federal law.

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

13:35-6.17 Professional fees and investments, prohibition of kickbacks

(a) For the purposes of this rule, the following words and terms shall have the following meanings:

1. "Health care service" means a business entity which provides on an in-patient or out-patient basis: testing for or diagnosis or treatment of human disease or dysfunction or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service includes, but is not limited to, a bioanalytical laboratory, pharmacy, home health care agency, home infusion therapy company, rehabilitation facility, nursing home, hospital, or a facility which provides radiologic or other diagnostic imaging services, physical therapy, ambulatory surgery, or ophthalmic services.

2. "Financial interest" means a monetary interest of any amount held by a practitioner personally or through immediate family, as defined herein, in a health care service to which the practitioner's patients are referred. It includes the offer or receipt, directly or indirectly, by the practitioner or immediate family of anything of more than negligible value as a result of a patient's purchase of a prescribed service, goods or device from the person or entity providing this. Except as set forth in (a)2i through vii below, " financial interest" includes a licensee's financial interest in a contractual arrangement with a licensed health care facility (such as a hospital, nursing home or clinic, etc.), whereby the licensee agrees to provide health care services on referral, for example, cardiac or radiologic diagnostic testing, to patients including those receiving Emergency Room care or inpatients or outpatients of the health care facility. "Financial interest" does not include the following:

i. A straight salary or an annual retainer which is not related to the volume of patients treated;

ii. A contractual arrangement with a licensed health care facility or health care service to provide non-clinical services such as quality assurance review, peer review, administrative or supervisory services, duties (other than hands-on care) of a department chair or medical director, or similar services;

iii. A contractual arrangement with a licensed health care facility to provide health care services to patients who are medically indigent, under which the facility pays the licensee reasonable fees for services rendered. For purposes of this rule, "medically indigent" patient means any patient meeting the requirements for indigency established by the State Medicaid program, by the Federal government for purposes of meeting Hill-Burton obligations, by the State Department of Health for purposes of reimbursing hospitals for uncompensated care, or by any other governmental program for purposes of providing health care to indigent individuals;

iv. A contractual arrangement (including a faculty practice plan) with a licensed health care facility to provide health care services to patients of the facility, under which the licensee agrees to accept payments from third party payors (plus any deductible or coinsurance amounts) as payment in full for such services; in the absence of a third party payment mechanism, the licensee shall have agreed to provide such services at no charge or the facility shall have agreed to pay the licensee reasonable fees for services rendered;

v. A contractual arrangement with a licensed health care facility to provide health care services to patients of the facility, under which the contract establishes the maximum fees which can be charged for the services or the facility approves the licensee's fees in advance, and the services to be provided are part of the facility's normal utilization review process;

vi. A contractual arrangement with a licensed health care facility in connection with a residency or externship program conducted by the facility in affiliation with a medical school accredited by the American Council on Graduate Medical Education *[or]***,* the American Osteopathic Association ***or the American Podiatric Medicine Association*** under which the facility pays the licensee (either directly or through a professional corporation or nonprofit corporation or other appropriate entity) for administration, teaching, supervision and/or hands-on care, and under which the facility or licensee (directly or indirectly) bills patients and third party payors for hands-on care; or

vii. A contractual arrangement (either individually or through an individual practice association, competitive medical plan, or similar organization) with a licensed health care facility to provide health care services to the facility's employees and/or beneficiaries of the facility's health plan, and/or to provide services to eligible individuals pursuant to an agreement between the facility and a health maintenance organization, other managed health care organization, insurance company, union welfare plan, employers or other similar organizations.

3. "Immediate family" means the practitioner's spouse and children, the practitioner's siblings and parents, the practitioner's spouse's siblings and parents, and the spouses of the practitioner's children.

4. "Practitioner" means a physician, podiatrist, bioanalytical laboratory director or specialty laboratory director, acupuncturist, midwife, certified nurse midwife, physician assistant and all other categories of licensee now or henceforth under the jurisdiction of the State Board of Medical Examiners.

5. "Significant beneficial interest" means any financial interest including an equity or ownership interest in a practice or in a commercial entity holding itself out as offering health care service as defined in (a)1 above. This interest does not, however, include ownership of a building or component thereof wherein the space is leased, in writing, to a person or entity at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in publicly traded securities.

6. "Grandfathered" means a personal attribute and status of an individual licensee derived from a significant beneficial interest in a health care service, held on or before July 30, 1991, which renders him or her exempt from the referral prohibitions set forth in N.J.S.A. 45:9-22.5. Those practitioners employed by or professionally affiliated with a grandfathered practitioner do not share the "grandfathered" status.

(b) A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest, unless the practitioner held the

interest prior to July 31, 1991 and discloses that interest to the patient as required herein or as otherwise permitted in this rule. Such a practitioner shall be deemed to be grandfathered. If a licensee professionally affiliated with a grandfathered practitioner obtains a significant beneficial interest in the same health care service in which the grandfathered practitioner holds an interest, on or after July 31, 1991, that practitioner shall not refer patients to that service. A licensee professionally affiliated with a grandfathered practitioner who does not hold an interest in that health care service may refer patients to that service so long as all of the disclosure requirements set forth below are met. Disclosure shall be made by the practitioner in ways appropriate to the professional circumstances including conspicuous posting of a written disclosure form prepared as set forth below, at least 8½ by 11 inches in size, in the practitioner's waiting room in all office locations. The patient shall also be provided with a personal copy of the notice. The notice format shall be as follows:

Public law/rule of the State of New Jersey/Board of Medical Examiners mandates that a physician, podiatrist and all other licensees of the Board of Medical Examiners inform patients of any significant financial interest held in a health care service.

Accordingly, take notice that practitioners in this office do have a financial interest in the following health care service(s) to which patients are referred:

(LIST APPLICABLE HEALTH CARE SERVICES)

You may, of course, seek treatment at a health care service provider of your own choice. A listing of alternative health care service providers can be found in the classified section of your telephone directory under the appropriate heading.

1.-2. (No change.)

3. Neither the prohibition on referral, nor disclosure requirements of this rule apply in the case of a practitioner providing health care services pursuant to a prepaid capitate contract with the Division of Medical Assistance and Health Services in the Department of Human Services.

4. (No change.)

(c) The following pertain to miscellaneous monetary arrangements:

1. A licensee shall not, directly or indirectly, give to or receive from any licensed or unlicensed source a gift of more than nominal (negligible) value, or any fee, commission, rebate or bonus or other compensation however denominated, which a reasonable person would recognize as having been given or received in appreciation for or to promote conduct by a licensee including: purchasing a medical product, ordering or promoting the sale or lease of a device or appliance or other prescribed item, prescribing any type of item or product for patient use, or making or receiving a referral to or from another for professional services. For example, a licensee who refers a patient to a health care service (such as a cardiac rehabilitation service or a provider of durable medical equipment or a provider of testing services) shall not accept from nor give to the health care service a fee directly or indirectly in connection with the referral, whether denominated as a referral or prescription fee or consulting or supervision fee or space leasing in which to render the services (other than as permitted in (h) below), or by any other name, whether or not the licensee has a financial interest as defined in (a) above.

i. (No change.)

ii. This section shall be construed broadly to effectuate its remedial intent. It shall not, however, prohibit a flat-fee payment by a licensee for regular advertising services (including placement on a commercially-sponsored "referral list" of licensed health care providers). It shall not prohibit receipt of reasonable payment for bona fide participation as a speaker at a professional workshop or seminar nor attendance by non-faculty licensees at a continuing medical education program whereby in conformance with the guidelines of the American Council on Continuing Medical Education ***or the American Podiatric Medical Association*** commercial sources have been utilized in calculating the registration fees to be charged to all participants. It shall not prohibit receipt of normal, commercially reasonable discounts for volume purchases from vendors, nor prohibit compensation for the sale of medical equipment by a licensee of the Board, in the disclosed capacity of a salesman, to another licensed health care professional. It shall not prohibit a licensee's participation by permit in an FDA-approved research project.

2.-3. (No change.)

4. A bill for services of members of a professional service corporation, or services of a physician's employees which have been rendered by licensed professionals authorized to provide services without medical supervision, shall identify the provider of service by name and degree, as well as the name of the service entity (if different).

5. A licensee may bill for only the actual cost of prescribed professional/technical services (including, for example, laboratory services, radiologic and EKG consultation, fabrication of eyeglasses, orthotics, etc.) ordered by or through the licensee, with the patient's consent, provided that the name and address of the provider of the professional/technical services and the cost as billed to the licensee, are disclosed to the patient. A licensee may contract with and provide professional/technical services to the prescribing licensee, supplying the information necessary for incorporation in the bill prepared by the prescribing licensee to the patient.

(d) A licensee shall not charge for "free samples" or other similar items obtained by the licensee from any source.

(e) Acting within the scope of lawful practice, a licensee may offer to and provide to a patient medications, including a prescription drug or an over-the-counter preparation or vitamin or food supplement, but only in accordance with the requirements of P.L. 1991, c.187, sec. 46 (N.J.S.A. 45:9-22.11) and N.J.A.C. 13:35-6.6. A licensee may also offer to and provide to a patient medical goods and devices under certain circumstances, as set forth in this rule and defined as follows: medical goods and devices include, but are not limited to, such items as hearing aids, eyeglasses, contact lenses, prosthetic devices, orthotics, etc.

1. A Board licensee shall derive his or her net professional income from the rendering of professional service. The practitioner may recoup the *[actual]* ***net discounted*** cost of providing those goods and devices which are ancillary to the primary professional service *[as well as the reasonable costs associated with the provision thereof]*, ***plus an administrative cost not to exceed 10 percent of the cost of item.*** *[but the]* ***The*** licensee shall not charge for these items a fee *[which generates]* ***intended to generate*** a profit. *[Licensees shall be required to maintain specific detailed and itemized records justifying the fees charged for goods and devices, and shall provide such records to the Board upon demand.]*

i.-iii. (No change.)

2.-3. (No change.)

4. The requirement to charge *[a fee which does not generate a profit]* ***no more than true cost plus 10 percent for an item prescribed and sold*** shall not apply to a hearing aid dispenser licensed pursuant to N.J.S.A. 45:9A-1 et seq. However, the customer receipt required by N.J.A.C. 13:35-8.14 shall clarify "cost" of earmold and of hearing aid by designating it as the "retail price" of each.

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

(h) The following pertain to real estate and medical equipment arrangements:

1.-4. (No change.)

5. A licensee who owns or practices in premises used for the performance of personal medical services including, but not limited to, ambulatory surgery services but not holding a Certificate of Need from the State Department of Health, shall not charge, or permit or condone a charge or "facility fee" separate from the fee for professional services. A facility fee may, however, be charged by a licensee who is a registered Medicare provider of surgical services *[to Medicare beneficiaries]*, who is billing pursuant to criteria for such fee established by rules of the United States Department of Health and Human Services.

(i)-(k) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Bill of Lading and Insurance Legal Liability

Adopted Amendments: N.J.A.C. 13:44D-4.1 and 4.2

Proposed: December 6, 1993 at 25 N.J.R. 5449(a).
Adopted: March 15, 1994 by the Board of Public Movers and Warehousemen, Thomas B. Quicksell, President.
Filed: December 6, 1994 as R.1995 d.9, **without change.**

Authority: N.J.S.A. 45:14D-6.

Effective Date: January 3, 1995.
Expiration Date: June 30, 1999.

The Board of Public Movers and Warehousemen afforded all interested parties an opportunity to comment on the proposed amendments, N.J.A.C. 13:44D-4.1 and 4.2, regarding bill of lading and insurance legal liability.

The official comment period ended on January 5, 1994.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on December 6, 1993 at 25 N.J.R. 5449(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Public Movers and Warehousemen, Diane Romano, Executive Director, 124 Halsey St., P.O. Box 45018, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received seven written comments regarding the proposal. A list of the commenters follows:

Barbara Sorghangen Crosslicht, Senior Vice President, Crofutt & Smith Moving and Storage, Inc.
Ike King, Brantley Bros. Moving & Storage, Inc.
J.W. McGrath, Executive Director, New Jersey Warehousemen & Movers Association
Edwin Banfield, President, Banfield Moving & Storage Co.
Luig Tramontana, Sr., President, Ware's Van & Storage Co., Inc.
Joseph F. Hughes, Jr., President, Mt. Ephraim Storage Co., Inc.
Gene Altenburg, Vice President, Prudent Air Freight Corporation

Following is a summary of the comments received together with the Board's responses:

COMMENT: Two commenters stated that these proposals will not in any way help the industry because they do not significantly enhance the laws that are currently in effect and will only serve to disrupt the hard-working, honest and legal mover.

RESPONSE: The Board believes that these proposed amendments do in fact significantly enhance the laws in effect. N.J.A.C. 13:44D-4.1 clarifies licensees' responsibilities to provide customers with a clear sense of liability and insurance options. N.J.A.C. 13:44D-4.2 advances the protection afforded consumers by requiring that consumers provide their informed consent to contracts to limit liability, and will also benefit consumers and movers in that both parties to a contract will better understand the specific conditions that would subject movers to full liability for any loss or damage to a shipper's goods. The amendments are not expected nor intended to be disruptive; rather, they clarify and place licensees on notice regarding existing Board guidelines.

N.J.A.C. 13:44D-4.2

COMMENT: One commenter objected to the proposed amendments because there is the possibility that one of the proposed conditions could be inadvertently left out and the subsequent repercussions seem to be too harsh since shippers choose to hear only what they want to hear.

RESPONSE: Under current rules, the mover has always been responsible for providing the shipper with this information on an Order for Services. The amendment to this section merely requires that the professional relationship established between licensees and shippers rests, not on verbal exchanges, but rather on the Order for Services, a signed document which requires that the shipper receive the brochure entitled "Important Notice to Consumers Utilizing Public Movers" in a timely manner.

COMMENT: Two commenters objected to the Board's role as both a fact finder and arbiter on the issue of negligence in the handling of a shipper's goods, which would then subject a licensee to full liability for a shipper's loss or damage.

RESPONSE: As of January 4, 1994, the Board of Public Movers and Warehousemen was legislatively established as the administrative agency authorized to administer and enforce the Public Movers and Warehousemen Licensing Act. Accordingly, the Board is empowered to implement both its enabling act and regulations adopted thereunder both as fact finder and as the agency head in rendering final agency decisions. The Board would also point out that an appeal process exists for licensees, who may have recourse to the Appellate Division of the Superior Court.

COMMENT: One commenter was opposed to replacement coverage insurance because the respondent did not want the shipper to be subject to a deductible that would deny him or her payment on any claim, no matter how minimal. As to loss and damages, the respondent claimed that the real problem is that movers are not properly covered for the minimum legal liability of $.60 per pound per article but merely cover themselves against catastrophes such as overturned vehicles or fire.

RESPONSE: The issue of deductible clauses is not a matter with which the Board involves itself. Proper documentation provided to the shipper, with a copy retained by the licensee, should include an explanation of the deductible and, subsequently, the shipper's signature verifying acknowledgement of the conditions of the agreed-on contract so as to ensure both consumer awareness and self-protection on behalf of the licensee.

COMMENT: One commenter asked the Board if the mover is liable if the mover has not inventoried the content of a box. The Board was also asked if licensees must now open all packed boxes to verify the contents and conditions and, if so, how are licensees to justify the increased cost and time.

RESPONSE: If the contents are unknown by the licensee because he or she was not involved in the packing, then the licensee is not responsible and responsibility lies with the consumer. A mover is not responsible, under any conditions, to inventory a box. Should a box be damaged or mishandled, the normal $.60 per pound per article provisions will continue to apply. Should the Order for Services not have been signed by the consumer, responsibility for the full value of the contents of the box will rest with the licensee as is currently the case.

COMMENT: One commenter noted that the shipper elects during the Order for Services presentation whether to stay with the 60 cents per pound per article or take additional coverage, and that the option the shipper chooses should be paramount in reference to how an article, if damaged, is covered. The respondent further noted that in interstate moves where a very similar situation exists, the Interstate Commerce Commission (ICC) has not found it necessary to specifically address situations of gross negligence or incompetence.

RESPONSE: The Board agrees that the Order for Services is where the shipper chooses coverage and is thus paramount in affirming how an article, if damaged, is covered. The amendments clarify licensees' responsibilities to provide customers with a clear sense of liability and insurance options. The Board, in its role as a state regulator, believes the requirements to be necessary and appropriate as they advance the protection afforded consumers by requiring that consumers provide their informed consent to contracts to limit liability. The requirements will also benefit consumers and movers in that both parties to a contract will better understand the specific conditions that would subject movers to full liability for any loss or damage to a shipper's goods. As such, the Order for Services serves as the basis for establishing where responsibility lies. The reference to the ICC is irrelevant because the proposal does not address an ICC situation; instead, it regulates the activities of New Jersey licensees.

COMMENT: One commenter stated that the amendments proposed regarding the Bill of Lading and the Order will not correct the problems they are intended to correct because a good number of licensees are not properly covered with insurance even at the 60 cent level and, furthermore, are not covered with perils of loading and unloading and so cannot pay for damages caused by anything except the overturning of a vehicle or a fire therein.

RESPONSE: The Board disagrees with the assessment put forward above and maintains that it is diligent in ensuring that licensees are adequately insured in regard to every aspect of their business practices. In specific, forms "E", "H" and "K" are insurance-related forms handled

by the Board office and these forms document a situation whereby licensees are liable should they fail to inform the Board office if insurance is cancelled.

COMMENT: Two commenters stated that all move requests are not orderly and asked about requests for moves that are within 24 hours and for which there is thus not enough time to secure the necessary approvals. The Board was asked if the licensee must then deny the move request, or if a signed waiver is in order. The opinion was offered that an order for service is not a legal document but instead merely serves as the means of ordering insurance coverage.

RESPONSE: The requirements imposed by the regulation are applicable to all movers in all situations. The Board recognizes that special considerations may arise in moves ordered on extremely short notice. Such considerations will be evaluated by the Board on a case-by-case basis in the event consumer complaints are received.

COMMENT: Three commenters objected to the proposed amendments because they are being implemented without the benefit of formal comments and discussion from the moving industry due to the fact that the proposal was published during the holiday period. One respondent asked for an extension of the comment period or for a meeting to be arranged to discuss the proposed amendments with the moving and storage industry and a second respondent endorsed the latter option.

RESPONSE: Members of the public had the requisite 30 days in which to respond to this proposal, and the Board believes an extension for the purposes of further discussion to be unnecessary to a full understanding of the issue. The Board received letters during the 30-day comment period, and none of these respondents raised an issue that the Board believes would warrant an extension of the comment period. The Board will, of course, address any specific concerns it subsequently receives about these rules.

Full text of the adoption follows:

13:44D-4.1 Bill of lading, brochure, estimated cost of services form, order for service form, warehouse receipt; issuance

(a) Prior to entering into an agreement to render services, every public mover and/or warehouseman shall issue the following to each shipper:

1. The brochure entitled "Important Notice to Consumers Utilizing Public Movers," which shall contain detailed explanations of the following:

i.-iv. (No change.)

2. (No change.)

3. An order for services form which shall include, but not be limited to, all pertinent information such as the date of shipment, storage arrangements, points of origin and destination, the date of delivery, a notice indicating that the shipper acknowledges receipt of the public mover's and/or warehouseman's brochure and the order for insurance. The form shall be fully completed in all respects, and signed and dated by the shipper at least one day prior to the commencement of any moving services. No charges shall be affixed to this form. A sample order for service form is provided at Appendix B, incorporated herein by reference. The public mover and/or warehouseman may adopt any form substantially similar to the suggested form outlined herein and in the sample; said form shall contain all of the information outlined in this paragraph.

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

13:44D-4.2 Legal liability and insurance

(a) The public mover and/or warehouseman may by contract with the shipper limit liability for loss or damage to goods in storage or in transit to a minimum of $.60 per pound per article, provided, however, that such limitation shall be null and void and the public mover and/or warehouseman subject to full liability if any of the following conditions apply:

1. The public mover and/or warehouseman failed to present an Order for Service to the shipper at least one day prior to the actual move and obtain his or her signature, with the date of signature, thus acknowledging receipt, as required by N.J.A.C. 13:44D-4.1(a)3;

2. At the time that an Order for Service was presented, the public mover and/or warehouseman failed to provide the shipper with the brochure entitled "Important Notice to Consumers Utilizing Public Movers," which informs the shipper that such limitation applies and that the shipper has the option of making other arrangements for insurance coverage for any damage in excess of the minimum liability offered by the mover and/or warehouseman; or

3. A court or administrative finding has been made that the loss of or damage to the shipper's goods was the result of gross negligence and/or gross incompetence on the part of the mover and/or warehouseman and his or her agents and/or employees, whether as to the actual handling of goods or in the failure to provide appropriate security to prevent loss by theft.

(b)-(h) (No change.)

TRANSPORTATION

(a)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD ENGINEERING
Public Utility Rearrangement Agreements
Readoption: N.J.A.C. 16:24

Proposed: October 17, 1994 at 26 N.J.R. 4160(a).
Adopted: November 18, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Planning.
Filed: December 8, 1994 as R.1995 d.15, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.5 and 52:14B-1 et seq.

Effective Date: December 8, 1994.
Expiration Date: December 8, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:24.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Interstate Highways
Adopted Amendment: N.J.A.C. 16:30-7.4

Proposed: October 17, 1994 at 26 N.J.R. 4162(b).
Adopted: November 18, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Planning.
Filed: December 8, 1994 as R.1995 d.16, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-17, 27:7-21, 27:7-44.1, 27:7A-6, 39:4-34, 39:4-81, 39:4-85.1, 39:4-88, 39:4-91, 39:4-140, 39:4-183.6, 39:4-183.27, 39:4-198 and 39:4-208.

Effective Date: January 3, 1995.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

16:30-7.4 Interstate highways

(a) It has been found and determined that the health, safety and welfare of the public require that the use of all Interstate highways in the State of New Jersey be limited to certain classes of traffic.

(b) The following definitions are furnished to clarify the provisions of this rule:

"Commissioner" means the Commissioner of the Department of Transportation.

"Interstate highway" means, for purposes of this regulation, those highways constructed or being constructed within this State and approved by the Secretary of Transportation of the United States

as an official portion of the National System of Interstate and Defense Highways pursuant to the provisions of Title 23, "Highways" of the United State Code, as amended. The traveled way and all land on both sides of the travelled way extending to an abutting owner's property lines is considered part of the Interstate highway.

"Pedestrian" means, for purposes of this regulation, persons walking, running, standing, sitting, or any form of loitering. (Individuals involved in Department approved Adopt-A-Highway Programs, Inmate Litter Pick-up Programs, or any other Department approved program are not considered pedestrians, for purposes of this rule.)

(c) The use of the aforesaid Interstate highways by the following classes of traffic is prohibited unless permission therefor has been obtained in advance from the Commissioner for the classes of traffic identified in (c)3 or (c)6 below:

1. Pedestrians;
2. Animals led, ridden or driven;
3. Bicycles;
4. Non-motorized vehicles (including, but not limited to, skateboards and rollerblades);
5. Motorized bicycles including, but not limited to, snowmobiles and all terrain vehicles;
6. Tractors, rollers and agricultural or construction machinery, self-propelled or towed.

(d) The following traffic is exempt from the provisions of this regulation:

1. NJDOT equipment;
2. Equipment of contractors engaged by the NJDOT for construction or maintenance operations;
3. Equipment of a public utility company as defined in N.J.S.A. 48:2-13;
4. Equipment involved in emergency operations.

(e) Any person guilty of violating a provision of this chapter shall be liable to a fine of $100.00 for each day of such violation and the cost of prosecution to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the Commissioner of Transportation.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Police and Firemen's Retirement System Election of Member-Trustees; Procedures

Adopted Repeal and New Rule: N.J.A.C. 17:4-1.4

Proposed: October 3, 1994 at 26 N.J.R. 3938(b).
Adopted: November 22, 1994, by the Police and Firemen's Retirement System, Regina Trauner, Secretary.
Filed: November 30, 1994 as R.1995 d.2, **without change.**

Authority: N.J.S.A. 43:16A-13(2)(c).

Effective Date: January 3, 1995.
Expiration Date: June 8, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:4-1.4 Election of member-trustee

(a) The procedures for the election of a police or fire trustee representative to the Board of Trustees are set forth in this section.

(b) Eligible candidates shall include any active or retired member of the Police and Firemen's Retirement System. Only police members may seek police seats and only fire members may seek firemen seats on the Board of Trustees. All candidates shall comply with any and all requirements as provided by law and these rules. Any candidate who fails to comply with the law and these rules is automatically disqualified as a candidate.

(c) The following apply to election notices:

1. At least four months prior to the expiration of the term of each elected trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board through the certifying officers to each member who is eligible to vote. The notice shall also inform the members that petition forms are available at the office of the retirement system.
2. The election notice shall also:
i. Advise the member of the election;
ii. State the position and term to be filled;
iii. State that nominating petitions are required;
iv. State the dates of the election;
v. Identify all present members of the Board; and
vi. Contain other information specified by the Board of Trustees.
3. Election notices shall be forwarded in bulk and in appropriate number to the certifying officer or other appropriate fiscal officer of each employing agency, together with instructions as to who is to receive the notices.
4. A receipt and report shall also be forwarded to each certifying officer or appropriate fiscal officer. Such form shall be returned to the Secretary and shall include documentation of:
i. Receipt of the notice by the certifying officer or other appropriate fiscal officer; and
ii. The extent to which the certifying officer or other appropriate fiscal officer has distributed the notice to eligible members.
5. Election notices shall be distributed to each member who is eligible to vote, as shown on a master list of members that shall be compiled by the Secretary and made available for review to any candidate at the office of the Division of Pensions and Benefits. Any challenge or questions concerning eligible voters shall be made prior to the close of the voting deadline. Failure to challenge the list or any part of it prior to this deadline shall disallow any challenge or question raised after the close of voting.

(d) The following apply to nominating petitions:

1. Nominating petition forms shall be available at the office of the Secretary of the Police and Firemen's Retirement System.
2. Nominating petitions shall be forwarded to each active or retired member requesting them.
3. The petition forms shall explain that:
i. For police trustee, at least 500 active police members, who are eligible to vote for the position, are required to sign the petition for the candidate.
ii. For fire trustee, at least 300 active fire members, who are eligible to vote for the position, are required to sign the petition for the candidate.
4. The petition form shall require the candidate's name and employer, and the membership number or Social Security of each petitioner.
5. The form shall explain that a member shall sign only one petition, with police members petitioning for a police candidate and fire members petitioning for a fire candidate.
6. The dates for filing and returning the petitions shall be identified, as well as the approximate date that ballots shall be sent to employers for distribution to voters.
7. A candidate named on a petition shall sign the petition in a designated space indicating that he or she is willing to be a candidate.
8. If only one candidate is nominated for a position, the candidate shall be deemed elected to the position without balloting. A notice to the respective membership shall be distributed indicating no contest since only one candidate was nominated by petition.

(e) The following apply to distribution of ballots:

1. For each eligible voter, there shall be forwarded to the certifying officer a ballot which shall include the following information and instructions:
i. The name of the eligible voter;
ii. The closing date of the election;
iii. The name of each candidate nominated and the name of his or her employer;
iv. Instructions to the voter for the proper casting of the ballot shall be shown upon the ballot or upon a separate sheet; and
v. Instructions that the candidate receiving a plurality of the legal votes cast shall be declared elected to the position.

2. The ballot positions shall be determined by a drawing conducted at a time and place determined appropriate by the Secretary of the retirement system. All candidates shall be invited to attend such a drawing.

3. The ballots, together with postage-paid return envelopes, shall be distributed by the certifying officers.

4. A receipt shall be signed by each certifying officer, acknowledging the receipt and distribution of the ballots.

5. The instructions shall also advise that the signature identifying the voter shall be severed from the ballot before it is removed from the envelope, thus assuring a secret ballot.

6. Failure to sign a ballot or voting for more candidates than instructed shall be cause for rejection of the ballot.

7. Mutilated ballots, illegible ballots, ballots with a write-in vote, multiple votes or any other ballot where it cannot be determined whom the voter intended to vote for shall be declared invalid and not considered.

8. The candidate receiving the highest number of legal votes shall be elected to the position.

9. The Secretary of the Board shall oversee the election process to ensure that the vendor complies with all of the requirements and assures the validity of the final election count.

10. The candidates whose names are printed upon the ballots shall be informed as to the method and the date of counting the ballots and shall be invited to be present or to be represented at the counting of the ballots.

(f) The following apply to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the Division of Pensions and Benefits. The information regarding each candidate shall be submitted by the candidate and the informational sheet shall also be approved by the Board of Trustees.

2. The Secretary shall inform each candidate that a background may be included with or upon the ballot and provide them with the opportunity to submit information regarding such material.

3. If not included upon the ballot, the biographical information shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notice of election without balloting or otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

4. Copies of the informational sheet shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

5. The informational sheets shall be posted at appropriate places throughout the workplace of each employing agency or be otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

(g) The following apply to recount procedures:

1. Any candidate or member, who shall have reason to believe that an error has been made in counting or declaring the vote, may, within 20 days of the certification of the results of the election, request, in writing, that the Board of Trustees shall, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board, who is a candidate on the contested ballot, shall not vote in the Board's decision on the request. Each candidate on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support his or her beliefs.

2. If a candidate or other interested party requests a recount within the prescribed time, this request shall be granted if a recount could possibly affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the election board. The election board shall certify the results of the recount to the Board of Trustees. If a recount is not requested within 20 days, the ballots may be destroyed.

3. Upon election and the taking of an oath of office, police and fire member trustees shall serve for a term of four years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

(a)

DIVISION OF PENSIONS AND BENEFITS

State Health Benefits Commission

Voluntary Furlough Program: Continued Coverage

Adopted Amendments: N.J.A.C. 17:9-4.2, 8.3 and 9.1

Proposed: June 6, 1994 at 26 N.J.R. 2202(a).

Adopted: November 28, 1994, by the State Health Benefits Commission, Patricia Chiacchio, Acting Secretary.

Filed: November 30, 1994 as R.1995 d.3, **without change.**

Authority: N.J.S.A. 52:14-17.27 et seq.

Effective Date: January 3, 1995.

Expiration Date: August 23, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:9-4.2 State; full-time defined

(a) (No change.)

(b) Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee, provided that the employee remits in advance to the employer the amount required, if any, as the employee's contribution for coverage.

17:9-8.3 Termination; effective date

(a) (No change.)

(b) Eligibility shall be terminated as follows:

1.-5. (No change.)

6. Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee.

17:9-9.1 State Dental Expense Program; comparable to State Health Benefits Program

(a) (No change.)

(b) Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee, provided that the employee remits in advance to the employer the amount required, if any, as the employee's contribution for coverage.

(b)

DIVISION OF PURCHASE AND PROPERTY

Purchase Bureau

Readoption: N.J.A.C. 17:12

Proposed: August 15, 1994 at 26 N.J.R. 3248(a) (see also 26 N.J.R. 4166(a)).

Adopted: November 29, 1994 by James Archibald, Deputy State Treasurer.

Filed: December 9, 1994 as R.1994 d.18, **without change.**

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12(d), 10:5-36(k) and (o), 52:34-13; Executive Orders No. 34 (1976) and No. 189 (1988).

Effective Date: December 9, 1994.

Expiration Date: December 9, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:12.

(a)

DIVISION OF PURCHASE AND PROPERTY COMMERCE AND ECONOMIC DEVELOPMENT

Division of Development for Small Business, and Women and Minority Business

Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses

Adopted Amendments and New Rules: N.J.A.C. 12A:10-1 and 17:13

Proposed: November 1, 1993 at 25 N.J.R. 4889(a).
Adopted: May 20, 1994 by Gualberto Medina, Commissioner, Department of Commerce and Economic Development and Brian W. Clymer, State Treasurer.
Filed: May 27, 1994 as R.1994 d.309, **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. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84(1993).

Effective Date: January 3, 1995.
Expiration Date: March 31, 1995.

Summary of Public Comments and Agency Responses:

The State of New Jersey's Department of Commerce and Economic Development and its Department of the Treasury is adopting N.J.A.C. 12A:10 and 17:13 as proposed, with changes made to correct minor points of edification and to incorporate specific clarifications. These rules establish a set-aside program for the State's contracting agencies which bid and execute goods and services exclusive of construction-related contracts. These rules were proposed on November 1, 1993 at 25 N.J.R. 4889.

Comments received during the comment period, which ended on December 1, 1993, are summarized and addressed hereinafter. Comments were received from:

1. Edward D. Goldberg, Chancellor, New Jersey Department of Higher Education
2. Hamilton V. Bowser, Sr., PE, President, Evanbow Construction Co., Inc., Vice Chair of the Governor's Study Commission
3. Pamela P. Lyons, Administrator, Office of Equal Opportunity & Public Contract Assistance, New Jersey Department of Environmental Protection and Energy

COMMENT: N.J.A.C. 17:13 (12A:10) should be changed as follows: (a) change set-aside goal percentages for minority business and female business participation to 15 and 10 percent respectively; (b) include construction contracting; and (c) extend the provisions to require participation by local governmental entities.

RESPONSE: The percentage goals, the scope and the application of these rules, as defined herein, are in compliance with the governing laws and executive orders. Set-aside rules concerning construction-related contracts are set forth in N.J.A.C. 17:14 (12A:10A). The percentage goals are established in the statutes, specifically at N.J.S.A. 52:32-17 et seq. These statutes apply to State agencies but not to local governmental entities. Any changes to these percentages or any expansion of the applicability of these statutes to include local governmental entities would require legislative action.

COMMENT: Other minority groups should be included in the definition of "Minority business" in these rules.

RESPONSE: The Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (Study Commission) (See Commission's *Final Report,* dated February 22, 1993, available at the New Jersey State Library, Trenton, New Jersey) only found evidence of discrimination in public contracting against African-American-, Hispanic- and Asian-American-owned firms and women-owned firms of all races and ethnicity. Based on the lack of sufficient data at this time, the Commission did not find evidence of discrimination against the other groups listed in the definition of the term "minority business", i.e., Portuguese-, Native American- and Alaskan native-owned firms. *City of Richmond* v. *Croson Co.,* 488 U.S. 469 (1989), requires that these rules be narrowly tailored to address the discrimination revealed by the Study Commission's study to be constitutionally valid.

COMMENT: The language in N.J.A.C. 17:13-2.1 (12A:10-2.1), which defines the set-aside eligibility requirements for a minority or female business, should require that the business owner be responsible for and perform useful management duties involving all facets of the business on a daily basis. Also, the list of who must be excluded from the count of 100 or fewer employees for small business eligibility status should include a company's officers and stockholders.

RESPONSE: The eligibility requirements listed conform to the definitions contained in the governing statutes. Any elaboration could serve to restrict eligibility beyond statutorily established limits.

COMMENT: A State contracting agency which reports unsatisfactory progress toward its annual goal or fails to achieve its annual goal should be required to expand its efforts to the extent necessary to ameliorate the variant condition.

RESPONSE: These rules require that each State contracting agency and using agency establish a set-aside program that provides the means and methods for the agency to meet the stated set-aside goals and then report on its progress in achieving the goals. The language in N.J.A.C. 17:13-5.3 (12A:10-5.3) has been modified to include a report to the Governor which will identify the degree of compliance accomplished by the State agencies. This report will be part of the public record.

COMMENT: The rules should require that prime contractors which fail to meet subcontract set-aside goals on two successive contracts or on three or more such contracts in a given year be barred from bidding for 12 months.

RESPONSE: Administrative rules cannot establish requirements that exceed the statutes on which those rules are based. N.J.S.A. 52:32-17, known as the Set-Aside Act, does not establish grounds for debarment for failure to comply with the set-aside subcontracting requirements. However, Executive Order #34 (1976) establishes the causes, procedures and durations of debarment and suspension actions. Rules governing contracts for all goods and services (N.J.A.C. 17:12) include the debarment provisions applicable to contractors which willfully fail to perform in accordance with contract specifications which include set-aside subcontracting requirements. The language in N.J.A.C. 17:13-4.1(d)2 (12A:10-4.1(d)2) has been modified to give prime contractors specific notice that penalties may be imposed for failure to abide by the contract terms and conditions.

COMMENT: The rules should define the method by which the State will determine when the statutorily defined groupings of minority businesses should be added to or deleted from the State's set-aside programs and when the State's set-aside program has achieved its objectives and can be discontinued.

RESPONSE: These rules implement the provisions of Executive Order No. 84(1993) which mandated that the State's set-aside program shall apply to businesses owned by females and to businesses owned by members of specific minority groups which were identified by the Governor's Study Commission as verifiably adversely impacted by discrimination. Executive Order No. 84(1993) establishes that the set-aside program is "remedial in nature and in purpose, and therefore shall be in effect with respect to each affected group only until such time as the discriminatory conditions that form the basis of the set-aside program are eradicated." These rules provide for an annual reporting of the results of State agencies' efforts to meet the percentage goals. This report, issued to the Governor, would advise of the need for continuation or modification of any aspects of the set-aside program, which would include any modifications to goals, discontinuance of the program, inclusion and/or deletions of eligible minority groups, etc. Any interested party seeking modification of any aspect of the program can effect those changes through legislative action.

COMMENT: Language should be added to indicate that the intent of the rules is to ensure that contracting opportunity is available wherever there are minority businesses ready, willing and able to provide the goods and/or services to the State and that the recognized minority business groups obtain contracts in general proportion to their numbers in the general State population, as determined by the State Treasurer on an annual basis.

RESPONSE: The statutes which govern these rules and the executive order which calls for implementation both mandate specific percentages

to be used as set-aside program goals. N.J.S.A. 52:32-27 calls for all contracting agencies to submit reports to the Department of Commerce which, in turn, reports annually to the Governor and to the Legislature on the progress toward the stated objectives and goals.

COMMENT: These rules should be extended to apply to private enterprises which benefit from the use of State monies, such as owners of State-leased space, banks handling State funds, insurance and surety bonding companies providing protection services to the State, etc.

RESPONSE: Any such extension would require enabling legislation.

COMMENT: Treasury should create cost-effective reporting mechanisms to permit computerized encoding, classifying and monitoring of agency records in order to reduce the workload these rules will place on the State Departments.

RESPONSE: The Department of the Treasury will provide centralized reporting of State expenditures against term contracts and purchase orders above the bidding threshold. Each department will be required to report expenditures under Treasury's Delegated Purchasing Authority program. Use of special set-aside identifiers that would allow for automated reporting is under consideration.

COMMENT: When departments utilize the Delegated Purchasing Authority program, eligibility for set-aside contracts should be restricted to firms that are already registered at the time of bid solicitation since the agency would not know of such bidders not on Commerce's list when deciding which firms to solicit for bids.

RESPONSE: These rules do not establish a different standard for Delegated Purchasing Authority purchasing. Bidders interested in specific procurements can apply up to one day before the bids are due. It is the policy of both the Department of Commerce and the Department of the Treasury to encourage businesses to secure their registration and certification status independent of any specific contract or bid in order to ensure their eligibility well in advance of any procurement. So long as a bidder has evidence of its registration or certification in its bid, the bid must be accepted.

COMMENT: Challenges to a bidder's designation as a registered or certified minority or female business will not stop the contract award process, but a successful challenge may impact the quality or timely completion of the contract work. Thus, all efforts should be made to ensure that registered and certified firms are what they say they are.

RESPONSE: Special efforts are taken by the Department of Commerce to ensure proper registration and certification, but should there be a successful challenge, N.J.A.C. 17:13-2.2(b) (12A:10-2.2(b)) defines the method of redress for the State contracting agency to take.

Summary of Changes upon Adoption:

Some technical changes and corrections, as well as a few minor substantive changes have been made upon adoption of the rules.

At N.J.A.C. 17:13-1.1(a) (12A:10-1.1(a)), two sentences were added to provide clarification that, as established by the governing Executive Order No. 84(1993), the percentages represent overall program goals for State contracting agencies and do not represent a fixed percentage amount that must be applied to any specific contract.

At N.J.A.C. 17:13-1.2(a) (12A:10-1.2(a)), the term "Bid threshold amount" is modified to read "Bidding threshold" to be consistent with its usage in the context of these rules. Further, the term "Direct purchasing" is deleted; the term is not used in these rules. Also, the hyphen in the term "line-item contract" is removed to reflect general use as three separate words. Also in this section, the term "Using Agency" is deleted since it is not used in these rules. In addition, "Waiver" is changed to "Waiver of Advertising" to provide more description to the term.

At N.J.A.C. 17:13-2.2(b) (12A:10-2.2(b)), the word "may" is deleted and replaced with the word "shall", and the word "and" is inserted at the end of (b)2. in order to conform the text to the governing statute, N.J.S.A. 52:32-30, which provides for the assessment of penalties.

At N.J.A.C. 17:13-3.1(a) (12A:10-3.1(a)), the date when all female and minority businesses seeking set-aside contracts or subcontracts is extended by nine months to September 1, 1995, to provide the new administration with the time it needs to prepare for and effect the comprehensive certification program.

At N.J.A.C. 17:13-4.1(d)1 (12A:10-4.1(d)1), provision is made, in response to a public comment, to require State contracting agencies to include Department of Commerce contact information as a part of the public advertisement for applicable contracts. In the same paragraph, the "reasonable efforts" language and citation is added to ensure clarity regarding the set-aside contracting requirements.

At N.J.A.C. 17:13-4.1(d)2 (12A:10-4.1(d)2), language is inserted to ensure that State agencies inform bidders about established set-aside laws and potential penalties for non-compliance with set-aside subcontracting targets in the event of contract award. The use of a standard form as a supplement to the bidding terms and conditions is intended to standardize and facilitate the communication process regarding set-aside requirements. This is not a substantive change in that it serves only to inform potential bidders of penalties established in existing rules (N.J.A.C. 17:12-6.2(a)9), which are based on the provisions of Executive Order #34(1976). As a result of the insertion of the new text, the remaining text is recodified.

At N.J.A.C. 17:13-5.1(a) (12A:10-5.1(a)), replacement terms "before the start of each" and "the coming fiscal year to comply" are introduced to provide more specific information regarding the timing and scope of annual set-aside program planning by State agencies.

At N.J.A.C. 17:13-5.2(a) (12A:10-5.2(a)), "and the percentages that" is inserted in the text of (a)1, and "and percentages" is inserted into the text of (a)3 to ensure that State agencies provide the Department of Commerce with comprehensive, accurate and validated information concerning their progress toward achieving the stated annual set-aside contracting and subcontracting goals. At N.J.A.C. 17:13-5.2(b) (12A:10-5.2(b)), the general reference to the various set-aside programs is replaced with more informative language which details the factors to be used by State agencies in analyzing and reporting their set-aside achievements.

At N.J.A.C. 17:13-5.3 (12A:10-5.3), clarifying language is inserted and added to define a standard reporting system that will serve as the formal means for the State's set-aside contracting program to be reviewed, analyzed and modified as necessary.

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

CHAPTER 13 (CHAPTER 10)
GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, MINORITY BUSINESSES AND FEMALE BUSINESSES

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

17:13-1.1 (12A:10-1.1) Purpose and scope

(a) The rules in this chapter are jointly promulgated by the Department of Commerce and Economic Development (hereinafter, "Department of Commerce") and the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq., and Executive Order No. 84, dated March 5, 1993, to establish a set-aside program that requires State agencies with contracting authority to make a good faith effort to award 15 percent of State contracts to eligible small businesses, seven percent of State contracts to eligible minority businesses and three percent of State contracts to eligible female businesses. ***These percentage goals are overall program goals for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside subcontracting goals for individual contracts.***

(b) These rules apply only to State contracts for goods and services awarded by any State contracting agency and are not applicable to the award of State contracts for construction and construction related services.

(c) Applications and questions regarding eligibility as a small business, minority business and/or female business should be addressed to:

Department of Commerce and Economic Development
Set-Aside and Certification Office
20 West State Street
CN 835
Trenton, New Jersey 08625-0835

Questions concerning the award of contracts under these rules should be directed to the State contracting agency issuing the particular contract.

17:13-1.2 (12A:10-1.2) Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"*[Bid]* ***Bidding*** threshold *[amount]*" means the dollar limit placed on all public contracting agencies pursuant to N.J.S.A. 52:34-7 to establish when public advertisement of bids is required.

"Certification" means the process whereby a minority-owned business or female-owned business is authenticated for participation in State programs requiring such certification, as judged and determined by the Set-Aside and Certification Office of the Department of Commerce and Economic Development.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development or his or her designee.

"Contractor" means any party providing goods and/or services or performing or offering to perform under a contract issued by a State contracting agency.

"Cooperative purchasing" means an extension of certain State contracts awarded by the Division of Purchase and Property for the use of either local governing authorities, pursuant to N.J.S.A. 52:25-16.1 et seq., volunteer fire departments, volunteer first aid squads and rescue squads, pursuant to N.J.S.A. 52:25-16.2, county colleges, pursuant to N.J.S.A. 18A:64A-25.9(b), State colleges, pursuant to N.J.S.A. 18A:64-60, or quasi-State agencies, pursuant to N.J.S.A. 52:27B-56.1. Such an award is made as an adjunct to an award of a contract for State agency purchases.

"Delegated Purchasing Authority" means the authority of a State agency to award contracts below the bid threshold amount pursuant to authority delegated by the Director, Division of Purchase and Property. (See N.J.S.A. 52:25-23.)

["Direct purchasing" means the issuance of a purchase order by a State agency for a specific product or service, for which a term contract has already been awarded.]

"Division of Purchase and Property" means the State agency within the Department of the Treasury which provides centralized purchasing of goods and services for other State departments, pursuant to N.J.S.A. 52:27B-56.

"Female business" means a business which has its principal place of business located in the State, is independently owned and operated and at least 51 percent is owned and controlled by women.

"Line*[-]*item contract" means an award in which a specific one-time purchase of goods or services is established.

"Minority business" means a business which has its principal place of business located in the State, is independently owned and operated and at least 51 percent of which is owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:

1. African American: a person having origins in any of the black racial groups of Africa.

2. Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.

3. Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asian, and Indian subcontinent, Hawaii or the Pacific Islands.

"Multi-source contract" means a term contract awarded by the Division of Purchase and Property wherein more than one vendor is awarded a contract. The term is applicable in two situations, when defined in conjunction with the Division of Purchase and Property (see N.J.S.A. 52:34-12.1):

1. Where the volume of business is so large or the geographical distances are so great that more than one vendor is necessary to serve the State's needs; or

2. Where the differences between manufacturers' versions of a product are so significant that it is necessary to have a contract with a vendor of each product.

"Registration" means the process by which any business can have its eligibility for participation in small, minority and female set-aside contracts determined.

"Request for Proposals" or "RFP" means the document issued by a State contracting agency to initiate an advertising bidding and contract award process. The RFP establishes the contract's basic terms and conditions, the product and/or service specifications, and the bidding requirements which may include a set-aside provision that restricts bidding eligibility to businesses qualified as small business, minority business or female business.

"Set-aside contract" means a contract, or a portion of a contract when that portion is so allocated, specifically designated by a contracting agency as exclusively being available for award to either a small business, minority business or female business.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, and has no more than 100 full-time employees.

"State contracting agency" means any board, commission, committee, authority or agency of the State which possesses the legal authority to award contracts for goods and services which include the following entities except where expressly inconsistent with statutory law:

1. DEPARTMENTS:
Agriculture
Banking
Commerce and Economic Development
Community Affairs
Corrections
Education
Environmental Protection and Energy
Health
Higher Education
Human Services
Insurance
Labor
Law and Public Safety
Military and Veterans' Affairs
Personnel
Public Advocate
State
Transportation
Treasury

2. COLLEGES:
Jersey City State College
Kean College of New Jersey
Montclair State College
New Jersey Institute of Technology
Ramapo College of New Jersey
Richard Stockton State College
Rowan College of New Jersey
Rutgers, The State University
Trenton State College
Thomas A. Edison College
University of Medicine and Dentistry of New Jersey
William Paterson College of New Jersey

3. AUTHORITIES:
Board of Regulatory Commissioners
Casino Reinvestment Development Authority
Development Authority for Small Businesses, Minorities and Women's Enterprises
N.J. Building Authority
N.J. Economic Development Authority
N.J. Educational Facilities Authority
N.J. Health Care Facilities Financing Authority
N.J. Highway Authority
N.J. Housing and Mortgage Finance Agency
N.J. Sports and Exposition Authority
N.J. Transit Corporation
N.J. Turnpike Authority
N.J. Water Supply Authority
Public Broadcasting Authority
South Jersey Transportation Authority
Urban Development Corporation

4. COMMISSIONS
Beach Erosion Commission
Casino Control Commission
County and Municipal Government Study Commission
Election Law Enforcement Commission

Executive Commission on Ethical Standards
Hackensack Meadowlands Development Commission
N.J. Commission on Capital Budgeting and Planning
N.J. Commission on Science and Technology
N.J. Racing Commission
North Jersey Water Supply Commission
Passaic Valley Sewer Commission
Pinelands Commission
State Commission of Investigation

5. All other departments, colleges, authorities and commissions that are established or may be established in the future.

"Subcontractor" means a third party that is engaged by a contractor to provide all or part of the goods and/or services included in a contract with the State.

"Term contract" means an award made by a State contracting agency in which a source of supply for a product or service is established for a specific period of time. A term contract is generally applied when a State contracting agency:

1. Establishes a fixed unit price or discount for items to be purchased thereunder;

2.-3. (No change.)

"Treasurer" means the Treasurer of the State of New Jersey or his or her designee.

["Using Agency" means the State agency for which a contract or a purchase of goods or services is being made.]

"Waiver ***of advertising***" means an award process authorized by N.J.S.A. 52:34-9 and 52:34-10, which does not require public advertisement and which is subject to approval by the State Treasurer. Whenever possible, competition is sought prior to issuance of a waiver of advertising.

SUBCHAPTER 2. SET-ASIDE ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES, MINORITY BUSINESSES AND FEMALE BUSINESSES

17:13-2.1 (12A:10-2.1) Standards of eligibility for small businesses, minority businesses and female businesses

(a) A business may be eligible as a small business, a minority business, a female business or a portion or combination of the three.

(b) In order to be eligible as a small business, a business must satisfy all of the following criteria:

1. The business must be independently owned and operated, as evidenced by its management being responsible for both its daily and long term operation, and its management owning at least 51 percent interest in the business.

2. The business must be incorporated or registered to do business in the State and have its principal place of business in New Jersey, defined as such when either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes.

3. The business must be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time positions, not including:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods and services which are the subject of the specific contract the business wants to be eligible as a small business.

(c) In order to be eligible as a minority or female business, a business must satisfy all of the following criteria:

1. The principal place of business must be in the State; and

2. At least 51 percent of the ownership of the business must be by minority or female persons; and

3. Control over the daily and long-term operations of the business must be exercised by one or more of the minority or female owners.

(d) Eligibility is formalized by the Department of Commerce's certification and/or registration and approval processes.

17:13-2.2 (12A:10-2.2) Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible small business, minority business or female business on the basis of false information knowingly supplied by the business and the business has been awarded a State contract or a subcontract thereto, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, *[may]* ***shall***:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-17 et seq.;

2. In addition, assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved; ***and***

3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a small business, minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

SUBCHAPTER 3. CERTIFICATION AND REGISTRATION

17:13-3.1 (12A:10-3.1) Certification and registration procedures for small businesses, minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by *[January 1]* ***September 1***, 1995, the date established by the Department of Commerce when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) Registration procedures established by the Department of Commerce are as follows:

1. Any business which seeks to register as a small business, minority business and/or female business must apply to the Department of Commerce and pay any applicable fees. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce and the State contracting agencies.

2. As part of its application to the Department of Commerce, a business shall reasonably document its principal place of business and independent status, and, as appropriate, the number of its employees. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee or affirmative action reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of State.

i. If an applicant fails to complete fully the Vendor Registration Form, registration may be delayed or denied.

ii. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. 17:13-2.2 (12A:10-2.2).

3. When an application for registration as a small, minority or female business is approved by the Department of Commerce, the

Department will issue the newly registered business an approval notice and add it to the Department's small, minority or female vendor lists.

4. State contracting agencies will utilize these lists in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established goals.

17:13-3.2 (12A:10-3.2) Time for application to register as a small business, minority business or female business

(a) A business may apply to the Department of Commerce at any time to be registered as a small business, minority business or female business and to be placed on the appropriate vendor list.

(b) If a business is to be considered as a small, minority or female contractor or subcontractor on a specific contract for the purposes of these rules, it must apply to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency.

17:13-3.3 (12A:10-3.3) Procedures for challenging a business registered as a small business, minority business or female business

(a) The qualification under these rules of a business on a vendors list as a small business, minority business or female business may be challenged by any other business on that State vendors list or by any of the State contracting agencies subject to these rules.

1. A registration challenge shall be made in writing to the Set-Aside and Certification Office of the Department of Commerce, setting forth the factual basis for the challenge. The Department shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the Department shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the Department of Commerce may concern only the qualification of a business under these rules as a small business, minority business or female business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the Department of Commerce receives a challenge, upon request of the business whose registration is at issue, the Department shall conduct a hearing on the matter as follows:

1.-2. (No change.)

3. The hearing will be conducted by the designee of the Commissioner of the Department of Commerce. This designee will issue a written report to the Commissioner within four working days following the close of the hearing.

4. At the discretion of the Commissioner's designee, participants at the hearing may be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a business's eligibility shall not stay the contract award process.

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

17:13-4.1 (12A:10-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15 percent of its contracts to be awarded to eligible small businesses, at least seven percent of its contracts to be awarded to eligible minority businesses and at least three percent of its contracts to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts awarded by the State agency in comparison to the total dollar value of all contracts awarded by the agency within a fiscal year.

1. The State contracting agencies shall designate specific contracts for each of the three distinct and exclusive set-aside categories.

2. The State contracting agencies shall, when they deem it appropriate, designate subcontracting goals for specific contracts which have not been set aside in their entirety.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report its good faith efforts to attain the established set-aside contracting goals, including contracts executed under its bidding threshold, as established by N.J.S.A. 52:34-7 et seq. The set-aside procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts will be offered as part of the agency's set-aside program.

i. A contract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified products or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When a State contracting agency has made a determination that a contract in its entirety is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation.

2. Invitations for bids shall be confined to either small businesses, minority businesses or female businesses, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

i. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

ii. Except in cases of emergency, the State contracting agency shall provide an opportunity for a hearing before contract award to address the reasons for the withdrawal of the set-aside designation. This hearing shall not be considered a contested case under the Administrative Procedures Act.

4. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules and procedures.

(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1. The public advertisement shall include ***the address and telephone number of the New Jersey Department of Commerce's Set-Aside and Certification Office and*** a notice to prospective bidders that set-aside goals***, or reasonable efforts as required in N.J.A.C. 17:13-4.2 (12A:10-4.2),*** must be met by any contractor receiving an award.

2. The RFP shall contain a standard form by which the bidder shall certify that it will comply with New Jersey laws pertaining to set-aside contracts and is aware that it is subject to criminal and civil penalties, including debarment, in the event of non-compliance.

*[2.]****3.*** The RFP shall contain a detailed notice to bidders advising the following:

i. The RFP includes a set-aside form (or forms) considered a mandatory requirement to be completed and included as a part of the bidder's proposal.

ii. Failure to complete and submit the form(s) shall be sufficient basis to deem the bid proposal non-responsive and thus subject to mandatory rejection.

iii. The set-aside form(s) completed by the bidder shall convey information in sufficient detail to permit the contracting agency to

effectively assess the bidder's plan for attaining the specified set-aside goal or documenting the bidder's good faith effort to meet the set-aside goal.

*[3.]***4.*** The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine effort to meet the set-aside goals.

17:13-4.2 (12A:10-4.2) Reasonable efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a reasonable effort to solicit and award subcontracts to eligible small businesses, minority businesses or female businesses, as established in the RFP:

1. The bidder shall attempt to locate qualified potential small, minority or female business subcontractors;

2. The bidder shall request a listing of small, minority or female businesses from the State contracting agency if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts;

4. The bidder shall provide all potential subcontractors with detailed information regarding the specifications; and

5. The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their efforts.

17:13-4.3 (12A:10-4.3) Exemptions from set-aside program

In those circumstances where Federal law or regulations permit or require a procurement procedure other than those prescribed herein, the State contracting agency may follow the Federal procedures notwithstanding the provisions of these regulations, provided that the State contracting agency issues a written declaration that such Federal laws are in effect.

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

17:13-5.1 (12A:10-5.1) Planning

(a) No later than 60 calendar days *[prior to the close of its]* ***before the start of each*** fiscal year, each State contracting agency shall submit to the Commissioner of the Department of Commerce a plan for *[complying]* ***the coming fiscal year to comply*** with the set-aside program established by these rules. The Department of Commerce will assist any State contracting agency in the development of its plan, upon request.

1. The plan shall include a list of all known procurements and reprocurements scheduled to be bid during that fiscal year, including the following information:

i. The name of the products or services covered by the contract;

ii. The expiration date of the current contract and the estimated date of the public bid;

iii. The term or duration of the contract;

iv. The estimated dollar value of the contract or the amount expended to date on the current contract;

v. The contracts that the agency intends to set aside in each set-aside category, i.e., small business, minority business and female business;

vi. The contracts which have been identified as appropriate for set-aside subcontracting goals;

vii. In addition to the requirements in i through vi above, the Division of Purchase and Property shall identify those multi-source term contracts included in the Cooperative Purchasing Program and indicate which of the multi-source contracts will be set-aside in their entirety, entirely and which will contain select line items set aside for small businesses, minority businesses or female businesses.

2. Each State contracting agency, with the exception of the Division of Purchase and Property, shall include a list of those products and services typically purchased under the bidding threshold, identifying those deemed appropriate for inclusion in the set-aside program.

i. Each State department served by the Division of Purchase and Property shall provide the Department of Commerce with a list of those products and services typically purchased pursuant to its delegated purchasing authority, or with a list of those products and services purchased during the preceding fiscal year under that authority.

3. Each State contracting agency shall list contracts awarded as the result of Waivers of Advertising, i.e., contracts with sole source suppliers such as water companies, gas and electric companies.

4. Each State contracting agency shall quarterly update its set-aside plans with a list of line item contracts not included in its initial procurement schedules, containing the same information required by N.J.A.C. 17:13-5.1(a)1 (12A:10-5.1(a)1.).

5. Copies of contracting plans shall be available for review during normal business hours in the office of each State contracting agency.

(b) The Department of Commerce shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding 15 percent of its total contracting dollars to small businesses, seven percent of its total contracting dollars to minority businesses and three percent of its total contracting dollars to female businesses.

17:13-5.2 (12A:10-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department:

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts ***and the percentages that*** were advertised and awarded as small business, minority business or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the three categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for small businesses and the contract is awarded to a small business owned by a minority woman that contract can be counted only as a small business award and not as a minority business or a female business award. If a small business, minority business or female business is awarded a contract that was not set aside, that contract cannot be counted as a set-aside award.

ii. The Division of Purchase and Property shall include a list of multi-source contracts which contain lines set aside for small business, minority business and female business, and those contracts extended through the Cooperative Purchasing Program.

2. The total number and dollar value of all advertised and awarded contracts which included subcontract requirements, setting forth the number and dollar value of subcontracts awarded to small businesses, minority businesses and female businesses, respectively.

3. Each State department served by the Division of Purchase and Property shall report the total number and dollar value of all purchases made under its delegated purchasing authority, delineating purchases ***and percentages*** made from small businesses, minority businesses and female businesses, respectively.

4. A description of efforts made by the State contracting agency to conduct outreach and educational programs for potential eligible small businesses, minority businesses and female businesses and any efforts made to assist the business community in achieving the objectives of these programs.

(b) Within 90 calendar days of the close of each State contracting agency's fiscal year, the agency shall file with the Department of Commerce, in a format prescribed by the Department, an analysis of actual contracting dollars paid to all contractors and*[, pursuant to the set-asides, the amount of contracts awarded]* ***actual contracting dollars paid*** to small businesses, minority businesses and female businesses***, pursuant to set-aside contracts and subcontracts***.

(c) All reports required by this subchapter shall be considered public records for the purposes of N.J.S.A. 47:1A-1 et seq. and shall be retained as part of the permanent records of the State contracting agency and the Department of Commerce.

17:13-5.3 (12A:10-5.3) Annual Review

The Commissioner of the Department of Commerce and the Treasurer of the State of New Jersey shall undertake an annual review of the operation and *[continued]* ***report to the Governor on the*** need for ***continuation or modification of*** the small, minority and female business set-aside programs contained in this chapter. This *[review]* ***report*** shall be based upon the reports submitted to the Department and any other information deemed appropriate. ***The report will include performance data on compliance and deficiencies for each contracting agency and be publicly distributed as deemed appropriate.***

(a)

DIVISION OF BUILDING AND CONSTRUCTION COMMERCE AND ECONOMIC DEVELOPMENT

Division of Development for Small Business, and Women and Minority Business

Minority and Female Contractor and Subcontractor Participation in State Construction Contracts

Adopted Amendments and New Rules: N.J.A.C. 12A:10A-1 and 17:14

Proposed: September 20, 1993 at 25 N.J.R. 4461(b).

Adopted: May 20, 1994 by Gualberto Medina, Commissioner, Department of Commerce and Economic Development and Brian W. Clymer, State Treasurer.

Filed: May 27, 1994 as R.1994 d.310, **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. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84(1993).

Effective Date: January 3, 1995.

Expiration Date: March 31, 1995.

Summary of Public Comments and Agency Responses:

The State of New Jersey's Department of Commerce and Economic Development and its Department of the Treasury is adopting N.J.A.C. 12A:10A and 17:14 as proposed, with changes made to correct minor points of edification and to incorporate specific clarifications in response to select comments received during the proposal review period. These rules establish a set-aside program for the State's contracting agencies which bid and execute construction-related contracts. These rules were proposed on September 20, 1993 at 25 N.J.R. 4461(b).

Comments received during the comment period, which ended on October 20, 1993, are summarized and addressed hereinafter.

Comments were received from:

1. Robert A. Briant, Jr., Assistant Executive Director, Utility and Transportation Contractors, Association of New Jersey
2. Angela Corio, Director of Central Purchasing, New Jersey Highway Authority
3. Andrea E. Ward, Attorney, New Jersey Turnpike Authority
4. Muriel Powlett, Acting Chairperson, Minority Business Advisory Council
5. Sujoy Banerjee, President, Microcon
6. Edward D. Goldberg, Chancellor, New Jersey Department of Higher Education
7. Pamela P. Lyons, Administrator, Office of Equal Opportunity & Public Contract Assistance, New Jersey Department of Environmental Protection and Energy
8. James T. Burke, A.R.M., Member, Governor's Advisory Council on Minority Business Development
9. Richard A. Williams, Director of Affirmative Action, Rowan College of New Jersey
10. Maureen Castellon, Manager, Elevator Inspection Corporation
11. Ronald W. Brown, Chair, State Affairs Committee, New Jersey United Minority Business Brain Trust, Inc.

COMMENT: There is no legal justification for removing the term "American Indian or Alaskan native" or the term "Portuguese" from the definition of the term "minority business" in these rules.

RESPONSE: The Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (Study Commission) only found evidence of discrimination in public contracting against African-American-, Hispanic- and Asian-American-owned firms and women-owned firms of all races and ethnicity. Based on the lack of sufficient data at this time, the Commission did not find evidence of discrimination against the other groups listed in the definition of the term "minority business," that is, Portuguese-, Native American- and Alaskan native-owned firms. *City of Richmond v. Croson Co.,* 488 U.S. 469 (1989) requires that these rules be narrowly tailored to address the discrimination revealed by the Study Commission's study to be constitutionally valid.

COMMENT: The non-remedial program is in direct conflict with the U.S. Supreme Court's decision in the *Croson* case which states that only upon satisfying strict scrutiny tests may narrowly tailored racial preference remedial programs be implemented.

RESPONSE: The record compiled by the Study Commission demonstrates that New Jersey has amassed evidence of discrimination which far exceeds that which was rejected by the Court in *Croson.* The Commission conducted a comprehensive study which includes 18 volumes of expert reports, four days of hearings, and testimony from 88 witnesses. The study included an analysis of the statistical disparity between the availability of minority and women contractors and their utilization by the State and/or the State contractors. The testimony which the Commission received included substantial anecdotal evidence of discrimination in the public contracting process in New Jersey. Based on the entire record, the Commission concluded that "there is substantial evidence of discrimination against women and minority contractors, and that race- and gender-neutral programs alone will not suffice to eliminate this pattern of exclusion." *Final Report of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts,* Executive Summary, dated February 22, 1993 and available at the State Library in Trenton. The Commission also determined that the State of New Jersey has infused tax dollars into the construction industry, for which there is evidence of a history of discrimination against minorities and women, and therefore, has "passively participated" in private discrimination. The Study Commission's Final Report and the record upon which it is based, provides the State with the compelling governmental interest which the state must possess prior to enacting a race- or gender-based preferential program such as those implemented herein.

COMMENT: Objective criteria, such as a percentage over the engineer's estimate, should be included in the section of these rules concerning the rejection of all bids when all bids are unreasonable in price.

RESPONSE: In the event that a State contracting agency determines all bids on a set-aside contract to be unacceptable, the State contracting agency, under these rules, must issue a notification of the bid cancellation, stating the reasons for the cancellation. The establishment of a specific percentage would be too inflexible and would not allow for the agency's consideration of other factors such as the unavailability of sufficient funding for the contract.

COMMENT: Insert the language "or reasonable efforts as required in 17:14-4.3 (12A:10A-4.3)" in N.J.A.C. 17:14-4.1(d)1 (12A:10A-4.1(d)1) after "to prospective bidders that set-aside goals" to make it perfectly clear that specific reasonable efforts are required and are acceptable to the contracting agency if the total remedial target is not met by the low bidder.

RESPONSE: The proposed language modification is appropriate and necessary and thus has been added to these rules. This change does not reflect a change in policy or requirements; it simply cross references requirements that currently exist.

COMMENT: The word "qualified" should be inserted prior to the word "eligible" in N.J.A.C. 17:14-4.2(c)2 (12A:10A-4.2(c)2) since the word "eligible" does not mean that the firm is qualified to do subcontract work.

RESPONSE: The cited text of these rules refers to the list of firms prepared by the Department of Commerce, which determines whether a firm merits status as a minority or female business. It is the statutory responsibility of the State contracting agencies to determine whether a firm has the qualifications or capability to perform the contract work. Therefore, the Departments decline to make the suggested change in language.

COMMENT: To require contractors to contact all potential subcontractors on the same day is unreasonable.

RESPONSE: The comment has merit; the language in N.J.A.C. 17:14-4.3(a)4 (12A:10A-4.3(a)4) has been changed upon adoption to accommodate instances in which same-day contact with all potential subcontractors is not feasible.

COMMENT: Purchases made by a State agency utilizing a State-issued term contract should be counted toward the attainment of that agency's set-aside goal.

RESPONSE: The issue presented here is not relevant to construction contracting since there is no central term contract program available for general use by such State agencies.

COMMENT: Describe the origin and basis for these rules as they relate to remedy of "proven past discrimination."

RESPONSE: The U.S. Supreme Court, in its *Croson* decision, established that past discrimination must be substantiated and measured. The Study Commission's Final Report established that certain groups had been adversely affected by past discrimination. These rules implement the corrective measures called for in the report, as directed by Executive Order No. 84(1993).

COMMENT: The requirement that a minority or female business need not be certified until 60 days after contract award may cause delays in the contracting agency's contract award/execution process.

RESPONSE: Prior to September 1, 1995, a minority or female business must be registered as such with the Department of Commerce to be eligible for a set-aside contract and must *apply* for certification with the Department of Commerce within 60 days following the date of initiation of the contract or be subject to ineligibility for another set-aside contract. The awarded contract would not be affected by the contracted party's failure to apply for certification. After September 1, 1995, minority and female businesses will be required to have filed an application for certification with the Department of Commerce in order to be eligible for set-aside contract assignment.

COMMENT: Describe the effect of the Governor's Executive Order No. 99(1993), which mandates use of unionized labor on construction contracts, on these rules.

RESPONSE: Executive Order No. 99(1993) has been rescinded and superseded by Executive Order No. 11(1994), which stipulates that the use of project agreements or selection of any particular union, trade council or labor organization is not required but may be considered on its merits on a project-by-project basis, subject to publicly disclosed justification. Executive Order No. 11(1994) also orders that State agencies, authorities and instrumentalities ensure that all public works projects are in full compliance with all statutes, regulations and executive orders, including Executive Order No. 84(1993) regarding implementation of set-aside goals for women- and minority-owned businesses.

COMMENT: Fees should not be assessed minority and female businesses.

RESPONSE: Fees are necessary to offset the Department of Commerce's costs of certification and registration.

COMMENT: Any firm should be allowed to challenge the certification status of any minority or female business.

RESPONSE: The rules necessarily limit the ability to challenge a firm's certification to entities with identifiable interest in order to preclude frivolous claims.

COMMENT: Since the Department of Commerce certifies minority and female business, challenges to a minority or female business's qualifications should be handled by that Department rather than by the State contracting agency.

RESPONSE: The Department of Commerce's authority is limited to certification of the ownership and operation of minority and female businesses. The determination of a bidder's capacity to perform contract work statutorily rests with the State contracting agency.

COMMENT: The set-aside goals should be measured by actual dollar value rather than total dollar value in order for an agency to get a proper perspective of its percentage goals.

RESPONSE: While the comment's point of distinction is not clear, it can be stated that the intent is for State contracting agencies to have a definitive plan to meet or exceed the established goals. The agency's plan would identify the agency's contracting program for the report period, including the dollar value of all contracts it expects to execute within the report period. The plan would also identify which of those contracts it plans to set aside for minority business participation and which of those contracts it plans to set aside for female business participation, as prime contracts and as subcontracts. Subsequently, on a quarterly basis, the agency would report on the progress of its efforts by providing the actual dollar values of all contracts it executed in the report period and the corresponding total values of the contracts it actually awarded as set-asides during the report period.

COMMENT: The Department of Commerce should keep both the lowest and next lowest bids to enable the contract to be performed by minority or female businesses and to give the State contracting agencies the best price possible.

RESPONSE: The Department of Commerce does not have the authority to perform public contract bidding activities. Further, State contracting agencies must abide by the provisions of the statutes by which they operate and under which their contract bidding and award programs have been established and controlled.

COMMENT: There is no mention of what percentages apply to regular suppliers, to brokers and to haulers/suppliers.

RESPONSE: The percentages that apply to these entities are consistent with the overall stated goals and are considered to be included in the definition within these rules of the term "subcontractor" or, if applicable, in the definition of the term "contractor."

COMMENT: The requirement that State contracting agencies hold a hearing if all bids are rejected will be costly and time-consuming and will add little to the process.

RESPONSE: The rules addressing the procedures that State contracting agencies must follow in the event that all set-aside bids are rejected conform to the provisions of the governing statute, N.J.S.A. 52:32-26, which requires that opportunity for such a hearing must be provided, notwithstanding the potential impact to the schedule.

COMMENT: The rules call for rejection of any bid where there is a failure to complete and submit required set-aside forms, but the rules do not address the consequences to a bidder who partially or nebulously completes the required forms.

RESPONSE: The principles underlying public bidding laws are applicable to the submission of set-aside forms in the same way they are applicable to other forms required in a bid submission. Each contracting agency has its established procedures pertaining to mandatory bid submissions and will apply the provisions set forth in those procedures to determine whether or not a particular bid meets the agency's requirements for a responsive bid.

COMMENT: The rules should require that a business which qualifies as both a minority business and a female business be deemed, by the State contracting agency, as one or the other but not both.

RESPONSE: Consistent with the statutes which establish the authorities and responsibilities of the two departments and the State contracting agencies, these rules specifically provide (1) for the Department of Commerce to determine which businesses meet the requirements for registration or certification as minority businesses or female businesses and to promulgate a listing of such firms and (2) for the State contracting agencies to designate which contracts will be set aside for exclusive bidding by minority businesses and which contracts will be set aside for exclusive bidding by female businesses. The language of N.J.A.C. 17:14-5.2(a)1i (12A:10A-5.2(a)1i) has been added and does not change but explains the original intent to address the double eligibility issue referenced in the comment.

COMMENT: The rules should provide for the participation in set-aside contracts of joint ventures in which at least one of the entities comprising the joint venture is a certified minority or female business.

RESPONSE: While note specifically named in these rules, a joint venture, as any other distinct business entity, would be required to apply to the Department of Commerce and to demonstrate that it conforms to the defined ownership and operations requirements in order to secure registration or certification as a minority business or a female business and thereby become eligible to participate in a set-aside contract.

COMMENT: Since the purpose of set-asides is to correct/offset the effect of discrimination, maintaining a level of seven percent set-aside for minorities is roughly half that which is required to meet the need as established in the Governor's Study Commission on Discrimination.

RESPONSE: The seven and three percent set-aside goals were legislatively established, and these rules must conform to the provisions of the governing statutes. Nevertheless, the non-remedial subcontracting target program and procedures provide the opportunity for a State contracting agency to establish enhanced set-aside objectives.

COMMENT: Clarification of the definition of "minority group" is needed, particularly regarding use of the term "Latinos" in place of the former "Hispanics" and the non-inclusion of American Indians, Alaskan natives and Portuguese in the proposed new rules.

RESPONSE: These rules are based upon Executive Order No. 84(1993) which establishes that minority business set-asides shall apply to African-Americans, Latinos and Asian-Americans. The Order utilizes the term "Latinos" and, for the sake of consistency, these rules have used that term. The Commission's findings of substantiated past discrimination did not include American Indians, Alaskan natives or Portuguese.

COMMENT: The State should not charge a fee for registration if certification is replacing registration as the eligibility requirement. Further, the registration process is defined in greater detail than the more important and significant certification process.

RESPONSE: Registration with the Department of Commerce is and will remain a requirement for participation in the State's set-aside programs, even after implementation of the certificaton process. Registration establishes a firm's eligibility for participation in set-aside contracts during the period that the Department of Commerce is performing its review of the application, provided it meets the State contracting agency's qualifications and bidding requirements. The certification process is defined in N.J.A.C. 12A:11; the registration process is defined and spelled out thoroughly in N.J.A.C. 12A:10A.

COMMENT: The standard amount of time currently allotted for a bidder to put together a bid for a State construction contract is approximately three weeks. Three weeks is too short a period of time for a bidder to perform effectively all the tasks involved in bid preparation.

RESPONSE: While most agencies have a standard bid period, the decision as to length of the bidding period can be adjusted on a contract-by-contract basis, contingent upon project complexity, schedule constraints, bidder complaints, etc. These rules respect the agency's prerogative to vary the bid period as it deems necessary for a particular contract.

COMMENT: To encourage development of an inherent free flow of business between minority and non-minority businesses, that is, without set-asides, the State contracting agencies should require businesses to provide evidence of adherence to anti-discrimination laws and then verify the information.

RESPONSE: Certain labor- and cost-intensive programs, while deserving consideration for future implementation, cannot, for practical purposes, be undertaken at the present time, when the primary objective is to initiate a functional Statewide set-aside program that attends to the requirements of the governing statutes and Executive Order No. 84(1993).

COMMENT: The rules do not provide for the State contracting agency to verify that the minority or women businesses named as subcontractors by a successful bidder are utilized by the bidder in the actual contract work and for the agency to take punitive action in such event.

RESPONSE: A State contracting agency is responsible to ensure that all contract terms are met, including contractually established minority and/or female business participation requirements.

COMMENT: The rules regarding reporting and reviewing of the results of State contracting agencies' efforts to meet the percentage objectives should be stated in more specific terms and should stipulate the inclusion of minority business concerns in the review and reporting processes, beyond the agencies' outreach efforts and its educational programs for minority businesses.

RESPONSE: The Department of Commerce endeavors to expand and enhance its relationship with interested community and business groups, including those concerned with the results of the State's set-aside program. The State agencies' progress reports, as public records, will be available for public review.

COMMENT: There was no mention of small business in the proposed rules. Also, clarify whether small businesses must be certified.

RESPONSE: Since most construction-related contracts are awarded to small businesses, there is no basis for establishing a set-aside program for small construction-related businesses. Small businesses are excluded from the certification process, but must register as such to bid on State contracts for goods and services other than those related to construction.

COMMENT: Minority firms should not have to register their status with different agencies or buying entities; certification should be by one agency and applicable with all State agencies.

RESPONSE: Registration and certification of minority and female businesses which seek to participate in set-aside contracts bid by State contracting agencies is solely the responsibility of the Department of Commerce. However, State agencies utilizing Federal funding must abide by Federal set-aside guidelines. Also, contracting agencies are statutorily required to determine the eligibility of firms to bid on their contracts, as it relates to a firm's ability to perform the contract work.

COMMENT: The rules should preclude instances where big corporations get credit for awarding subcontracts to small minority business "fronts," that is, small companies in which controlling interest is held by a major corporation rather than by minority individuals.

RESPONSE: The State's "set-aside law," N.J.S.A. 52:32-17 et seq., specifies that for a female or a minority business to be eligible for participation in State set-aside programs, controlling interest in that business entity must be held by a person who is, or by persons who are, female or minority, respectively.

COMMENT: It is suggested that a certain number of evaluation points could be assigned to minority firms and used as a criteria for awarding bids in open competitive bidding to provide advantage for bidders which are minority businesses or those majority businesses which subcontract with minority businesses.

RESPONSE: While the concept may have merit, its consideration as a part of this rulemaking process is not appropriate. Since current public bidding statutes preclude the assignment of merit points for open public bidding of construction contracts, the matter would seem to require legislative attention.

COMMENT: Treasury should create cost-effective reporting mechanisms to permit computerized encoding, classifying and monitoring of agency records in order to reduce the workload these rules will place on the State departments.

RESPONSE: The Department of the Treasury will provide centralized reporting of State expenditures against term contracts and purchase orders above the bidding threshold. Each department will be required to report expenditures under Treasury's Delegated Purchasing Authority program. Use of special set-aside identifiers that would allow for automated reporting is under consideration.

COMMENT: When departments utilize the Delegated Purchasing Authority program, eligibility for set-aside contracts should be restricted to firms that are already registered at the time of bid solicitation since the agency would not know of such bidders not on Commerce's list when deciding which firms to solicit for bids.

RESPONSE: Even though bidders interested in specific procurements can apply up to one day before the bids are due, it is the policy of both the Department of Commerce and the Department of the Treasury to encourage businesses to secure their registration and certification status independent of any specific contract or bid in order to ensure their eligibility well in advance of any procurement. So long as a bidder has evidence of its registration or certification in its bid, the bid must be accepted.

COMMENT: Challenges to a bidder's designation as a registered or certified minority or female business will not stop the contract award process, but a successful challenge may impact the quality or timely completion of the contract work. Thus, all efforts should be made to ensure that registered and certified firms are what they say they are.

RESPONSE: Special efforts are taken by the Department of Commerce to ensure proper registration and certification, but should there be a successful challenge, N.J.A.C. 17:14-2.2 (12A:10A-2.2) defines the method of redress for the State contracting agency to take.

COMMENT: The female and minority business should be prequalified for the various construction categories and contract range capability based upon historical contract performance and upon financial (bonding) capability.

RESPONSE: State construction contracting statutes require that all prime construction bidders/contractors be prequalified and classified. There are no such prequalification or classification provisions applicable to subcontractors before or during the bidding process.

COMMENT: State contracting agencies should be permitted to combine small business and minority and/or female set-asides when there are not enough minority or female businesses to allow exclusive set-aside for either minority businesses or female businesses.

RESPONSE: N.J.S.A. 52:32-25, referring to set-aside contracting, stipulates that "... invitations for bids shall be confined to businesses designated by the department as appropriate for the set-aside and bids from other bidders shall be rejected." Consequently, implementation of the proposed concept would require statutory revision.

COMMENT: The rules should establish guidelines for State contracting agencies to determine which contracts should or should not be set aside, to preclude set-asides in instances where there is a greater poten-

tial for contract performance problems on certain "public sensitive" or complex projects such as those requiring Critical Path Method Time Schedules.

RESPONSE: Each State contracting agency is responsible for developing its plan for meeting the established set-aside goals. Determining which contracts will be bid as set-asides is a primary element of the planning process, requiring consideration of many factors including availability of eligible and qualified bidders capable of performing the contract work.

COMMENT: State contracting agencies should require that a bidder's proposal include a minority/female business participation plan detailing its formula for inclusion of minority/female businesses as subcontractors.

RESPONSE: While the specific methodology and procedures that a particular State contracting agency employs to conduct its set-aside program is a part of that agency's responsibility, such procedures would necessarily include not only a means of ascertaining a bidder's plan for meeting stipulated subcontracting targets but also a means of verifying that the subcontracting targets were in fact met.

COMMENT: The Department of Commerce's lists of eligible minority and female businesses should be incorporated with the bid package issued by the State contracting agency.

RESPONSE: The potential cost to the State for the inclusion of the lists of registered minority and female businesses in each bid package is prohibitive.

COMMENT: For the non-remedial subcontracting target programs implemented by State contracting agencies, there should be no fewer than five, rather than the proposed three, minority or female businesses identified for each subcontractable element of a construction contract in order to enhance the possibility of realizing successful, effective bidding and subcontracting. Specific contract set-aside targets could be adjusted up or down to reflect availability of eligible subcontractors.

RESPONSE: These rules do not preclude an agency from exercising sound judgment in deciding how many or which subcontractable elements are most likely to produce the desired results. These rules do reflect the provisions of the statutes upon which they are based; in this case, N.J.S.A. 52:32-20a. Specific set-aside subcontracting targets can be adjusted for individual contracts.

COMMENT: If a firm listed as a minority or female business in a bidder's subcontractor plan is not certified at the time of bidding and subsequently proves to be uncertifiable as a minority business or female business, the State contracting agency must request a revised plan from the contracted vendor to ensure compliance to the bidding requirements pertaining to subcontracting targets.

RESPONSE: It is the contracting agency's responsibility to ensure that all contract "deliverables," including minority and female business subcontracting targets, are achieved to the fullest extent possible.

COMMENT: State agencies' reporting of progress in attaining the established goals for minority and female business participation to the Department of Commerce should be documented by proof of each prime contractor's payment of its minority and female business subcontractors and verification by the subcontractors.

RESPONSE: State departments and contracting agencies are inherently obligated to forward accurate reports of their progress toward the established goals. It is also incumbent upon them to develop the procedures necessary to ensure that contractors comply with contract provisions, including subcontractor payment requirements. Should there be an indication of error or impropriety in any case, it is the duty of the responsible party to determine the facts of the matter.

COMMENT: N.J.A.C. 17:14-4.1(b)1 (12A:10-4.1(b)1) should contain language that will make the contracting agency contact all businesses listed as furnishing construction work or services, in order to come up with three bids from qualified minority and/or female businesses which would make the contract suitable for set-aside. Also, in subparagraph (b)1i the word "should" should replace "may" to preclude an agency's option to forego set-aside when bids from three minority and/or female businesses are possible.

RESPONSE: The language remains as proposed in recognition of the State contracting agency's or department's responsibility to determine whether or not any particular contract can or should be deemed a set-aside contract as well as to meet the established set-aside goals. State contracting agencies will notify eligible businesses in accordance with their standard operating procedures and legal notification requirements.

COMMENT: N.J.A.C. 17:14-4.1(c)3 (12A:10-4.1(c)3) should contain language that forces the State contracting agency to negotiate prices with those companies that are the nearest to being an acceptable low bidder with a reasonable price before rejecting all bids and withdrawing the set-aside designation.

RESPONSE: The statutes governing construction contract bidding preclude State contracting agencies from conducting price negotiations with bidders.

COMMENT: N.J.A.C. 17:14-4.1(d)1 (12A:10A-4.1(d)1) should contain the following language: "This advertisement should always contain the address and telephone number of the Department of Commerce where prospective bidders can get a list of eligible female and minority businesses." Also, in N.J.A.C. 17:14-4.1(d)2iii, language should be added to force a bidder to provide details about specific quotes received from eligible minority and female businesses, including the bidder's efforts to negotiate lower prices with the subcontractors.

RESPONSE: The suggestion that the telephone number of the Department of Commerce's Set-Aside and Certification Office should be listed in the advertisement has merit. The text of N.J.A.C. 17:14-4.1(d)1 (12A:10A-4.1(d)1) has been revised to include this provision. As to the second part of the comment, it is the responsibility of each State contracting agency to define in its bidding documents the information it needs to ascertain whether a bidder has made a bonafide effort (1) to contact minority and/or female businesses for price quotes and (2) to establish a subcontractual relationship with those businesses that can meet the contract requirements. The rules, as proposed, are appropriately general in nature to allow the various State contracting agencies flexibility in determining more specific requirements.

COMMENT: (1) N.J.A.C. 17:14-4.3 (12A:10-4.3) should be strengthened in its entirety; specifically paragraph (a)1 should read: "The bidder shall locate a minimum of three qualified potential minority and/or female business contractors for each area if subcontracts will be utilized." (2) Paragraph (a)2 should contain language requiring the bidder to contact the Department of Commerce for its list of eligible minority and female businesses. (3) Paragraph (a)6 should be changed to read as follows: "The bidder shall negotiate prices with potential subcontractors which submitted higher than acceptable price quotes or provide explanation why such action was not taken." (4) The rules should be strengthened to require that the contracting agency make a decision before it awards the contract as to whether reasonable efforts were in fact taken by the successful bidder.

RESPONSE: (1) Deletion of the words "shall attempt" would not allow for situations where in fact there are less than three eligible or potentially eligible minority or female businesses available and interested in any particular subcontractable element of the contract work. (2) The listing referred to in paragraph (a)2 is the Department of Commerce's lists of registered minority and female businesses. A bidder which can identify and access the required number of eligible or potentially eligible minority or female businesses without referencing Commerce's lists should not be required to perform the unnecessary task. (3) The act of negotiating requires, at a minimum, both parties to consent to the negotiation process. For the State to compel such negotiating would be considered an inappropriate intrusion into the conduct of business. (4) N.J.A.C. 17:14-4.2(h)1i (12A:10A-4.2(h)1i) establishes the State contracting agency's responsibility to review the bidder's documentation, prior to awarding of the contract, to determine whether reasonable efforts were in fact taken by the bidder to contact and subcontract with minority and/or female businesses.

COMMENT: The State's Department of Community Affairs construction code inspection program is utilizing its staff forces to perform the necessary inspections instead of contracting with private entities which provide those same services, thus denying minority and female businesses opportunity for set-aside contracting.

RESPONSE: While the Departments recognize the concerns expressed in the comment, such comment has no relevancy to the current rulemaking, and the Departments would refer the party to the Department of Community Affairs.

COMMENT: The State should consider set-aside plans that provide preferences to prime contractors which demonstrate positive efforts in subcontracting with minority businesses, consistent with innovative, legislatively created programs that have been initiated by other governmental jurisdictions, such as Richmond, Virginia.

RESPONSE: The governing statute (N.J.S.A. 52:32-17) and Executive Order No. 84 (1993) do not address this issue, and therefore it is not made a part of these rules. The implementation of such preference provisions would require legislative action.

COMMENT: The State should consider utilizing an "implementation ratio" that is higher than the established percentage set-aside goals so that the remedial goals can be achieved faster and any deficiencies in other contracting areas can be offset.

RESPONSE: These rules do not specifically address implementation ratios. However, the non-remedial target program in N.J.A.C. 17:14-2.2 permits a contracting agency to establish appropriate targets when circumstances suggest greater availability than the statutory goals of minority and female businesses for a particular project.

Summary of Changes upon Adoption:

Some technical changes and corrections, as well as a few minor substantive changes have been made upon adoption of the rules.

At N.J.A.C. 17:14-1.1(a) (12A:10A-1.1(a)), two sentences were added to provide clarification that, as established by the governing Executive Order No. 84 (1993), the percentages represent overall program goals for State contracting agencies and do not represent a fixed percentage amount that must be applied to any specific contract. The intent of these rules, as set forth in the Summary section of the proposed rules, is to establish a set-aside program that requires State contracting agencies to make a good faith effort to meet the statutorily defined goals concerning the awarding of contracts and/or subcontracts to minority and female businesses. Consistent with that intent, State contracting agencies may, due to factors such as the anticipated availability of eligible contractors or subcontractors, be required to make adjustments to the set-aside percentage(s) on individual contracts. This prerogative in no way relieves the agency of the responsibility to make an earnest, conscientious effort to meet the specified goals.

At N.J.A.C. 17:14-1.2 (12A:10A-1.2), in the definition for "State contracting agency" and under the title "1. DEPARTMENTS", the word "Personnel" was moved to maintain alphabetical order of the list. Also, under "3. AUTHORITIES" of that same definition, the term "N.J. Expressway Authority" was deleted and replaced with the term "South Jersey Transportation Authority" to reflect the renaming of the agency.

At N.J.A.C. 17:14-2.2(b) (12A:10A-2.2(b)), the word "may" is deleted and replaced with the word "shall" to have the text conform to the governing statute, N.J.S.A. 52:32-30, which provides for the assessment of penalties.

At N.J.A.C. 17:14-3.1(a) (12A:10A-3.1(a)), the date when all female and minority businesses seeking set-aside contracts or subcontracts is extended by nine months to September 1, 1995, to provide the new administration with the time it needs to prepare for and effect the comprehensive certification program.

At N.J.A.C. 17:14-3.3 (12A:10A-3.3), specifically in paragraph (a)2, the misspelling of the word "business's" is corrected.

At N.J.A.C. 17:14-4.1 (12A:10A-4.1), the erroneous citation of N.J.A.C. 17:14-4.11 in the title line is corrected. Also, in 4.1(a) immediately thereafter, the word "Each" is substituted for the word "Any" as a grammatical preference.

At N.J.A.C. 17:14-4.1(d)1 (12A:10A-4.1(d)1), provision is made, in response to a public comment, to require State contracting agencies to include Department of Commerce contact information as a part of the public advertisement for applicable contracts. In the same paragraph, the "reasonable efforts" language and citation is added to ensure clarity regarding the set-aside contracting requirements.

At N.J.A.C. 17:14-4.1(d)2 (12A:10A-4.1(d)2), language is inserted to ensure that State agencies inform bidders about established set-aside laws and potential penalties for non-compliance with set-aside subcontracting targets in the event of contract award. The use of a standard form as a supplement to the bidding terms and conditions is intended to standardize and facilitate the communication process regarding set-aside requirements. This is not so substantive a change in that it will simply serve to inform the bidder of the existing laws and possible penalties. As a result of the insertion of the new text, proposed paragraphs (d)2 and 3 are recodified as (d)3 and 4.

At N.J.A.C. 17:14-4.3(a)4 (12A:10A-4.3(a)4), the words "attempted to" are added in acknowledgment of the validity of a comment from the public observing that it is unreasonable to require a contractor to contact all potential set-aside subcontractors on the same day. The intent is to have contractors make timely and proximate contact with potential set-aside subs.

At N.J.A.C. 17:14-5.2(a)1 (12A:10A-5.2(a)1), "and the percentages that" is inserted to ensure that State agencies provide the Department of Commerce with comprehensive, accurate and validated information concerning their progress toward achieving the stated annual set-aside contracting and subcontracting goals. In response to a public comment, N.J.A.C. 17:14-5.2(a)1i is added to elucidate the rules for determining which contracts can and cannot be counted as set-asides for reporting purposes. These changes do not represent so substantive change to the rules as proposed in that they only serve to support by example the proposed reporting requirements. The changes do not modify the intent or the scope of the reporting requirements.

At N.J.A.C. 17:14-5.2(a)2 (12A:10A-5.2(a)2), a period is deleted and replaced with a semicolon to correct a typographical error.

At N.J.A.C. 17:14-5.2(b) (12A:10A-5.2(b)), the general reference to the various set-aside programs is replaced with more informative language which details the basic factors to be used by State agencies in analyzing and reporting their set-aside achievements.

At N.J.A.C. 17:14-5.3 (12A:10A-5.3), clarifying language is inserted and added to define a standard reporting system that will serve as the formal means for the State's set-aside contracting program to be reviewed, analyzed and modified as necessary.

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

CHAPTER 14 (CHAPTER 10A)
MINORITY AND FEMALE CONTRACTOR AND SUBCONTRACTOR PARTICIPATION IN STATE CONSTRUCTION CONTRACTS

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

17:14-1.1 (12A:10A-1.1) Purpose and scope

(a) The rules in this chapter are jointly promulgated by the Department of Commerce and Economic Development (hereinafter, "Department of Commerce") and the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq. and Executive Order No. 84, dated March 5, 1993, to establish a set-aside program that requires State agencies with contracting authority to make a good faith effort to award seven percent of public construction contracts and subcontracts to eligible minority-owned businesses and three percent of public construction contracts and subcontracts to eligible female-owned businesses. ***These percentage goals are overall program goals for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside subcontracting goals for individual contracts.***

(b) These rules apply only to State construction contracts awarded by any State contracting agency and are not applicable to the award of State contracts for the purchase of goods and services not related to construction contracts.

(c) Applications and questions regarding eligibility as a minority business or female business should be addressed to:

Set-Aside and Certification Office
Department of Commerce and Economic Development
20 West State Street, CN 835
Trenton, New Jersey 08625-0835

17:14-1.2 (12A:10A-1.2) Definitions

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

"Certification" means that a minority-owned or woman-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in State programs requiring certification, as judged and determined by the Set-aside and Certification Office of the Department of Commerce and Economic Development.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development or his or her designee.

. . .

"Contractor" means any party performing or offering to perform a construction contract or consultant contract, or any party providing materials or goods used to perform a construction contract issued by a contracting agency of the State of New Jersey.

"Delegated purchasing authority" means the authority of a State agency to award contracts on its own pursuant to authority delegated

to it by the Director, Division of Building and Construction, as established in N.J.S.A. 52:34-7.

"Division of Building and Construction" means the State agency within the Department of the Treasury which provides a centralized design and construction contract procurement and administration service for other State agencies pursuant to N.J.S.A. 52:18A-151 et seq.

"Female business" means a business which has its principal place of business in the State, is independently owned and operated and is at least 51 percent owned and controlled by women.

"Minority business" means a business which has its principal place of business in the State, is independently owned and operated and is at least 51 percent owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:

1. African American: a person having origins in any of the black racial groups of Africa.

2. Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.

3. (No change.)

"Non-remedial targets" means numerical objectives which a State contracting agency may establish in lieu of or as a supplement to the remedial goals to ensure that discrimination is not presently occurring on publicly funded construction projects.

"Registration" means the process by which any business can have its eligibility for participation in minority and female set-aside determined.

"Remedial goals" mean the statutorily determined percentages of contracts awarded by each State contracting agency to eligible minority and female businesses in order to eradicate the effects of proven past discrimination.

"Set-aside contract" means a contract, or subcontractable portion of a contract when that portion is so allocated, specifically designated by a contracting agency as exclusively available for award to either an eligible minority or female business.

"State contracting agency" means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make construction contracts and includes the following except where expressly inconsistent with statutory authority:

1. DEPARTMENTS
Agriculture
Banking
[Personnel]
Commerce and Economic Development
Community Affairs
Corrections
Education
Environmental Protection *[and Energy]*
Health
Higher Education
Human Services
Insurance
Labor
Law and Public Safety
Military and Veterans' Affairs
Personnel
Public Advocate
State
Transportation
Treasury

2. COLLEGES
Jersey City State College
Kean College of New Jersey
Montclair State College
New Jersey Institute of Technology
Ramapo College of New Jersey
Richard Stockton State College
Rowan College of New Jersey
Rutgers, The State University
Thomas A. Edison College
Trenton State College
University of Medicine and Dentistry of New Jersey
William Paterson College of New Jersey

3. AUTHORITIES
Board of Regulatory Commissioners
Casino Reinvestment Development Authority
Development Authority for Small Businesses, Minorities and Women's Enterprises
N.J. Building Authority
N.J. Economic Development Authority
N.J. Educational Facilities Authority
N.J. Health Care Facilities Financing Authority
N.J. Highway Authority
N.J. Housing & Mortgage Finance Agency
N.J. Sports and Exposition Authority
N.J. Transit Corporation
N.J. Turnpike Authority
N.J. Water Supply Authority
Public Broadcasting Authority
South Jersey Transportation Authority
Urban Development Corporation

4. COMMISSIONS
(No change.)

"Subcontractor" means a third party that is engaged by a contractor to perform all or part of the work or to provide supplies, materials or equipment included in a construction-related contract with a State contracting agency.

. . .

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR MINORITY AND FEMALE BUSINESSES

17:14-2.1 (12A:10A-2.1) Standards of eligibility for minority businesses and female businesses

(a) (No change.)

(b) In order to be eligible as a minority or female business, a business must satisfy all of the following criteria:

1. The principal place of business must be in the State;

2. At least 51 percent of the ownership of the business must be by minority or female persons; and

3. Control over the daily and long-term operations of the business must be exercised by one or more of the minority or female owners.

(c) Eligibility is formalized by the Department of Commerce's certification and/or registration and approval processes.

17:14-2.2 (12A:10A-2.2) Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a contract or subcontract on a State construction contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, *[may]* ***shall***:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-17 et seq.;

2. In addition, assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved; and

3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

SUBCHAPTER 3. CERTIFICATION AND REGISTRATION

17:14-3.1 (12A:10A-3.1) Certification and registration procedures for minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Business awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of contract, or by *[January 1]* ***September 1***, 1995 when certification will be required for all businesses seeking set-aside contracts or subcontracts, whichever date comes first.

(b) Registration procedures established by the Department of Commerce are as follows:

1. Any business which seeks to register as a minority business and/or female business must apply to the Department of Commerce and pay any applicable fees. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce and the State contracting agencies.

i. If an applicant fails to complete fully the Vendor Registration Form, registration may be delayed or denied.

2. When an application for registration as a female or minority business is approved by the Department of Commerce, the Department will issue the newly registered business an approval notice and add it to the Department's female or minority vendors list.

3. State agencies awarding contracts will utilize these lists in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established goals.

17:14-3.2 (12A:10A-3.2) Time for application to register as a minority business or female business

(a) (No change.)

(b) If a business is to be considered as a minority or female business contractor or subcontractor on a specific contract for purposes of these rules, it must apply to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency.

17:14-3.3 (12A:10A-3.3) Procedures for challenging a business registered as a minority business or female business

(a) The qualification under these rules of a business on a vendors list as a minority business or female business may be challenged by any other business on that State vendors list or by any of the State contracting agencies subject to these rules.

1. A registration challenge shall be made in writing to the Set-Aside and Certification Office of the Department of Commerce, setting forth the factual basis for the challenge. The Department shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the Department shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the Department of Commerce may concern only the qualification of a business under these rules as a minority business or female business. Any challenge to a *[business']* ***business's*** qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the Department of Commerce receives a challenge, upon request of the business whose registration is at issue, the Department shall conduct a hearing on the matter as follows:

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Department may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the Commissioner of the Department of Commerce. This designee will issue a written report to the Commissioner within four working days following the close of the hearing.

4. At the discretion of the Commissioner's designee, participants at the hearing may be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a vendor's eligibility shall not stay the contract award process.

SUBCHAPTER 4. STATE AGENCY SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAMS

[17:14-4.11] ***17:14-4.1*** (12A:10-4.1) Remedial set-aside program goals and procedures

(a) *[Any]* ***Each*** State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least seven percent of its contracts to be awarded to eligible minority businesses and at least three percent of its contracts to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts awarded by the State agency in comparison to the total dollar value of all contracts awarded by the agency within a fiscal year.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report its good faith efforts to attain the established set-aside contracting goals. Contracts executed under delegated purchasing authority shall be subject to set-aside provisions established by the delegating agency in its formal delegation procedures. Consistent with the requirements of N.J.S.A. 52:32-17 et seq., the procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts or subcontracts will be offered as set-aside contracts.

i. A contract or subcontract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified construction work or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When an agency has made a determination that a contract in its entirety is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation.

2. Invitations for bids shall be confined to either minority businesses or to female businesses, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

i. The agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

ii. Except in cases of emergency, the State contracting agency shall provide an opportunity for a hearing before contract award to

address the reasons for the withdrawal of the set-aside designation. This hearing shall not be considered a contested case under the Administrative Procedures Act.

4. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules and procedures.

(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1. The public advertisement shall include ***the address and telephone number of the New Jersey Department of Commerce's Set-Aside and Certification Office and*** a notice to prospective bidders that set-aside goals***, or reasonable efforts as required in N.J.A.C. 17:14-4.3 (12A:10A-4.3),*** must be met by any contractor receiving an award.

2. The bid documents shall contain a standard form by which the bidder shall certify that it will comply with New Jersey laws pertaining to set-aside contracts and is aware that it is subject to criminal and civil penalties, including debarment, in the event of non-compliance.

*[2.]***3.*** The bid documents shall contain a detailed notice to bidders advising the following:

i. The bidding packet includes a set-aside form or forms considered a material and mandatory requirement and which must be completed and included as a part of the bidder's proposal.

ii. Failure to complete and submit the form(s) shall be sufficient basis to deem the bid proposal non-responsive and thus subject to mandatory rejection.

iii. The set-aside form(s) completed by the bidder shall convey information in sufficient detail to permit the contracting agency to effectively assess the bidder's plan for attaining the specified set-aside goal or documenting the bidder's good faith effort to meet the set-aside goal.

iv. The Department of Commerce's lists of eligible minority and female businesses will be available from the State contracting agencies.

*[3.]***4.*** The award of any contract or subcontract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine effort to meet the set-aside goals.

17:14-4.2 (12A:10A-4.2) Non-remedial subcontracting target program and procedures

(a) When it deems appropriate, any State contracting agency, consistent with its contracting authority, may establish and administer a non-remedial target program in lieu of or as a supplement to the remedial set-aside program. This non-remedial program shall be designed to ensure that discrimination is not presently occurring on publicly funded construction projects, as evidenced by a bidder's good faith efforts to solicit price quotes from or enter into contracts with eligible businesses.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts are suitable for the subcontracting target program.

i. Factors to be considered when making the determination that a particular contract is suitable for inclusion in this program include, but are not limited to: the total dollar amount of the project, the use of a general construction contractor for the completion of the entire project and the number of available eligible businesses in geographical proximity to the project site.

ii. The designation of a particular contract as part of the non-remedial target program shall be made prior to the public advertisement for bids.

(c) The State contracting agency shall set separate target levels, to be no less than the remedial target levels, for the participation of minority and female business subcontractors for each construction contract awarded pursuant to this program. The target levels shall be set according to the following procedures:

1. The State contracting agency shall make a determination of the subcontractable elements of the contract based upon the agency's breakdown of projected trade disciplines or work components of the contract and the estimated costs of those individual elements.

2. For each subcontractable element, the State contracting agency shall review the appropriate vendor list of the Department of Commerce to determine the number of eligible minority businesses and the number of eligible female businesses which may reasonably be expected to participate in the project, giving consideration to the geographic location of the project and the estimated dollar value of the subcontract.

3. The subcontractable elements where there are fewer than three minority businesses or three female businesses reasonably expected to participate in the contract will be eliminated from consideration for inclusion in the target.

4. Those subcontractable elements having the greatest availability of minority or female businesses will be considered for inclusion in the target.

5. The total dollar value of the subcontractable elements with the greatest likelihood of participation by minority businesses shall be combined. The percentage of the total dollar value of the contract that this combined amount represents shall be used by the State contracting agency to set a reasonable target for overall minority business participation in subcontracted elements of the contract.

6. This same procedure shall be followed for setting a reasonable target for female business participation in the contract.

(d) Nothing in these rules shall be construed as requiring or permitting a State contracting agency to depart from its statutory restrictions or documented policies governing the percentage of a contract which may be subcontracted.

(e) The public advertisement shall include a notice to prospective bidders disclosing the target levels for the contract.

(f) The bid documents shall contain a detailed notice to bidders advising of the following:

1. The bidding package includes a minority and female business utilization form or forms considered a material and mandatory requirement which must be completed and included as part of the bidder's proposal.

2. Failure to complete and submit the form or forms shall be sufficient basis to deem the proposal non-responsive and thus subject to mandatory rejection.

3. The minority and female business utilization plan will be used by the State contracting agency to determine, prior to award, whether the bidder's proposal is reasonably designed to meet the targets.

(g) A bidder's proposal identifying contracts for minority and female businesses, the combined cost estimates of which meet the targets, will be deemed to have non-discriminatory subcontracting practices.

(h) A bidder's proposal failing to identify contracts for minority and female businesses with a combined cost estimate meeting the targets shall include documentation of the bidder's good faith efforts to meet the targets. Documentation must include a record of the bidder's attempts to contract with eligible businesses and the reasons for failure to meet the targets.

1. The State contracting agency shall review this documentation in order to determine whether the bidder made reasonable efforts to solicit and award contracts to eligible minority and female businesses.

i. In order to make the required determinations, the State contracting agency will review the method by which subcontractors were selected to ensure uniformity in approach and to ensure that no disparate treatment has occurred. The State contracting agency will consider the bidders actions taken pursuant to N.J.A.C. 17:14-4.3 (12A:10A-4.3) in determining whether reasonable efforts were made by the bidder to solicit and award subcontracts to eligible minority and female businesses.

(i) The award of any contract pursuant to this program shall be made, in accordance with the State contracting agency's applicable

statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine good faith effort to meet the targets.

17:14-4.3 (12A:10A-4.3) Reasonable efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a reasonable effort to solicit and award subcontracts to eligible minority and female businesses:

1. The bidder shall attempt to locate qualified potential minority and/or female business subcontractors;

2. The bidder shall request a listing of minority and/or female businesses from the State contracting agency if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts;

4. The bidder shall ***attempt to*** contact all potential subcontractors on the same day and use similar methods to contact them;

5. The bidder shall provide all potential subcontractors with detailed information regarding the specifications; and

6. The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors which submitted higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their efforts.

17:14-4.4 (12A:10A-4.4) Exemptions from set-aside programs

In those circumstances where Federal law or regulations permit or require a procurement procedure other than those prescribed herein, the State contracting agency may follow the Federal procedures notwithstanding the provisions of these rules, provided that the State contracting agency issues a written declaration that such Federal laws are in effect.

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

17:14-5.1 (12A:10A-5.1) Planning

(a) Within 60 calendar days of the finalization of the capital budget for each State contracting agency, that agency shall submit to the Commissioner of the Department of Commerce a plan for complying with the remedial and/or non-remedial programs as established by these rules. The Department of Commerce will assist any State contracting agency in the development of its plan, upon request. This plan shall include the following:

1. A list of all construction contracts scheduled and funded for that year, identifying the estimated cost of each project;

2. Identification of those contracts which the State contracting agency intends to include in its remedial goal program; and

3. Identification of those contracts which the State contracting agency intends to include in its non-remedial target program.

(b) The Department of Commerce shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding seven percent of its total contracting dollars to minority businesses and three percent of its total contracting dollars to female businesses.

17:14-5.2 (12A:10A-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department:

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts ***and the percentages that*** were advertised and awarded as minority or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the two categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if any agency sets aside a contract for female businesses and the contract is awarded to a female business owned by a minority woman, that contract can be counted only as a female business award and not as a minority business award. If a minority business or female business was awarded a contract that was not set aside, that contract cannot be counted as a set-aside award.*

2. The total number and dollar value of all contracts advertised and awarded subject to the remedial subcontract set-aside program, setting forth the number and dollar value of subcontracts awarded to minority and female businesses, respectively*[.]**;*

3. The total number and dollar value of all contracts advertised and awarded subject to the non-remedial target program, setting forth the number and dollar value of subcontracts awarded to minority and female businesses, respectively; and

4. A description of efforts made by the State contracting agency to conduct outreach and educational programs for potentially eligible minority and female businesses and any efforts made to assist the business community in achieving the objectives of these programs.

(b) Within 90 calendar days of the close of each State contracting agency's fiscal year, the agency shall file with the Department of Commerce*,* in a format prescribed by the Department*,* an analysis of actual contracting dollars paid to all contractors and *[pursuant to the set-aside, the remedial subcontracting and the remedial target programs]* ***actual contracting dollars paid to minority businesses and female businesses, pursuant to set-aside contracts and subcontracts****.

(c) All reports required by this subchapter shall be considered public records for the purposes of N.J.S.A. 47:1A-1 et seq. and shall be retained as part of the permanent records of the State contracting agency and the Department of Commerce.

17:14-5.3 (12A:10A-5.3) Annual review

The Commissioner of the Department of Commerce and the Treasurer of the State of New Jersey shall undertake an annual review of the operation and *[continued]* ***report to the Governor on the*** need for ***continuation or modification of*** the minority and female business set-aside programs contained in this chapter. This *[review]* ***report*** shall be based upon the reports submitted to the Department and any other information deemed appropriate. ***The report will include performance data on compliance and deficiencies for each contracting agency and be publicly distributed as deemed appropriate.****

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Gross Income Tax

Commuter Transportation Benefits Reporting by Employer

Adopted New Rule: N.J.A.C. 18:35-1.28

Proposed: October 17, 1994 at 26 N.J.R. 4173(a).

Adopted: December 9, 1994 by Richard D. Gardiner, Director, Division of Taxation.

Filed: December 9, 1994 as R.1995 d.19 **with substantive and technical changes** not requiring additional public notice and comments (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54A:9-17(a).

Effective Date: January 3, 1995.

Expiration Date: June 4, 1998.

Summary of Public Comments and Agency Responses:

Robert Woodford, representing the New Jersey Business and Industry Association, recommended that, in the interest of clarity, the two last sentences of subsection (a) be reversed. The Division agreed with this suggestion and has made the suggested change. The rule does not exceed or relate to standards or requirements of Federal law, and follows the requirements of N.J.S.A. 54A:7-2, on which it is based.

Summary of Changes Upon Adoption:
The order of the two last sentences of proposed N.J.A.C. 18:35-1.28(a) has been reversed.

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

18:35-1.28 Commuter transportation benefits reporting by employer

(a) Pursuant to N.J.S.A. 54A:7-2, an employer shall provide an employee with a written statement as prescribed by the Director in (b) below showing the cost of commuter transportation benefits paid by the employer to the employee. Should said benefits exceed the amount of $720.00 for the taxable year beginning on or after January 1, 1993, but before January 1, 1994, then the amount received by the employee in excess of $720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit, rounded down to the nearest $5.00, in proportion to the change in the average consumer price index for all urban consumers in the New York and northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1993 to the calendar year ending before the taxable year. ***Notice of the adjusted limit shall be published in the New Jersey Register.*** Amounts received by the employee not exceeding $720.00 shall not be included in the employee's gross income. *[Notice of the adjusted limit shall be published in the New Jersey Register.]*

(b) The written statement required to be provided by the employer to the employee as set forth in (a) above may be set forth on a W-2 form or other written information statement showing the amount of such benefits.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Personnel Assigned to the Operation and Conduct of Gaming and Slot Machines

Adopted Amendment: N.J.A.C. 19:45-1.12

Proposed: October 17, 1994 at 26 N.J.R. 4174(a).
Adopted: December 5, 1994 by the Casino Control Commission, Bradford S. Smith, Chairman.
Filed: December 7, 1994 as R.1995 d.11, **without change.**

Authority: N.J.S.A. 5:12-63(c), 70(j) and 99(a).

Effective Date: January 3, 1995.
Expiration Date: August 15, 1997.

Summary of Public Comment and Agency Response:
COMMENT: Sands Hotel and Casino, Bally's Park Place, Inc., Bally's Grand Hotel and Casino and TropWorld Casino and Entertainment Resort indicated that they support the adoption of the amendments.
RESPONSE: Accepted.
COMMENT: The Division of Gaming Enforcement indicated that it does not object to the adoption of the amendments.
RESPONSE: Accepted.

Full text of the adoption follows:

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

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

(c) Each casino licensee shall maintain the following standard levels of staffing:

1.-4. (No change.)

5. One floorperson shall supervise:

i. Not more than four blackjack, roulette, pai gow poker, minibaccarat, sic bo, red dog or big six tables, or any combination thereof; or

ii. Not more than two craps tables; or

iii.-iv. (No change.)

6. (No change.)

(d) (No change)

(e) Notwithstanding the provisions of (c) above, a casino licensee may implement a plan for revised supervision by floorpersons or pit bosses. In any plan for revised supervision:

1. One floorperson may supervise not more than six blackjack, roulette, minibaccarat, sic bo, red dog or big six tables, or any combination thereof; and

2. One pit boss may supervise not more than 24 gaming tables.

(f)-(j) (No change.)

(b)

CASINO REINVESTMENT DEVELOPMENT AUTHORITY

Hotel Development Project Eligibility and Conditions Approval Criteria

Adopted Amendment: N.J.A.C. 19:65-2.5

Proposed: December 6, 1993 at 25 N.J.R. 5455(a).
Adopted: November 22, 1994 by Casino Reinvestment Development Authority, Frederick Nickles, Chairman.
Filed: November 30, 1994 as R.1995 d.4, **without change.**

Authority: N.J.S.A. 5:12-144.1 and 5:12-161(f); P.L. 1993, c.159. (N.J.S.A. 5:12-173.1 et seq.).

Effective Date: January 3, 1995.
Expiration Date: October 5, 1997.

Summary of Public Comments and Agency Responses:
No comments were submitted.

Full text of the adoption follows:

19:65-2.5 Approval criteria

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

(d) The Authority shall require that the applicant establish, among other things, with respect to hotel development projects, the following:

1.-2. (No change.)

3. The project does not include the construction, reconstruction or rehabilitation of any unit which was in existence and used or available for use as a hotel unit as of July 1, 1993 except when the project will result in the hotel units being upgraded to first class hotel units, and the cost of such construction, reconstruction or rehabilitation exceeds 50 percent of the acquisition value of the structure as defined in N.J.A.C. 19:65-1.2. For purposes of this subsection, "first class hotel unit" shall mean a sleeping unit:

i. Containing at least approximately 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges;

ii. Containing private bathroom facilities; and

iii. To be held available and to be used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in the Casino Control Act, N.J.S.A. 5:12-27, except that the building or buildings containing units need not be operated as a part of one casino hotel facility nor be physically connected to a casino hotel.

PERSONNEL

(a)

COMMISSIONER OF PERSONNEL

Voluntary Furlough Program

Adopted Amendments: N.J.A.C. 4A:3-4.6; 4A:4-2.15 and 5.2; 4A:6-1.2, 1.3, 1.5 and 2.4; and 4A:8-2.4

Adopted New Rule: N.J.A.C. 4A:6-1.23

Reproposed: October 17, 1994 at 26 N.J.R. 4126(a).
Adopted: December 6, 1994, by Linda M. Anselmini, Commissioner, Department of Personnel.
Filed: December 7, 1994 as R.1995 d.12, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1993, c.297.

Effective Date: January 3, 1995.
Expiration Dates: August 5, 1998, N.J.A.C. 4A:3;
May 12, 1998, N.J.A.C. 4A:4;
December 22, 1997, N.J.A.C. 4A:6;
January 16, 1995, N.J.A.C. 4A:8.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing concerning the proposed amendments and new rule was held on November 3, 1994. Henry Maurer served as hearing officer. No comments were received on this proposal, and no recommendations were made by the hearing officer. Fifteen people submitted written comments. The hearing record may be reviewed by contacting Janet Share Zatz, Director, Division of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

COMMENT: Department of Environmental Protection (DEP) employees Paula A. Berg, Phiroza Stoneback, Carol Pillsbury, Kathleen V. H. Kunze, Swati Toppin, Karen Jentis, Ann Charles, Leslie Reid-Green and Beverly Krasnansky all expressed agreement with the proposed amendments and new rule on voluntary furlough. Also, two other State employees, Deborah A. Bechtel and Diane Glass, expressed satisfaction with the proposal. All of these commenters stated that they were happy with the Department of Personnel's willingness to take into account special family and other personal needs and come up with a workable, more flexible program than that originally proposed in the June 6, 1994 New Jersey Register (see 26 N.J.R. 2179(a)).

RESPONSE: The Commissioner of Personnel is pleased that this reproposal is viewed so positively by employees interested in taking a voluntary furlough, and is happy to be able to adopt it.

COMMENT: Anthony Anastasio, Director of Administration, Office of the Public Defender, asked whether N.J.A.C. 4A:6-1.23(b) applies to local government only.

RESPONSE: By the very language of the rule, N.J.A.C. 4A:6-1.23(b) applies to local government only.

COMMENT: Deborah A. Bechtel expressed concern about the requirement in N.J.A.C. 4A:6-1.23(c)1 that an employee wait until approval by the appointing authority before taking the requested voluntary furlough. She expressed similar concern about paragraph (d)3 which requires approval by both the appointing authority and the Department of Personnel. She stated that, under the voluntary furlough pilot program, she has seen situations in which a voluntary furlough request was approved after the requested furlough start date.

RESPONSE: The Commissioner understands these concerns. However, although the program is intended to benefit both employees and the State, the voluntary furlough may be denied to an employee if one of the grounds indicated in paragraph (c)3 is met. Thus, a voluntary furlough is not an entitlement. Nevertheless, if an employee believes that a voluntary furlough approval has been unreasonably delayed, the employee may file a noncontractual grievance.

COMMENT: Raymond P. Robertson, Director of Human Resources at the Department of Labor (DOL), proposed that N.J.A.C. 4A:6-1.23(c)3 be amended to add as a ground for denial of a voluntary furlough that the "program area" for which the employee works does not have a funding problem and that the furlough would only promote a loss of productivity.

RESPONSE: The Commissioner believes that the proposed ground for denial is already covered by the language of paragraph (c)3.

COMMENT: Mr. Anastasio suggested amendatory language allowing denial of a furlough if granting one would result in "significant operational disruptions or inefficiencies of the agency's operations."

RESPONSE: The Commissioner has decided not to modify N.J.A.C. 4A:6-1.23(c)3 at this time. The main purpose of a voluntary furlough is to save money and lessen the need for layoffs. Therefore, to deny a furlough, an agency should show that the furlough would cost, rather than save, money. The Commissioner believes that paragraph (c)3 already adequately conveys this ground for denial.

COMMENT: Mr. Robertson commented that N.J.A.C. 4A:6-1.23(c)5 should be deleted. This provision requires that a voluntary furlough request for a purpose covered under either the State Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) or both, be recorded accordingly. He argued that this requirement will only encourage employees to withhold a reason for the voluntary furlough which may be an FLA or FMLA purpose. Mr. Anastasio expressed concern that paragraph (c)5 suggests that both voluntary furlough time and FLA or FMLA time may have to be reduced if one or both family leave laws apply.

RESPONSE: If the reason for the employee's voluntary furlough request falls under either the FLA, the FMLA, or both, then the applicable law and regulations require that time off which the employees has requested must be recorded accordingly, and all of the rights attendant those leaves shall apply. This requirement is now clearly reflected in recently adopted amendments to N.J.A.C. 4A:6-1.21(a).

COMMENT: Patrick DiMattia, Manager, Human Resource Services, Office of the Public Defender, expressed opposition to the furlough extension leave of 60 additional days beyond the 30 day maximum for voluntary furlough, provided in N.J.A.C. 4A:6-1.23(d). Mr. DiMattia stated that such a leave is unnecessary in view of the available option of a leave of absence without pay for permanent employees without a loss of seniority, as an alternative to layoff.

RESPONSE: As a result of comments received in response to the original voluntary furlough proposal, the Commissioner determined that the furlough extension leave would be necessary to provide some flexibility to employees participating in the voluntary furlough program. Such flexibility, the Commissioner believes, would encourage employees to participate in the program, thereby promoting fiscal savings. The limit of 60 furlough extension days beyond the 30 day voluntary furlough maximum should also help to prevent any potential for operational problems in agencies. It is also noted that furlough extension leave may only be used for education or family care needs, and is available only to those employees who have already used 30 furlough days.

COMMENT: Deborah A. Bechtel proposed that N.J.A.C. 4A:6-1.23(d) be changed to state that an employee may request "up to 60 additional days' furlough extension leave" to clarify that the 60 days are above and beyond the 30 days for the voluntary furlough.

RESPONSE: The purpose of the furlough extension leave is to extend the voluntary furlough maximum of 30 days by 60 additional days. The Commissioner believes that this purpose is already clearly stated in subsection (d) and that subsection (d) need not be changed.

COMMENT: Deborah A. Bechtel and Diane Glass asked whether the blocks of 10 work days in which the furlough extension leave must be taken may consist of shorter work days.

RESPONSE: The voluntary furlough may be taken in the form of shorter work days, up to the equivalent of 30 work days. See N.J.A.C. 4A:6-1.23(c)2(i). However, N.J.A.C. 4A:6-1.23(d) explicitly requires that furlough extension leave be taken in blocks of 10 work days, with no provision for shorter work days. This is because, since furlough extension leave will be treated like other unpaid leaves, the employee must prepay the health benefit premium. These blocks of 10 work days, nevertheless, need not be consecutive.

COMMENT: Mr. Robertson pointed out that N.J.A.C. 4A:6-1.23(d)1 should be changed to reflect that, as in other leaves without pay, a furlough extension leave requires the employee to prepay both the employee's and employer's health benefit premiums.

RESPONSE: The Commissioner agrees with this suggestion and has decided to adopt the rule proposal with an amendment to this effect, which would require prepayment by the employee of the full premium amount. The proposal Summary which appeared in the October 17, 1994

issue of the New Jersey Register gave notice that, with regard to health benefits, a furlough extension leave would be treated like other leaves without pay. Even though the Summary went on, erroneously, to say that the employee would thus have to prepay only the employee's premium share, the crux of the Summary involved treating the health benefit payments as they are treated under a leave without pay. (See, also, the Social Impact Statement). Adopting the proposed language, requiring that the employee pay only the employee's share of the premium during furlough extension leave, would have been inconsistent with the current rules on health benefits during leaves without pay. N.J.A.C. 17:9-7.2(o)1 provide that coverage of an employee and dependents may continue during a leave of absence without pay if the employee pays "... in advance the total charge required for the employee's coverage and coverage of the employee's dependents during such period of authorized leave of absence without pay...."

COMMENT: In the course of a layoff appeal involving seniority of employees who had taken a voluntary furlough during their one-year trainee periods, comments were made on the voluntary furlough pilot program. Specifically, John Kelly, Staff Representative, Communications Workers of America (CWA) Local 1033, stated that the provisions of the voluntary furlough program should address the issue of the impact of participation in the program on seniority accrual during a trainee period.

RESPONSE: The Commissioner recognizes this issue as an important one, and invites the submission of a specific proposal to address it.

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

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) (No change.)

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1.-5. (No change.)

6. Leave without pay while receiving workers' compensation benefits;

7. Leave without pay under a voluntary alternative to layoff program;

8. Voluntary furlough; and

9. Furlough extension leave.

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

4A:4-2.15 Rating of examinations

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

(d) In calculating seniority for promotional examinations, voluntary furloughs and the following types of leaves shall not be deducted from seniority.

1. All leaves with pay including sick leave injury (SLI);

2. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and

3. In local service, leave without pay to fill elective office.

(e)-(h) (No change.)

4A:4-5.2 Duration

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

(e) An approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.

1. (No change.)

4A:6-1.2 Vacation leave

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

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction without actual interruption due to resignation, retirement or removal.

1. (No change.)

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave and voluntary furlough, shall not be included in calculating years of continuous service.

(d)-(i) (No change.)

4A:6-1.3 Sick leave

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

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension but shall continue to accrue during a voluntary furlough or furlough extension leave.

(d)-(i) (No change.)

4A:6-1.5 Vacation and sick leave adjustments: State service

(a) (No change.)

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1.-2. (No change.)

(c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d)-(g) (No change.)

4A:6-1.23 Voluntary furlough program

(a) The purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work without pay in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status.

(b) In local service, an appointing authority may establish a voluntary furlough proram which may differ in detail but which shall be consistent with the purpose of these rules, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the voluntary furlough program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

(c) An employee who wishes to participate in the program shall request, in writing, approval for such participation from the appointing authority.

1. The employee shall not be permitted to take the voluntary furlough until the employee has received approval by the appointing authority.

2. The manner in which the employee proposes to use the voluntary furlough shall be contained in the request, may be the equivalent of no more than 30 work days in a calendar year, and may consist of one or more of the following:

i. Shorter work days;

ii. Intermittent days off; or
iii. Consecutive days off.

3. An appointing authority may deny an employee the opportunity to participate in the program if it determines that such participation would be detrimental to the public health, safety or welfare or would result in increased costs to the appointing authority due to increased overtime, the need to appoint additional employees or the loss to that appointing authority of anticipated revenue.

4. An employee shall not be permitted to use a voluntary furlough for any of the following purposes:

i. As sick leave;
ii. As a leave without pay due to disability; or
iii. To seek or engage in alternate employment.

5. When an employee uses voluntary furlough or furlough extension leave for a purpose covered by the New Jersey Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) and the employee is eligible for coverage under the FLA or FMLA, the voluntary furlough or furlough extension leave shall be recorded as FLA leave, FMLA leave, or both, as appropriate.

(d) An employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive.

1. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if the employee is in pay status. The employee may continue health benefits by paying the *[employee's share]* ***full premium amount (employer's and employee's share)*** for the furlough extension's days in accordance with the regulations of the State Health Benefits Commission.

2. Furlough extension leave may be used for education or family care needs only.

3. Requests for furlough extension leave are subject to the approval of the appointing authority and the Department of Personnel.

(e) An employee on a voluntary furlough or furlough extension leave shall continue to accrue leave time as if the employee is in pay status. See N.J.A.C. 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave) and 4A:6-1.5 (vacation and sick leave adjustments).

(f) In State service, the anniversary date of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:3-4.6.

(g) The seniority of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:4-2.15 (seniority in rating of examinations) and N.J.A.C. 4A:8-2.4 (seniority in layoffs).

(h) An employee serving in a working test period who is participating in the program shall have the working test period extended for the period of time equal to the voluntary furlough or furlough extension leave. See N.J.A.C. 4A:4-5.

(i) In State service, an employee on a voluntary furlough or furlough extension leave on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls. See N.J.A.C. 4A:6-2.4.

(j) See N.J.A.C. 17:9-4.2, 8.3 and 9.1 for State health benefits coverage during a voluntary furlough.

(k) Once an employee has used the equivalent of 30 days for a voluntary furlough and the equivalent of 60 days for a furlough extension leave in a calendar year, the employee shall not be permitted to take a leave without pay unless it is approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10.

1. For any leave without pay approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10 after the employee has taken a voluntary furlough and furlough extension leave, the rules on leave time, anniversary dates and seniority with respect to leaves without pay shall apply. See N.J.A.C. 4A:6-1.2 (vacation leave), 1.3 (sick leave), 1.5 (vacation and sick leave adjustments); 4A:3-4.6 (anniversary dates); and 4A:4-2.15 (seniority in rating of examinations) and 4A:8-2.4 (seniority in layoffs).

4A:6-2.4 Holidays: State service

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

(d) Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday. An employee on a voluntary furlough or a furlough extension leave on the day before a holiday shall receive pay for the holiday as long as the employee is in pay status during the pay period in which the holiday falls.

4A:8-2.4 Seniority

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

(c) Voluntary furloughs and the following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d)-(g) (No change.)

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Family Support Service System

Adopted New Rules: N.J.A.C. 10:46A

Proposed: August 15, 1994 at 26 N.J.R. 3341(b).
Adopted: November 21, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: November 28, 1994, as R.1995 d.1, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:6D-33 et seq., specifically 30:6D-41.

Effective Date: January 3, 1995.
Expiration Date: January 3, 2000.

Summary of Public Comments and Agency Responses:

The Division of Developmental Disabilities received six public comments from provider agencies under contract with or regulated by the Division. One comment was received from the Office of Legislative Services. A summary of comments and responses follows:

The ARC of New Jersey

Comments were submitted by Brenda Considine, Director of Legislative and Advocacy Services:

COMMENT: N.J.A.C. 10:46A-1.1(d), under General Provisions. The guidelines used by the Commissioner should be widely available and understood by everyone using or interfacing with the Family Support System. Wording should be added to state that the Commissioner shall establish and **make available written** income, ...

RESPONSE: The Division agrees the guidelines should be widely available and understood by everyone. When the income, need and other criteria are established, they will be published and made available in accordance with the Administrative Procedure Act. This means that the standards will be proposed and adopted in the same way that the Family Support Service System rules were proposed and adopted in the New Jersey Register, with a 30 day public comment period. The guidelines would then become part of the rules in N.J.A.C. 10:46A and will be available in that form.

COMMENT: N.J.A.C. 10:46A-1.3, Definitions. The ARC recommends that it be made clear that the DDD Family Support Coordinator is an employee of the Division. Also, the passage should refer to the family support service **system**, not a program.

RESPONSE: The Division agrees, and at N.J.A.C. 10:46A-1.3 wording has been added to the definition of DDD Family Support Coordinator stating the individual is an employee of the Division. The word program has also been deleted from the definition and the words service system have been added. These changes clarify, but do not alter, the intent of the proposed text.

COMMENT: At N.J.A.C. 10:46A-2.2, additional wording is recommended so that parents who themselves have a developmental disability may access family support services.

RESPONSE: A parent with a developmental disability may access family support services, in accordance with N.J.A.C. 10:46A-2.2(a)1.

COMMENT: At N.J.A.C. 10:46A-2.3, the ARC recommends that any denial or modification be documented in writing.

RESPONSE: N.J.A.C. 10:46A-2.3(d) states that the family shall be notified, by telephone or in writing, of the approval, denial, modification or status of the requested family support services. Restricting the notification to a written form would limit the Division's ability to serve the families in an expeditious manner, due to the high volume of requests and the need for modifications. It is the responsibility of the DDD staff to maintain documentation of their activities.

COMMENT: N.J.A.C. 10:46A-3, Family Support Coordinator. The ARC recommends that the word "Statewide" be added before the Family Support Coordinator throughout this subchapter.

RESPONSE: At N.J.A.C. 10:46A-3.1, Family Support Coordinator is the terminology consistent with the law.

COMMENT: N.J.A.C. 10:46A-4. For purposes of clarity, the word "Regional" should precede Family Support Planning Council throughout the subchapter.

RESPONSE: The Division agrees and the word "Regional" has been added throughout the section.

COMMENT: N.J.A.C. 10:46A-4.1, Membership. The ARC recommends that individuals be limited to seven years of service so as to allow new voices to participate.

RESPONSE: Members of the Family Support Advisory Group discussed this issue on numerous occasions. After careful review, it was decided by the families that experienced and interested council members shall be allowed to serve on the councils without limitations.

COMMENT: Can persons of the same family serve simultaneously? The ARC would recommend no.

RESPONSE: The Division agrees. Wording will be added, in a proposal, to state that no more than one member of the same household shall serve on a Council simultaneously. It is not possible to make such a change to the rule on adoption, since the change needs to be presented to the public, with an opportunity to comment, in accordance with N.J.A.C. 1:30-4.3.

COMMENT: Are the Regional Council meetings to be open to the public? If so, how are they to be publicized?

RESPONSE: The Regional Council meetings are subject to the Public Meeting Act. Members of the Regional Family Support Planning Councils will comply with the requirements of the Act, and will be open to the public.

COMMENT: The ARC recommends that the Family Support Coordinator should serve as a non-voting member of the Statewide Family Support Council.

RESPONSE: The Division agrees. This requirement is cited at N.J.A.C. 10:46A-3.1(c)4.

Sussex County Association for Retarded Citizens (SCARC)

A supportive letter and comment was submitted by Richard C. Lecher, Executive Director.

COMMENT: The SCARC is extremely pleased that the Division has involved families in the creation of these rules and regulations. SCARC has enjoyed several years of providing family support services to families who are in need.

SCARC would only hope that the new rules and regulations do not become encumbered by a bureaucracy which will slow down the process of meeting family needs.

SCARC applauds the Division in the establishment of the Regional Family Support Planning Councils which, hopefully, will bring the interpretation of needed services closer to the location of the family.

RESPONSE: The Division thanks the SCARC for the letter supporting the Family Support rules. The Division feels that the Regional Family Support Planning Councils will be able to eliminate bureaucracy issues that would slow down the process of meeting family needs.

The New Jersey Center for Outreach and Services for the Autism Community, Inc. (COSAC)

COMMENT: N.J.A.C. 10:46A-1.1(d). COSAC recommends that the income eligibility limits need to be removed. By placing income limits on the family, it penalizes those who may just make a small amount over the income limit. The ability to demonstrate need is vague. Families should not be penalized because the "need" is not substantial enough to justify eligibility.

RESPONSE: The Division understands the concerns that the income, needs and other criteria could affect some families receiving family support services.

The requirement to establish income, need and other criteria is clearly stated in the Family Support Act, in order to ensure that the expenditures for the system are within the limits of the funds available for the purposes of the Act. Therefore, the Division cannot make the requested change.

COMMENT: N.J.A.C. 10:46A-4.1(c). COSAC believes that the Director of the Division of Developmental Disabilities (DDD) should appoint a non-voting member to each Regional Family Support Planning Council. The non-voting status of the appointee will ensure that the Councils remain family oriented while benefitting from the Division's technical expertise.

RESPONSE: The composition of the Regional Family Support Planning Councils is established in the Family Support Act. The Council meetings will be public and staff from the Division may attend the meetings.

COMMENT: N.J.A.C. 10:46A-4.1(k). COSAC believes more stringent guidelines need to be set for the expenditure of funds for compensation to Council members. Without guidelines, excessive amount of funds can be used to cover administrative costs.

RESPONSE: The Family Support Act clearly states that Council members shall serve without compensation beyond reimbursement for reasonable transportation, child care and other costs related to serving on the Council. Council members will be reimbursed using the State's travel regulations regarding mileage and prevailing respite care rates.

COMMENT: COSAC recommends that monitoring of the activities needs to be consistent. If each Council creates a separate way to monitor, there is no way that an equitable study or evaluation can be done.

RESPONSE: N.J.A.C. 10:46A-4.1 states that all Regional Family Support Planning Council members shall receive initial orientation and ongoing training and support.

COMMENT: Since a minimum term is set for the chairperson, vice-chairperson and secretary of the Statewide Family Support Council, COSAC recommends that a maximum term should also be created.

RESPONSE: Members of the Family Support Advisory Group discussed this issue on numerous occasions. After careful review, it was decided by the families that experienced and interested Council members shall be allowed to serve on the Councils without limitations.

The Training School at Vineland

Comments were submitted by Sharon Omrod, Director, Community Based Services:

COMMENT: Who will train the Regional Planning Council Members and what curriculum will be utilized?

RESPONSE: The Developmental Disabilities Council, in conjunction with DDD, will develop the curriculum to be used for training the Regional Planning Council Members.

New Horizons in Autism

Comments were submitted by David Velardo, Family Support Director:

COMMENT: New Horizons in Autism recognizes that each family is and should be at the heart of designing their service needs. What is unclear is how this rule change will affect the current family/provider relationships.

RESPONSE: The new rules should strengthen the relationship between the family and provider. The rules at N.J.A.C. 10:46A-2.3 and 3.1 delineate the process by which requests for services are made. That process, as described in the rules, is driven by a family's need, and is the result of a cooperative effort among the regional office, the Family Support Coordinator, the Regional Planning Councils, the Statewide Family Support Council, and public and private provider agencies.

The Eden Family of Services

Comments were submitted by David L. Holmes, Ed.D., President and Executive Director:

COMMENT: At N.J.A.C. 10:46A-1.1, Purpose; authority. Eden Family Services supports the opportunity for adults with developmental disabilities to make their own decisions, with the stipulation that this is afforded to the extent the individual is capable.

RESPONSE: The Division thanks the commenter for its support. As provided in N.J.A.C. 10:46A-1.1(f), adults with developmental disabilities should have options for living separately from their families, but, when this is not the case, families should be provided the supports they need, within available funding limits.

COMMENT: N.J.A.C. 10:46A-2.3(d), Requests for Family Support Services. This statement is inconsistent with N.J.A.C. 10:46A-1.1(b) of the General Provisions section; however, we support the need for fiscal accountability to ensure efficient and appropriate use of funds.

RESPONSE: The Division does not see a conflict between N.J.A.C. 10:46A-1.1(b) and N.J.A.C. 10:46A-2.3(d). Subsection (b) indicates that families are able to define their own needs and select their own services within available resources.

The section entitled "Requests for Family Support Services" outlines the process that would be followed when families are requesting specific services. Given the finite amount of available resources, it is not possible for DDD to meet all services requested by families. Subsection (d) outlines the procedures that are followed when notifying families as to the status of their requests.

Office of Legislative Services

Comments were submitted by Jay Hershberg, principal Fiscal Analyst:

COMMENT: Many of the developmentally disabled persons who may be eligible for family support services will be Medicaid eligible. However, there is no explicit reference to obtaining information on a person's Medicaid status. The system of family support includes a wide array of social and health services. Many of these services, if medically necessary, are Medicaid reimbursable.

RESPONSE: The rule at N.J.A.C. 10:46A-2.1(c) clearly states that the Department of Human Services and any publicly funded agency which provide family support services shall assist families in obtaining all other sources of funding before using funds available for the purpose of this chapter.

For more clarity, wording referencing Medicaid and private insurance as other funding sources, has been added to N.J.A.C. 10:46A-2.1(c).

COMMENT: It is unclear from the proposed rules as to whether the family support services in question can be provided by persons or agencies that are not licensed to provide such services.

RESPONSE: The law clearly states that a Statewide family support policy must acknowledge that families themselves are able to define their own needs and select their own services; within available resources, family supports must be chosen by the families, controlled by families and monitored by families. Therefore, no specific restrictions regarding licensing were included in the rules. The families need to be free to select whomever they wish, to act on their behalf to perform those services they would otherwise have to perform for their developmentally disabled family members.

COMMENT: The proposed rules do not require the family to submit documentation as to how it spent the money that it was approved for.

RESPONSE: In keeping with the spirit of the Family Support Act, the Division does not require families to submit documentation as to how the money was spent. This issue will be raised with the Regional Family Support Planning Councils, when they are established, to elicit their input and recommendations regarding the administration of the Family Support Service System. If the Councils recommend changes, and the Division agrees to these changes, the requirements would be proposed and adopted as part of these rules.

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

CHAPTER 46A
FAMILY SUPPORT SERVICE SYSTEM

SUBCHAPTER 1. GENERAL PROVISIONS

10:46A-1.1 Purpose; authority

(a) Pursuant to N.J.S.A. 30:6D-33 et seq., the Division of Developmental Disabilities, in conjunction with the New Jersey Developmental Disabilities Council must create a system of family support that is flexible and designed to strengthen and promote families that provide care at home for a family member with a developmental disability.

(b) A Statewide family support policy must acknowledge that families themselves are able to define their own needs and select their own services; within available resources, family supports must be chosen by the families, controlled by families and monitored by families.

(c) The system of Family Support shall include, but not be limited to:

1. After school care;
2. Cash subsidies;
3. Communication and interpreter services;
4. Counseling services;
5. Crisis intervention;
6. Day care;
7. Equipment and supplies;
8. Estate and transition planning;
9. Home and vehicle modification;
10. Home health services;
11. Homemaker assistance;
12. Housing assistance;
13. Medical and dental care not otherwise covered;
14. Parent education and training;
15. Personal assistance services;
16. Recreation services;
17. Respite care for families;
18. Self advocacy training;
19. Service coordination;
20. Specialized diagnosis and evaluation;
21. Specialized nutrition and clothing;
22. Therapeutic or nursing services;
23. Transportation;
24. Vouchers; and
25. Other services as identified by the family, in accordance with N.J.A.C. 10:46A-2.3.

(d) The Commissioner shall establish income, need and other criteria, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to ensure that the expenditures for the Family Support System are within the limits of available funding.

(e) The amounts of funds for family support services shall be subject to the funding available in the current fiscal year.

(f) Adults with developmental disabilities should be afforded the opportunity to make decisions for themselves, live in typical homes within their own communities and exercise their full rights as citizens. Adults with developmental disabilities should have options for living separately from their families, but, when this is not the case, families should be provided the supports they need, within available funding limits.

10:46A-1.2 Scope

The provisions of this chapter shall apply to all eligible persons with developmental disabilities and/or their families. The provisions of this chapter also apply to agencies under contract with or regulated by the Division of Developmental Disabilities, within the Department of Human Services.

10:46A-1.3 Definitions

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

"Adult" means any individual 18 years of age and older.

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.
6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met. (N.J.S.A. 30:6D-25.)

"DDD Family Support Coordinator" means *[the individual]* ***an employee of DDD*** designated by the Regional Administrator to coordinate the region's family support *[program]* ***service system***.

"Developmental Disabilities Council" (DDC) means the Federally-mandated State planning and advisory board composed of 28 members appointed by the Governor.

"Division" means the Division of Developmental Disabilities within the Department of Human Services.

"Family" means the family member with a developmental disability and his or her parents, siblings, spouse, and/or children, or uncompensated caregiver.

"Functional services" means those services and programs available to provide a person with a developmental disability: education, training, rehablitation, adjustment, treatment, care and protection. (N.J.S.A. 30:4-23)

"Family support" means a coordinated system of on-going public and private supports, services, resources, and other assistance, which are designed to maintain and enhance the quality of life of a family member with a developmental disability and his or her family.

"Family Support Coordinator" means a coordinator working under the direction of the Developmental Disabilities Council (DDC) who shall be a person qualified by training and experience to perform the duties of his or her office.

"Level of service" means the contracted number of units of service to be delivered and the actual number of units of service delivered.

"Parent" means the biological or adoptive parent or uncompensated foster parent or legal guardian.

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

"Support services" means services provided to a person with a developmental disability and his or her family that are generally of short term duration, or are a specific type of care, treatment, training, assistance or device that will help the individual avoid the need for more intensive care which would require coordination of a sequence of generic or specialized services.

"Uncompensated caregiver" means the person, including, but not limited to, a parent, sibling, spouse, child, grandparent, step family member, aunt, uncle, cousin or legal guardian, who, without monetary payment, cares for the family member with a developmental disability and with whom the family member with a developmental disability resides.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:46A-2.1 General eligibility

(a) A person determined to have a developmental disability in accordance with the requirements of N.J.A.C. 10:46 and who is a resident of the State of New Jersey, shall be eligible for family support services.

1. In accordance with N.J.A.C. 10:46, a person with a developmental disability can be determined to be eligible for either functional services, or for support services only.

(b) A person with a developmental disability must either live with a family member or an uncompensated caregiver. The requested family support services are provided to support the family.

(c) The DHS and any publicly funded agency which provides family support services shall assist families in obtaining all other sources of funding***, such as Medicaid or private insurance,*** before using funds available for the purpose of this chapter.

10:46A-2.2 Who may apply for family support services

(a) Requests for family support services may be made by:

1. A competent adult on his or her own behalf;
2. An uncompensated caregiver;
3. A parent, family member or a legal guardian of an incompetent adult; or
4. The parents or legal guardian of a minor.

10:46A-2.3 Requests for family support services

(a) Requests for family support services shall be made to a regional office of the Division.

1. An individual not previously determined eligible for Division services and who is requesting family support services shall contact the regional intake worker to initiate the eligibility process.
2. If an individual is eligible for functional services of the Division, requests for family support services shall be made to the assigned case manager.
3. If an individual is eligible for support services only, in accordance with N.J.A.C. 10:46-2.3, the request for family support services shall be made to a DDD regional family support coordinator.

(b) The request shall be made by telephone, in writing or by appearing in person to the appropriate regional office of the Division as noted below.

Regional Office	Counties of Jurisdiction
Northern Regional Office 201-927-2600 1 B Laurel Drive Flanders, NJ 07836	Sussex, Morris, Warren, Passaic, Bergen, Hudson
Upper Central Reg. Office 201-379-1700 65 Springfield Avenue Springfield, NJ 07081	Essex, Somerset, Union
Lower Central Reg. Office 609-292-4500 Capital Place 1 222 So. Warren Street Trenton, NJ 08625	Middlesex, Monmouth, Mercer, Ocean, Hunterdon
Southern Regional Office 609-757-4700 101 Haddon Avenue Suite 17 Camden, NJ 08103	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington

(c) Minimum information submitted shall include, but not be limited to:

1. The name of the person for whom family support services is requested and the presenting disability;
2. The specific family support services requested;
3. The length of time specific family support services will be needed, if known;
4. The name, address and telephone number of a family contact person; and
5. Such other information as needed by the Division to consider a person's request.

(d) The family shall be notified within 10 working days by telephone, or in writing, by a DDD regional family support coordinator or case manager of the approval, denial, modification or status of the requested family support services.

(e) A DDD regional family support coordinator, in conjunction with the family and regional staff, will evaluate the needs of individuals and their families who are receiving family support services and the availability of family support resources on an ongoing basis.

(f) Individuals who disagree with a Family Support Service decision may appeal the decision in accordance with the provisions of N.J.A.C. 10:48-1, Appeal Procedure.

SUBCHAPTER 3. FAMILY SUPPORT COORDINATOR

10:46A-3.1 Role of the Coordinator

(a) The family support system shall be administered by the Division, in conjunction with the Family Support Coordinator working under the direction of the Developmental Disabilities Council.

(b) The Division of Developmental Disabilities shall develop an agreement with the Developmental Disabilities Council regarding the role and authority of the Coordinator.

(c) The Family Support Coordinator shall:

1. Coordinate efforts by ***the*** Regional ***Family Support*** Planning Councils and public and private agencies, including, but not limited to:

i. Identification of services provided by different agencies to avoid duplication; and

ii. Planning with all agencies to insure that gaps in services are filled;

2. Adopt, review and revise, no less than annually, a State Family Support Plan, that is based on the annual reports of the Regional ***Family Support*** Planning Councils, which shall:

i. Assess needs, establish goals, and set priorities for the provision of family supports for individuals with developmental disabilities;

ii. provide for outreach and coordinated delivery of family supports;

3. Provide administrative support services to each of ***the*** Regional ***Family Support*** Planning Councils and the Statewide Council;

4. Participate as a non-voting member of the Statewide Family Support Council;

5. Develop and implement a training plan for family support as identified by the Regional ***Family Support*** Planning Council in the annual reports; and

6. Respond to public inquiries and requests for information regarding family support.

SUBCHAPTER 4. REGIONAL FAMILY SUPPORT PLANNING COUNCILS

10:46A-4.1 Membership

(a) DDD and DDC will ensure that two Regional Family Support Planning Councils shall be established in each of the four DDD regions *[within 90 days after adoption of this chapter]* ***by April 3, 1995***.

(b) The need to establish additional councils or merge existing councils shall be evaluated within one year and annually thereafter by the Statewide Family Support Council in conjunction with the Regional Family Support Planning Council(s). Councils can be added or merged as the needs indicate. Minimally, there shall be one council per region.

(c) Each Regional Family Support Planning Council shall be comprised of no more than 11 members. All members shall be either a person with a developmental disability or a family member of a person with a developmental disability.

(d) Initially, six members of the Regional Family Support Planning Council shall serve three year terms, five members shall serve two year terms. Thereafter, all members shall serve a two year term. No member shall serve for more than seven consecutive years.

(e) All Regional Family Support Planning Council members shall receive initial orientation and ongoing training and support.

(f) Initially, members of the Family Support Advisory Group may serve on a Regional Family Support Planning Council. The Advisory Group will nominate the additional members to reflect the cultural, economic, ethnic, geographic and disability diversity of the region it serves by soliciting information from interested individuals.

(g) As terms expire, individuals will be nominated by the Regional Family Support Planning Council membership, reflecting the cultural, economic, ethnic, geographic and disability diversity of the region it serves.

(h) Names of individuals interested in Regional Family Support Planning Council membership shall be maintained by the Regional Family Support Planning Council and/or Family Support Coordinator. Nominees shall be taken from this list.

(i) All Regional Family Support Planning Council members shall be appointed by the Commissioner, Department of Human Services.

(j) A chairperson and vice-chairperson shall be elected for each Regional Family Support Planning Council. These individuals, or two other designated representatives as chosen by the Regional Family Support Planning Council, shall serve on a Statewide Family Support Council.

(k) ***The Regional Family Support Planning*** Council members shall serve without compensation beyond reimbursement for reasonable transportation, child care and other costs related to serving on the council.

(l) Regional Family Support Planning Councils shall meet at least quarterly. Individual councils may establish more frequent meeting schedules based on the needs of the council.

(m) No member of the Regional Family Support Planning Council who is an employee or board member of an agency under contract with the DDD providing family support services shall enter into discussion or cast a vote on any matter which would provide a direct financial benefit to that agency.

10:46A-4.2 Responsibilities of the Regional Family Support Planning Councils

(a) Each Regional Family Support Planning Council shall work to establish and expand family support in its region.

(b) Each Regional Family Support Planning Council shall develop and implement a method of obtaining public input that provides the opportunity to express comments and share concerns and information about family support.

1. Public input shall include public meetings, that are held locally at a time and place that is convenient for the families.

2. Attendance records and written minutes shall be made available to the Family Support Coordinator and the DDD.

3. Based on the needs of the region the Regional Family Support Planning Council serves, at least two additional means of obtaining public input shall also be utilized to ensure all interested individuals are represented.

(c) Each Regional Family Support Planning Council shall monitor the implementation of the family support system to ensure that the system is meeting the mandates of the legislation and the extent to which family-centered outcomes are achieved. Monitoring shall, at a minimum, address the following:

1. The effectiveness of the public awareness and outreach activities supported by the Division of Developmental Disabilities and the Developmental Disabilities Council;

2. The diversity of the families accessing the system in comparison to the demographics of the area;

3. Family satisfaction with regard to the system;

4. The practices of DDD and provider agencies, as it relates to Family Support, including the implementation of the eligibility criteria;

5. A review of family support resources to determine the extent to which they meet the needs of the families in the regions; and

6. Levels of service.

(d) Each Regional Family Support Planning Council shall, based on the results of the public input and monitoring activities, advise and assist DDD annually on the allocation of family support resources for the region the council serves.

1. By December 15th of each year, DDD shall provide each Regional Family Support Planning Council with estimated figures representing the allocation of existing resources for family support at State and regional levels.

2. Each Regional Family Support Planning Council shall submit a plan to DDD, by February 15th of each year, which includes advice on how these resources can best meet the needs of the families that reside within the region that the council serves.

3. The recommendations shall include advice on the equitable distribution of resources within the region.

4. Each Regional Family Support Planning Council shall develop a plan which ensures that no later than *[the end of the third year after adoption of these rules]* ***December 31, 1997***, all family support resources are expended in accordance with the principles established in the Family Support Act.

5. DDD will inform each Regional Family Support Planning Council of any new funds for family support services no later than 15 days following the notification of receipt of funds. Within 30 additional days, each Regional Family Support Planning Council will make recommendations to DDD regarding the new funds. The Regional Family Support Planning Councils will also make recommendations about the allocation of such funds.

(e) Each Regional Family Support Planning Council shall develop an annual report, for submission to the Family Support Coordinator, which shall include:

1. A description of information-gathering process;
2. Monitoring results and data collected;
3. An evaluation of the family support system;
4. Long and short-term recommendations, based on successes and areas for improvements; and
5. Identification of training needs for family support.

(f) Each Regional Family Support Planning Council's annual report shall be made available, upon request, through the Family Support Coordinator.

10:46A-4.3 Statewide Family Support Council

(a) The membership and responsibilities of the Statewide Family Support Council shall be as follows:

1. The Council shall be comprised of a chairperson and a vice-chairperson, or two other designated representatives, from each Regional Family Support Planning Council.
2. The Council shall elect a chairperson, vice-chairperson and a secretary, each of whom will serve for a minimum one year term.
3. The Council shall meet a minimum of once every six months.
4. The Council shall come together for sharing of information, concerns and problem solving. Attendance records and written minutes will be made available to each Regional Family Support Planning Council and the Family Support Coodinator.
5. The Council shall annually approve the Statewide Family Support Plan adopted by the Coordinator for submission to the Commissioner.

(b) The Statewide Family Support Plan shall be made available, upon request, through the Family Support Coordinator.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual of Hospital Services
Disproportionate Share Adjustment for the Other Uncompensated Care Component
Joint Adopted Amendment: N.J.A.C. 10:52-8.2

Proposed: June 6, 1994 at 26 N.J.R. 2239(a).
Adopted: December 6, 1994 by William Waldman, Commissioner, Department of Human Services; and November 29, 1994 by the Essential Health Services Commission, Anne F. Weiss, Executive Director.
Filed: December 8, 1994 as R.1995 d.13, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:5, 4D-6a(1), 30:4D-7, 7a, b, and c, 30:4D-12; and N.J.S.A. 26:2H-18 and 42 CFR 447.251, 253.
Agency Control Number: 94-A-16.
Effective Date: January 3, 1995.
Expiration Date: February 8, 1995.

Comments were received from the New Jersey Healthcare Financial Management Association, Community Medical Center, Bergen Pines County Hospital, Saint Mary's Hospital (Passaic), Dover General Hospital, Kennedy Memorial Hospital, and Kimball Medical Center.

Summary of Public Comments and Agency Responses:

1. COMMENT: Two commenters suggest using the hospital inpatient and outpatient direct patient care (DPC) amounts from the 1991 proforma final reconciliations to determine the hospital inpatient DPC and outpatient DPC percentages for 1991. These percentages are used in the Medicare shortfall calculations to apportion financial elements that are total amounts (for example, Capital Facilities Allowance) between inpatient and outpatient using a cost basis. The commenters contend that the use of this data would capture both volume and patient mix changes more accurately than the proposal.

RESPONSE: This comment relates to the source of data used to develop the DPC percentages used to apportion inpatient vs. outpatient costs in the calculation. The proposal was silent with respect to this issue. Therefore, while the Department and EHSC agreed to change the data source for outpatient DPC for 1991, DHS and EHSC consider this change to be a clarification to the proposal. The current methodology, which was used to establish the Medicare shortfall while the Chapter 83 (N.J.S.A. 26:2H-1) reimbursement system was still in effect, bases the hospital inpatient and outpatient DPC percentages upon Report 5 data from the 1991 rate package; the Report 5 DPC amounts used are derived from 1988 base year costs and reflect 1988 volume and patient mix. The Essential Health Services Commission (EHSC) and the Department of Human Services (DHS) agree that actual 1991 data should be used. Total inpatient DPC from the data intermediary reports will be used for both 1991 and 1992, since these reports are based on actual uniform bill and DRG rates for the appropriate years' calculations. Total outpatient DPC will be obtained from the proforma final reconciliations (proformas) for 1991, which is the sum of approved DPC costs for outpatients with rates and without rates. For 1992, no provision was made to reconcile outpatient services in the proformas. Therefore, 1992 outpatient DPC will be calculated by determining actual 1992 allocated outpatient costs based on 1992 Chapter 83 cost report data.

2. COMMENT: Three commenters recommend using the proformas as the source of indirect cost data for the 1991 Medicare shortfall calculation.

RESPONSE: For the 1991 Medicare shortfall calculation, indirect costs will be obtained from the 1991 proformas. The inpatient/outpatient split will be based upon the inpatient and outpatient DPC percentages as defined in the previous comment. The original proposal did not specify where fixed indirect costs would be obtained. Obtaining them from the proforma would have been possible under the original proposal. This clarification was made at the request of the industry to specify which of several avenues (all possible under the proposal) would be used. Therefore, since this data source could have been used under the proposal, this clarification would not violate N.J.A.C. 1:30-4.3.

This change requires a clarification to the text of the proposed rule because the proposal assumes using indirect costs based on base year volume adjusted by the percentage change in admissions for inpatient indirects, and the percentage change in same day surgery cases (SDS) for the SDS portion of outpatient indirects. However, using the 1991 proformas as a source of indirect costs is a more accurate method than the original proposal to measure the change in utilization from 1988 to 1991.

3. COMMENT: Three commenters believe that obstetrical, newborn and pediatric physician services should be removed from the Medicare Part B costs. The rationale for this request is that Medicare patients do not generally use these services and they are not included in the Chapter 83 rates for these patients; therefore, it is not appropriate to offset these costs. The commenters contend that this information is easily obtained from the Medicare cost reports.

RESPONSE: The proposal to remove obstetrical, newborn and pediatric physician services from the Medicare Part B physician costs cannot be done unless the affected hospitals provide the Medicare fiscal intermediary with the cost information related to these services. Although the commenters claimed that this information was available to the fiscal intermediary through the Medicare cost report, upon further investigation, the Essential Health Services Commission and the Department of Human Services determined that this information is available through neither the Medicare nor Chapter 83 cost reports. Since this information is only available at the audit workpaper or general ledger level of detail, neither the fiscal intermediary, the Essential Health Services Commission, nor the Department of Human Services had the information necessary to make these adjustments. Since a hospital cost study to elicit the necessary information and a recalculation of the Medicare Worksheet A-8-2 by the fiscal intermediary would be necessary to determine such an adjustment, the Essential Health Services Commission considers this request to be unreasonably burdensome to implement.

This comment requested that obstetrics, newborn and pediatrics data be removed from Part B physician costs. After investigation, we found that the Medicare cost report, which is the source of the Part B data, did not include sufficient detail to accommodate this request. The Medicare fiscal intermediary would only have two possible methods to obtain this data for both 1991 and 1992; from the hospitals themselves or by a time consuming and costly detailed review of their accounting workpapers from the Medicare audits for those years (but if the workpapers did not show this detail, it would be necessary to resort to the hospitals' detailed general ledgers). Not all hospitals have maternity, nursery or pediatrics services. Also, DHS and EHSC do not believe that

a large amount of money is involved Statewide. DHS and EHSC believe that limited number of affected hospitals and relatively small financial impact do not justify the administrative effort and cost.

4. COMMENT: Two commenters proposed that the Chapter 83 inpatient DRG rates from the data intermediary reports should be calculated by using non-acute days to determine DRG assignment and that payments should be based on acute days only.

RESPONSE: The Commission and DHS agrees with this comment and will use the appropriate criteria when calculating the Chapter 83 inpatient DRG rates.

The comment regarding appropriate days to use in calculating DRG assignment and determining payment rates under Chapter 83 relate to the proper method to establish DRG rates based on uniform bills under the Chapter 83 regulations. This method was not mentioned in the proposed rule because it was not appropriate to do so. The comment was directed at a prior practice of the data intermediary in producing erroneous reports. This response is an acknowledgement of the past problem and a pledge that it would not recur in the future reports.

5. COMMENT: One commenter proposes using the sum of the proposed Medicare outpatient indirect and DPC amounts multiplied by the technology factor to determine the technology factor adjustmet related to Medicare outpatient payments.

RESPONSE: According to the rules in effect during the 1991 and 1992 at N.J.A.C. 8:31B-3.26(b), the technology factor is an adjustment that is applied to total direct and indirect costs which reimburses hospitals for the cost of providing new technologies. The original Medicare shortfall methodology adjusted the technology factor amount obtained from the 1991 mark-up factor report, which was based on base year volume, by the percentage change in admissions between 1988 and 1991. This adjustment was therefore applied to both inpatient and outpatient cost, even though this percentage actually applied to inpatients only. Since, at final reconciliation, the Department would have recalculated the technology factor amount using actual total direct and indirect costs, the Essential Health Services Commission and the Department of Human Services agree that the methodology should reconcile both inpatient and outpatient components to actual in the Medicare shortfall calculation.

The technology factor was another one of those details not mentioned in the proposal. The Chapter 83 citation is N.J.A.C. 8:31B-3.26(b). DHS and EHSC decided to reconcile this item since it would have been reconciled at final reconciliation, and comports with the court's directive to use actual costs in the OUC calculations. This clarification should not violate N.J.A.C. 1:30-4.3.

6. COMMENT: Four commenters propose using actual CFA, malpractice and outside collection costs in the Medicare shortfall calculations. One commenter also suggests using actual Commission Fees, Medical Insurance and Utilization Review costs for 1992.

RESPONSE: Actual CFA, outside collection and income from other resources will be used in the 1991 and 1992 Medicare shortfall calculations. The actual CFA amounts were calculated based on the same method used during the final reconciliation process. Actual malpractice costs will be used for the 1991 calculations, but not for 1992, since malpractice costs would not have been reconciled according to the 1992 final reconciliation methodology. With respect to Commission Fees, Medical Insurance and Utilization Review costs, these costs would not have been reconciled to actual according to the 1992 Final Reconciliation methodology. Therefore, the EHSC and DHS will not reconcile these costs to actual for 1992.

7. COMMENT: Three commenters indicated that laboratory payments, which are paid by Medicare on a fee schedule, are not included on the Medicare cost report. Since these services should be included, and payments for laboratory services are included on the Chapter 83 side of the calculation, it is proposed that payments and charges be obtained from the 24 month Provider Statistical Reimbursement Report (PS&R). The PS&R is a report issued by the fiscal intermediary, which summarizes Medicare payments for the year.

RESPONSE: With respect to outpatient laboratory charges and payments, once again this is one of the details not included in the proposal. At the time the proposal was made, DHS and EHSC were not aware that 1991 was the first year that outpatient laboratory was no longer included in Medicare cost report settlement. When the commenters brought it to DHS and EHSC attention, DHS and EHSC worked with the other intermediary to get this data from an alternate source. DHS and EHSC did not intend to change the rule to reflect this issue because DHS and EHSC did not think it was necessary.

Since there is no longer a Medicare cost report settlement of outpatient laboratory payments, the fiscal intermediary provided this information from the Medicare PS&R data. The Essential Health Services Commission and Department of Human Services will include this Medicare data for laboratory outpatient charges and payments in the outpatient portion of the Medicare shortfall calculations.

8. COMMENT: Two commenters indicate that Medicare outpatient costs, not Medicare outpatient payments, were used to represent Medicare outpatient payments in the Medicare shortfall calculations. The commenters recommend obtaining Medicare outpatient payments from the audited Medicare cost reports.

RESPONSE: The calculation will use Medicare outpatient payments from the audited Medicare cost reports. The request that Medicare outpatient payments be used instead of Medicare outpatient cost relates to a prior practice to use cost as a proxy for payments when using a filed, as opposed to an audited, Medicare cost report. DHS' and EHSC's response reflects their acknowledgement that payments will be obtained from the fiscal intermediary and will be used for both 1991 and 1992 OUC calculations. The citation involved is N.J.A.C. 10:52-8.2(a)3vii. This represents no change from the proposal.

9. COMMENT: Five commenters contend that the proposed amendment relating to the calculation of Medicare outpatient payments yields anomalous results. According to the proposed amendment, Medicare payments for "outpatients with rates" are calculated using the 1991 rates multiplied by the Medicare volume reported by the hospitals on the Chapter 83 cost report, and the Medicare payments for "outpatients without rates" are derived by using the outpatient without rates approved cost from the 1991 proformas multiplied by the Medicare outpatient percentage. The problem area identified by the commenters is that the overall Medicare outpatient percentage is applied to a portion of outpatient payments (outpatient without rates); the correct procedure would be to derive a Medicare outpatient percentage that applies only to this portion of outpatients. Four commenters proposed different methods to derive Medicare outpatient payments.

One commenter proposes calculating the Medicare outpatient percentage to be applied to outpatients without rates based upon Medicare outpatient charges excluding patients with rates compared to total outpatient charges excluding patients with rates. Another commenter suggested using current rate year outpatient cost data through the use of a cost to charge ratio applied to outpatient charges to determine Chapter 83 outpatient payments for Medicare patients. Another commenter proposed a complicated technical formula to calculate DPC for Medicare outpatients without rates using 1991 proforma data and revenue data from the 1991 Chapter 83 E form. One commenter suggested that the Medicare outpatient percentages be based upon either the 1991 proforma or 1993 Medicare cost report data to determine the 1993 OUC subsidy payments. The citation in both the proposal and final rule is N.J.A.C. 10:52-8.2(a)2vi(1) and (2). The rationale for the change is simply that the commenters pointed out that the proposal produced anomalous results which were unintended by the authors; the changes corrects those problems.

RESPONSE: The Essential Health Services Commission and the Department of Human Services will use the following method to calculate total 1991 Chapter 83 outpatient Medicare payments: using the 1991 proforma final reconciliations as the source, add the total 1991 rate year approved cost for outpatients with rates to 1991 total approved cost for outpatients without rates and multiply this sum by the 1991 Medicare outpatient percent. This will completely eliminate the problem the commenters identified in a simple and straightforward manner, without having to attempt implementation of the complex calculations suggested by the commenters. No amendment to the proposed text is necessary.

Due to the changes in the Chapter 83 regulations in 1992 and the resulting rates that were established, the 1992 proformas did not include a reconciliation of outpatient payments. The Essential Health Services Commission and the Department of Human Services will run the 1992 actual data from the Chapter 83 cost report through the "pre-model" rate setting process in order to segregate 1992 costs between the inpatient and outpatient categories and to allocate indirect costs to them. After the allocation process is complete, the total allocated outpatient costs (both routine and ancillary) will be compared to the associated revenue areas to determine a total outpatient cost to charge ratio. This ratio will be applied to Medicare outpatient charges provided by the fiscal intermediary, including laboratory services, but excluding same day medical

(SDM) charges for Medicare patients as identified on the MEDIX reports. The resulting amount is the estimate of 1992 Medicare outpatient payments under Chapter 83.

10. COMMENT: For 1992, a commenter proposes allocating the indirect costs not included in the inpatient and outpatient direct rates between inpatient and outpatient based on the 1992 E Form revenue data.

RESPONSE: The Essential Health Services Commission and the Department of Human Services believe it is preferable to continue to base this inpatient and outpatient allocation on DPC percentages in 1992, since 1992 DPC data is available. Specifically, total inpatient DPC amounts are available from the 1992 data intermediary reports, and total outpatient DPC is available from the pre-model reports described in the previous comment. This approach would preserve consistency, since the "other financial elements" (that is, costs other than directs and indirect, such as CFA and technology factor adjustment) are allocated between inpatient and outpatient, based on DPC percentages.

11. COMMENT: Two commenters recommend that MICU, outpatient and home dialysis and SNF data should continue to be excluded from the Medicare shortfall calculations, since these areas are not included in the Chapter 83 rates.

RESPONSE: The Essential Health Services Commission and the Department of Human Services will ensure all data related to these areas that are excluded from Chapter 83 are not included in the Medicare shortfall calculations.

12. COMMENT: One commenter recommends that inpatient Chapter 83 payments based on the 1992 data intermediary reports should be changed to exclude SDM payments and reclassify them as outpatient.

RESPONSE: The Essential Health Services Commission and the Department of Human Services believe that this change is unnecessary since SDM charges are removed in the development of the Medicare outpatient percentage, thus treating same day medical as inpatient as it is treated under Chapter 83. The Medicare shortfall methodology is intended to measure actual Chapter 83 payments for Medicare patients and compare them to actual Medicare payments.

13. COMMENT: One commenter requests inclusion of the adjustment the hospital received in 1991 in lieu of accepting its voluntary settlement offer.

RESPONSE: While the commenter characterized the requested adjustment as "in lieu of voluntary settlement," that is not an accurate description of this adjustment. Instead, it represents the 1991 effect of continuing adjustments related to its 1990 rate appeal. For 1991, only one other hospital received this adjustment. In 1992, all hospitals received 1992 continuing adjustments.

14. One commenter stated that 445 excluded unit cases were removed from its 1991 Medicare UB data, but the reimbursement provided by the fiscal intermediary from the hospital's audited Medicare cost report includes payments for 516 cases. The commenter claims that this discrepancy is due to the fact that some of the 516 cases were subject to the SHARE reimbursement, and therefore were not included in the hospital's UB data. The hospital requests a "gross down" of the Medicare reimbursement to match the 445 cases excluded from the Chapter 83 inpatient payments.

RESPONSE: The Essential Health Services Commission and the Department of Human Services agree that reimbursement for the SHARE cases should not be included in the excluded unit reimbursement used in the Medicare shortfall calculations, and that the number of cases removed from the UB data base should equal the number of cases for which the fiscal intermediary provided excluded unit reimbursement. Since the commenter's suggested approach is a reasonable method to adjust its excluded unit reimbursement, the Commission will make this adjustment to the hospital's 1991 Medicare payment data. This comment relates to a unique situation experienced by only one hospital; that hospital has an excluded unit that is reimbursed on the New Jersey side as a combination of SHARE and Chapter 83 that cannot be segregated in the Medicare payment data. Since only Chapter 83 cases should be considered in the Medicare shortfall calculation, the granting of the hospital's request should be considered an administrative accommodation for a unique circumstance that should not be included in the final rule.

15. COMMENT: One commenter agrees that the Other Uncompensated Care subsidy payments should be recalculated using updated data. The commenter, Kennedy Memorial Hospital, recommended that the Department propose to update the data for the Hospital Relief Subsidy Fund payments.

RESPONSE: The calculation will be done using the 1991 actual data for the 1993 OUC subsidy payments, and 1992 data for the 1994 and 1995 OUC subsidy payments, as required by Chapter 160. The Department will review whether the data for the Hospital Relief Subsidy Fund should be updated, and, if so, will propose a separate rule amendment concerning that fund.

16. COMMENT: One commenter recommends that for 1993, 1994, and 1995 OUC subsidy calculations, the same year's actual Medicare payment data be used.

RESPONSE: Chapter 160 specifies that the 1993 OUC subsidy payments are to be based on 1991 data, and the 1994 and 1995 subsidy payments are to be based on 1992 data. The 1992 audited Medicare data just became available in October 1994; therefore, it is the most recent reliable data.

Summary of Changes Upon Adoption:

The following changes were made upon adoption as a result of hospital and health care industry comments and the availability of more recent and accurate data since the proposal.

1. Indirect cost allocation—N.J.A.C. 10:52-8.2(a)3iv(1) provides an updated source, the 1991 proformas for 1991 indirect costs and additional specificity on how fixed indirect costs will be apportioned between Medicare and non-Medicare patients. N.J.A.C. 10:52-8.2(a)3iv(2) provides similar information regarding the source and allocation of 1992 fixed indirect costs. Neither clarification changes the intent of the proposal; they simply amplify how the proposed rule will be carried out and what data sources will be used.

2. Calculations of Medicare outpatient payments—Commenters suggested different data sources and certain refinements to the proposed methodology to calculate more accurately the Medicare share of Chapter 83 outpatient payments. The changes to N.J.A.C. 10:52-8.2(a)3vi(1) and (2) the new data sources and refinements.

In summary, the changes made in the text of the rule do not change the substance of the rule. They simply amplify and clarify the rule to give the health care industry additional notice of how the other uncompensated care calculation will be done and what source data will be used. These clarifications do not affect the type or number of facilities that will be impacted by the rule.

Full text of the adoption follows (additions to proposal indicated in boldface with astrisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

(OAL Note: The rule text below includes changes to N.J.A.C. 10:52-8.2 proposed at 26 N.J.R. 3485(a) and adopted at 26 N.J.R. 4392(a).)

10:52-8.2 Method of payment

(a) The disproportionate share adjustment shall include at least the adjustment amount annually determined by the Essential Health Services Commission based upon a determination regarding payments for charity and uncompensated care from the Health Care Subsidy Fund.

1. (No change.)

2. The recommendation from the Essential Health Services Commission shall be calculated in the following manner pursuant to P.L. 1992, c.160 (N.J.S.A. 26:2H-18).

i.-ii. (No change.)

3. A hospital's eligibility for the Other Uncompensated Care Hospital Subsidy Fund payment shall be calculated using the following formula:

i. Hospital Specific Other Uncompensated Care for Year/Hospital Specific Revenue for Year = Hospital Specific Percentage of Other Uncompensated Care (%OUC). A hospital is eligible for a subsidy if, upon establishing rank order of the %OUC for all hospitals:

(1) In 1993, the hospital is among the 45 percent of hospitals with the highest %OUC;

(2) In 1994, the hospital is among the 30 percent of hospitals with the highest %OUC; and

(3) In 1995, the hospital is among the 15 percent of hospitals with the highest %OUC.

ii. The amount of the subsidy an eligible hospital shall receive shall be based on the following:

Hospital Specific Other Uncompensated Care for Year/Total Other Uncompensated Care for all Eligible Hospitals for Year

multiplied by Total Amount of Subsidy Allocated for the Year = Hospital Specific Subsidy for the Year

The monies in the Other Uncompensated Care component of the disproportionate share hospital subsidy account shall be distributed to eligible hospitals in accordance with the formulas provided in this section. In 1993, the fund shall distribute $100 million in subsidies to eligible hospitals; in 1994, the fund shall distribute $67 million to eligible hospitals; and in 1995, the fund shall distribute $33 million to eligible hospitals. For 1993, the formulas shall use 1991 Hospital Specific Other Uncompensated Care and Total Uncompensated Care for eligible hospitals and the hospital's PCB for "Hospital Specific Revenue for Year." In 1994 and 1995, the formulas shall use 1992 Other Uncompensated Care and Total Other Uncompensated Care for all eligible hospitals and the hospital's 1993 revenue cap established pursuant to P.L. 1992, c.160 section 3. (N.J.S.A. 26:2H-18).

iii. Other Uncompensated Care (OUC) shall be distributed to hospitals to meet the requirements of Chapter 160, Section 1d (N.J.S.A. 26:2H-18). OUC is defined as all costs not reimbursed by hospital payers excluding charity care, graduate medical education, discounts, bad debt, and reduction in Medicaid payments. The Department of Health (DOH), under the direction of the Essential Health Services Commission (EHSC), will calculate the actual OUC amounts for the purpose of determining the distribution of the OUC subsidy payments.

(1) In 1993, OUC subsidies shall be based upon actual 1991 OUC amounts.

(2) In 1994 and 1995, OUC subsidies shall be based upon actual 1992 OUC amounts.

(3) In 1994, interim OUC subsidy payments shall initially be based upon the projected 1992 OUC amounts determined by the DOH under Chapter 83 (N.J.S.A. 26:2H-1) for the rate year 1992; the actual 1992 OUC amounts shall be determined after October 1, 1994, when final 1992 data for all acute hospitals is available from the fiscal intermediary. After the actual 1992 OUC amounts are calculated by the DOH and approved by the EHSC, the 1994 OUC subsidy payments or other Medicaid payments shall be adjusted by making adjustments to the OUC or other DSH or Medicaid payments made by the Division of Medical Assistance and Health Services (DMAHS).

iv. The Chapter 83 (N.J.S.A. 26:2H-1) inpatient payments referenced in (a)3iii above, shall be based upon Diagnosis Related Groups (DRG) payments from the applicable rate year's uniform bill (UB) data submitted to the DOH under the former N.J.A.C. 8:31B-3.45.

(1) *[Fixed indirect costs shall be apportioned to Medicare inpatients based upon the Medicare percentage of total DRG payments using UB data.]* ***For 1993, total indirect costs from the 1991 proforma final reconciliation shall be first apportioned to inpatients through application of the inpatient direct patient care cost (DPC) percentage, then apportioned to Medicare inpatients based upon the Medicare percentage of total DRG payments using UB data. The inpatient DPC percentage shall be derived by dividing total inpatient DRG payments into the sum of the following: total inpatient DRG payments plus patients with rates approved cost from the 1991 proforma final reconciliation plus outpatients without rates approved cost from the 1991 proforma final reconciliations by total inpatient DRG payments.***

(2) *[Variable indirect costs shall reflect the applicable rate per year volume levels.]* ***For 1994, most 1992 indirect costs were volume variable and included in the DRG rates. For those 1992 indirect costs not allocated through the establishment of inpatient and outpatient rates, those "other" indirect costs will be considered fixed and will be allocated to inpatients through the inpatient DPC percentage, and apportioned to Medicare inpatients based upon the Medicare percentage of total DRG payments. The source of the 1992 "other" indirect costs shall be the 1992 Report 5, which expresses 1988 base year costs in 1992 dollars. Total 1992 DPC shall be established as follows: 1992 total inpatient DRG rates plus 1992 outpatient DPC. 1992 outpatient DPC shall be derived by running 1992 actual costs through the 1992 rate setting methodology, which allocates most indirect costs to both inpatient and outpatient rates.***

*[(A) For 1993, 1991 inpatient indirect costs under Chapter 83 (N.J.S.A. 26:2H-1) were volume variable. Inpatient indirect costs shall be adjusted based upon the percentage change in inpatient discharges between base year 1988 and the rate year 1991. The source of the discharge data is the 1988 and 1991 Chapter 83 cost reports.

(B) For 1994, most 1992 indirect costs were volume variable and included in the DRG rates. Therefore, for 1992 volume variable indirect costs, no additional volume calculation is necessary for volume changes between 1988 and 1992.]*

(3) Inpatient Part B physician costs shall be removed since no comparable Medicare data on Medicare payments is available.

v. The DOH will apply the Federal Prospective Payment System (PPS) GROUPER and Pricer programs to determine DRG payments for the Medicare patients identified in (a)3iv above.

(1) The DOH will include "excluded unit" Medicare reimbursement in Medicare inpatient payments for the applicable rate year for those Medicare cases reimbursed under Chapter 83 (N.J.S.A. 26:2H-1) but not under PPS.

(2) The DOH will include the following data from the applicable rate year Medicare cost reports in order to determine the other components of Medicare inpatient payments:

(A) Excluded unit reimbursement;

(B) Pass-through payments; and

(C) Inpatient Part B physician costs.

vi. Chapter 83 (N.J.S.A. 26:2H-1) Medicare outpatient payments shall be based upon:

(1) *[Applicable rate year routine outpatient payment rates and Medicare volume from the applicable rate year Chapter 83 cost report.]* ***For 1993, total Chapter 83 outpatient payments will be derived by adding total 1993 approved cost for outpatients with rates to total 1991 approved cost for all patients without rates. The source of this data shall be the 1991 proforma final reconciliations. 1991 Chapter 83 outpatient payments for Medicare patients shall be derived by multiplying the 1991 Medicare outpatient revenue percentage by the total Chapter 83 payments.***

*[(2) Payments for outpatients without rates shall be based upon the applicable rate year Medicare outpatient revenue percent of total approved cost from the rate year audited proforma final reconciliations submitted to the DOH by the hospitals as of December 31, 1992.

(3) Fixed indirect costs shall be allocated to Medicare outpatients based upon the applicable rate year Medicare outpatient revenue percent.

(4) For 1993, same day surgery (SDS) 1991 indirect costs were volume variable. SDS indirect costs shall be adjusted based upon the 1988 to 1991 percentage change in SDS cases. The source of the SDS data is the 1988 and 1991 Chapter 83 cost reports.]*

(2) For 1994, 1992 actual outpatient DPC costs shall be used to determine Chapter 83 outpatient payments. These DPC costs shall include indirect costs allocated to outpatients, and shall be apportioned to Medicare patients by applying the actual 1992 cost-to-charge ratio to Medicare outpatient charges from the 1992 Medicare cost reports.

*[(5)]**(3)* For 1994, most 1992 indirect costs were volume variable and included in the outpatient rates. *[Therefore, for 1992 volume variable indirect costs, no additional volume calculation is necessary for volume changes between 1988 and 1992.]* ***For those 1992 indirect costs not allocated through the establishment of inpatient and outpatient rates, those "other" indirect costs will be considered fixed and will be allocated to outpatients through the outpatient DPC percentage, and apportioned to Medicare outpatients based upon the Medicare percentage of total outpatient revenue. The source of the 1992 "other" indirect costs shall be 1992 Report 5, which expresses 1988 base year costs in 1992 dollars. The outpatient DPC shall be derived by allocating indirect costs to the inpatient and outpatient rates in accordance with the 1992 rate**

setting methodology. The outpatient DPC percentage shall be derived by dividing 1992 outpatient DPC into 1992 total DPC as defined in (a)3iv(2) above.*

*[(6)]**(4)* Outpatient Part B physician costs shall be removed since no comparable Medicare data on payments is available.

vii. The DOH will use the following Medicare outpatient data from the applicable rate year Medicare cost reports:

(1) Medicare outpatient payments;

(2) Medicare outpatient revenue which shall be used to determine the Medicare outpatient percentages to apportion Chapter 83 (N.J.S.A. 26:2H-1) outpatient indirect costs; and

(3) Medicare outpatient Part B physician costs.

viii. The OUC formula is as follows: The sum of Chapter 83 (N.J.S.A. 26:2H-1) inpatient and outpatient payments as defined in (a)3iv and vi above, minus inpatient and outpatient payments as defined in (a)3v and vii above.

ix. The DOH will calculate the OUC subsidy payments based upon the formula in P.L. 1992, c.160, section 11 (N.J.S.A. 26:2H-18), as follows:

(1) In 1993, each hospital's actual 1991 OUC amount divided by its 1992 preliminary cost base shall yield a percentage called the OUC percentage. Forty-five percent of the hospitals with the highest OUC percentages will receive $100 million in OUC subsidy payments. For those hospitals qualifying for a share of the subsidy payments, in accordance with (a)3ix(2) below, each hospital's payment is determined by the hospital's OUC as a percentage of the sum of all eligible hospitals' OUC amounts; this hospital-specific percentage is multiplied by the Statewide subsidy amount to derive the hospital's subsidy payment.

(2) In 1994, each hospital's actual 1992 OUC amount divided by its 1993 revenue cap shall yield the OUC percentage. Thirty percent of the hospitals with the highest OUC percentage will receive $67 million in OUC subsidy payments. For those hospitals qualifying for a share of the subsidy payments, each hospital's payment is determined by the hospital's OUC as a percentage of the sum of all eligible hospitals' OUC amounts; this hospital-specific percentage is multiplied by the Statewide subsidy amount to derive the hospital's subsidy payment.

(3) In 1995, each hospital's actual 1992 OUC amount divided by its 1993 revenue cap shall yield the OUC percentage. Fifteen percent of the hospitals with the highest OUC percentages will receive $33 million in OUC subsidy payments. For those hospitals qualifying for a share of the subsidy payments, each hospital's payments is determined by the hospital's OUC as a percentage of the sum of all eligible hospitals' OUC amounts; this hospital-specific percentage is multiplied by the Statewide subsidy amount to derive the hospital's subsidy payment.

4. (No change in text.)

i. (No change in text.)

5. (No change in text.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services

Readoption with Amendments: N.J.A.C. 10:63

Adopted Repeal: N.J.A.C. 10:63-1, 2, 2A, and 4 and Appendix I

Adopted New Rules: N.J.A.C. 10:63-1, 2, 3, and Appendices A to Q

Adopted Recodification: N.J.A.C. 10:63-5, recodified as N.J.A.C. 10:63-4

Proposed: September 6, 1994 at N.J.R. 3614(a).

Adopted: November 21, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: November 23, 1994 as R.1994 d.624, with **substantive and technical changes** not requiring additional notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12; Section 1919 of the Social Security Act; 42 U.S.C. 1396r.

Effective Date of Readoption: November 23, 1994.

Effective Date of Amendments and New Rules: January 3, 1995.

Expiration Date: January 3, 2000.

Summary of Public Comments and Agency Responses:

Written comments were received from the following individuals and agencies:

New Jersey State Independent Living Council—Lydia Kirschenbaum

DIAL, Inc.—John W. Halko Jr.

National Union of Hospital and Health Care Employees-99C—Richard DiLucia

John Sugameli RP, CCP—Rockaway, New Jersey

New Jersey Academy of Consultant Pharmacists—Steve Zlotnick

Steve Zlotnick RP, CCP, FASCP—Flanders, New Jersey

Masonic Home of New Jersey—Rick Small

Children's Specialized Hospital—Mary Elizabeth Duffy

National Association of Activity Professionals—Charles F. Price

Joint Board for Certification of Consultant Pharmacists—Barry J. Cook

Quality Resources—Mary Lou Schnurr

Debbie Hommel, CRA, ACC

Monmouth County Board of Chosen Freeholders—Diana L. Scotti

Seniors Management, Inc.—Auther E. Stern

Resident's Council, Cheshire Home, Inc.—Deepak Patel

Morris County Department of Human Services—William Lehr/ Fitzgibbons

New Jersey Association of Health Care Facilities—James E. Cunningham

Voorhees Pediatric Facility—Carl W. Underland

Linda Morrissey (Schiele)

Ronald Council

Deborah Gall—Freehold, New Jersey

Kathleen Silver—Cherry Hill, New Jersey

Ronald Cahn

HBA Management of Health Care Facilities—Barton D. Weisman, Barry Kantrowitz, Keith Kroeger

New Jersey Association of Non-Profit Homes for the Aging—Karen Uebele

New Jersey Activity Professionals' Association—Susan Harris

General comments and responses follow:

COMMENT: Concerns were expressed regarding the emphasis on the need for rehabilitation and prognosis for improvement in determining eligibility for admission to a SCNF and reassessment by Medicaid staff.

RESPONSE: While it is correct that the SCNF rules do establish clinical parameters which focus on short-term aggressive rehabilitation with the objective to require discharge planning to alternative health care settings or community integration, the rules also recognize the individual who has plateaued but continues to require specialized services due to technological and/or therapeutically complex care needs. More importantly, assessment and reassessment by the Medicaid Regional Staff Nurse (RSN) is inherent in the process of determining initial and ongoing clinical eligibility and is the mechanism to conduct utilization review. This process is not new, nor is it unique to a SCNF population.

COMMENT: Several comments were received objecting to the nurse staffing requirements in a Special Care Nursing Facility (SCNF), suggesting that the rules will materially limit a facility in providing quality care.

RESPONSE: Division of Medical Assistance and Health Services staff believe that the nurse staffing requirements for SCNFs, in conjunction with the reimbursement methodology, will enable facilities to identify the nursing care needs of the targeted population and provide a high quality of appropriate nursing services. The nurse staffing rules, as proposed, reflect a comprehensive onsite care need analysis of the existing SCNF residents, a computer search of nurse staffing literature, and a consensus of professional opinions from a nurse task force which included representation from university nursing faculty and directors of nursing in SCNFs.

COMMENT: Commenters suggested that the proposed programmatic and reimbursement rules governing SCNFs do not acknowledge the distinctions in delivery of nursing services between a pediatric and adult population.

RESPONSE: The Division is unable to identify overt nurse staffing distinctions in providing clinical nursing services between the pediatric and adult populations. The proposed nurse staffing rules were promulgated only after Division staff reviewed and analyzed nurse staf-

fing methodologies in both acute and long-term pediatric and adult inpatient units. In addition to the extensive analysis which was conducted in developing the SCNF rules, pediatric nurse supervisors and clinicians were consulted.

COMMENT: The New Jersey Association of Health Care Facilities (NJAHCF) suggested that the individual agreements between the Division and the current SCNF providers remain in effect until January 1, 1998, thus allowing time for a comparative analysis relative to delivery of quality of care between the existing SCNFs and facilities which become SCNF providers under this chapter. This would allow a phase-in period for existing units.

RESPONSE: The Department feels that further study is not indicated. As noted in previous responses, the Division has conducted lengthy analyses to determine the qualitative impact of the SCNF rules on care delivery. However, Division staff will continuously evaluate care outcomes in the periodic reassessment progress.

COMMENT: One commenter expressed concern regarding the rate of reimbursement and the timeliness of payment for consultant pharmacist services provided to nursing facilities.

RESPONSE: This Department does not consider that the contract between the NF and the consultant pharmacist is within the scope of this rule.

COMMENT: Throughout N.J.A.C. 10:63-3, rates are applied based upon 1977 data, that is, land values, replacement costs, for insurance purposes. It is imperative that Medicaid utilize more current rate structures.

RESPONSE: References to 1977 data for land values, and replacement costs, relate to those facilities which were in existence at the time of the inception of the CARE system (January 1, 1978). Since the CFA for these facilities does not change under the CARE system, these references must be retained. However, there are provisions in the rules which allow for inflation of building and land values for facilities or additions to facilities which have begun operation since January 1, 1978 (see N.J.A.C. 10:63-3.7(a)4, N.J.A.C. 10:63-3.11(o)). In addition, reimbursement for capitalized maintenance and replacement for all facilities is determined at current costs and subject to cost limits calculated by using current maintenance and replacement costs as reported by facilities statewide. (see N.J.A.C. 10:63-3.14)

COMMENT: Adoption of the proposed rules regarding Special Care Nursing Facilities will have a negative effect on the ability of the State to deal with the serious health problems of its residents in a quality, effective manner. It will cost the State more money by shifting the care back into the acute hospital setting and undermine the quality of care provided to Medicaid recipients. It also represents a unilateral change in the terms of the relationship with the current SCNF providers, without regard for the impact on it, and destroys the underlying foundation of trust.

RESPONSE: The Department does not believe that the regulatory changes it has proposed will have the impact suggested by the commenter. Rate analyses performed by the Department demonstrate that most SCNF providers currently involved in the Program will not be drastically affected by the reimbursement adjustment as proposed. In those instances in which facility rates will be substantially reduced, Department analyses indicate that reimbursement decreases generally correspond to imprecise cost allocations, and inconsistencies in cost reporting.

The current cost based methodology for reimbursing SCNFs began over ten years ago when only a handful of facilities were involved in providing special care services. The Department currently has provider agreements with 17 special care units and anticipates that number to increase greatly over the next few years. In consideration of the size to which the special care program has grown and the anticipated growth of the program in the near future, it is impractical to continue the current reimbursement policy which requires intense dialogue with and monitoring of each individual special care provider. The proposed methodology will create internal controls which will provide a reasonable rate of reimbursement in a special care facility's prospective rate, but will allow, just as it does in the CARE system for conventional NFs, an appeals process which will allow the Division to recognize and address issues of equity raised by individual facilities.

COMMENT: Many of the proposed rules regarding Special Care Nursing Facilities seek to set universal guidelines and establish a general reimbursement system on facilities that provide care to a unique group of individuals.

RESPONSE: The special care reimbursement methodology proposed by the Department recognizes six distinctive types of special care providers. As proposed, the Department feels it is responsive to the differing care needs of special program patients. The Department has given considerable attention to the subject of variability of patient's needs among special care program types and feels that the proposed rules contain adequate flexibility to address the unique needs of each current and potential special program provider.

COMMENT: Reimbursement by nursing facilities to consultant pharmacists are often not made in a timely manner. It is recommended that either the rules require timely payment, such as within 60 days from the date the facility received payment, or that services be directly billable, rather than a part of the per diem rate.

RESPONSE: This Department does not consider that the contract between the NF and the consultant pharmacist is within the scope of this rule. In addition, these services are part of the overall costs of patient care, and therefore should be included in the reimbursement to the facility, rather than directly billable to the Medicaid program.

Comments and responses regarding specific sections follow:

N.J.A.C. 10:63-1.2 Definitions

COMMENT: One commenter suggested that the language defining "Occupancy level" does not reflect the language of N.J.S.A. 10:5-12, and is unclear.

RESPONSE: The Department recognizes the necessity for consistency with the language of New Jersey law. Therefore, the Department has amended N.J.A.C. 10:63-1.2 "Occupancy Level" to reflect the exact language of N.J.S.A. 10:5-12.2. "Medicaid occupancy level".

COMMENT: Use of the term "Standardized Resident Assessment" is inconsistent with language used by the Department of Health.

RESPONSE: The Department of Health Licensing Standards for Long-Term Care Facilities, N.J.A.C. 8:39 (see 26 N.J.R. 4641 (a)), uses the term Standardized Resident Assessment when referring to completion of a comprehensive assessment.

COMMENT: With respect to the term "waiting list," the Division was requested to add the words "who have completed a written application" in referencing the names of individuals on the list.

RESPONSE: The Department agrees, and has added this qualification to N.J.A.C. 10:63-1.9, requiring a formal , written, application for nursing facility admission. This requirement mirrors the requirement of the licensing authority, the New Jersey Department of Health, at N.J.A.C. 8:39.

COMMENT: One commenter requested that qualifications for a consultant pharmacist include certification by the Joint Board for Certification of Consultant Pharmacists.

RESPONSE: The Division is satisfied with the requirement that consultant pharmacists hold a valid license as a registered pharmacist issued by the New Jersey State Board of Pharmacy, the licensing entity authorized by statute. Therefore, the rule will remain as written, with no further qualifications. Division policy has consistently used the State licensing authority standards as the standard for providers.

N.J.A.C. 10:63-1.5 Occupancy level

COMMENT: One commenter stated that the method of calculating Occupancy level in a NF "does not make sense".

RESPONSE: The Department agrees that the language used to describe the method of calculating occupancy level is unclear, therefore language has been revised to conform with the form in N.J.A.C. 10:63-Appendix E, which providers are presently using.

N.J.A.C. 10:63-1.6 Termination of NF provider agreement

COMMENT: One commenter requested the origin of the determination of 23 days for termination of a Medicaid provider agreement.

RESPONSE: "Twenty-three (23) days from the survey date" is a Federal stipulation in the Medicare/Medicaid State Operations Manual, U.S. Department of Health and Human Services, HCFA-Pub.7 section 1000(1989), under the authority of section 1919(h) of the Social Security Act.

N.J.A.C. 10:63-1.8 Admission, transfer and readmission; general

COMMENT: One commenter suggested that the individual rights of the patient are not taken into account when it is required that a hospitalized patient be transferred to a Medicare certified facility if Medicare benefits are available.

RESPONSE: The exact language of this requirement at N.J.A.C. 10:63-1.8(i) states that the transfer to a Medicare certified facility shall

be accomplished "... to the extent possible.", thus indicating that an individual's rights are to be considered when accomplishing NF placement.

N.J.A.C. 10:63-1.9 Waiting list

COMMENT: One commenter suggested that the Department of Human Services has no authority to establish and regulate waiting lists, and suggested the deletion of the process. The commenter also stated that, if a 24 hour bed hold were required, the Department should pay for the hold.

RESPONSE: The determination of whether or not the Medicaid occupancy level of a NF is below the Statewide occupancy level is within the jurisdiction of this Department. The Department also has the authority to assure that no violation of N.J.S.A. 10:5-12.2 occurs. This is being accomplished by rules at N.J.A.C. 10:63-1.9(a) which require that a bona fide waiting list be maintained by all Medicaid certified nursing facilities, in accordance with the NF licensing rules at N.J.A.C. 8:39. The Department has amended N.J.A.C. 10:63-1.9 on adoption to remove the process, since it was not the Department's intent to pay for the bed hold. The Department is adding provisions which preserve the rights of the patients awaiting placement.

COMMENT: Commenters requested that the language regulating waiting list be amended to conform with language of N.J.S.A. 10:5-12.2 which requires a Medicaid provider whose Medicaid occupancy is below the statewide occupancy level to accept Medicaid and public assistance recipients on a first come, first served basis.

RESPONSE: The Department agrees to amend language at N.J.A.C. 10:63-1.9(a) to assure conformity to N.J.S.A. 10:5-12.2.

N.J.A.C. 10:63-1.13 Clinical and related records

COMMENT: One commenter suggested the deletion of the requirement at 10:63-1.13 (f), which requires that a facility designate an employee to be responsible for assuring the management of medical records, in the absence of a medical records librarian, on the basis of adding unnecessary cost.

RESPONSE: The Division feels that this requirement is necessary to assure proper management of medical records and recognizes the associated costs in the rate of reimbursement. This requirement is not a new requirement but has been carried over from current rules previously found at N.J.A.C. 10:63-1.8(a)7.

N.J.A.C. 10:63 1.14 Absence from facility

COMMENT: One commenter suggested that the requirement at N.J.A.C. 10:63 1.14 (a) 1 which requires that a NF reserve the same room and same bed for a Medicaid recipient during a period of authorized bed reserve is restrictive and contrary to current industry practice.

RESPONSE: The requirement at N.J.A.C. 10:63-1.14 (a)1 concerning bed reserve during a period of hospitalization reflects current Division policy in Medicaid long-term care services bulletin 84-9, issued September 5, 1984, now being formalized in rule. Within the 10 day bed hold period, the Division is paying the NF to hold that person's bed for their return.

N.J.A.C. 10:63-1.16 Utilization of resident's income for Personal Needs Allowance (PNA) and cost of care in the NF:

COMMENT: Comments were received stating that "NF's may not charge mark-ups for services" at N.J.A.C. 10:63-1.16(e)5 is outside the realm of Division authority.

RESPONSE: The Division agrees with the commenters that the language at N.J.A.C. 10:63-1.16(e)5 is an error and inapplicable to the reimbursement of Medicaid services in an NF. A Medicaid participating NF is required to accept as payment in full for covered services, the amount paid in accordance with Medicaid policy defined in N.J.A.C. 10:49-9.3(a)2. Medicaid has no authority to regulate billing for non-covered services or the private pay population.

N.J.A.C. 10:63-1.18 Medicare/Medicaid

COMMENT: Commenters suggested that the rules governing Medicaid payment of Medicare co-insurance do not reflect a recent United States Court of Appeals for the Third Circuit decision which ruled that the "buy-in" provisions of the Medicaid Act do not exempt states from paying the full 20 percent co-insurance and deductibles.

RESPONSE: The language at N.J.A.C. 10:63-1.18(e) reflects requirements which are currently in practice. In preparing this readoption, the Division reexamined the fee structure for payment of co-insurance and deductibles and does not choose to make the requested changes with this readoption. The Division will review this issue further pending any further action on the Third Circuit decision.

N.J.A.C. 10:63-2.2 Delivery of nursing services

COMMENT: Several comments were received referencing the service specific case mix system as defined in N.J.A.C.10:63-2.2. One commenter suggested adding supplemental categories to the additional nursing services defined in N.J.A.C. 10:63-2.2(a) and objected to the language of N.J.A.C. 10:63-2.2(f) which requires that each category of additional nursing service may only be counted once on an individual resident.

RESPONSE: The nursing service requirements set forth in N.J.A.C. 10:63-2.2 reflect the minimum standards set forth by the New Jersey Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39-25. The language of N.J.A.C. 10:63-2.2(f) was included to clarify current Division policy, and is adequate to reimburse for additional nursing services, as specified in detail in this subsection. The Division believes that neither additional supplemental categories, nor counting services more than once, are needed to provide efficient and effective care.

COMMENT: One commenter suggested that language at N.J.A.C. 10:63-2.2(e)12 should be limited to care of a "simple stabilized tracheostomy ..." in an adult patient, stating that this would not apply to a pediatric patient.

RESPONSE: The Division does not recognize distinctions based purely on age. Each resident's care needs must be based on an individualized comprehensive assessment.

COMMENT: One commenter questioned whether the language at N.J.A.C. 10:63-2.2(f)2i, which limits categorizing tube feedings which are routinely clamped off as an additional nursing service, applies in a weaning situation.

RESPONSE: The Division recognizes the need for additional nursing during the active weaning process. The statement at N.J.A.C. 10:63-2.2(f)2i applies to situations where a feeding tube remains intact after the active weaning phase has been accomplished.

N.J.A.C. 10:63-2.5 Resident activities

COMMENT: Several commenters requested that the staffing ratio be increased to an average of 55 minutes per resident per week.

RESPONSE: The Division bases limits for reimbursement on Department of Health standards for minimum staffing requirements as set forth in the New Jersey Department of Health Licensing Standards for Long Term Care Facilities, N.J.A.C. 8:39-7, and does not believe that an increase over that standard is necessary. As indicated in Department of Health rules at N.J.A.C. 8:39-8.3, a facility may, if it chooses, provide 55 minutes per resident per week.

COMMENT: Commenters stated that the staffing ratios defined at N.J.A.C. 10:63-2.5(d)1 are inconsistent with the licensing requirements at N.J.A.C. 8:39-7 and lead to misunderstanding in interpreting the rules.

RESPONSE: The Division agrees that language at N.J.A.C. 10:63-2.5(d)1 is ambiguous and inconsistent with requirements at N.J.A.C. 8:39-7. Therefore, language has been amended to be consistent with N.J.A.C. 8:39-7 which contains the staffing minimums required for licensure.

COMMENT: Several commenters requested that the word "age" be deleted from N.J.A.C. 10:63-2.5(a) as age is frequently an inadequate indicator of the appropriateness of activities.

RESPONSE: The Division agrees that the appropriateness of activities is often not based on chronological "age" and has deleted the word as suggested.

COMMENT: A commenter suggested that a Resident Council should be allowed to set its own schedule for meetings, rather than being required to have a meeting at least once a month.

RESPONSE: The Division agrees, since it is not the intention of the Division to regulate the Resident Council, but to assure that the nursing facility allows the resident council to have the opportunity to meet on a regular basis.

N.J.A.C. 10:63-2.7 Pharmaceutical services; general

COMMENT: Under N.J.A.C. 10:63-2.7(c)(1), "... a physician order written to continue medication administration shall be considered a new prescription and issued a unique prescription number by the NF contracted pharmacy provider." The New Jersey Association of Non Profit Homes for the Aged (NJANPHA) indicated that daily unit dose systems are not required to have prescription numbers.

RESPONSE: The intent of N.J.A.C. 10:63-2.7(c)(1) is to require a NF contracted pharmacy provider to assign a unique prescription number to a prescription dispensed in response to a physician order written in a nursing facility. Although a prescription number is required on prescription labels in accordance with State Board of Pharmacy rules (N.J.A.C. 10:39, et al.), this requirement does not apply to twenty-four (24) hour unit-dose drug delivery systems.

N.J.A.C. 10:63-2.21 Special Care Nursing Facility (SCNF)

COMMENT: Voorhees Pediatric Facility suggested that "habilitation" therapies be referenced as a service in a SCNF providing care to children.

RESPONSE: The word "habilitation," although appropriate in the generic, was purposely omitted as this term may also apply to a specifically prescribed program for a defined population, such as those under the auspices of the Division of Developmental Disabilities.

COMMENT: The NJANPHA requested clarification as to how nurse staffing will be determined in a SCNF within the scope of N.J.A.C. 10:63-2.21(e)2.

RESPONSE: It is the responsibility of the facility to conduct comprehensive care need determinations which will provide the basis for nurse staffing within the parameters of the rules.

COMMENT: Several commenters suggested including certification by the National Certification Council for Activity Professionals (NCCAP) as a requirement for Director of Resident Activities in a SCNF.

RESPONSE: The Department wishes to acknowledge the criteria of professional certifying bodies as being above minimum standards and therefore, will include certification as an alternate requirement to N.J.A.C. 10:63-2.21(e)4.

COMMENT: NJANPHA objects to the rule which requires a respiratory care practitioner be available on the premises on a 24-hour basis in a SCNF which provides ventilator management, as unnecessary.

RESPONSE: The Division strongly supports this requirement, which is the same as contained in the New Jersey Department of Health Licensing Standards for Long Term Care Facilities at N.J.A.C. 8:39-2.9. No lesser standard can be permitted.

N.J.A.C. 10:63-3.3 Rate components

COMMENT: Amend N.J.A.C. 10:63-3.3(c)2 to read "For Class III programs, all therapy costs for other than respiratory therapy will be reimbursed by a per diem calculation by dividing total base period therapy costs **for Medicaid patients** by total base period **Medicaid** patient days for each facility (less recoveries for Medicaid patients)." It is not appropriate, nor the current practice, to take from private or insurance payments.

RESPONSE: The "current practice" for calculating Medicaid NF per diem rates assumes that routine costs of Medicaid patient care are not paid by any other third party. However, if a nursing facility receives reimbursement for a Medicaid patient from some source other than Medicaid for a routine cost item, this payment must be recovered or offset on the facility cost report. Medicaid is the last payor among third party payors. Unlike other routine cost areas, therapy treatments for nursing facility patients are more likely to be covered by third party payors other than Medicaid. Failure to offset payments of third parties for Medicaid patient therapies would result in duplicate payment for these treatments.

The alternative methodology proposed by the commenter could underreimburse facilities for the cost of therapies for Medicaid patients. If the rate of third party reimbursement for non-Medicaid patients is greater than the rate received for Medicaid patients, the resulting therapy per diem would be understated and would be insufficient to cover the net cost of therapy treatments for Medicaid patients. The methodology as proposed by the Department more precisely arrives at the true cost of providing therapy treatments to Medicaid patients in Class III NFs (SCNFs).

COMMENT: Class III programs will get no special consideration in subsection N.J.A.C. 10:63-3.3(f) for the additional costs involved in being a Governmental Peer Grouping Facility. The commenter recommends that each category of costs for special care nursing facilities which includes a county facility should be set with two screens; one for proprietary SCNFs, and one for the governmental facility. This could be done at no extra cost to the State of New Jersey, since peer grouping money is funded 100 percent by the Federal government.

RESPONSE: The SCNF amendments do not make any changes to reimbursement methodology for therapy treatments to governmental peer grouping facilities other than the potential area of respiratory therapy for Class III NFs. There are currently no county governmental facilities with a Medicaid provider agreement for a SCNF ventilator program. The Department does not consider that a governmental peer grouping approach is necessary or appropriate for ventilator therapy services even if, at some time, a county governmental facility becomes a SCNF ventilator provider.

COMMENT: It is grossly improper to develop a common reasonableness respiratory therapy screen for all Class III programs (for the purposes of paragraph 3), since ventilator needs may vary considerably for the various types of programs.

RESPONSE: The Division recognizes that individual inpatient's respiratory therapy needs may vary significantly within a facility. However, analysis suggests that the average per diem respiratory cost should not vary significantly from facility to facility. In addition, the calculation of the respiratory therapy cost limit makes provision for a 20 percent enhancement to the median per diem respiratory therapy cost to allow for significant variations among facilities.

N.J.A.C. 10:63-3.6 General services expenses

COMMENT: Add the following sentence to N.J.A.C. 10:63-3.6(b)2ii: "Any facility with costs in excess of this screen will be allowed said costs up to the General Service screen". Multi-facility corporations, many of which are publicly-held companies, are prevalent and a part of the long-term care field in New Jersey and the nation. Management costs are legitimate to the efficient operations of such organizations and lend special expertise to the operation of special units as well. As a result, the management costs and/or administrator costs associated with this necessary special expertise should be allowable, subject to the control of the overall general services screen.

RESPONSE: The commenter's proposed revision would allow a chain corporation's excess management costs (or a part thereof) to be reimbursed dependent upon efficiencies within the non-food general services cost limit. The Division evaluated this provision, does not believe that the requested change is appropriate, and the requested change was not made. Most home office/management costs are allocated to non-food general services costs and are already recognized in the cost limit and rate calculations. The home office/management costs remaining in the administration/management cost center relate primarily to executive salaries and home office property costs. Although these costs are recognized as allowable costs in the facility cost base, they are not used in the cost limit calculation for administrator/management costs. Since these types of costs are duplicative of costs already included in the rates (administrator's salary and facility property costs), the Department does not consider them appropriate for the special treatment recommended by the commenter. It should be noted, however, that the administrative management cost limit includes an allowance for management costs derived from a cost regression analysis based upon administrators' compensation rates.

COMMENT: N.J.A.C. 10:63-3.6(a)2i and ii read identically except for reference to Class I, II, and III. Why not combine them for easier reading?

RESPONSE: The apparent awkwardness of these provisions is necessary in order to guarantee that these two subparagraphs represent the creation of two distinct sets of cost limits, that is, a cost limit for the Class I and III facilities and a separate cost limit for the Class II facilities.

COMMENT: N.J.A.C. 10:63-3.6(b)2 should include home office management costs in the computation of the reasonableness limit for the Administrator and Management costs. Any 100+ bed freestanding facility should be permitted to combine the Assistant Administrator and Administrator screens.

RESPONSE: The Division has considered the changes suggested by the commenter and has determined that the proposal does not (or does?) assure rates that are reasonable and adequate to meet the cost of efficiently and economically operated facilities. (See N.J.A.C. 10:63-3.1) The proposal regarding the SCNF administrator's cost limit has been discussed at length between the Division and the SCNF providers. The Division has not been convinced of the necessity of higher levels of reimbursement for the administrator expenses for SCNFs.

N.J.A.C. 10:63-3.7 Property operating expenses

COMMENT: N.J.A.C. 10:63-3.7(c) and (c)1 should be deleted. Utilities should be a pass through and not be screened. There are large variances in cost in geographical areas of the State, depending upon the utility company, which distort any screen. In addition, no facility has control over its utility rate nor the ability to not pay without jeopardizing

the very special patient population. Newly-proposed cost saving programs cooperated in by nursing homes through the utility companies should adequately assist in this area without the need for a screen.

RESPONSE: Currently, the enhancement to the utility cost limit is 50 percent above the median annual facility utility cost per bed statewide. The limit, as it exists currently, more than adequately allows for variances in geographical areas in which facilities are located.

COMMENT: The reasonable plant square feet for the special care programs in a Class II facility should be determined in the same manner as for non special care programs in a Class II NF. By not affording the same consideration to the special care program of Class II facilities the rules are not being applied consistently (See N.J.A.C. 10:63-3.7(a)2i(2)(B).

RESPONSE: The Division considers that the reasonable cost limits for property operating expenses, as determined by each type of Class III facility, is the most appropriate means to measure reasonable expenditures for Class III facilities. The Division has determined that the rule as proposed provides rates that are reasonable and adequate to meet the cost of efficiently and economically operated facilities.

N.J.A.C. 10:63-3.9 Routine patient care expenses

COMMENT: To apply maximum nursing requirements to the 17 diverse SCNFs would result in underpayment of facilities with a higher patient acuity level. If the SCNFs had to operate under the proposed nursing requirements, some of them would have to transfer certain technologically dependent patients back to area hospitals in order not to jeopardize their care.

RESPONSE: The nurse component cost limit is based partially upon generic "special care" staffing requirements. The Department has exhaustively reviewed this issue and feels confident that the proposed staffing patterns will satisfy the needs of each type of special care patients.

It should be noted that the proposed staffing patterns are not intended to restrict a special care provider from enhancing nurse staffing above the proposed levels. The calculation of the nursing component cost limit makes provision for variations in nurse staffing by means of a twenty five percent enhancement to the base calculation of the nursing cost limit. In fact, the cost study analyses performed by the Department, and shared with the SCNF providers, indicate that the large majority of special care providers will be reimbursed the full amount of their current base period nurse staffing salary costs.

COMMENT: The per diem calculation for reimbursement of the facility for services of consultant pharmacist is improperly computed. Facility costs used in the current calculation are based on only Medicaid patient costs, while LTC days is based on the total number of licensed beds.

RESPONSE: Although the cost of non-Medicaid pharmaceutical consultation is not directly incurred by a nursing facility, it can be added to the facility cost report. This procedure is valid as long as the adjustment is fully disclosed on the reconciliation schedule of the cost report.

N.J.A.C. 10:63-3.11 Buildings

COMMENT: A current SCNF provider contends it is morally wrong and violates its contractual agreement with the State to now restrict total square footage and cost of moveable equipment using the same methodology and limits as Class I NFs, since its facility was built based on Medicaid's approval ten years ago. The full construction cost should be considered in reimbursement.

RESPONSE: One of the purposes of this regulatory proposal is the implementation of a standard reimbursement methodology for special care nursing facilities. This comment raises issue of the applicability of the standardized methodology to the unique circumstances of a specific facility. The appropriate forum for such issues is provided by the rule itself in the rate appeal process contained in this chapter.

COMMENT: A Class II NF provider believes that they will get no consideration for being a county peer grouping facility, although the reasonable limit on appraised value of Class I facilities will be applied to Class III facilities.

RESPONSE: The county peer grouping facilities (Class II) have a contractual obligation to share the additional county revenue for community based services targeted for the elderly and disabled. Application of the reasonable limit on the appraised value of the property as a Class I to the county peer grouping facility is appropriate.

N.J.A.C. 10:63-3.16 Target occupancy level

COMMENT: A freestanding SCNF would not only lose its present occupancy incentive but run the risk of losing reimbursement costs by not achieving a 90 percent occupancy level. The commenter has a present contractual agreement that does not impose target occupancy levels yet reimburses an occupancy incentive when the census exceeds 70 percent.

RESPONSE: The Department considers that a target occupancy of 90 percent establishes a reasonable goal for occupancy of a SCNF, and, at the same time, creates an incentive to maximize admission of Medicaid patients. One of the objects of the regulatory proposal is to establish a standard reimbursement methodology for special care nursing facilities. In order to create a standardized and equitable reimbursement methodology for all SCNFs, special rate adjustments to specific facilities will be eliminated under the new regulatory framework. This does not, however, preclude a facility from seeking any rate relief which it considers appropriate by means of the rate appeal process.

Summary of Changes upon Adoption:

The following changes are being made either in response to public comment or were initiated by the Division due to recodification, typographical error, accidental omission, or clarity:

N.J.A.C. 10:63-1.2 Definitions

The definition of "Occupancy Level" has been amended to reflect the exact language of N.J.S.A. 10:5-12 which defines "Medicaid occupancy level." This change was requested by a commenter and is necessary to comply with New Jersey law.

Additional language has been added to the definitions of "Specialized Services for Mental Illness" and "Specialized Services for Mental Retardation" which does not add to or curtail the requirements. This language has been amended to be consistent with the full definitions developed in conjunction with the Division of Mental Health and Hospitals and the Division of Developmental Disabilities. The definitions are consistent with those utilized by those divisions in the rules governing their programs.

The definition of "Waiting list" has been amended to reflect that a formal application be completed in writing. This change was made in response to public comment and to be consistent with the requirements of the licensing agency at N.J.A.C. 8:39-1.5(e),(h). The intent is to formalize the application process.

N.J.A.C. 10:63-1.3 Program participation

The words "an in-state" have been added to N.J.A.C. 10:63-1.3(a) and "if in state" has been deleted from N.J.A.C. 10:63-1.3(a)1. This was done to clarify that these requirements apply to New Jersey NFs only. The requirements contained in this manual do not apply to out-of-State providers.

N.J.A.C. 10:63-1.5 Occupancy level

The Division has amended N.J.A.C. 10:63-1.5(a) to clarify the methodology for calculating the NF Medicaid occupancy level. The revised language conforms with the form at N.J.A.C. 10:63-Appendix E which providers are presently using.

N.J.A.C. 10:63-1.9 Waiting list

The phrase "which shall be applied regardless of a NF's Medicaid occupancy level" has been deleted from N.J.A.C. 10:63-1.9(a) to comply with N.J.S.A. 10:5-12.2. The phrase "the request of any individual (or family) to have his or her name added to the list" has been deleted and replaced with "a completed written application." The Division believes a more formalized process is necessary to distinguish a bona fide applicant from a person that is making an inquiry. The intent is to be consistent with licensing rules at N.J.A.C. 8:39-1.5(e) and (h) in formalizing the application process.

The word "daily" at N.J.A.C. 10:63-1.9(a)1i has been deleted and replaced with "on a regular basis". The Division, based on comments, recognized that the requirement for "daily" updates was neither practical nor necessary.

The word "written" has been added to N.J.A.C. 10:63-1.9(a)1ii to modify "application." The phrase "and/or the oral request" has been deleted. As previously stated, the Division believes a more formalized process is necessary to distinguish a bona fide applicant from a person that is making an inquiry. The intent is to be consistent with N.J.A.C. 8:39-1.5(e) and (h) in formalizing the application process.

N.J.A.C. 10:63-1.9(a)1iii, iv, and v, as proposed, have been deleted, as requested by a commenter (see comments section).

A new N.J.A.C. 10:63-1.9(a)1iii has been added which states "Utilize the waiting list to admit individuals on a first-come, first-serve basis in the order in which they apply until the provider's Medicaid occupancy level equals the Statewide occupancy level, or the Medicaid occupancy level set forth in the provider's Certificate of Need, whichever is higher".

The phrase "whose Medicaid occupancy level is less than the Statewide occupancy level" has been added to N.J.A.C. 10:63-1.9(a)2.

The Division has added N.J.A.C. 10:63-1.9(a)2i to clarify that "Under the provisions of N.J.S.A. 10:5-12.2, a facility with a residential unit or a Life-Care community may give its own residents priority when a NF bed becomes available."

N.J.A.C. 10:63-1.16 Utilization of resident's income for cost of care in the NF and for PNA

The words "hearing aids, dentures, glasses" are being deleted from N.J.A.C. 10:63-1.16(e)4ii as these items are individually prescribed and reimbursed outside of the NF per diem rate.

The phrase "NFs may not charge mark-ups for services" has been deleted from 1.16(e)5.

N.J.A.C. 10:63-2.5 Resident activities

The word "age" has been deleted from N.J.A.C.10:63-2.5(a) as several comments suggested that age is often not a sufficient nor complete measure of activity appropriateness.

The statement concerning appointment of a activity coordinator in a NF with more than 60 beds at N.J.A.C. 10:63-2.5(d)2 has been deleted to avoid misinterpretation. (See comments.)

N.J.A.C.10:63-2.5(e)2 has been amended to read "diversity of activities seven days per week and during at least two evenings per week" which reflects the proposed licensing requirements of N.J.A.C. 8:39-7.

The wording at N.J.A.C.10:63-2.5(e)3 has been amended to read "have the opportunity to meet at least monthly." The change was made based on comments which suggested that a resident council should be allowed permissiveness in setting up meetings.

The use of the phrase "activity goals" in N.J.A.C.10:63-2.5(g)4 has been amended to read "resident goals." This was amended to reflect the present practice of goals being developed for and focused on the resident.

N.J.A.C. 10:63-2.6 Social services

The word "weekdays" has been deleted from N.J.A.C.10:63-2.6(g)4 to avoid conflict with holidays which fall on a weekday.

N.J.A.C. 10:63-2.6(j) has been amended to read ". . . the social services department shall initiate contact with the local school district . . ."

N.J.A.C. 10:63-2.21 Special care nursing facility

The word "subacute" has been deleted from N.J.A.C. 10:63-2.21(c)1. Although used in the generic, the Division wishes to avoid confusion with the burgeoning subacute industry which at this time remains undefined.

N.J.A.C. 10:63-2.21(e)4i2 has been added to the qualification for director of resident activities, which will state "in lieu of (e)4i above, hold current certification from the National Certification Council for Activity Professionals (National Certification Council for Activity Professionals, 520 Stewart, Park Ridge, Illinois 60068) or the National Council of Therapeutic Recreation Certification (National Council for Therapeutic Recreation, P.O. Box 16126, Alexandria, Virginia 22302.")

N.J.A.C. 10:63-3.6 General service expenses

The Division is correcting the regression formula to conform with the existing text at N.J.A.C. 10:63-3.5. The formula as written in the proposal adds an aggregate number and an average number which creates a nonsensical result.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterkisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

10:63-1.1 Scope

This chapter addresses the provision of quality, cost-prudent health care services available to New Jersey Medicaid eligible children and adults in a nursing facility (NF) and addresses the provision of and reimbursement for services required to meet the individual's medical, nursing, rehabilitative and psychosocial needs to attain and maintain the highest practicable mental and physical functional status. Although the scope of the Long-Term Care Services chapter encompasses other long-term care facilities such as governmental psychiatric hospitals, inpatient psychiatric services/programs for the under 21 (residential treatment centers) and intermediate care facilities/mentally retarded (ICF/MRs), the following subchapters specifically address nursing facility services. However, the Fiscal Agent Billing Supplement applies to all the above cited long-term care facilities.

10:63-1.2 Definitions

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

"Advance directive" means a written instruction relating to the provision of health care when the individual is incapacitated, such as a living will or durable power of attorney for health care.

"Air fluidized therapy bed" means a device employing the circulation of filtered air through ceramic spherules (small, round ceramic objects).

"Case management" means a process by which the Division of Medical Assistance and Health Services Medical Social Care Specialist monitors the provision of nursing facility care to assure timely and appropriate provider responses to changes in care needs and delivery of coordinated services.

"Case mix" means a system of staffing and reimbursement for nursing services based on variation in patient acuity and care needs that influences the type and amount of service needed.

"Clinical audits" means a method of utilization control under the enforcement authority of Section 1902(a)(30)(A) of the Social Security Act, in accordance with 42 CFR 456.1(b)(1), to monitor the utilization of and payment for nursing facility care and services reimbursable under the Medicaid State Plan.

"Comprehensive assessment" means a process conducted by each member of the interdisciplinary team which, for each resident, identifies problems; determines care needs; and in conjunction with the resident and his or her significant other or legal representative, results in an interdisciplinary plan of care.

"Consultant pharmacist" means a pharmacist licensed by the New Jersey State Board of Pharmacy who meets the qualifications in N.J.A.C. 10:51-3.3.

"Conventional nursing facility"—see nursing facility.

"Department of Health" (DOH) means the New Jersey State Department of Health.

"Division of Developmental Disabilities (DDD)" means the Division of Developmental Disabilities within the New Jersey State Department of Human Services.

"Division of Mental Health and Hospitals (DMH&H)" means the Division of Mental Health and Hospitals within the New Jersey State Department of Human Services.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the Regional Staff Nurse during the Pre-Admission Screening (PAS) assessment process which reflects the individual's current or potential health problems and required care needs.

"Interdisciplinary care plan" means the care plan developed by the interdisciplinary team which includes measurable objectives and time tables to meet the resident's medical, nursing, dietary and psychosocial needs that are identified through the comprehensive assessment process.

"Interdisciplinary team" means a team consisting of a physician and a registered professional nurse and may also include other health professions relative to the provision of needed services. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

"Low airloss therapy bed" means a bed frame that is equipped with air sacs which are grouped into zones corresponding to various body areas. The air sacs are inflated by a constant flow of air, some of which is directed through the air sacs to the patient surface.

***"Medicaid Occupancy level" means the average number of Medicaid recipients and recipients of public assistance under P.L.**

1947, c.156, as amended (C44.8-107 et seq.) residing in a NF divided by the total number of licensed beds in the facility during the billing month.*

"Medical director" means a physician licensed under New Jersey State law who is responsible for the direction and coordination of medical care in a nursing facility.

"Medical evaluation team (MET)" means a team of Medicaid professionals consisting of a physician consultant, a regional staff nurse (RSN), a regional pharmaceutical consultant, a Medical Social Care Specialist I (MSCS I) and a Medical Social Care Specialist II (MSCS II) who are assigned to the Medicaid District Office (MDO). A MET has the responsibility to review medical, nursing, and social information as well as any other supporting data in order to evaluate the need for long-term care, determine the level of care needed, the feasibility of alternate care, the quality of care given and the outcome of service. Members of the MET may review each recipient or potential recipient as individual team members or may perform the review as a multidisciplinary team.

"Medical social care specialist (MSCS)" means a social worker employed by the Division of Medical Assistance and Health Services who performs case management as required by N.J.A.C. 10:63.

"Medical staff" means one or more licensed physicians who act as the attending physician(s) to Medicaid recipients in a nursing facility.

"Minimum data set (MDS)" means a minimum set of screening and assessment elements, including common definitions and coding categories, needed to comprehensively assess an individual nursing facility resident. The items in the MDS standardize communication about resident problems and conditions within facilities, between facilities, and between facilities and outside agencies.

"Nursing facility (NF)" means an institution (or distinct part of an institution) certified by the New Jersey State Department of Health for participation in Title XIX Medicaid and primarily engaged in providing health-related care and services on a 24-hour basis to Medicaid recipients (children and adults) who, due to medical disorders, developmental disabilities and/or related cognitive and behavioral impairments, exhibit the need for medical, nursing, rehabilitative, and psychosocial management above the level of room and board. However, the nursing facility is not primarily for care and treatment of mental diseases which require continuous 24-hour supervision by qualified mental health professionals or the provision of parenting needs related to growth and development.

["Occupancy level" means the average number of Medicaid recipients and recipients receiving public assistance under P.L. 1947, c.156, as amended (C44.8-107 et seq.) residing in a NF multiplied by the number of days residing in a NF. This sum is then divided by the total number of licensed beds in the facility during the billing month.]

"Occupational therapist" means a person who is registered by the American Occupational Therapy Association, 1383 Piccard Drive, P.O. Box 1725, Rockville, MD 20849-1725, or is a graduate of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association, 515 N. State St., Chicago, IL 60610, and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association, 515 N. State St., Chicago, IL 60610, and the American Physical Therapy Association, 1111 N. Fairfax St., Alexandria, VA 22314 or its equivalent; and if practicing in the State of New Jersey, is licensed by the State of New Jersey, or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and also meets all applicable Federal requirements.

"Physician's services" means those services provided within the scope of medical practice as defined by the laws of New Jersey and those services which are performed by or under the direct personal supervision of the physician.

1. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners.

2. "Direct personal supervision" means services which are rendered in the physician's presence.

"Pre-admission screening (PAS)" means that process by which all Medicaid eligible recipients seeking admission to a Medicaid certified NF and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified NF receive a comprehensive needs assessment by the Regional Staff Nurse to determine their long-term care needs and the most appropriate setting for those needs to be met, pursuant to N.J.S.A. 30:4D-17.10. (P.L. 1988, c.97).

"Pre-admission screening and annual resident review (PASARR)" means that process by which all individuals with mental illness (MI) or mental retardation (MR) are screened prior to admission to a NF and annually thereafter in order to determine the individual's appropriateness for NF services, and whether the individual requires specialized services for his or her condition.

"Prior authorization" means approval granted by the Division of Medical Assistance and Health Services through the appropriate Medicaid District Office (MDO) for payment for NF or before other Medicaid covered services are rendered to a Medicaid recipient, in accordance with this chapter.

"Regional staff nurse (RSN)" means a registered professional nurse employed by the Division of Medical Assistance and Health Services who performs health needs assessments as required by this chapter.

"Rehabilitative and/or restorative nursing care" means nursing care provided by a registered professional nurse, or under the direction of a registered professional nurse, qualified by experience in rehabilitative or restorative nursing care.

"Rehabilitative services" means physical therapy, occupational therapy, speech-language pathology services, and the use of such supplies and equipment as are necessary in the provision of such services.

"Resident" means a Medicaid eligible or potentially eligible recipient residing in an NF.

"Respiratory care practitioner" means an individual credentialed by the State Board of Respiratory Care, to practice respiratory care under the direction or supervision of a physician pursuant to State of New Jersey P.L. 1971, c.60; P.L. 1974, c.46; and P.L. 1978, c.73, amended August 1991.

"Section Q" means the resident classification portion of the standardized resident assessment (SRA) instrument which identifies an individual NF resident's nursing service requirements based on the standards at N.J.A.C. 10:63-2.2(a).

"Skilled nursing facility (SNF)" means a free-standing institution or an identifiable part of an institution which meets all the State and Federal requirements for participation in the Medicare Program as a skilled nursing facility.

"Social services" means those services provided to meet the emotional and social needs of the Medicaid recipient and significant other or guardian at the time of admission, during treatment and care in the facility, and at the time of discharge.

"Special care nursing facility (SCNF)" means a NF or separate and distinct unit within a Medicaid certified conventional NF which has been approved by the Division of Medical Assistance and Health Services to provide care to New Jersey Medicaid recipients who require specialized health care services beyond the scope of conventional nursing facility services as defined in N.J.A.C. 10:63-2, Nursing Facility Services.

"Specialized services for mental illness (MI)" mean those services offered, in accordance with 42 CFR 483.120, when an individual is experiencing an acute episode of serious mental illness and psychiatric hospitalization is recommended, based on a Psychiatric Evaluation. Specialized Services entail implementation of a continuous, aggressive, and individualized treatment plan by an interdisciplinary team of qualified and trained mental health personnel. ***During a period of 24-hour supervision for the individual, specific therapies and activities are prescribed, with the following**

objectives: to diagnose and reduce behavioral symptoms; to improve independent functioning; and as early as possible, to permit functioning at a level where less than specialized services are appropriate. Specialized services go beyond the range of services which a NF is required to provide.*

"Specialized services for mental retardation (MR)" mean those services offered, in accordance with 42 CFR 483.120, when an individual is determined to have skill deficits or other specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the individual functional skills. Specialized services are those services needed to address such skill deficits or specialized training needs. ***Specialized services may be provided in an intermediate care facility for the mentally retarded (ICF/MR) or in a community-based setting which meets ICF/MR standards. Specialized services go beyond the range of services which a NF is required to provide.***

"Speech-language pathologist" means a person who has a certificate of clinical competence from the American Speech and Hearing Association; meets all applicable Federal regulations; has completed the equivalent educational requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certificate, and, if practicing in the State of New Jersey is licensed by the State of New Jersey; or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable.

"Standardized Resident Assessment (SRA)" means an instrument developed by the State to report minimum data set requirements, including resident assessment protocols and additional State mandated data, which results in a comprehensive, standardized assessment of a NF resident's functional capabilities and service requirements.

"Track of care" means the designation of the setting and scope of Medicaid services determined by the PAS process conducted by the RSN following assessment of the Medicaid eligible or potentially eligible Medicaid recipient, as follows:

1. "Track I" means long-term NF care.
2. "Track II" means short-term NF care.
3. "Track III" means long-term care services in a community setting.

"Waiting list" means the standardized listing, maintained in chronological order by the NF, of the names of all individuals seeking admission *[or readmission]* to a Medicaid participating NF ***who have completed a written application***.

10:63-1.3 Program participation

(a) A NF shall comply with the following requirements in order to participate in the New Jersey Medicaid program. *[A]* ***An in-State*** NF shall:

1. Be licensed by the New Jersey State Department of Health, in accordance with N.J.A.C. 8:39*[, if in-State]*;

2. Be certified by the New Jersey State Department of Health and, in the case of both Medicare and Medicaid, by the Health Care Financing Administration (HCFA), which assures that the NF meets the Federal requirements for participation in Medicaid and Medicare;

3. Be approved for participation as a NF provider by the New Jersey Medicaid program. This includes the filing of a New Jersey Medicaid Provider Application FD-20 (see Appendix A, incorporated herein by reference), the signing of a Provider Agreement MCNH-38 (see Appendix B, incorporated herein by reference), and submittal of the HCFA-1513, Ownership and Control Interest Disclosure Statement (see Appendix C, incorporated herein by reference). The agreement for participation in the New Jersey Medicaid program stipulates that a NF shall provide all NF services required by N.J.A.C. 10:63. Continued participation as a New Jersey Medicaid provider will be subject to recertification by the New Jersey Department of Health and compliance with all Federal and State laws, rules and regulations. Upon recertification by the Department of Health, each NF will receive notification from the Provider Enrollment Unit, Division of Medical Assistance and Health Services, informing the facility that their provider agreement is being continued.

4. File a completed Cost Study for Long-Term Care Facility form MCNH-1 (see Appendix D, incorporated herein by reference) with the New Jersey State Department of Health and the Division of Medical Assistance and Health Services. After the initial cost study is filed, the provider shall file an MCNH-1 annually.

5. In accordance with 42 CFR 483.12(d)(1)(i)(ii), not require residents or potential residents to waive their rights to Medicare or Medicaid; and not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for Medicare or Medicaid benefits; and

6. Accept as payment in full for covered services, the amounts paid in accordance with Medicaid policy defined at N.J.A.C. 10:49-9.3(a)2.

10:63-1.4 Private pay

(a) NFs which are approved for participation as providers of service under the New Jersey Medicaid program shall be prohibited under Section 6(a) of P.L. 1985, c.303 from soliciting or accepting payment, any type of gift, money, contribution, donation or other consideration as a condition of admission or continued stay from a Medicaid recipient or his or her family.

(b) NFs which are providers of service under the New Jersey Medicaid program shall be prohibited under Section 6(b)(c) of P.L. 1985, c.303 from requiring private pay contracts from Medicaid qualified applicants as a condition for admission or continued stay.

1. The prohibitions in (a) and (b) above are applicable regardless of the Medicaid occupancy level in a facility. A violation may be a criminal act punishable as a crime of the third degree.

2. The exception to the above is private pay contracts entered into with life-care communities that are explicitly referenced as such within their Medicaid participation agreement.

(c) An individual may enter a NF on a private pay contract basis only if Medicaid eligibility has not been established and no application to the New Jersey Medicaid program has been made. A private pay contract shall become void as soon as Medicaid eligibility is established.

10:63-1.5 Occupancy level

(a) *[The NF occupancy level shall be calculated using the total of Medicaid recipients multiplied by the number of days residing in the NF plus the total of public assistance recipients (under N.J.S.A. 44:8-107) multiplied by the number of days residing in the NF. This sum equals the total days which is then divided by the total number of NF licensed beds during the actual billing month.]* ***The NF Medicaid occupancy level shall be calculated by adding the total days for Medicaid and public assistance recipients residing in the NF during the month, dividing this sum by the number of days in the month to determine the average daily census, and dividing this amount by the total number of licensed long-term care beds.***

1. A Special Care Nursing Facility (SCNF) which is an identifiable unit within a conventional NF shall calculate its occupancy level separate and apart from the occupancy level of the conventional NF beds using the same formula as cited in (a) above.

2. The NF shall submit the completed Provider Certification Statement for Long Term Care (see Appendix E, incorporated herein by reference), to report the actual calculation of the occupancy level determination of the NF. In addition to the occupancy level determination, the Certification Statement is also used to certify that the billing information is accurate, complete and in accordance with the rules of the New Jersey Health Services Program (Medicaid). The Certification Statement shall be submitted with the monthly Turn Around Document (TAD) (as set forth in Appendix Q, incorporated herein by reference) to the fiscal agent. Billing documents will be returned if the Certification Statement is not completed, signed and attached.

3. The calculation of the occupancy level shall include eligible bed reserve days in the determination of the Medicaid occupancy level.

10:63-1.6 Termination of a NF provider agreement

(a) The Division shall terminate a NF's provider agreement if the Division:

1. Receives notice from the New Jersey State Department of Health or HCFA that the NF is no longer certified to provide NF services. In that case:

i. The provider agreement shall be terminated 23 days from the survey date if the New Jersey State Department of Health or the Secretary of the Department of Health and Human Services find that deficiencies pose immediate jeopardy to residents' health and safety.

ii. If the deficiencies do not pose immediate jeopardy to the resident's health and safety, the provider agreement shall be terminated ninety days from the survey date.

iii. The termination of provider agreement shall be rescinded if, prior to the effective date of termination, the Division is notified by the New Jersey Department of Health or the Secretary of the Department of Health and Human Services that the deficiencies have been satisfactorily corrected and the NF is certified to provide NF services; and

2. Determines that other good cause for such termination exists as cited at N.J.A.C. 10:49-11 or as a result of a pattern of aberrancies reported in a *[Clinical Audit]* ***clinical audit*** as defined at N.J.A.C. 10:63-*[1.6]***1.12***.

10:63-1.7 Administrative appeal of denial, termination or non-renewal of NF certification or Medicaid Provider Agreement

(a) Any NF whose certification or Medicaid Provider Agreement is denied, terminated or not renewed shall have the opportunity to request a full evidentiary hearing before an administrative law judge, in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. In order to obtain a hearing, the NF shall submit, within 20 days from the date of the Division letter proposing termination, a written request to the Chief, Office of Legal and Regulatory Liaison, Division of Medical Assistance and Health Services, Mail Code #3, CN-712, Trenton, New Jersey, 08625-0712.

2. All hearings requested pursuant to this section shall be completed either before the effective date of the denial, termination or non-renewal, or within 120 days thereafter.

3. If the Division elects to provide a hearing after the effective date of denial, termination or non-renewal, the NF will be entitled to an informal reconsideration to be completed prior to the effective date of the denial, termination or non-renewal.

4. The informal reconsideration, if requested by the NF, will include the following:

i. Written notice by the Division to the NF outlining the findings upon which the denial, termination or non-renewal is based;

ii. Notice that the NF is allowed a reasonable opportunity to refute the findings in writing; and

iii. A written affirmation or reversal of the denial, termination or non-renewal.

(b) A (S)NF whose certification or Medicare/Medicaid provider agreement is denied, terminated or not renewed by HCFA, may request a hearing pursuant to 42 CFR 498.40 by submitting a written request to the Health Care Financing Administration, Division of Health Standards and Quality, Attn: Coordinator Hearing and Appeals, Federal Building Room 3821, 26 Federal Plaza, New York, New York 10278.

1. A final decision entered under the Medicare review procedures will be binding for purposes of Medicaid participation.

10:63-1.8 Admission, transfer and readmission; general

(a) Pursuant to P.L. 1988, c.97, a Medicaid participating NF shall not admit any individual who is Medicaid eligible or who may become Medicaid eligible within 180 days of admission to the facility, or an individual with mental illness (MI) or mental retardation (MR) subject to Pre-Admission Screening and Annual Resident Review (PASARR) requirements as defined at 42 CFR 483.102 regardless of payment source, unless that individual has been prescreened by the Medicaid District Office (MDO) registered professional nursing staff and determined appropriate for NF placement.

(b) A Medicaid eligible individual residing in a Medicaid participating NF who is transferred to an acute care hospital shall not require preadmission screening prior to returning to the same or another NF.

(c) A Medicaid eligible individual identified as MI residing in a Medicaid participating NF, who is admitted to a psychiatric unit for treatment, shall not be subject to PASARR requirements, prior to returning to the NF. However, if the resident's condition indicates a significant change in mental or behavioral status, the NF shall immediately secure an Annual Resident Review (ARR) as defined in N.J.A.C. 10:63-1.11(e).

(d) In cases of transfer of a NF resident with MI or MR to a hospital or another NF, the admitting NF is responsible for ensuring that copies of the resident's most recent PASARR resident assessment reports, SRA and current HSDP accompany the transferring resident.

(e) Payment will not be made by the New Jersey Medicaid program for NF services provided to private paying patients who have applied for Medicaid benefits unless they have been authorized to receive NF services by the MDO. (See N.J.A.C. 10:63-*[1.5]* ***1.11***).

(f) The NF shall obtain a statement of the Medicaid recipient's budgetary information on the PA-3L Statement of Income Available for Medicaid Payment (see Appendix F, incorporated herein by reference) from the appropriate CWA.

(g) Notification of the approval or denial of NF services by the MDO shall be provided to the applicant and other individuals and agencies, as required in N.J.A.C. 10:49-10.4.

(h) In the event that a NF admits a Medicaid eligible recipient or an individual who may become Medicaid eligible within 180 days of admission without preadmission screening by the MDO, the effective date of the initial authorization will be the date of the MDO assessment. Facilities admitting such individuals without preadmission screening shall not be reimbursed by the New Jersey Medicaid program for any care rendered before the MDO assessment.

(i) When an inpatient is to be discharged from the hospital to a NF, the transfer shall, to the extent possible, be to a Medicare/Medicaid participating (S)NF when Medicare (Title XVIII) benefits are available.

(j) When an inpatient is discharged from the hospital to a Medicaid certified NF, the NF shall be responsible for securing a legible abstract or summary prepared by either the attending physician or the hospital and signed by attending physician, covering the Medicaid recipient's care in the hospital. This information shall be forwarded to the NF along with the HSDP and MDO authorization and where applicable, PASARR-related material.

(k) The NF shall submit a Notification From Long-Term Care Facility of the Admission or Termination of a Medical Patient, MCNH-33 Form, (see Appendix G, incorporated herein by reference) along with a copy of the hospital transfer form or its equivalent PA-4 Form, Certification of Need for Patient Care in Facility other than Public or Private General Hospital (see Appendix H, incorporated herein by reference) to the MDO serving the county where the NF is located, within two working days of admission.

(l) When a resident is transferred to a hospital, there is no change in the policy for readmission to the NF or the termination from the NF *[(see N.J.A.C. 10:63-1.8(a))]*. The MCNH-33 form*[,]* shall be completed, dated and signed for each readmission and termination of a Medicaid recipient. The MCNH-33 form shall reflect the room number and bed number to which or from which the Medicaid patient has been transferred or readmitted.

10:63-1.9 Waiting list

(a) The NF shall establish a single waiting list*[,]* in chronological order*[, which shall be applied regardless of a NF's Medicaid occupancy level]*. The order of names shall be predicated upon the order in which *[the request of any individual (or family) to have his or her name added to the list]* ***a completed written application***

is received. Hospitalized individuals ready for readmission to the NF are to be added to the top of the list as soon as the hospital notifies the NF of the contemplated discharge. As soon as a bed becomes available, it shall be filled from this waiting list. Provisions can be made for emergency, life-threatening situations or *[Life-Care]* ***life-care*** community admissions.

1. The NF shall meet the following requirements:

i. Maintain only one waiting list; this list shall reflect a roster updated *[daily]* ***on a regular basis***, of all individuals who have applied for admission to the facility;

ii. Reflect in chronological order the full name and address of the individual applying by the date the ***written*** application *[and/or the oral request]* for admission is made;

*[iii. Hold a vacant bed for a minimum period of 24-hours pending notification for the admission of the individual whose name appears first on the waiting list. Documentation of how the notification was given is required;

iv. If the individual on the waiting list is unable or does not qualify for admission within the 24-hour period, the vacant bed shall be offered to the next individual on the list under the same conditions.

v. If the individual whose name appears first on the waiting list is not admitted to the facility within the 24-hour period, that person's name shall remain on the waiting list in the same order previously held until admitted to the NF; and]*

iii. Utilize the waiting list to admit individuals on a first-come, first-serve basis in the order in which they apply until the provider's Medicaid occupancy level equals the Statewide occupancy level, or the Medicaid occupany level set forth in the provider's Certificate of Need, whichever is higher.

*[vi.]***iv.*** A file shall be maintained containing full documentation to support any valid reason why the individual whose name appears first on the waiting list is not admitted to the NF.

2. It shall be unlawful discrimination for any Medicaid participating NF ***whose Medicaid occupancy level is less than the Statewide occupancy level*** to deny admission to a Medicaid eligible individual who has been authorized for NF services by the MDO when a NF bed becomes available in accord with the waiting list.

i. Under the provisions of N.J.S.A. 10:5-12.2, a facility with a residential unit or a Life-Care community may give its own residents priority when a NF bed becomes available.

10:63-1.10 Involuntary transfer initiated by the facility

(a) The Division recognizes that there may be problems in relocating infirm aged persons from a NF. The purpose of this rule is to specify the circumstances in which the involuntary transfer of a Medicaid recipient in a NF is authorized and to establish conditions and procedures designed to minimize the risks, trauma and discomfort which may accompany the involuntary transfer of a Medicaid recipient from a NF.

(b) This rule shall be interpreted consistent with the Federal requirement that care and service under the Medicaid program be provided in a manner consistent with the best interests of the resident.

(c) This rule shall apply to the involuntary transfer of a Medicaid recipient at the request of a NF. This rule shall not apply to the Division's utilization review process, nor to the movement of a Medicaid recipient to another bed within the same facility.

(d) A transfer of a Medicaid recipient which was not consented to or requested by the recipient or by the recipient's family or authorized representative shall be considered an involuntary transfer. A Medicaid recipient is a Medicaid eligible individual residing in a NF which has a Medicaid provider agreement. This includes Medicaid recipients over the minimum number stipulated in the agreement or an individual who had entered the facility as non-Medicaid and is awaiting resolution of Medicaid eligibility.

(e) A Medicaid recipient shall only be involuntarily transferred when adequate alternative placement, acceptable to the Division, is available. A Medicaid recipient may be transferred involuntarily only for the following reasons:

1. The transfer is required by medical necessity;

2. The transfer is necessary to protect the physical welfare or safety of the recipient or other residents;

3. The transfer is required because the resident has failed, after reasonable and appropriate notice, to reimburse the NF for a stay in the facility from his/her available income as reported on the PA-3L; or

4. The transfer is required by the New Jersey State Department of Health pursuant to licensure action or to the facility's suspension or termination as a Medicaid provider by the Division.

(f) In any determination as to whether a transfer is authorized by this rule, the burden of proof, by a preponderance of the evidence, shall rest with the party requesting the transfer, who shall be required to appear at a hearing if one is requested and scheduled. Where a transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:

1. The effect of relocation trauma on the recipient;

2. The proximity of the proposed placement to the present facility and to the family and friends of the recipient; and

3. The availability of necessary medical and social services as required by Federal and State rules and regulations.

(g) The procedure for involuntary transfer shall be as follows:

1. The NF shall submit to the Division a written notice with documentation of its intention to and reason for the involuntary transfer of a Medicaid recipient from the facility;

2. If the MDO determines that an involuntary transfer is appropriate, the recipient and/or the recipient's authorized representative shall be given 30 days prior written notice by the Division that a transfer is proposed by the NF and that such transfer will take effect upon completion of the relocation program specified in (h). The written notice to the recipient and/or authorized representative will advise of the right to a hearing. If the recipient requests a hearing within 30 days of the date of the written notice, the transfer is stayed pending the decision following the hearing. In those instances where the Division determines that an acute situation or emergency exists, the transfer shall take effect;

3. The Division will comply with the hearing time requirements in State and Federal rules and regulations, unless an adjournment is requested by the appellant;

4. The hearing shall be conducted at a time and place convenient to the recipient. Notification shall be sent to all parties concerned;

5. All hearings shall be conducted in accordance with the Fair Hearing procedures adopted by the Division.

(h) The relocation procedure shall be as follows:

1. In the event the relocation of a recipient is the final Division determination, the Division shall afford relocation counselling for all prospective transferees in order to reduce as much as possible the impact of transfer trauma.

2. The staff of the transferring and receiving NFs shall assist in the transfer process, although responsibility and authority for the coordination and transfer rests with the Division and will include:

i. Evaluation and review by appropriate MDO staff;

ii. Initial recipient, family or authorized representative counseling;

iii. Involvement of the recipient, family or authorized representative in the placement process with recognition of their choices;

iv. Recipient preparation and site visit for all able to do so within the capability of the transferring agent;

v. Accompaniment on the transfer day by a family member, authorized representative or attendant, unless the recipient otherwise requests;

vi. Follow-up counseling at the new location; and

vii. No right to an administrative hearing on a claim for failure to implement the requirements of this subsection for relocation counseling.

(i) No owner, administrator or employee of a NF shall attempt to have recipients seek relocation by harassment or threats. Such action by or on behalf of the NF may be cause for the curtailment of future admission of Medicaid recipients to the NF or for termination of the Medicaid Provider Agreement with the NF, depending upon the nature of the action.

(j) Any complaints regarding the handling of recipients relative to their transfer shall be referred to the Division for investigation and corrective action.

10:63-1.11 NF authorization process

(a) A Medicaid participating NF shall obtain authorization from the MDO prior to the admission of a Medicaid eligible or potentially Medicaid eligible individual. A Notification from Long Term Care Facility of Admission or Termination of a Medicaid Patient, form MCNH-33, shall be forwarded to the MDO serving the county where the NF is located, within two working days of admission or termination.

1. Pre-Admission Screening and Annual Resident Review (PASARR) shall be required for all individuals with mental illness (MI) or mental retardation (MR) who apply to, or reside in, Medicaid Certified NFs regardless of payment sources.

(b) The Medicaid RSN shall review the medical, nursing and social information obtained at the time of assessment, as well as any other supporting data to assess the individual's care needs and determine the appropriate setting for the delivery of needed services. The RSN will authorize or deny NF placement based on the service requirements of N.J.A.C. 10:63-2, and the feasibility of alternative placement and will designate the track of care.

1. For each NF applicant with MI or MR who is determined by the RSN to require NF placement, the State mental health or mental retardation authority (as appropriate) will determine whether the individual requires specialized services for MI or MR, prior to issuance of the NF placement approval.

i. For the MI diagnosed individual, the RSN will request that the Psychiatric Evaluation form (see Appendix I, incorporated herein by reference), provided by the mental health authority, be completed by a Board eligible/certified psychiatrist and forwarded to the Division of Mental Health and Hospitals for determination of need for specialized services.

ii. For the MR diagnosed individual, the MDO will contact the appropriate Division of Developmental Disabilities staff to complete the determination for specialized services. In the case of an individual dually diagnosed with MI and MR, the determination by the mental health authority is completed first.

iii. The results of the MI or MR determinations will be forwarded to the MDO and will be conveyed to the referring individual. If no specialized services are required, the NF approval letter will accompany the MI/MR agency report.

iv. Individuals having Alzheimer's Disease or related organic dementia as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised 1987 (DSM-III-R), shall be identified and the clinical records shall contain documentation which supports the diagnosis.

v. In the event the individual is determined by the State MI or MR authority to require specialized services, NF placement is inappropriate. The MI or MR authority will assist in finding appropriate placement/services for the individual.

vi. If the NF placement is denied based on failure to meet the NF requirements of N.J.A.C. 10:63-2, further screening by the State MI or MR authority is not required.

(c) As part of the PAS determination, the RSN will assign the track of care based on the following criteria:

1. Track I designates long-term NF care and shall be assigned in situations when long-term placement is required because clinical prognosis is poor, and when, during the assessment process, short-term stays are neither realistic nor predictable. Individuals designated for Track I services shall, at a minimum, require nursing services as required by N.J.A.C. 10:63-2.

i. A Track I designation shall not preclude the possibility of future discharge. The Medicaid Social Care Specialist will monitor those individuals with discharge potential and consult with the RSN who will reassess the individual and update the Health Services Delivery Plan (HSDP) for a track change if appropriate.

2. Track II designates short-term NF care and shall be assigned in those situations when comprehensive and coordinated NF services are required to stabilize medical conditions, promote rehabilitation, or restore maximum functioning levels and to provide a therapeutic setting which assures family counseling and teaching in preparation for discharge to the community setting.

i. Individuals designated for Track II services shall, at a minimum, require nursing services as defined by N.J.A.C. 10:63-2.

ii. Individuals shall also be assigned to short-term NF stays, in spite of technically complex care needs and guarded prognosis, particularly when the individual is motivated towards NF alternatives and/or when caregivers, through case management intervention, may obtain services which make return to the community a viable option.

3. Track III designates long-term care services in the community and shall be assigned in the case of:

i. Individuals who meet the requirements of N.J.A.C. 10:63-2, but can be appropriately cared for in the community with supportive health care services. These individuals may be eligible for Medicaid State Plan services or Home and Community-based Services Waiver Programs.

ii. Individuals who may not require NF services as defined by N.J.A.C. 10:63-2, but would appropriately benefit from a structured therapeutic care setting such as can be provided in a Residential Health Care Facility, a group or boarding home, or other similar facility.

(d) The following procedures are to be utilized by the referent when seeking authorization through PAS prior to the admission of an individual to a Medicaid participating NF.

1. PAS procedure from a hospital setting: The hospital discharge planner/social work staff shall be responsible for identifying a potentially Medicaid eligible individual, a Medicaid eligible individual or an individual subject to PASARR requirements who may be at risk of NF placement on the basis of the "At-Risk Criteria for Nursing facility Placement Referral to the Medicaid Office for PAS Evaluation" (see Appendix J, incorporated herein by reference). These individuals shall be referred by the hospital to the MDO for assessment by the Medicaid RSN and, if appropriate, the county welfare agency (CWA) for eligibility determination.

i. NF approval: The RSN will conduct a PAS assessment utilizing the PAS-1 (see Appendix K, incorporated herein by reference) assessment instrument, and will verbally advise the hospital discharge planner/social worker and patient/family of the assessment decision and, if appropriate, will advise that an evaluation for PAS MI/MR specialized services is required. For a non-PAS MI/MR individual, the RSN will leave a copy of the Health Service Delivery Plan (HSDP) (see Appendix L, incorporated herein by reference), which identifies the individual's current and potential health problems and required care needs, and signed PAS-7 approval letter (see Appendix M, incorporated herein by reference), with the discharge planner/social worker. The original approval letter, signed by the RSN, will be sent by the MDO to the individual/family with copies to the CWA. For PAS MI/MR individuals, the signed approval letter will only be forwarded to the individual/family, with a copy to the referent, after the determination has been made that no specialized services are required.

(1) A copy of the HSDP, approval letter and, in appropriate cases, the MI/MR evaluation and determination or documentation which supports the diagnosis of Alzheimer's Disease or related organic dementia will be attached to the hospital discharge material and forwarded with the individual to the admitting NF.

(2) If the individual being transferred will be eligible for Medicare benefits, the transfer shall, to the extent possible, be made to a Medicare participating (S)NF.

ii. In the case of a NF denial, the RSN will verbally advise the hospital discharge planner/social worker and the individual and/or the individual's family of the assessment decision. The RSN will leave a signed copy of the PAS-8 denial letter (see Appendix N, incorporated herein by reference) with the discharge planner/social worker. The assessment decision may also result in a denial of any other long-term care services covered by the Medicaid program. The original denial letter, signed by the RSN, will be sent to the patient/family by the MDO, with copies to the CWA.

2. Individuals potentially eligible for Medicaid who are currently residing in a Medicaid participating NF who did not meet PASARR criteria for MI/MR individuals prior to admission, and who may become eligible for Medicaid within six months, shall be referred by the NF to the MDO for a PAS evaluation via the MCNH-33

and PA-4 forms, utilizing the "At Risk Criteria for Nursing Facility Placement Referral To The Medicaid Office For PAS Evaluation."

i. If the RSN approves NF placement of a potentially eligible individual, a copy of the HSDP and approval letter will be given to the NF designate for attachment to the clinical record.

(1) The CWA will forward the MCNH-33 Form (Notification from Long-Term Care Facility of Admission or Termination of Medicaid Patient) to the MDO indicating a change in the individual's status from private pay to Medicaid status.

ii. If a potentially eligible individual is denied NF, a denial letter will be issued to the NF designate by the MDO.

(1) If the MDO receives a subsequent referral for NF approval for a previously denied individual, the RSN shall review the presenting evidence to ensure that a significant change in the individual's condition has occurred.

3. Individuals residing in the community who are Medicaid-eligible recipients or who may become eligible for Medicaid within six months of admission, or an individual subject to PASARR requirements as defined at 42 CFR 483.102, seeking admission to a Medicaid participating NF shall be referred to the MDO for preadmission screening and, if appropriate, to the CWA for eligibility determination.

i. Upon receipt of a PA-4 Form (Certification of Need for Patient Care in Facility Other than Public or Private General Hospital) or physician statement which substantiates diagnosis and describes the individual's care needs, the Medicaid RSN will conduct a PAS assessment in accordance with (b) above. The individual will receive notification from the MDO, in writing, of approval or denial of NF. Copies of the letter will be sent by the MDO to the CWA. For individuals residing in the community who meet the PASARR/MI criteria, the attending physician may complete the Psychiatric Evaluation form, in the event that a board-eligible/certified psychiatrist is not available.

ii. If NF placement is approved, the Medicaid social worker *[shall]* ***will*** assist the individual and/or family in selecting an appropriate NF.

(e) The procedure for NF continued stay shall be as follows:

1. The NF shall assess all individuals following admission, and periodically thereafter, utilizing the SRA in order to classify nursing service needs based on requirements contained in N.J.A.C. 10:63-2, and shall determine continued need for NF services, as follows:

i. Individuals currently residing in NFs who meet the PASARR criteria for MI or MR as defined under 42 CFR 483.102 will be evaluated through the Annual Resident Review (ARR) process, which mandates that a review and determination of need for specialized services be completed by the State MI/MR authority (DMH&H/DDD) not less often than annually (42 CFR 483.114).

(1) A PASARR Reassessment list, identifying those individuals subject to review by DMH&H and/or DDD, will be forwarded by the MDO to the NF. The NF shall update the NF PASARR Reassessment list to reflect deaths, transfers, discharges or changes in status affecting the criteria for PASARR requirements.

ii. For individuals with mental illness, the NF shall ensure that the attending physician completes the Psychiatric Evaluation form, provided by the DMH&H, within the identified time frame and forwards that evaluation to DMH&H. The NF shall maintain a copy of the psychiatric evaluation on the individual's clinical record. The NF is not required to repeat the supporting diagnostic evaluation on individuals with Alzheimer's Disease or related organic dementias, providing that the initial documentation is maintained on the individual's current NF clinical record. The psychiatric evaluation performed by the attending physician will be reviewed by a DMH&H psychiatrist to determine specialized service needs. If the individual is found to require specialized service, the DMH&H will contact the NF regarding treatment options.

iii. For individuals with mental retardation, staff from the Division of Developmental Disabilities (DDD) will visit NFs to perform MR evaluations. The MR evaluation process will include observation and/or interviews of each MR individual.

iv. Individuals who are identified on the NF PASARR Reassessment list but are hospitalized or on therapeutic leave, shall have the annual review completed by the NF following readmission to the NF.

2. The Medicaid RSN shall periodically assess Medicaid recipients, review the NF's assessments, patient classifications, and case mix reporting, and may recommend alternatives to NF stay or deny continued stay.

(f) Medical Social Care Specialists employed by the Division shall provide case management to Medicaid recipients, on an ongoing basis, following placement to monitor the provision of NF care in order to:

1. Assure that services are rendered as recommended by the HSDP and in accordance with the NF's evaluation of the individuals health service needs;

2. Assure the delivery of timely and coordinated services;

3. Provide direct or secure needed consultations with Medicaid professional or NF staff to promote service provision which is coordinated, effective and cost prudent; and

4. Facilitate discharge planning and promote appropriate placement to alternate care settings.

(g) Alternative care and discharge planning shall be conducted as follows:

1. Alternative care planning is the determination, initially and periodically, as to whether or not each Medicaid recipient requires initial placement or continued placement in an institutional setting and whether or not each recipient's nursing, social and other health care needs can be met through alternative institutional or non-institutional services.

i. The RSN will authorize initial NF services after consideration and rejection of possible means of alternate care. Similarly, the possibility of alternate means of care will be a prime consideration in every reassessment of the care required by the individual.

ii. The MDO staff will examine resident records for proof of continued vigilance and effort by the facility to utilize alternative means of care for all long-term residents.

(1) Recipients designated as track II (short-term) shall be monitored closely by MDO professional staff to assure active participation by the facility in the discharge planning process.

iii. If alternative care is available, accessible, and appropriate to the needs of the individual, the RSN shall deny the request for NF services.

iv. If an appropriate alternative plan of care becomes available and accessible for a person already approved for NF care who is awaiting placement, the RSN shall rescind the authorization for NF services.

v. Special Care NF (SCNF) residents who continue to require long-term supportive and restorative nursing services and therapeutic treatment for continued maintenance, in the absence of significant clinical change or special service needs, shall be approved for conventional NF placement (adult or pediatric) by the RSN after consideration and rejection of all possible means of alternate care.

(h) The NF shall notify the MDO, via the MCNH-33 Form, of all instances involving the termination of nursing facility services, which include but are not limited to, discharge, death, transfer and ineligibility.

(i) Authorization of out-of-State placement shall include the following additional conditions:

1. Authorization of out-of-State long-term care shall be prior authorized by the Division and shall be considered only when a required long-term care service is not available in New Jersey.

2. The out-of-State facility shall be licensed as a (S)NF by that state and the rate of reimbursement shall not exceed that authorized by the Title XIX program in the state in which the facility is located, or the reimbursement rate authorized by the New Jersey Health Services Program, whichever is lower.

3. Requests for prior authorization of out-of-State placement shall be accompanied by sufficient evidence of medical necessity to substantiate the request. The Division will review the records provided to determine the need for long-term care services and to determine the appropriateness of placing the recipient in a NF in New Jersey. The request shall be submitted to:

Department of Human Services
Division of Medical Assistance and Health Services
Office of Medical Care Administration
Mail Code #8, CN 712
Trenton, New Jersey 08625-0712

4. Prior to submitting a request for out-of-State placement, the recipient shall comply with the requirements of the pre-admission screening as defined in this subchapter.

10:63-1.12 Clinical audit

(a) Clinical audit is a method of utilization control under the enforcement authority of Section 1902(a)(30)(A) of the Social Security Act, to monitor the continued utilization of and payment for NF care and services reimbursable under the Medicaid program. Clinical audit has as its major component verification of NF services provision.

(b) Professional staff from the Medicaid District Office (MDO) shall periodically conduct a post payment review of New Jersey Medicaid recipients for whom NF services have been provided. The review shall principally involve assessment of the Medicaid recipient's care needs and evaluation of treatment outcomes, based on direct observation of the recipient and examination of clinical and related records. The focus of the review shall be on the following areas:

1. Comparative analysis of NF claim reporting to recipient's identified care needs;

2. Appropriate utilization and provision of required services; *[amd]* ***and***

3. Effectiveness and quality of provided services.

(c) Enforcement action will be taken by the Division as follows:

1. As a result of the clinical audits, aberrations in the reporting and/or provision of services and failure to comply with the requirements of this chapter shall be documented and reported to the NF for corrective action.

2. *[If a]* ***A*** pattern of practice of significant proportion *[is documented]* wherein the NF has provided items or services at a frequency or amount determined unnecessary, or of a quality that does not meet the standards outlined in this chapter, *[this]* will result in an increase, reduction or termination of services, and ultimate restriction of the NF participation in the Medicaid Program.

10:63-1.13 Clinical and related records

(a) An individual clinical record shall be maintained for each Medicaid recipient covering his or her medical, nursing, social and related care in accordance with accepted professional standards and licensing standards as set forth by the Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39. All entries on the clinical record shall be current, dated and signed by the appropriate staff member and readily available at the appropriate nurses' station for review by DMAHS staff.

(b) The clinical record of a deceased resident shall be properly completed. It shall include:

1. Written reports of visits made by the physician during the critical stage of illness;

2. Written documentation of death pronouncement completed by the qualified health professional as specified by the NF's policies and procedures;

3. Complete nurse's notes containing all necessary and pertinent information documenting the resident's condition during the illness and apparent demise, notification of physician and next of kin;

4. Autopsy records where appropriate; and

5. A written record of the disposition of the body of the deceased individual.

(c) All clinical records of discharged residents shall be completed promptly and shall be filed and retained for the duration required by N.J.S.A. 26:8-5.

(d) If the resident is transferred to or from another health care facility a copy of the resident clinical record or an abstract thereof, including the most recent HSDP, SRA and current copy of PASARR Specialized Service review for MI/MR individuals or the documentation which supports the diagnosis for individuals with Alzheimer's disease or related organic dementia, shall accompany the resident.

(e) All information contained in the clinical record shall be treated as confidential and shall be disclosed only to authorized persons.

(f) If the NF does not have a full or part-time medical records librarian, an employee of the facility shall be assigned the responsibility for assuring that records are maintained, completed and preserved in accordance with accepted procedures. The designated individual shall be trained by, and must receive regular consultation from, a medical records librarian who is under written contract with the facility.

(g) Billing and financial records rules are as follows:

1. The Fiscal Agent Billing Supplement identifies the procedures required for the general use of the billing transaction forms and computer generated forms. All appropriate reports shall be retained until audited by the Division.

2. The facility shall establish and maintain appropriate and accurate records and accounts of all receipts and disbursements of Medicaid recipient funds, which shall be subject to review and fiscal audit by the State of New Jersey as may be required. A recipient shall be credited with the maximum amount of personal needs allowance funds authorized by Federal or State law for each month that such records or accounts are unavailable.

3. Any and all financial and other records relating to recipient's personal needs allowance accounts, income, cost studies, and billings to the Medicaid program shall be maintained and retained in accordance with professional standards and practices for the longest of the following periods of time:

i. At least one year after the resolution of audit findings or the conclusion of recovery proceedings arising out of those audit findings (whichever is later) for the records that are audited;

ii. One year after the conclusion of all hearings, appeals and/or other litigation with respect to audits of such records; or

iii. Seven years.

4. The records described in (g)3 above shall be made available for audit upon the request of appropriate State and/or Federal personnel or their agents.

5. Claims for NF services that are older than 12 months will be rejected.

i. A claim for payment for services shall be received by the fiscal agent no later that one year after the "from date of service" on the claim form (TAD). An adjustment request FD999 (see Appendix Q) for a paid claim shall be honored for a period of six months from the original date of payment;

ii. For purposes of this time limitation, a claim is the submission of a TAD, provided by the fiscal agent for the New Jersey Medicaid program, indicating a request for reimbursement for authorized NF services provided to an eligible recipient and which has been returned to the fiscal agent within the time limit specified. An adjustment form (FD999) or an MCNH-33 shall not constitute a claim for payment;

iii. Other timely filing information is located in the Administrative chapter at N.J.A.C. 10:49-7.2, "Timeliness of claim submission and inquiry".

10:63-1.14 Absence from facility due to hospital admission or therapeutic leave; bed reserve

(a) The bed reserve policy for hospital admission is as follows:

1. The NF shall reserve and hold the same room and the same bed of the Medicaid recipient transferred to a general or psychiatric hospital for a period not to exceed 10 days. The NF shall determine the individual's status or whereabouts during or after the 10 day bed reserve period.

i. If the resident is not readmitted to the same room or the same bed or the same NF during a bed reserve period, the NF requesting bed reserve reimbursement shall record on the resident's chart and make available for Division review, a justification for the action taken. Pending outcome of the Division's review, the facility may be subject to forfeiture of bed reserve reimbursement.

ii. Said reserved bed shall remain empty and shall not be occupied by another individual during the bed reserve period.

2. Reimbursement, not to exceed 10 days, shall be at the rate the NF received prior to the transfer to the hospital.

i. The recipient's available monthly income shall be applied against the per diem cost of care.

3. If readmission to the NF does not occur until after the 10 day bed reserve period, the next available bed shall be given to the Medicaid recipient. The recipient's name shall be placed on the chronological listing of persons waiting admission/readmission to the NF, and the recipient waiting for readmission shall have priority for the next available bed in the facility.

4. The bed reserve policy applies to any person in the NF eligible to receive Medicaid benefits; for example, a Medicare/Medicaid recipient who, at the time of transfer to the hospital, might be eligible for long-term care services under Medicare benefits.

5. Admission procedures (see N.J.A.C. 10:63-1.8) shall be followed when the Medicaid recipient has been readmitted following a period of hospitalization.

(b) Requirements concerning absence due to therapeutic leave are as follows:

1. The Medicaid program will reimburse NFs their per diem rate for reserving beds for Medicaid recipients who are absent from the facility on therapeutic leave up to a maximum of 24 days annually. For this purpose, annually is defined as a calendar year beginning on January 1 and ending on December 31. Further, no portion of unused leave days may be carried over into the next calendar year. The facility shall maintain accurate leave day records on the Medicaid recipient's chart, for review by the Division.

2. A therapeutic leave shall include therapeutic or rehabilitative home and community visits with relatives and friends. Home visits shall be limited to therapeutic home visits only and shall not include hospital visits.

3. The absence of a Medicaid recipient from the facility for the purpose of therapeutic leave shall be authorized in writing by the recipient's attending physician and shall be included in the recipient's plan of care.

4. In those instances where a recipient is in more than one NF within a calendar year, the receiving facility shall determine the number of therapeutic leave days that have been allowed for payment by the sending facility within the same calendar year. A record of any leave days shall be a part of the information provided on the Patient Information Transfer Form.

5. The facility shall reserve and hold the same room and bed for the Medicaid recipient on a therapeutic home visit. Said bed shall not be occupied by another individual during the period of time in which the Medicaid recipient is on such leave.

6. Where a recipient's condition or situation requires more than 24 therapeutic leave days annually, as determined by the recipient's attending physician, prior authorization for the additional days shall be obtained from the MDO. The request for prior authorization shall be submitted in writing to the MDO Director, over the signature of the attending physician. A facility shall be reimbursed its per diem rate for reserving a bed for a Medicaid recipient for any additional days so authorized.

10:63-1.15 Complaints

(a) The Division will receive, document and investigate complaints from multiple sources and take appropriate corrective action as required. It is the Division's policy that the source of the complaint be held confidential, unless disclosure permission is obtained from the complainant.

(b) In addition to investigation by the Division, when complaints against a facility indicate the facility's failure to correct previously reported survey deficiencies or to comply with established licensure and Medicare/Medicaid certification standards, such complaint reports will be forwarded to the New Jersey State Department of Health and the Office of the Ombudsman for the Institutionalized Elderly for review and action. Any complaints or reports received by the Division indicating legal violations will be referred to the office of the Attorney General for review and action, as required.

10:63-1.16 Utilization of resident's income for cost of care in the NF and for PNA

(a) After provision for the resident's Personal Needs Allowance (PNA) is met, and then after provision for other allocations such as maintenance of spouse and/or dependent's home are satisfied, the remainder of the Medicaid recipient's income shall be applied to the cost of care in the NF, which includes per diem, bed reserve and other allowable expenses.

1. The amount of income which shall be collected by the NF from the recipient, recipient's family or Representative Payee (if any) will be established in the process of determining eligibility and identified by form PA-3L, Statement of Income Available for Medicaid Payment, issued by the CWA. The NF shall collect all of the recipient's income to offset the Medicaid payment.

2. The NF shall notify the CWA immediately whenever there is a change/difference in any income source, as well as when any additional assets or resources come to the attention of the NF.

3. The New Jersey Medicaid program encourages families or any other concerned individual(s) to make voluntary monetary contributions to the State of New Jersey on behalf of Medicaid recipients. Inquiries should be directed to the Division of Medical Assistance and Health Services, Bureau of Administrative Control, Mail Code #6, CN-712, Trenton, New Jersey 08625-0712.

(b) For all institutionalized aged, blind, and disabled individuals who are eligible for Medicaid, a designated amount of income as determined by State law (N.J.S.A 30:4D-6a) shall be protected for personal needs allowance.

1. Certain individuals in a NF have no income, or insufficient income to provide a maximum amount of PNA. For those individuals not already deemed eligible for SSI, the facility shall insure that the application for SSI benefits has been made. PA-3L's for those recipients who only receive an SSI check can be obtained from the Bureau of Claims and Accounts, CN 712, Trenton, New Jersey 08625-0712.

(c) Each Medicaid recipient residing in a NF shall be permitted to accumulate a sum of money from the PNA which, when combined with other resources retained by or for the person, does not exceed the maximum resource standard in N.J.A.C. 10:71-4.5.

1. If the NF is handling the PNA, the facility shall closely monitor the PNA account and inform the recipient and/or his or her representative when the amount comes within $200.00 of the resource eligibility cap. If the PNA is in excess of the resource standard defined in N.J.A.C. 10:71-4.5, the recipient and/or his or her representative shall be advised of his or her right to reduce the excess monies and that the recipient may be terminated from Medicaid coverage, unless the amount in excess of the resource standard is expended.

2. The recipient may choose to reduce excess PNA by applying some of the accumulated PNA toward past expenditures paid for his or her care by the Medicaid program. Checks payable to the "Treasurer, State of New Jersey", may be directed to the Chief, Bureau of Administrative Control, Division of Medical Assistance and Health Services, Mail Code #6, CN-712, Trenton, N.J. 08625-0712.

(d) Standards for management of PNA shall comply with Federal regulations at 42 CFR 483.10(c) and State licensing requirements at N.J.A.C. 8:39-4.1.

(e) The personal needs allowance (PNA) shall be used as follows:

1. The PNA is intended to meet the personal and incidental needs of a recipient residing in a NF, in keeping with his or her wishes. The PNA is not intended to be applied against outstanding balances for the cost of care.

2. The NF shall not charge for items the recipient has not requested, nor for any items about which the recipient has not been informed in advance that he or she will be billed.

3. NF's shall not charge for any item or service reimbursable under the Medicaid program. A facility may charge the difference between the cost of the brand a recipient requests and the cost of the brand generally provided by the facility, if the facility chooses to provide the requested brand. NFs shall not require the purchase of non-covered items as a condition for admission.

4. The basic items that NFs shall make available for recipient use under the Medicaid program include:

i. Personal hygiene item*s* such as soap, facial tissues, towels, washcloths, shaving materials (lotion, razor, razor blades), combs,

hair brushes, shampoo, tooth brushes, tooth paste, laundry services, denture cleaner and adhesive, dental floss, deodorant, incontinent supplies, sanitary napkins, disinfecting soaps or specialized cleaning agents, when medically indicated to treat special skin problems or to fight infections;

ii. Durable medical equipment such as wheelchairs, gerichairs, crutches, canes, walkers, commodes, Hoyer lifts, mattresses*[, hearing aids, dentures, glasses]*;

iii. Services, including electricity, TV antenna or cable hook-up when needed for acceptable reception, banking charges that are not deducted from the interest; and

iv. Basic room furnishings, such as chairs, table, fans, bed-spreads, curtains.

5. *[NFs may not charge mark-ups for services.]* The facility may not mandate TV rental.

6. Examples of personal items for which PNA is intended are:

i. Small purchases, such as cosmetics, electric shavers, hair spray, special lotions or powders, clothes brushes, tobacco or candy;

ii. Personal items, such as clothing, jewelry, watches, accessories, haircuts, beauty parlor services, newspapers or magazines;

iii. Personalization of living area with items requested by the resident, such as bed-spread, rug, pictures, furniture, radio or TV;

iv. Community contacts, such as home visits, transportation, trips to special events or places of interest, telephone calls, stationery, stamps or gifts;

v. Hobbies, such as games, photographic materials, aquariums, plants or audio or video tapes.

7. The PNA may be used to continue a bed reserve, if a recipient transferred to a hospital is unable to return within the 10-day bed reserve period. Payment shall be strictly voluntary, however, and shall be permitted only when the recipient's right to return to the NF (see N.J.A.C. 10:63-*[1.8]***1.4***) has been fully explained to the recipient and his representative. The recipient's request to use the PNA for this purpose shall be in writing. Under no circumstances shall the facility use overt or implicit coercion in this matter.

(f) A uniform accounting system shall be maintained by the facility as follows:

1. In compliance with Federal and State rules and regulations the NF *[sahll]* ***shall*** accept fiduciary responsibilities for a Medicaid recipient's PNA if the recipient and/or authorized representative requests that his or her PNA be managed by the facility. The NF shall establish and maintain a ystem that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each recipient's personal funds entrusted to the facility on the recipient's behalf. In compliance with Federal and State rules and regulations, the facility shall deposit any resident's personal funds in excess of $50.00 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts. The facility shall credit all interest earned on the resident's account to his or her account.

2. The PNA account and related supporting information, such as receipts, canceled check, bank statement, check register shall be maintained at the facility. The Division recommends that a direct deposit system be utilized.

3. A general ledger control account shall be established to record the total amount of PNA held in escrow by the facility.

4. A subsidiary ledger shall be established whereby each recipient's deposits and disbursements are recorded and the total of the recipient's balances reconciled to the general ledger control account each month, or as last reported by the banking facility.

5. When recording the recipient's income in a cash receipts journal, the PNA shall be segregated from the available income applied to the cost of the recipient's care. Within five days of receipt, the PNA shall be deposited directly into the interest bearing checking or savings account restricted for PNA. The general ledger control account shall reflect a credit posting to indicate the total PNA received during the month. Each recipient's subsidiary ledger account shall also be posted to record the deposits to the appropriate account.

6. To facilitate the recipient's access to the PNA, a portion of the total cash may be transferred periodically from the segregated checking/savings account to a petty cash fund. Such petty cash fund shall be maintained as an imprest fund. The amount of the imprest fund shall be reasonable and necessary for the size of the facility and needs of the recipients.

7. In compliance with Federal and State rules and regulations, the facility shall provide, at least quarterly, to the recipient and/or his or her authorized representative, an accounting of all transactions with regard to the PNA account. The amount of balance in the recipient's account shall be available for the recipient and/or his or her authorized representative on request.

8. Management of funds shall be as follows:

i. For recipients who are able to manage their funds, a family member must have authorization in writing from the recipient for a specific amount before funds are disbursed from the PNA.

ii. Recipients who are unable to manage their funds should have representative payees appointed.

iii. Family members should withdraw funds only on presentation of receipts showing items purchased for the recipient, unless this appears to be a financial hardship for the family member.

iv. In cases where there is an outside representative payee, and the recipient appears to be denied access to his PNA funds, or personal items are not being purchased for him, the facility shall take steps to ensure that the recipient's right to his PNA benefits is restored. Such steps may include warning letters to the representative payee, use of the NF attorney, and/or referrals to the Office of the Ombudsman for the Institutionalized Elderly and the Social Security Administration. In such cases, the facility may wish to request representative payeeship.

9. When drawing checks or cash to make disbursements from the recipient's PNA account, either an original invoice or a signed receipt from the recipient or an authorized representative shall be retained by the facility and referenced to the recipient's account. The receipt must stipulate the use of the funds or specify the items purchased.

10. When the facility draws checks on behalf of a recipient or reimburses the petty cash fund, disbursements of PNA shall be segregated from the operating expenses of the facility. At the end of each month, the general ledger control account shall be charged for the total PNA disbursed and each recipient's subsidiary ledger account *[sahll]* ***shall*** reflect the monthly disbursements on that recipient's behalf.

11. Accumulated interest is the property of the recipient. Although a recipient's PNA may not be used for banking service charges, interest from the account may be used for this purpose.

12. Upon discharge or transfer to another NF or other place of residence, the facility shall provide the recipient with a final accounting statement and a check in the amount of the recipient's close-out balance within seven working days of the transfer; however, a recipient transferred to another NF shall be given the option of authorizing the sending facility in writing to transfer any balance to the recipient's account at the receiving facility. The transfer of a PNA account from one facility to another shall be documented in writing, with a copy given to the recipient and/or his or her authorized representative. A recipient discharged or transferred shall have the right to the return of his or her personal property, such as, television, radio or other items.

13. Unclaimed PNA funds left behind by a discharged recipient who cannot be located or where the authorized representative cannot be located, shall be forwarded within 30 days to the Bureau of Administrative Control, Mail Code #6, CN 712, Trenton, New Jersey 08625-0712.

14. Within 10 days after the death of a Medicaid recipient, whether death occurred in the NF, in a hospital, ***or*** during a period of therapeutic leave, the NF shall send a written notice regarding the existence of PNA funds both to the CWA and the individual identified by the recipient as the person to contact. A NF shall exercise all reasonable efforts to locate and notify any family, representative payee or interested person acting on behalf of the deceased Medicaid recipient.

i. The facility shall advise the contact person or responsible person that any claims made for PNA funds must be directed to the NF.

When no CWA claim exists, the executor(rix) or administrator(rix), upon presentation of a letter of administration from the County Surrogate's Office, must be issued a check made payable to the estate of the deceased Medicaid recipient for the PNA funds. A check for the funds shall not be issued unless a Surrogate's letter is presented, except when a recipient dies intestate, leaving no surviving spouse, and the total value of the estate is less than $5,000; in such case, an affidavit of administration in accordance with N.J.S.A. 3B:10-4 is acceptable.

ii. If there is an outstanding funeral bill which is deemed reasonable and there is no claim by the CWA or an executor/administrator, the NF may directly reimburse the funeral director from the PNA funds.

iii. If no claim for PNA funds is made to the NF within 30 days of death, a check made payable to the "Treasurer, State of New Jersey" shall be forwarded to the Bureau of Administrative Control, Mail Code #6, CN-712, Trenton, New Jersey 08625-0712. The following information shall be included:

(1) An identification of the funds as unclaimed PNA funds of the deceased Medicaid recipient;

(2) Recipient's name;

(3) HSP (Medicaid) Case Number;

(4) Date of death; and

(5) Amount enclosed for that recipient.

iv. If a claim is received by the NF after the PNA funds have been forwarded to the Bureau of Administrative Control and within five years of the Medicaid recipient's death, the claim must be referred to the Bureau for processing. After five years, all claims received by the NF must be referred to the State Treasurer.

v. Any transactions involving distribution of a deceased Medicaid recipient's PNA funds must appear on the NF's record for audit purposes.

(g) Questions regarding personal needs allowance administration, for example, procedures, policy, or use of funds, should be directed to the Director of the Medicaid District Office serving the NF.

10:63-1.17 Residents rights

(a) The NF shall ensure that each resident and his ***or her*** representative are informed of their rights upon admission and provided with a written statement of all resident rights, in accordance with 42 CFR 483.10 through 483.15, the Nursing Home Resident Rights Act, N.J.S.A. 30:13-1 et seq. and N.J.A.C. 8:39-4.1.

(b) The NF shall ensure that every resident who is entitled to Medicaid benefits shall receive a written statement of the services covered in the Medicaid per diem rate, those services required to be offered by the NF on an as-needed basis, and any charges not covered under the Medicaid program while in the facility.

(c) The NF shall notify each resident of his or her right under State law to make decisions concerning his medical care and his or her right to formulate an advance directive in compliance with the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201 and the advance directive provisions of the Omnibus Reconciliation Act of 1990, effective December 1, 1991 and Department of Health licensing requirements at N.J.A.C. 8:39-9.5.

10:63-1.18 Medicare/Medicaid

(a) The New Jersey Medicaid Program will reimburse for NF services provided to combination Medicare/Medicaid recipients only after Medicare covered benefits have been fully utilized or when medically necessary services are not covered by the Medicare Program. (Exceptions—see (e)2i below).

(b) Only skilled nursing facilities (SNFs), as defined in N.J.A.C. 10:63-1.2, certified by the Health Care Financing Administration (HCFA) and the New Jersey Department of Health are eligible to be reimbursed by Medicare for services rendered consistent with all Medicare requirements.

(c) Medicare covers eligible beneficiaries needing post-hospital skilled nursing care when they are placed in Medicare certified facilities.

(d) When Medicare benefits are terminated or exhausted because of coverage limitations, Medicaid may be billed on behalf of eligible recipients, provided that:

1. The services are allowable and provided within the standards and procedures established by the New Jersey Medicaid Program as described in this manual.

2. The certified facility provides written documentation of a denial of Medicare coverage:

i. The certified facility shall indicate for all Medicare eligible beneficiaries through status reports, that the effort was made to apply for Medicare reimbursement prior to Medicaid billing. Status reports affirming denial shall be obtained from the Medicare Fiscal Intermediary. Status reports shall consist of:

(1) A copy of form Inpatient Hospital and Skilled Nursing Facility Admission and Billing SSA-1453; or

(2) A notice of denial of coverage form Notice of Medicare Claim Determination SSA-1954 or form Notice of Medicare Claim Determination SSA-1955; or

(3) The facility statement of non-coverage, signed by an administrator or officer, which shall be accepted only under the limitation of benefits.

(e) Medicare Part A coinsurance may be paid by the New Jersey Medicaid Program, but the total combined Medicare/Medicaid reimbursement may never exceed the facility's Medicaid Nursing Facility rate. If the Medicaid recipient has available income during the coinsurance period of Medicare eligibility, it shall be used to offset the coinsurance charges, prior to billing Medicaid. New Jersey Medicaid will pay Part B Medicare insurance premiums for all eligible Medicare-Medicaid recipients. Claims for Part B services shall be billed to Medicaid only after Medicare benefits have been exhausted. Medicare timely filing requirements shall be met prior to the reimbursement of coinsurance by Medicaid.

2. Coinsurance and deductible payment shall be made as follows:

i. Medicaid will not assume responsibility for payment of coinsurance for certain services under Part B Medical Insurance when the basis of payment is fee for service (for example, physicians or podiatrists). However, coinsurance is paid for certain other Part B Provider services where the basis for payment is not fee for service (for example, durable medical equipment), but only in those instances where the Medicare allowable reimbursement is less than the Medicaid established reimbursement for those items.

ii. Medicaid will assume responsibility for deductible payments for Part B Medical Insurance services.

SUBCHAPTER 2. NURSING FACILITY SERVICES

10:63-2.1 Nursing facility services; eligibility

(a) Eligibility for nursing facility (NF) services will be determined by the RSN, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic NF services described in N.J.A.C. 10:63-2.2.

1. Individuals requiring NF services may have unstable medical, emotional/behavioral and psychosocial conditions which require ongoing nursing assessment, intervention and/or referrals to other disciplines for evaluation and appropriate treatment. Typically, adult NF residents have severely impaired cognitive and related problems with memory deficits and problem solving. These deficits severely compromise personal safety and therefore, require a structured therapeutic environment. NF residents are dependent in several activities of daily living. Dependency in activities of daily living (ADL) may have a high degree of individual variability. Each separate ADL may be classified as either independent, requiring some assistance, or totally dependent.

i. Children requiring NF services exhibit functional limitations identified either in terms of developmental delay requiring nursing care over and above routine parenting or are limited in terms of specific age-appropriate physical and cognitive activities, functional abilities (ADL) or abnormal behavior, as demonstrated by performance at home, school or recreational activities.

(1) Children who have achieved developmental milestones within appropriate time frames and who require only well child care and/or treatment of acute, time limited illnesses or injuries shall not be eligible for NF services.

2. NF residents shall be those individuals who require services which address the medical, nursing, dietary and psychosocial needs

that are essential to obtaining and maintaining the highest physical, mental, emotional and functional status of the individual. Care and treatment shall be directed toward development, restoration, maintenance, or the prevention of deterioration. Care shall be delivered in a therapeutic health care environment with the goal of improving or maintaining overall function and health status. The therapeutic environment shall ensure that the individual does not decline (within the confines of the individual's right to refuse treatment) unless the individual's clinical condition demonstrates that deterioration was unavoidable.

(b) All Medicaid participating NFs shall provide or arrange for services in accordance with statutory and regulatory requirements under 42 CFR 483 and Department of Health licensing rules at N.J.A.C. 8:39. Reimbursement of NF services is discussed in N.J.A.C. 10:63**-3***.

(c) NF services shall be delivered within an interdisciplinary team approach. The interdisciplinary team shall consist of a physician and a registered professional nurse and may also include other health professionals as determined by the individual's health care needs. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

10:63-2.2 Delivery of nursing services

(a) The NF shall provide 24-hour nursing services in accordance with the minimum standards set forth by the New Jersey Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39, which is incorporated herein by reference. Employing the service-specific case mix system to classify recipients with similar care requirements and resource utilization, the NF shall provide nursing services by registered professional nurses, licensed practical nurses and nurses aides on the basis of the total number of residents multiplied by 2.5 hours/day; plus the total number of residents receiving each of the following services:

1. Tracheostomy	1.25 hours/day
2. Use of respirator	1.25 hours/day
3. Head trauma stimulation/advanced neuromuscular/orthopedic care	1.50 hours/day
4. Intravenous therapy	1.50 hours/day
5. Wound care	0.75 hour/day
6. Oxygen therapy	0.75 hour/day
7. Nasogastric tube feedings and/or gastrostomy	1.00 hour/day

*[i.]**(b)* Nursing service requirements ***in (a) above*** shall be classified and recorded for each individual Medicaid recipient on Section Q (see Appendix O, incorporated herein by reference) of the New Jersey Standardized Resident Assessment (SRA) instrument. Section Q *[(Appendix O)]* shall be reviewed and revised to reflect changes in the recipient's nursing service requirements at the time of each mandated review and revision of the SRA during the comprehensive assessment process and development of the interdisciplinary care plan. Section Q *[(Appendix O)]* is signed and dated by the registered professional nurse who completes the assessment. In the absence of necessary change to Section Q at the time of review, the current form may be signed and redated indicating that no change in nursing service requirements was identified.

*[(b)]**(c)* The NF provision of 2.5 hours/day means services provided to Medicaid recipients who are chronically or sub-acutely ill and require care for these entities, disease sequela or related deficits.

*[(c)]**(d)* The 2.5 hours of nursing care shall incorporate the principles of nursing process which consists of ongoing assessment of the recipient's health status for the purpose of planning, implementing and evaluating the individual's response to treatment.

1. In his or her capacity as coordinator of the interdisciplinary team, the registered professional nurse, who has primary responsibility for the recipient, shall perform, beginning on the day of admission, a comprehensive assessment of the recipient to provide, communicate and record within the SRA: baseline data of physiological and psychological status; definition of functional strengths and limitations; and determination of current and potential health care needs and service requirements.

i. In addition to clinical observations and hands-on examination of the Medicaid recipient, the licensed nurse shall review the HSDP and any available transfer records. The assessment data shall be coordinated by the registered professional nurse with oral or written communication and assessments derived from other members of the interdisciplinary team and shall be consistent with the medical plan of treatment. The initial comprehensive assessment (SRA) shall be completed no later than 14 days after admission and on an annual basis thereafter. If there is a significant change in the recipient's status, the NF shall complete a full comprehensive assessment involving the SRA. The registered professional nurse shall analyze the data and utilize the resident assessment protocols (RAPs) to focus problem identification, structure the review of assessment information and develop an interdisciplinary care plan which documents specific interventions unique to the individual, which define service requirements and facilitate the plan of treatment.

2. The interdisciplinary care plan shall identify and document the recipient's problems and causative or contributing factors and is derived from the comprehensive assessment. The plan shall be coordinated and certified by the registered professional nurse with active participation of the Medicaid recipient and/or significant other. The scope of the plan shall be determined by the actual and anticipated needs of the Medicaid recipient and shall include: physiological, psychological and environmental factors; recipient/family education; and discharge planning. The care plan shall be a documented, accessible record of individualized care which reflects current standards of professional practice and includes:

i. Identified problems (needs) and contributing factors;

ii. Specific and measurable objectives (outcomes) which provide a standard for measurement of care plan effectiveness;

iii. The plan of care shall emphasize interventions which prevent deterioration, maintain wellness and promote maximum rehabilitation; and

iv. The initial interdisciplinary care plan shall be completed and implemented within 21 days of admission and shall be reviewed regularly and revised as often as necessary, according to all significant changes in a recipient's condition and to attainment of and/or revisions in objectives as indicated. Review and appropriate revision shall be done at least every three months and whenever the clinical status of the recipient changes significantly or requires a change in service provision.

3. Implementation of the interdisciplinary care plan and delivery of nursing care shall be documented within nursing progress (clinical) notes, which shall establish a format for recording significant observations or interaction, unusual events or responses, or a change in the Medicaid recipient's condition, which requires a change in the scope of service delivery. Specific reference shall be made to the recipient's reactions to medication and treatments, rehabilitative therapies, additional nursing services in accordance with N.J.A.C. 10:63-*[2.4(a)]***2.2(a)***, observation of clinical signs and symptoms, and current physical, psychosocial and environmental problems. Nursing entries shall be made as often as necessary, based on the Medicaid recipient's condition and in accordance with the standards of professional nursing practice.

4. Assessment review is the process of ongoing evaluation of health service needs and delivery. Nursing actions shall be analyzed for effectiveness of care plan implementation and achievement of objectives. The registered professional nurse, along with the Medicaid recipient and/or significant other, shall participate with the team in the ongoing process of evaluation, reordering priorities, setting new objectives, revision of plans for care and the redirection of service delivery.

i. The assessment review process shall be conducted quarterly. Conclusions shall be documented on the SRA quarterly review, and the interdisciplinary care plan shall be updated to provide a comparison of the Medicaid recipient's previous and present health status, and to outline changes in service delivery and nursing interventions. The assessment review shall identify the effectiveness of, and the Medicaid recipient's response to, therapeutic interventions, and, whenever possible, the reason for any ineffectiveness in recipient responses.

*[(d)]**(e)* Restorative nursing is a primary component in the delivery of the 2.5 hours of nursing care. Restorative nursing addresses preventable deterioration and is directed toward assisting each recipient to attain the highest level of physical, mental, emotional, social and environmental functioning. Restorative nursing functions shall include:

1. Supervision, direction, assistance, training or retraining in all phases of activities of daily living to promote independence or growth, and to develop or restore function to the extent the individual is able (bathing, dressing, toileting, transfers and ambulation, continence, and feeding);

2. Discharge planning which focuses on assessment of the caregiving potential of the resident, family or significant other. The nurse shall, along with other members of the interdisciplinary team, extend the assessment beyond the needs of the resident to include assessment of the caregivers' ability to provide long-term care and their need for information on normal growth, development or aging; care needs; medication and treatment; home safety and the need for additional supports, both formal and informal, in preparation for the resident's return to the community;

3. Proper positioning of the individual in bed, wheelchair or other accommodation to prevent deformities and pressure sores;

4. Program of bowel and bladder retraining for incontinence, in accordance with the individual's potential for restoration;

5. Range of motion exercises, active and passive, as necessary;

6. Follow-up care as required for physical therapy, occupational therapy and/or speech-language pathology services;

7. Follow-up care as required for uncomplicated plaster care; assistance with adjustment to and use of prosthetic and/or orthotic devices;

8. Routine care and maintenance of ostomies (that is, cleansing and appliance change and instruction for self care);

9. Resident education relative to health care, special diet, and, if ordered by the physician, self-administration of medication;

10. Encouragement of resident participation in, and monitoring resident response to, individual or group activities and therapies for psychosocial maintenance and restoration; and

11. In a NF providing care to children, the application of the principles of growth and development in planning, implementing and evaluating care needs; consideration of the child's physical and developmental functioning with respect to his/her need for recreational and educational stimulation and growth; and application of behavior modification techniques in the management of developmental and disability-related behavior problems.

*[(e)]**(f)* The 2.5 hours of nursing care provided shall also include, but not be limited to, the following nursing procedures, therapies and activities:

1. Safe and appropriate administration of medications;

2. Emergency care (for example, oxygen, injections, resuscitation);

3. Observation, recording, interpretation and reporting of vital signs, height and weight;

4. Intake and output recording, as clinically indicated;

5. Catheter care including intermittent or continuous bladder irrigations, intermittent catheterizations, and use of other drainage catheters;

6. Preparations for laboratory procedures and collection of laboratory specimens;

7. Telephone pacemaker or electrocardiogram checks;

8. Terminal illness management, when there is need for supportive services and intensive personal care;

9. Heat or cold treatments as ordered by the physician;

10. Risk determination for pressure sores using a standardized assessment instrument and implementation of necessary preventive measures as clinically indicated (for example, mattress overlays or cushions, positioning schedule, range of motion, nutrition support, skin care and skin checks);

11. Care of Stage I and II pressure sores, as follows:

i. A Stage I pressure sore is an area of redness which does not respond to local circulatory stimulation. It involves the epidermis. No break in the skin is evident;

ii. A Stage II pressure sore is a partial thickness, loss of skin layers with epidermis and possibly dermis involvement. A shallow ulcer or blister appears, and the site is free of necrotic tissue;

iii. An individual who enters the NF without pressure sores should not develop them unless the individual's condition demonstrates pressure sores were unavoidable. Treatment of superficial skin tears, wounds, excoriations and lesions shall be included in the 2.5 hours of care;

12. The long-term care of a simple stabilized tracheostomy with minimal care and supervision by licensed staff;

13. Uncomplicated administration of respiratory therapies requiring minimal staff assistance, direction, and supervision;

14. Protection of individuals through the appropriate use of universal precautions, in accordance with Centers for Disease Control guidelines published in the Morbidity and Mortality Weekly Report, volume 38, number 5-6 (Centers for Disease Control, Atlanta, Ga. 30333);

15. Appropriate use of restraints (physical and/or chemical), in accordance with the physician's order and N.J.A.C. 8:39 licensure standards, and clinically appropriate measures to guarantee the safety of individuals (for example, side rails);

16. Observation, supervision and recording of basic nutritional states for maintenance of current health status and prevention of deficiencies;

17. Observation, supervision and instruction concerning special dietary requirements during ongoing adjustment to treatment regimen for diagnosed medical conditions;

18. Nursing treatment, observation and/or direction of mental status impairment which necessitates nursing supervision and intervention (for example, marked confusion and/or disorientation in one, two, or three spheres (time, place and/or person), marked memory loss, severe impairments in judgment); and

19. Emotional support and counseling on an ongoing basis, and during adjustment to impaired physical and mental states, including observation for changes in affect and mood which may require special precautions and/or therapies.

*[(f)]**(g)* Nursing services requiring additional nursing hours above 2.5 hours/day are set forth in *[(f)]**(g)*1 through 7 below. An individual recipient may require one or more additional nursing services, however, each category of additional nursing service may only be counted once for each individual recipient.

1. Wound care (.75 hours), which includes, but is not limited to, ulcers, burns, pressure sores, open surgical sites, fistulas, tube sites and tumor erosion sites. In this category are Stage II pressure sores encompassing two or more distinct lesions on separate anatomical sites, Stage III and Stage IV pressure sores.

i. Tube site and surrounding skin related to ostomy feeding is not to be counted as an additional nursing service unless there are complicating factors such as: exudative, suppurative or ulcerative inflammation which require specific physician prescribed intervention provided by the licensed nurse beyond routine cleansing and dressing.

ii. Stage III and Stage IV are defined as follows:

(1) Stage III. The wound extends through the epidermis and dermis into the subcutaneous fat and is a full thickness wound. There may be inflammation, necrotic tissue, infection and drainage and undermining sinus tract formation. The drainage can be serosanguinous or purulent. The area is painful.

(2) Stage IV. The pressure wound extends through the epidermis, dermis, and subcutaneous fat into fascia, muscle and/or bone. Eschar, undermining, odor and profuse drainage may exist.

(3) Other wounds which may be categorized under wound care as defined in (f)l above include:

(A) Open wounds which are draining purulent or colored exudate or which have a foul odor present and/or for which the individual is receiving antibiotic therapy;

(B) Wounds with a drain or T-Tube;

(C) Wounds which require irrigation or instillation of a sterile cleansing or medicated solution and/or packing with sterile gauze;

(D) Recently debrided ulcers;

(E) Wounds with exposed internal vessels or a mass which may have a proclivity for hemorrhage when dressing is changed (for example, post radical neck surgery, cancer of the vulva);

(F) Open wounds, widespread skin disease or complications following radiation therapy, or which result from immune deficiencies or vascular insufficiencies; and

(G) Complicated post-operative wounds which exhibit signs of infection, allergic reactions or an underlying medical condition that affects healing.

2. Tube feedings (1.00 hr/day), which include nasogastric tube, and percutaneous feedings may be used if the feedings are required to treat the individual's condition after all non-invasive avenues to improve the nutritional status have been exhausted with no improvement. The clinical record shall document the non-invasive measures provided and the individual's poor response. The record shall also indicate the medical condition for which the feedings are ordered. Included in this service is the routine care of the tube site and surrounding skin of the surgical gastrostomy.

i. Feeding tubes that are routinely clamped off and are no longer the primary source of dietary administration and nutritional support are covered under the basic 2.5 hours/day of nursing service and shall not be counted as an additional nursing service.

3. Oxygen therapy (.75 hrs/day), which includes complex provision of oxygen/respiratory therapies due to the nature of the individual's condition, type or multiplicity of procedures required and the need for therapies for which individual is dependent upon administration by licensed staff such as positive pressure breathing therapy, nasal BiPAP and aerosol therapy.

4. Tracheostomy (1.25 hrs/day), which includes new tracheostomy sites and complicated cases involving symptomatic infections and unstable respiratory functioning.

5. Intravenous Therapy (1.50 hrs/day), which includes clinically indicated therapies ordered by the physician, such as central venous lines, Hickman/Broviac catheters, heparin locks, total parenteral nutrition, clysis, hyperalimentation and peritoneal dialysis. When clinically indicated, intravenous medications should be appropriately and safely administered within prevailing medical protocols. If intravenous therapy is for the purpose of hydration, the clinical record shall document any preventive measures and attempts to improve hydration orally, and the individual's inadequate response.

6. Respirator use (1.25 hrs/day), which includes care for individuals who are stable and no longer require acute or specialized respirator programs and who require mechanical ventilation to oxygenate their blood. Ongoing assessment and intervention by a licensed nurse is needed. The individual's treatment plan should include protocols for weaning the individual from assisted respiration and/or self care when clinically indicated and ordered by the physician.

7. Head trauma stimulation/advanced neuromuscular/orthopedic care (1.50 hrs/day), as follows:

i. Care of head trauma is directed toward individuals who are stable (have plateaued) and can no longer benefit from a rehabilitative unit or unit for specialized care of the head injured. Individuals shall have access to and periodic reviews by such specialists as a neurologist, neuropsychologist, psychiatrist and vocational rehabilitation specialist, in accordance with their clinical needs. There shall also be contact with appropriate therapies, such as physical therapy, speech-language pathology services and occupational therapy. The distinguishing characteristic for add-on hours for head trauma is the necessity for ongoing assessment and follow-up by licensed nursing personnel focusing on early identification of complications, and implementation of appropriate nursing interventions. Nursing protocols may be initiated which are specifically designed to meet individual needs of head injured individuals. The nurse may also supervise a coma stimulation program, when this need is identified by the interdisciplinary team.

ii. Advanced neuromuscular care needs will be identified by the physician for individuals during an unstable episode or where there is advanced and progressive deterioration in which the individual requires observation for *[neuro-logical]* ***neurological*** complications, monitoring and administration of medications or nursing interventions to stabilize the condition and prevent unnecessary regression.

iii. Advanced orthopedic care is the care of plastered body parts with a pre-existing peripheral vascular or circulatory condition requiring observations for complications and monitoring and administration of medication to control pain and/or infection. Such care also involves additional measures to maintain mobility; care of post-operative fracture and joint arthroplasty, during the immediate subacute post- operative period involving proper alignment; teaching and counseling and follow-up to therapeutic exercise and activity regimens. Individuals in this group shall be identified by the physician as needing advanced orthopedic care. If the requirement for advanced orthopedic care exceeds 30 days, clinical need must be demonstrated and clearly documented by the interdisciplinary team.

10:63-2.3 Physician services

(a) General requirements for physician services shall be as follows:

1. Each Medicaid recipient's care shall be under the supervision of a New Jersey licensed attending physician chosen by, or agreed to by, the Medicaid recipient, or if the recipient is incompetent, by the family or legal guardian.

2. In a NF providing care to children, the attending physician shall be board certified/eligible by the American Board of Pediatrics or the American Board of Family Practice.

3. The NF shall maintain arrangements which assure that the services of a New Jersey licensed physician who can act in case of emergency, are continuously available.

(b) Requirements for a medical director shall be as follows:

1. The NF shall retain, pursuant to a written agreement, a physician licensed under New Jersey State Law to serve as Medical Director on a part-time or full-time basis as is appropriate for the needs of the residents and the size of the facility. The Medical Director shall be responsible for the overall development of medical policies and coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to the residents and to monitor the health status of the employees.

i. In a NF providing care exclusively to children, the medical director shall be certified/eligible by the American Board of Pediatrics or the American Board of Family Practice.

2. The duties of the medical director shall include, but not be limited to, the following:

i. Participation in the development of written policies, rules and regulations which are approved by the governing body of the facility;

ii. Delineation of the responsibilities of the attending physician(s) and ensuring that visits by medical consultants occur as needed;

iii. Acting as liaison between administration and medical staff for improving services and ensuring the carrying out of responsibilities of the medical staff;

iv. Surveying the execution of resident care policies, which includes a periodic evaluation of the adequacy and appropriateness of the services of health professional and supporting staff and monitoring the health status of the facility's employees;

v. Participation in the review of incidents and accidents that occur on the premises to identify hazards to health and safety of employees and residents. The Medical Director is given appropriate information to help ensure a safe and sanitary environment for residents and personnel;

vi. Ensuring that the medical regimen is incorporated in the resident care plan;

vii. Participation in the facility's quality assurance program through meetings, interviews and/or preparation or review of reports regarding infection control, pharmaceutical services, credentials, resident care, etc.;

viii. Collaboration with administration in the planning of educational programs for facility staff;

ix. Reviewing written reports of surveys and inspection and making recommendations to the administrator;

x. Participation in special projects, such as medical evaluation studies;

xi. Negotiating and resolving problems with the medical community;

xii. Responding quickly and appropriately to medical emergencies which are not handled by another attending physician; and

xiii. Ensuring that, for each Medicaid recipient, there is a designated primary and alternate physician who can be contacted when necessary.

(c) Requirements for an attending physician shall be as follows:

1. Initial medical findings and physician's orders;

i. There shall be available to the NF, prior to, or at the time of admission, resident information which includes medical history, diagnosis, current medical findings, medical plan of care and rehabilitation potential.

ii. If the resident is transferred from another health care facility, a transfer summary of the course of treatment including findings of diagnostic services shall accompany the resident. If the transfer summary information is not available in writing in the facility upon admission of the resident, it shall be obtained by the facility after admission.

iii. There shall be orders from a physician for the immediate care of the resident, to include, at a minimum, medications, dietary needs, hygiene, level of activity, and special therapies, if applicable. A current health facility discharge summary containing the information is acceptable.

(1) If medical orders for the immediate care of the resident are unobtainable at the time of admission, the physician with responsibility for emergency care shall give temporary orders.

(2) Each resident shall be examined by a physician within five days before, or 48 hours after admission.

2. The attending physician shall also be responsible for initial and ongoing medical evaluation, as follows:

i. The medical assessment of the Medicaid recipient shall begin at the time of admission to a NF and shall be the foundation for the planning, implementation, and evaluation of medical services directed toward the care needs of the resident.

ii. The medical assessment shall consist of the complete, documented, and identifiable appraisal (from the time of admission to discharge) of the Medicaid recipient's current physical and psychosocial health status. The medical assessment shall be utilized to determine the existing and potential requirements of care. The evaluation of the data obtained from the medical assessment shall lead to the development of the medical services portion of the interdisciplinary care plan. The assessment data shall be available to all staff involved in the care of the resident.

iii. The tools utilized in the assessment process shall include a complete history and physical examination, eliciting medically defined conditions and prior medical history, admission form(s), transfer form(s), Health Service Delivery Plan (HSDP), and data from other members of the interdisciplinary team.

*[3.]***iv.*** Other Medicaid recipient data utilized should include:

*[i.]***(1)*** Clinical physical and psychological symptoms and signs;

*[ii.]***(2)*** Capabilities to perform functional activities of daily living;

*[iii.]***(3)*** Sensory (hearing, speech, and vision) and physical impairments;

*[iv.]***(4)*** Medical necessity of additional nursing services, in accordance with N.J.A.C. 10:63-*[2.4]***2.2***;

*[v.]***(5)*** Nutritional status and requirements;

*[vi.]***(6)*** Special treatments or procedures (including laboratory and other diagnostic services);

*[vii.]***(7)*** Psychosocial status;

*[viii.]***(8)*** Dental condition;

*[ix.]***(9)*** Activities potential;

*[x.]***(10)*** Rehabilitation potential;

*[xi.]***(11)*** Cognitive status;

*[xii.]***(12)*** Drug therapy;

*[xiii.]***(13)*** Safety requirements;

*[xiv.]***(14)*** Attention to comfort and dignity; and

*[xv.]***(15)*** Plans of alternative care, when applicable.

*[4.]***v.*** In addition to the requirements in *[(c)3iv]* ***(c)2iv.*** above, medical evaluations of children in a NF shall include the following:

*[i.]***(1)*** Assessment of developmental status;

*[ii.]***(2)*** Measurement and recording of head circumference until the age of 24 months;

*[iii.]***(3)*** Measurement and recording of blood pressure, from age three;

*[iv.]***(4)*** Assessment of immunization status and administration of appropriate immunizations according to the recommendations of the Academy of Pediatrics;

*[v.]***(5)*** Hemoglobin determination once during each of the following times: six to eight months, two to six years, and 10 to 12 years of age;

*[vi.]***(6)*** Urinalysis—a minimum of once between age 18 and 24 months and once between 13 and 15 years of age;

*[vii.]***(7)*** Tuberculin testing once during each of the following times: nine to 12 months, four to six years, and 10 to 15 years of age; and

viii.***(8)*** Lead screening (EP Test) upon admission.

*[5.]***vi.*** As an active member of the interdisciplinary team, the attending physician shall:

*[i.]***(1)*** Identify and document the medical needs of the Medicaid recipient;

*[ii.]***(2)*** Be attentive to and develop individualized preventive, maintenance, restorative and/or rehabilitative medical interventions in relation to the physical and psychosocial needs identified in order to prevent deterioration, maintain wellness and promote maximum development or restoration;

*[iii.]***(3)*** Be observant of clinical signs and symptoms of the Medicaid recipient;

*[iv.]***(4)*** Perform, annually, a complete physical examination, as the medical component of the comprehensive resident assessment;

*[v.]***(5)*** Periodically evaluate and be cognizant of the Medicaid recipient's total clinical record including the interdisciplinary care plan and facilitate necessary changes as medically indicated;

*[vi.]***(6)*** Identify and document the effectiveness of, and the Medicaid recipient's response to, therapeutic intervention such as medications, treatment and special therapies, and, where possible, the reason for any ineffectiveness in the Medicaid recipient's responses.

*[6.]***3.*** Physician progress notes shall:

i. Be maintained in accordance with accepted professional standards and practices as necessitated by the Medicaid recipient's medical condition;

ii. Be a legible, individualized summary of the Medicaid recipient's medical status and reflect current medical condition, including clinical signs and symptoms; significant change in physical or mental conditions; response to medications, treatments, and special therapies; indications of injury including the date, time and action taken; medical necessity for extent of change in the medical treatment plan; and

iii. Be written, signed, and dated at each visit.

*[(d)]***4.*** Physician orders shall be completed as follows:

i. Orders concerning medications and treatment shall be in effect for the specified number of days indicated by the physician, but in no case shall exceed a period of 60 days. Vague and blanket orders shall not be acceptable. The physician shall review all orders and re-confirm in writing with signature and date, when any orders are continued.

*[2.]***ii.*** Stop orders shall conform with the standards of the Formulary Committee of the facility.

*[(e)]***5.*** Physician visits shall be conducted as follows:

*[1.]***i.*** All required physician visits shall be made by the physician personally, or a physician assistant or nurse practitioner, as permitted by State law.

*[i.]***(1)*** For the first 90 days, the Medicaid recipient shall be visited and examined every 30 days. Thereafter, with written justification, the interval between visits may be extended for up to 60 days.

*[ii.]***(2)*** Additional visits shall be made when significant clinical changes in the Medicaid recipient's condition require medical intervention.

10:63-2.4 Rehabilitative services

(a) Rehabilitative services include physical therapy, occupational therapy, and speech-language pathology services provided by a qualified therapist for the purpose of attaining maximum reduction of physical or mental disability and restoration of the resident to his best functional level. Rehabilitative services shall be made available to Medicaid recipients as an integral part of an interdisciplinary program. Rehabilitative services shall not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form; massage; routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified therapist.

1. If the attending physician orders an evaluation for physical, speech-language pathology services or occupational therapy, an appropriately qualified therapist shall perform an assessment to determine the need for services. The therapist shall complete a written report of therapy recommendations within 14 days of the physicians's order and shall include the report in the clinical record, for review by the attending physician.

2. Rehabilitative treatment shall be provided under the direct supervision and in the presence of a qualified therapist or physiatrist, only upon the written signed order of the physician who shall indicate modality and frequency and duration of treatments. The attending physician shall evaluate each resident's response to therapeutic services on a monthly basis. Continuance of said services shall be based on documentation of a potential for significant functional improvement within a reasonable time frame.

i. Rehabilitation therapy services shall be integrated with medical, nursing, recreational and social services to promote development or restoration of the resident to his/her maximum potential and reviewed in conjunction with other periodic reviews of the interdisciplinary care plan.

3. Rehabilitative services shall be provided by qualified therapists employed by or under contract to:

i. An approved home health agency;

ii. A licensed or accredited general or special hospital;

iii. An approved independent outpatient health facility; or

iv. A NF.

4. Rehabilitative services are considered part of the NF's cost. Reimbursement for such services is included in the NF's per diem rate.

10:63-2.5 Resident activities

(a) An ongoing resident activities program shall be established as an adjunct to the treatment program and an integral component of the interdisciplinary plan of care. The program shall be a planned schedule of *[age-]*appropriate social, physical, spiritual, psychological, leisure, cognitive, vocational and educational activities designed to meet the needs, interests, and behaviors of all residents, whether ambulatory, chair bound, or bedfast. In a facility providing care to children, activities programming shall be geared to the child's developmental and behavioral needs.

(b) Activities shall enable the residents to maintain a sense of usefulness and self-respect, and when possible, help to prevent regression. Activities shall encourage development or restoration to self-care and resumption of normal activities, stimulate and maximize the total functional ability of the resident and assist the resident to integrate into the social life of the facility. Families and friends of the resident shall be encouraged to accompany the resident to activities.

(c) Outside community resources, such as the Commission for the Blind, Office of Education, Divisions of Developmental Disabilities and Vocational Rehabilitation shall be accessed to develop needs-specific activities. Community outreach shall be done to encourage community groups to participate in programs in the facility. Residents also shall be encouraged to participate in programs in the community.

(d) Resident activities staffing requirements are as follows:

1. The resident activities director shall meet the qualifications required by N.J.A.C. 8:39-7, Mandatory Patient Activities. In a facility providing care exclusively to children, the resident activities director who does not possess a baccalaureate degree shall have one year of the required three years of experience in a recreational program for children.

2. The facility shall appoint a resident activities director who shall provide *[patient]* ***resident*** activity services in the facility on an average of 45 minutes per week per resident. *[Facilities of more than 60 residents shall have a full-time coordinator.]* Additional resident activity staff time shall be provided *[to the number of residents over 60]* at a ratio of no less than 1:53 residents.

3. The use of volunteers should be encouraged as adjuncts to staff. Volunteers should be trained and supervised in the performance of their duties by qualified staff.

(e) Scheduling requirements are as follows:

1. A monthly schedule of activities in large print shall be conspicuously posted so that residents and staff are aware of daily programs.

2. There shall be a diversity of activities seven days per week*[,]* ***and during at least two evenings per week*** *[including evenings]*. Evening activities shall be scheduled after the evening meal.

3. *[A]* ***The*** Resident***s'*** Council ***shall have the opportunity to meet at least monthly.*** *[meeting shall be scheduled at least monthly.]* All residents shall be given the opportunity to have input into programming.

(f) Space and equipment requirements are as follows:

1. Sufficient space shall be provided for group activities and for each resident's individual use. Activity areas shall be accessible to all residents. Programs shall be provided on the resident units as well as general activity areas.

2. Community social and recreational facilities shall be utilized for those able to do so. Transportation shall be provided to and from destinations in the community.

3. Adequate indoor and outdoor recreational areas shall be provided with sufficient equipment and materials available to support ongoing programs as well as self-directed activities.

4. In a facility providing care to children, a safe, handicapped accessible outdoor play area shall be provided.

(g) Resident planning requirements are as follows:

1. Activities staff shall be integral members of the interdisciplinary team and shall participate in all resident care conferences and quarterly reviews. Resident activities staff shall have input into the assessment.

2. Activities staff shall conduct an initial assessment of activity needs within 14 days after the date of admission. The assessment shall include the resident's current functioning, past lifestyle, interests, skills, employment, hobbies, organizational memberships, and religious preferences. This information shall form the basis for the activities component of the SRA.

3. The activities staff shall be aware of each resident's physical and medical limitations and restrictions, so that activities participation is coordinated with the treatment plan.

4. A plan for the resident's activities program shall be formulated, with the active participation of the resident, if possible. *[Activity]* ***Resident*** goals shall be developed as an outcome of the SRA and in conjunction with the interdisciplinary care plan.

5. Progress towards goals shall be evaluated with the resident at least quarterly in conjunction with the interdisciplinary review of the care plan. If a resident's functional status changes, resident activity staff shall review the activity plan and make revisions of goals, if necessary.

6. Residents shall be encouraged to participate in a variety of activities. Outreach efforts to involve residents in activities programs shall be the responsibility of all staff.

7. All staff of the facility shall be trained at least yearly in the value of an activities program for overall effective resident care and shall encourage participation in activities.

8. On readmission after a period of hospitalization, an activities worker shall review the resident's functioning and shall participate in a reassessment, if a significant change has occurred.

10:63-2.6 Social services

(a) Social work services shall have as their fundamental purpose the enhancement of a resident's sense of well-being and control over his life to the fullest extent possible. Social work interventions shall be geared to the resident's strengths, regardless of the extent of disability and shall be designed to enhance coping skills. Social work services shall help residents make the fullest use of nursing facility life, and shall assist residents in discharge to community living.

(b) Social workers shall assist residents with the emotional reactions to pain and functional loss, interpersonal conflicts, fear of death, and other issues impacting on the quality of life. Supportive intervention and encouragement shall be provided. The social worker collaborates with other staff to maximize opportunities for choice and individual expression. Social workers shall monitor a resident's concrete and personal needs and shall serve as primary advocates for the resident in the NF.

(c) Social work services shall not include:

1. Clerical or billing activity;

2. Public relations activity that does not relate to social work services; or

3. Medical records monitoring responsibilities.

(d) Social services staffing and qualifications shall be as follows:

1. Social work services shall be provided in accordance with accepted professional practice by persons who meet the qualifications for social worker as defined in the Social Workers' Licensing Act of 1991 N.J.S.A. 45:15BB-1 et seq. and the licensure requirements of N.J.A.C. 8:39-39. In a NF providing care to children, it is recommended that social service staff receive consultation and training in social care for children.

2. The facility shall provide a minimum of one full-time equivalent social worker for every 120 residents. In a facility with more than 120 residents, one social worker shall coordinate the work of the department.

(e) Social services assessment and care planning shall be as follows:

1. The social worker shall meet with the resident and family prior to or following admission and shall conduct a social assessment. The social assessment shall be completed within 14 days of admission and shall provide the basis for social service input into the SRA. The assessment shall gather sufficient information to provide an accurate understanding of the individual and shall include the following:

i. Current problem areas, factors that led to placement, and reactions to placement by the resident and family;

ii. Lifestyle and living arrangements before placement;

iii. Family composition, place of birth, marital history, number and location of children;

iv. Social history, which includes personality factors, adaptation to change and disability, interest, religious ties, community activities, medical and psychiatric history, substance abuse; and

v. Discharge criteria.

2. As an integral member of the interdisciplinary team, the social worker shall have active input into the completion of the Standardized Resident Assessment (SRA). The social worker shall attend resident care conferences and quarterly reviews.

3. Resident goals shall be developed as an outcome of the SRA and in conjunction with the interdisciplinary care plan. The resident and family shall be included in the development of goals if possible.

4. Reassessment of the resident's social needs shall be done annually in conjunction with the interdisciplinary team's review of the SRA. Any new social information shall be recorded in the progress notes.

5. Expectations regarding potential discharge shall be discussed fully with all residents and families on admission. The special needs of residents identified as only needing short term placement (Track II) during pre-admission screening shall be discussed with the resident and family on admission. The family's criteria for discharge shall be fully explored and goals for discharge shall be incorporated into the interdisciplinary care plan.

6. Progress towards goals shall be reviewed with the interdisciplinary team quarterly, or when significant changes occur. Residents and families shall be included in the interdisciplinary care plan review, if possible. Goals shall be based on a current review of resident and family needs and the existing problems to be addressed, as reflected in the current SRA.

7. The social worker shall remain familiar enough with each resident to have an understanding of each resident's psycho-social function and to provide assistance as needed.

8. The social worker shall document important or unusual events and other circumstances which require social service intervention.

9. The record shall reflect the resident's current psycho-social functioning and social work interventions.

10. On readmission of a resident after a period of hospitalization, the social worker shall review the resident's functioning and participate in a reassessment if a significant change has occurred. If a new chart is opened on readmission, a copy of the original social assessment shall be included.

11. The resident's written consent (or that of a responsible person acting on his or her behalf) shall be obtained before social service information is transmitted to an outside agency or individual. The consent form shall be on the resident's chart. All personnel having access to the record shall be trained to appreciate its confidential nature.

(f) Social services consultation shall be as follows:

1. The social worker shall provide consultation services to residents and family members at the time of admission.

2. Consultation shall be given to the resident when the need arises, upon referral, or when the resident requests it. Situations which may require consultation include problems in adjusting to functional limitations and losses and decline in cognitive functioning involving loss of memory, confusion, and disorientation. Social work consultation may also ***be*** used to help residents deal with depression, anxiety, and lack of motivation and other problems affecting interpersonal relationships, such as aggressive or self-isolating behavior.

3. The social worker shall provide crisis intervention when medical or personal crises occur, or when there is a death of a family member or other significant person. Consultation shall also be offered when residents require assistance in mourning losses that occur within the NF.

4. Social work intervention shall be provided when residents exhibit behavior problems, resistance to care, roommate conflicts, or other adjustment difficulties.

5. The social worker shall encourage residents to participate in their treatment plans and activities within and outside the facility, and to form satisfying and appropriate friendships with other individuals in the NF.

6. The social worker shall provide consultation to staff when interpersonal conflicts or behavior problems occur among residents or between residents and staff.

(g) Social *[services]* ***work*** liaison services shall be as follows:

1. The social worker shall make frequent rounds in the NF, in order to maintain contact and to be accessible to residents who may require or be seeking assistance, and to maintain good communication with other staff.

2. Liaison contact with families shall be maintained by the social worker throughout a patient's stay. The frequency of contact shall depend on the resident's and family's needs.

3. The social worker shall be active in interpreting facility policies and procedures to the resident and his family during the initial period following admission. Questions, problems and complaints shall be addressed promptly.

4. The social worker shall act on a physician's order for a social service consultation within two working days *[(weekdays)]*.

5. The social worker shall assist in identifying residents who may be in need of psychological or psychiatric intervention.

6. The social worker shall assist staff in understanding the resident's personal situation and background in order to enhance the ability of staff to deal with the resident appropriately.

7. The social worker shall deal with problems concerning family visitation and support.

8. The social worker shall serve as a resource to assist families with social service needs and to locate other agencies for assistance.

(h) Social work *[services and]* supportive services shall be as follows:

1. The social worker shall ensure that the resident has sufficient clothing and other personal items and that the resident's basic needs are being met.

2. The social worker shall ensure that the resident's rights are protected and that the Personal Needs Allowance (PNA) is properly utilized.

3. The social worker shall assist residents in understanding and exercising their rights, including the right to make health care decisions.

4. The social worker shall assist the resident in obtaining needed entitlements, community, or legal services.

5. The social worker shall facilitate the acquisition of prosthetic and assistive devices if necessary.

6. The social worker shall assist the resident and/or family in applying for Medicaid benefits, when appropriate.

7. The social worker shall work with the Activities and/or Volunteer Services Departments to obtain visitors for residents who have no supportive family or are otherwise isolated, or who have communication difficulties due to a language barrier.

8. The social worker may develop support and education groups for residents and families, as appropriate. The social worker shall serve as coordinator or co-coordinator in family support groups held in the NF and shall participate actively in meetings of the Resident's Council.

(i) Social *[work]* services *[and]* discharge planning shall be as follows:

1. The social worker shall be the primary staff member responsible for coordinating and carrying out discharge planning.

2. Discharge planning is a process that begins on admission and continues throughout the resident's stay until discharge occurs or is no longer feasible. Discharge planning shall be a collaborative effort by the entire interdisciplinary team. The social worker shall work very closely with nursing staff and other therapists until discharge is accomplished.

3. All residents shall have the right to live in the least restrictive setting possible. The social worker shall, in concert with other members of the interdisciplinary team, identify residents who may have discharge potential.

4. The social worker shall consult the HSDP on admission to determine the recommendations of the Medicaid RSN concerning discharge and to identify Track II residents.

5. All residents who appear to be appropriate for discharge shall have their needs reviewed. This review shall include physical and social functioning, medical needs in the community, current and potential supports, resources needed for community living, and psychological readiness for discharge.

6. Discharge planning shall be carried out by means of an interdisciplinary care plan that includes goals and time frames. Social work intervention geared towards discharge shall be recorded as interim notes. The discharge plan shall include:

i. The level of functioning which needs to be achieved by the resident prior to discharge;

ii. Housing needs: the availability of prior living arrangements and the type of future housing needed for successful discharge (for example, apartment, family home, rooming or boarding home, residential health care facility, foster home and/or shared housing);

iii. any informal support systems available to the resident;

iv. Specific financial assistance needed by the recipient; and

v. Specific community resources needed for care in the community (for example, meals-on-wheels, day-care and/or home health assistance).

7. The social worker shall link the resident to necessary community resources and shall follow up to verify that services have been implemented.

8. The social worker shall assist in identifying the family's training needs for resident care in order to implement a successful discharge plan.

9. The social worker shall maintain active contact with the resident, his family, and significant others to support their involvement with the discharge plan.

10. The social worker shall be acquainted with formal resources that are available in the community and shall maintain an up-to-date resource file.

(j) In a NF providing care to children, the social *[worker]* ***services department*** shall initiate contact with the local school district when a child is admitted. The social worker shall also continue to serve as the coordinator between the local school district and the NF to facilitate the best care for the child.

10:63-2.7 Pharmaceutical services; general

(a) Prescribed legend drugs shall be supplied to each individual resident by a licensed pharmacy. Legend drugs may be supplied to individual residents by other than a licensed pharmacy when dispensed by NF medical professional staff from an emergency drug box, or the like, supplied by the NF's contracted pharmacy provider. Non-legend drugs, such as aspirin, milk of magnesia, etc., may be separately stocked in the drugroom or medication cart of the NF. This will permit the NF to maintain a supply of non-legend drugs to be administered as directed by the prescribing physician under the supervision of a NF professional staff in keeping with established stop order policies (see (b) below). Reimbursement for non-legend drugs (that is, drugs which by Federal law do not require a prescription) shall be included in the NF per diem rate.

1. The New Jersey Medicaid program shall not reimburse for Methadone when used for drug detoxification or addiction.

(b) "Stop orders" are internal policy regulations of the NF and unrelated to the New Jersey Medicaid program rules. Thus, such "stop orders" shall not supersede Program rules concerning the prescribing of drugs and pharmaceutical services as outlined in N.J.A.C. 10:61, Pharmacy Services.

(c) In NFs, if the quantity of drug or medication is not indicated in writing by the prescriber, the pharmacy provider shall dispense an appropriate quantity of medication not to exceed a one month supply.

1. In NFs, a written physician order shall be considered a prescription. A physician order written to continue medication administration shall be considered a new prescription and issued a unique prescription number by the NF contracted pharmacy provider.

(d) Pharmacies with Institutional Permits shall be reimbursed prorated capitation which shall equal 75 percent of the capitation rate approved by Medicaid for pharmacies with Retail Permits.

(e) Signed physicians' orders for medications, drugs, tests, diet, and treatment administered to Medicaid recipients must be accurately recorded on the recipient's chart with review and update as required.

(f) All services required of a Consultant Pharmacist in NFs, as stipulated in Federal and State statutes, rules and regulations, including, but not limited to, those listed in this subsection shall be provided.

1. Responsibilities of the consultant pharmacist shall be as follows:

i. Assure that all drugs are dispensed, and in cooperation with the Director of Nursing, shall assure all drugs are administered in compliance with all State and Federal laws;

ii. Establish and monitor the implementation of written policies and procedures, through the Pharmaceutical Services Committee (Pharmacy and Therapeutics Committee), to assure the safe use, storage, integrity, administration, control and accountability of drugs;

iii. Assure the drug records are in order and that an account of all controlled substances is maintained and reconciled;

iv. Assure that recipients' medication records are accurate, up to date, and that these records indicate that medications are administered in accordance with physician's orders and established stop-order policies;

v. Assure that drugs, biologicals, laboratory tests, special dietary requirements and foods, used or administered concomitantly with other medication to the same recipient, are monitored for potential adverse reactions, allergies, drug interactions, contraindications, rationality, drug evaluation, and laboratory test modifications, and that the physician is advised promptly of any recommended changes;

vi. Review the drug regimen (that is, the dosage form, route of administration and time of administration) of each recipient at least monthly and report any irregularities pertaining to medications to the attending physician, Medical Director or Director of Nursing, as appropriate. Irregularities in the administration of medications shall also be reported promptly to the Director of Nursing.

vii. Report in writing at least quarterly to the Pharmaceutical Services Committee (Pharmacy and Therapeutics Committee), on the status of the facility's pharmaceutical services and staff performance as related to pharmaceutical services. This report shall include, but not be limited to, a summary of the review of each recipient's drug regimen and clinical record and the consultant pharmacist's findings and recommendations;

viii. Assure there is maintained and available upon request of the Director of the New Jersey Medicaid program or his or her designee, documented records of the disposition, dispósal or destruction of unused or discontinued drugs;

ix. Serve as an active member of the Pharmaceutical Services Committee (Pharmacy and Therapeutics Committee), and Infection Control Committee of the facility;

x. Provide and document in-service programs for the complete nursing staff. This training shall include, but not be limited to, registered nurses, licensed practical nurses, and aides and shall be given at least quarterly; and

xi. Devote a sufficient number of hours to carry out these responsibilities, maintain a written record of activities, findings and recommendations.

10:63-2.8 Consultations and referrals for examination and treatment

(a) Certain services, such as medical and surgical specialties, chiropractic, dental, mental health, podiatric, and vision care, shall be initiated by the attending physician as either a request for a "consultation" or as a "referral for examination and treatment".

(b) A consultation shall be ordered when the attending physician wishes an appropriate practitioner to evaluate, through history and appropriate physical findings and other ancillary means:

1. The nature and progress of a disease, illness, or condition, and/or
2. To establish or confirm a diagnosis, and/or
3. To determine the prognosis, and/or
4. To suggest appropriate therapy.

(c) When a consultant assumes the continuing care of the resident, subsequent services rendered by the consultant are not considered a consultation and other appropriate procedure codes shall be utilized.

(d) A referral for examination and treatment shall be ordered by the attending physician when he or she wishes a practitioner to assume responsibility for a specific aspect of the resident's care; for example, the attending physician may order a referral for examination and treatment for dental services.

(e) For the initial consultation examination and subsequent examinations, the record shall document the following:

1. The date of service;
2. The chief complaint(s);
3. Pertinent historical and physical data;
4. Reports of diagnostic procedures performed;
5. The diagnosis; and
6. The treatment.

(f) A request for either a consultation or a referral for examination and treatment shall be written and signed by the attending physician on the order sheet, and shall clearly indicate the reason for the request.

1. If the attending physician is unable to write the request on the order sheet, he or she may personally dictate, by telephone to an appropriate person at the facility, the order for the consultation or the referral for examination and treatment, indicating the supporting reason(s) for the request. The attending physician shall then, within seven days of requesting the consultation or referral for examination and treatment, countersign the order on the order sheet or sign and forward to the NF an identical order on a prescription form which will satisfy the requirements until the next visit, when he or she shall sign the order sheet.

2. In consideration of a resident's rights, a resident may request either a consultation or a referral for examination and treatment, provided it is consistent with medical necessity. The attending physician shall note the request on the order sheet and, if the physician so wishes, may note that it was made at the resident's request.

Example: Resident requests ophthalmologic consultation with Dr. Evans for significant refractive error.

Signed: A.B. Turner, M.D.

10:63-2.9 Mental health services

(a) All facilities shall assist Medicaid recipients to obtain mental health care through a licensed psychiatrist or psychologist, who shall provide, or make provision for, routine and emergency services.

(b) An initial consultation for mental health services shall be performed only upon a written order signed by the attending physician (on the order sheet) citing the reason(s) for the consultation in the progress notes.

(c) If the mental health services are recommended following initial consultation, the psychiatrist or *[psychiatrist]* ***psychologist*** may provide the mental health service upon the written order signed by the attending physician. If the individual who provides the mental health services is a psychiatrist, he or she shall comply with the Medicaid policies cited in N.J.A.C. 10:54 regarding the request for authorization requirements for mental health services. If the individual who provides the mental health services is a psychologist, he or she *[must]* ***shall*** comply with *[the Medicaid policies cited in]* N.J.A.C. 10:67 regarding the request for authorization requirements for mental health services.

(d) Therapeutic goals and outcomes shall be documented by the psychiatrist and/or psychologist in the clinical record and treatment provided only where there is potential for significant functional improvement within a reasonable time frame.

10:63-2.10 Dental services

(a) All facilities shall assist Medicaid recipients to obtain dental care through a licensed dentist, who shall provide, or make provision for:

1. Appropriate consulting services;
2. In-service education to the facility;
3. Policies concerning oral hygiene; and
4. Routine and emergency services.

(b) Dental examinations carried out to comply with the Department of Health's minimal requirements, as well as regular dental examinations, shall not be considered consultations and need not be brought to the attending physician's attention except as a matter of courtesy. However, treatments which involve invasive procedures such as extractions or fillings, except in an emergency, shall be brought to the attention of the attending physician who acknowledges clearance for such treatment on the order sheet.

(c) The dentist shall establish a time frame for the next periodic examination, either at the time of examination, or at the completion of treatment. The time frame entered on the clinical record may be for six months, one year, or any other time period that the attending dentist has established in accordance with his or her knowledge of the recipient.

(d) Dental care of a child residing in a NF shall be provided according to the American Dental Association Pediatric protocol ***available from the American Dental Association, 211 East Chicago Ave., Chicago, IL 60611***.

(e) Policy and procedures regarding the provision of dental services are listed in the New Jersey Medicaid Program Manual for Dental Services*[, available from the American Dental Association, 211 East Chicago Ave., Chicago, IL 60611]*. Services requiring prior authorization are listed under 202.2 (N.J.A.C. 10:56-1.3).

10:63-2.11 Podiatry services

(a) All facilities shall assist Medicaid recipients to obtain podiatry care through a licensed podiatrist who shall provide, or make provision for:

1. Appropriate consulting services;
2. In-service education for the facility;
3. Policies concerning foot care; and
4. Routine and emergency services.

(b) Once the attending physician reviews the consultation and approves the treatment plan of the podiatrist, the physician shall not be required to sign a request every time the podiatrist treats the resident; however, the attending physician shall review and approve the need for the podiatric services for residents under treatment every six months, and if continuing service is indicated, complete a request for podiatric services for each resident under treatment at least once a year. This shall be accomplished by an order on the order sheet and not by repeated requests for consultation.

1. Podiatry services provided to children shall be prior authorized by MDO professional staff.

(c) Policies and procedures regarding the provision of podiatric services are outlined in the New Jersey Medicaid Program's Podiatry Services Manual (N.J.A.C. 10:57).

10:63-2.12 Chiropractic services

All facilities shall assist Medicaid recipients to obtain chiropractic care through a licensed chiropractor who shall provide, or make provision for routine and emergency services.

10:63-2.13 Vision care services

(a) All facilities shall assist Medicaid recipients to obtain vision care through a licensed ophthalmologist or optometrist who shall provide, or make provision for, routine and emergency services.

(b) Policies and procedures regarding the provision of Vision Care services are outlined in the New Jersey Medicaid Program's Vision Care Manual (N.J.A.C. 10:62).

10:63-2.14 Laboratory; X-ray, portable X-ray and other diagnostic services

(a) A NF shall have written agreements with one or more general hospitals or one or more clinical laboratories so that the facility can obtain laboratory services, including emergency services promptly. If the facility has its own laboratory capabilities, the services may not be billed on a separate fee-for-service basis. A laboratory must be:

1. Licensed and/or approved by the New Jersey State Department of Health and the State Board of Medical Examiners which includes meeting Certificate of Need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey Sanitary Code; and

2. Certified as an independent laboratory under the Title XVIII Medicare Program; and

3. Approved for participation as an independent laboratory provider by the New Jersey Medicaid program.

(b) A NF shall have written agreements with one or more general hospitals or one or more Board certified or Board eligible radiologists so that the facility can obtain radiological services, including emergency services promptly.

1. Portable X-ray may be used when medically indicated. The mechanical portion of the services (obtaining the films) may be done by personnel of either the hospital or radiologist, but the interpretation of the film will be by a Board certified or Board eligible radiologist only.

2. X-ray services offered directly by the facility must be in adherence with the standards of the New Jersey Radiological Society.

(c) A NF shall have written agreements with one or more general hospitals or one or more qualified providers so that the facility can obtain other diagnostic services, such as ECG, EEG, CAT scan, MRI and ultrasonogram, including emergency services, promptly.

1. All diagnostic services shall be ordered by a physician, who shall be promptly notified of the test results.

2. All findings and reports shall be recorded in the recipients clinical record.

10:63-2.15 Medical supplies and equipment

(a) Medical supplies include incontinency pads, bandages, dressings, compresses, sponges, plasters, tapes, cellu-cotton or other types of pads used to save labor or linen, and other disposable items (for example, colostomy bags), hot water bags, thermometers, catheters, rubber gloves, and supplies required in the administration of medication including disposable syringes. Routinely used medical supplies are considered part of the institution's cost and cannot be billed directly to the program by the supplier.

(b) Equipment for administration of oxygen for residents in a NF is a required service. Oxygen itself must conform to United States Pharmacopoeia Standards in order to be used as a medicinal gas. (United States Pharmacopoeia Convention, 12601 Twinbrook Parkway, Rockville, MD 20852.)

(c) Routinely used durable medical equipment ordered for Medicaid recipients in a participating NF (for example, walkers, wheelchairs, bed-rails, crutches, traction apparatus, IPPB machine, electric nebulizers, electric aspirators, low-end pressure relief systems such as mattress overlays and mattress replacements, powered mattress systems and powered flotation beds) and other therapeutic equipment and supplies essential to furnish the services offered by the facility for the care and treatment of its residents shall be considered part of the NF's cost, and shall not be billed directly to the program by the supplier.

(d) When unusual circumstances require special medical equipment not usually found in a NF, such special equipment may be reimbursable, with prior authorization from the Medicaid District Office serving the county where the facility is located.

1. When special medical equipment is authorized and purchased on behalf of a Medicaid recipient, ownership of such equipment shall vest in the Division of Medical Assistance and Health Services. The recipient shall be granted a possessory interest for as long as the recipient requires use of the equipment. When the recipient no longer needs such equipment, possession and control shall revert to the Division. The recipient shall agree to this when he or she signs the "patient's certification" section on the claim form. The NF shall notify the MDO in writing when such equipment is no longer in use.

2. Prior authorization requests for special medical equipment shall be accompanied by documentation from the attending physician, the registered professional nurse who has primary responsibility for the recipient, and appropriate rehabilitative therapy personnel, which relates the medical necessity for the equipment and describes the extraordinary requirements of the recipient.

3. Pressure relief systems shall be reimbursed in a NF under the following conditions:

i. Air Fluidized and Low Air Loss therapy beds, as defined in N.J.A.C. 10:63-1.2, shall be considered special medical equipment and shall be prior authorized for reimbursement in a NF only when all of the following criteria, indicating medical necessity, are documented by the physician.

(1) The recipient has two stage III (full-thickness tissue loss) pressure sores or a stage IV (deep tissue destruction) pressure sore which involves two of the following sites: hips, buttocks, sacrum.

(2) The recipient with coexisting risk factors (such as vascular irregularities, nutritional depletion, diabetes or immune suppression) presents post-operatively with a posterior or lateral flap or graft site requiring short-term therapy until the operative site is viable.

(3) The recipient is bedridden or chair-bound as a result of severely limited mobility.

(4) The recipient is receiving maximal medical/nursing care, prior instituted conservative treatment has been unsuccessful and all other alternative equipment has been considered and ruled out.

(5) The bed is ordered, in writing, by the attending physician based on his or her comprehensive assessment (which includes a physical examination) and evaluation of the recipient.

(6) Prior authorization in conditions other than those defined above shall be considered on an individual basis by the MDO.

ii. Air fluidized and low air loss therapy beds shall not be covered for reimbursement in a NF under any of the following circumstances:

(1) As a preventative measure;

(2) After healing to stage II has occurred or wound stability (no significant change or evidence of healing) has been achieved;

(3) If the facility structure cannot support the weight of the bed or the facility electrical system is insufficient for the anticipated increase in energy consumption, air fluidized therapy shall be considered inappropriate. Reimbursement for an air fluidized bed shall be limited to the equipment itself. Payment shall not be made for architectural adjustments such as electrical or structural improvement.

iii. Prior authorization of air fluidized or low air loss therapy beds, if approved, shall be granted for 30 days only. Continued use beyond the initial approval period shall require prior authorization on a monthly basis. The following information shall be submitted to the MDO to obtain prior authorization:

(1) A completed FD-354 prior authorization form;

(2) The physicians' written prescription;

(3) A medical history relating to the wound which includes previous therapy and pressure relief systems utilized and found unsuccessful;

(4) Physician progress notes indicating medical necessity, plan of treatment and evaluation of response to treatment specific to the care of the wound;

(5) The wound care flow sheet documenting weekly the site, size, depth and stage of the wound, noting also the presence and description of drainage or odor;

(6) Laboratory values including a complete blood count and blood chemistries initially and on request thereafter;

(7) A nutritional assessment by a registered dietitian initially on request thereafter; and

(8) Photographs of the site upon permission of the recipient/family, after full due consideration is afforded to the recipient's right to privacy, dignity and confidentiality.

iv. After treatment with an air fluidized or low air loss therapy bed is initiated, the recipient shall:

(1) Be examined by the physician on a monthly basis;

(2) Remain on the therapy unit and be confined to bed, unless medically necessary. While confined to bed, due consideration shall be given to the recipient's need for social and sensory stimulation and recreational diversion by providing in-room visitation and social/recreational activities appropriate to the recipient's condition; and

(3) Be repositioned on a turning schedule of not less than every two hours.

v. Professional staff from the MDO may, at their discretion, perform an onsite visit to evaluate the recipient prior to or after therapy has been instituted. Continued approval shall be contingent upon the facility's compliance with the criteria and conditions defined in (d)3i, ii, iii and iv above and cooperation of the recipient to the therapeutic modality.

10:63-2.16 Consultant services; general

If the NF has significant, unresolved or recurring problems, the NF shall be required to provide appropriate consultation in any service area until the problems are corrected.

10:63-2.17 Transportation services

(a) The NF shall assist a Medicaid recipient in obtaining transportation when the recipient requires a Medicaid-covered service or care not regularly provided by the NF.

(b) If a transportation service is provided by the NF to an inpatient of the NF, no additional reimbursement shall be allowed. Reimbursement shall be included in the per diem rate.

(c) Ambulance service shall not require authorization from the MDO, but shall be reimbursable to the transportation provider only when the use of any other method of transportation is medically contraindicated. (See N.J.A.C. 10:50-1.3(c)2 for specific conditions for ambulance service reimbursement.)

(d) Invalid coach services shall not require prior authorization from the MDO.

1. Invalid coach services shall be provided by a transportation provider approved in accordance with N.J.A.C. 10:50, Transportation Services.

2. An invalid coach may be utilized when a Medicaid recipient requires transportation from place to place for the purpose of obtaining a Medicaid-covered service and when the use of an alternative mode of transportation, such as a taxi, bus, livery, or private vehicle would create a serious risk to life or health.

(e) Transportation by taxi, train, bus and other public conveyances shall not be directly reimbursable by the New Jersey Medicaid program. Inquiry should be made to the County Welfare Agency for authorization and payment for such transportation.

(f) Policy and procedures regarding the provision of transportation services are outlined in the New Jersey Medical Transportation Services Manual (N.J.A.C. 10:50-1.3 through 1.6).

10:63-2.18 Bed and board

(a) Beds are provided in rooms licensed by the New Jersey Department of Health. A NF providing care to children shall have available protective cribs for infants and small children, as well as appropriate furniture, sized and scaled for children.

(b) Board shall be provided to meet basic nutritional needs and shall include the provision of therapeutic diets as prescribed by the attending physician.

10:63-2.19 Housekeeping and maintenance services

(a) Housekeeping and maintenance services necessary to maintain a sanitary and comfortable environment and laundering of personal clothing (excluding dry cleaning) shall be required.

10:63-2.20 Non-covered services

(a) Non-covered services in NFs shall include, but not be limited to, the following:

1. Admission or continued care primarily for diet therapy of exogenous obesity, bed rest, rest cure, or care of non-medical nature;

2. Private duty nursing;

3. Private attendant services;

4. Services and supplies not related to the care of the resident, such as guest meals and accommodations, television, telephone, and personal items;

5. Practitioner or therapy services furnished on a fee-for-service basis by an owner, partner, administrator, stockholder, or others having direct or indirect financial interest in the NF; or

6. Partial care services in independent clinics.

10:63-2.21 Special care nursing facility (SCNF)

(a) A special care nursing facility (SCNF) is a nursing facility or separate and distinct SCNF unit within a Medicaid-certified conventional nursing facility which has been approved by the Division of Medical Assistance and Health Services to provide care to New Jersey Medicaid recipients who require specialized nursing facility services beyond the scope of a conventional nursing facility as defined in N.J.A.C. 10:63-2. A SCNF or SCNF unit shall have a minimum of 24 beds.

1. The minimum bed requirement shall be waived for SCNFs that were approved by the Division prior to the adoption of this regulation. In addition, the requirement will be waived in those instances where a SCNF's Certificate of Need stipulates a specific number of beds approved by the New Jersey Department of Health.

2. A SCNF shall provide intensive medical, nursing and psychosocial management to the seriously ill individual who has potential for measurable and consistent maturation or rehabilitation, or has a technologically and/or therapeutically complex condition which requires the delivery of intensive and coordinated health care services on a 24 hour basis. Length of stay in a SCNF shall be determined by the individual's progress and the overall response to the therapeutic regimen.

(b) A SCNF shall provide the services of an interdisciplinary team, under the direction of a physician specialist, who has training and expertise in the treatment specific to the medical condition and specialized needs of the target population of the SCNF.

1. Within a focused, specialized therapeutic program, targeted, when appropriate, at timely discharge to alternative health care settings, such as conventional NF or community-based services, the SCNF shall provide:

i. Aggressive management and treatment to stabilize, improve and monitor current conditions;

ii. Appropriate, intensive rehabilitative therapies and counseling services; and

iii. Coordinated care planning and delivery of required services.

(c) A SCNF shall provide services to Medicaid recipients who have been determined, through the PAS process, to require extended rehabilitation and/or complex care.

1. Extended rehabilitation shall be considered for a medically stable individual with a *[subacute]* condition whose prognosis indicates the potential for rehabilitative progress which requires a prescribed period of therapeutic treatment and goal-directed services provided by a qualified interdisciplinary team to restore the individual to the highest practical level of *[the]* physical, cognitive and behavioral functioning. The individual may remain for a period of up to 12 months, with a review after six months. Length of stay will be extended for periods of six months, if continued benefit from the service can be demonstrated.

2. Complex care shall be considered for a medically stable individual judged to have plateaued who demonstrates the need for prolonged, technologically and/or therapeutically complex care. Although the rehabilitative component may be less intense, the individual continues to require focused assessment, coordinated care planning and direct services on a continuing basis provided by a interdisciplinary team with training and expertise in the treatment of the medical conditions and specialized needs of the resident population of the SCNF. The individual may remain for a period of up to 2 years with review every 12 months. Length of stay will be extended for periods of six months if continued benefit from the service can be demonstrated.

3. Medicaid recipients who are suitably placed in the community, receiving care in appropriate alternative placements or referred for social reasons only shall not be authorized for admission to a SCNF.

(d) Discharge procedures shall include utilizing Medicaid discharge protocols established by N.J.A.C. 10:63, and the following:

1. The recipient shall be discharged upon achievement of maximum benefit from the specialized programming and maximum level of functioning and when the individual's condition can be appropriately managed in either the community or other forms of institutional care.

2. Outpatient treatment and supported community services may be needed to assist in community integration.

3. In the case of a recipient residing in a SCNF unit of a conventional NF, who is determined by Division staff to no longer require special programming, yet continues to require conventional NF services, such a recipient shall be accepted for placement into a conventional NF bed in the facility. If a conventional NF bed within the facility is not available within a reasonable time, the SCNF shall assist the individual in finding placement in another facility. The SCNF shall be afforded 30 to 60 days from then date of the determination to effect transfer of the recipient to a bed within the facilities conventional bed allocation or arrange transfer to another conventional NF.

(e) The SCNF shall provide all required services, as defined in this subchapter.

1. A SCNF shall provide those medical services as defined in N.J.A.C. 10:63-2.3, with the following modifications and/or additions:

i. A free-standing SCNF shall have a designated medical director who is board eligible/certified in a medical specialty as targeted by the medical diagnoses, medical conditions and/or resident population of the SCNF. The medical director shall also function as a primary care attending physician. If a speciality medical group provides medical services to the SCNF, a member of that group shall be designated as the medical director.

(1) In lieu of the requirements contained in i above, a free-standing SCNF may have a designated medical director who is a licensed physician and was serving as medical director prior to the effective date of these rules.

ii. For each resident there shall be a designated primary care physician specialist who is board eligible/certified in a medical specialty determined by the medical diagnoses, medical conditions and or resident population of the SCNF;

iii. Responsibilities of the primary care physician include but are not limited to:

(1) History, physical exam and diagnosis on admission and a comprehensive physical exam conducted on a yearly basis;

(2) Medical assessment shall reflect a correlation of the staging of existing diagnosis and premorbid conditions to the prognosis for rehabilitation.

(3) Each resident shall be examined and evaluated as required by the individual's condition as designated by the medical care plan.

2. A SCNF shall provide those nursing services as defined in N.J.A.C. 10:63-2.2 with the following modifications and/or additions:

i. A free-standing SCNF shall have a director of nurses or a nursing administrator who is a registered professional nurse in the State of New Jersey and possesses a Master's Degree or a Baccalaureate Degree in Nursing and has a minimum of two years experience as a nursing administrator or who has at least two years of supervisory experience in either an acute or long-term care setting.

(1) In lieu of (e)2i above, serve as director of nursing prior to the adoption of these regulations.

(2) A SCNF unit within a conventional NF whose director of nursing does not meet the qualifications of (e)2i above shall have a nurse manager who meets the qualifications assigned full time to the unit. The SCNF unit shall have six months from the date of adoption of these rules to comply with this requirement.

ii. Registered professional nurses certified in intravenous therapy shall be available on a 24 hour basis.

iii. Two and one-half hours of basic nursing services by registered professional nurses, licensed practical nurses and certified nurse aides as defined in N.J.A.C. 10:63-2.2. Additional nursing services up to a maximum of three hours may be provided due to technically complex nursing needs and/or intensive rehabilitative/restorative nursing care needs.

iv. Provision of additional nursing services (acuities) as defined in N.J.A.C. 10:63-2.2 does not apply to nurse staffing rules in a SCNF.

(1) Sixty percent of the additional hours of care under iii above shall be provided by registered professional nurses, and forty percent shall be provided by licensed practical nurses. There shall be a minimum of one registered professional nurse, one licensed practical nurse and one certified nurse aide on each shift.

v. Responsibilities of the nursing staff, in concert with other members of the interdisciplinary team, include, but are not limited to:

(1) Expertise and understanding of the physiologic impact, prognosis and treatment needs specific to the medical condition or specialized needs of the target population to enhance integration of the resident and family goals with adjustment and rehabilitation.

(2) Utilization and application of specialized equipment essential to provide services required for the care and treatment of the SCNF population.

(3) Comprehensive and coordinated program of restorative and rehabilitative nursing services to prevent complications and promote and/or restore the individual's physical, psychosocial function to a realistic level.

(4) Individual/family education and instruction of self care to promote optimum level of health in preparation for discharge to a less restrictive environment.

(5) Evaluation and management of moderate to extreme emotional and behavioral disorders related to illness.

3. A SCNF shall provide those social services as required by N.J.A.C. 10:63-2.6, with the following modifications and/or additions:

i. The social services coordinator shall possess a Master's Degree or Baccalaureate Degree in Social Work from a college or university accredited by the Council on Social Work and have at least two years of full time social work experience in a health care setting.

ii. An average of at least 50 minutes of social work services per week for each resident. This is equal to one half-time equivalent social worker for every 24 residents.

iii. In a SCNF with more than 48 beds, one of the direct care social workers shall be designated as the Director of Social Services.

iv. Responsibilities of the social service staff, in concert with other members of the interdisciplinary team, include, but are not limited to:

(1) Knowledge of alternative care programs and resources in the community to assist the resident/family with appropriate discharge planning.

(2) Maintain a library of information and resources pertinent to the resident's diagnosis, educational/vocational training needs and applications to community based programs.

(3) Facilitate on-going collaboration and coordination among health care providers, the resident and the family to promote long-range social and health care planning.

(4) Coordinate SCNF programming with community-based resources to facilitate continuity of care and assimilation into community/family environment.

(5) On-going supportive intervention with the resident/family in dealing with the confusion, anger, fear, depression, guilt and conflict associated with illness.

4. A SCNF shall provide resident activities required by N.J.A.C. 10:63-2.5, with the following modifications and/or additions:

i. The director of resident activities shall possess a Master's Degree or Baccalaureate Degree from an accredited college or university with a major area of concentration in recreation, creative arts therapy, occupational therapy or therapeutic recreation. In addition, three years of experience in a clinical, residential or community-based therapeutic recreation program is required.

(1) In lieu of (e)4i above, serve as director of resident activities prior to the adoption of these rules*[.]**; or*

(2) In lieu of (e)4i above, hold current certification from the National Certification Council for Activity Professionals (National Certification Council for Activity Professionals, 520 Stewart, Park Ridge, Illinois 60068) or the National Council of Therapeutic Recreation Certification (National Council of Therapeutic Recreation Certification, P.O. Box 16126, Alexandria, Virginia 22302.

ii. An average of at least 100 minutes of resident activity services per week for each resident. This is equal to one full-time equivalent resident activities staff for every 24 residents. This staff person shall serve as the Director of Resident Activities.

iii. For each additional 24 beds, the facility shall provide the services of a full-time resident activities assistant.

iv. Responsibilities of the resident activities staff, in concert with other members of the interdisciplinary team, shall include, but are not limited to:

(1) Utilization of all possible community, social, recreational, public and voluntary resources to promote the resident's ties with community life.

(2) Provision of therapeutic resident activities which endorse the therapeutic plan of care.

(3) Incorporation of family-centered activities which provide a supportive, therapeutic environment to give residents and families an opportunity to work together toward achieving common goals.

5. A SCNF shall provide, directly in the facility, the rehabilitation services as required by N.J.A.C. 10:63-2.4 on an intensive level which are specifically targeted to meet the goals of the prescribed treatment plan.

i. Rehabilitative therapies shall include, but shall not be limited to:

(1) Physical therapy;

(2) Occupational therapy;

(3) Speech/language pathology; and

(4) Cognitive or remedial therapies (including neuropsychological treatment)

ii. Rehabilitation services shall focus on developing and/or restoring maximum levels of function within the limits of the resident's impairment. Through collaboration with other members of the interdisciplinary team, a comprehensive rehabilitation plan shall be developed which:

(1) Identifies rehabilitation needs and establishes realistic criteria for measuring the need for continued rehabilitative services;

(2) Projects targeted outcomes (goals) and defines the parameters to measure response to treatment goals; and

(3) Establishes realistic time frames to meet outcome criteria.

6. Mental health services provided by a licensed psychiatrist, psychologist or other appropriately credentialed professional shall be provided to residents with mental health disorders in accordance with N.J.A.C. 10:63-2.9.

7. A SCNF that provides ventilator management of New Jersey Medicaid eligible children or adults, shall provide respiratory therapy services beyond the scope of N.J.A.C. 10:63-2, which shall include, but not be limited to:

i. A respiratory care practitioner who is currently licensed by the New Jersey State Board of Respiratory Care be available on the premises on a 24 hour basis.

ii. Respiratory life support systems must be provided inclusive of, but not limited to:

(1) Mechanical ventilators (pressure/volume/time cycled), (portable/stationary); and

(2) Oxygen therapy delivery systems.

iii. Administration of medically prescribed respiratory care which includes, but is not limited to:

(1) Nasopharyngeal aspiration;

(2) Maintenance of natural and mechanical airways;

(3) Insertion and maintenance of artificial airways;

(4) Aerosol treatment;

(5) Administration of nebulized bronchodilators;

(6) IPPB;

(7) Oxygen therapy;

(8) Mechanical ventilation with/without supplemental oxygen;

(9) Monitoring of blood gases;

(10) Under the direction of the pulmonologist, the respiratory therapist applies weaning parameters and provides direct supervision during the weaning process;

(11) Postural drainage and chest percussion; and

(12) Breathing exercise and respiratory rehabilitation.

SUBCHAPTER 3. COST STUDY, RATE REVIEW GUIDELINES AND REPORTING SYSTEM FOR LONG-TERM CARE FACILITIES

10:63-3.1 Purpose and scope

(a) These rules describe the methodology to be used by the State of New Jersey to establish prospective per diem rates for the provision of nursing facility services to residents under the State's Medicaid program. These rules have been developed jointly by the State Department of Human Services and the State Department of Health ("the departments").

(b) The departments believe that the strict application of these rules will generally produce equitable rates for the payment of nursing facilities (NFs) for the reasonable cost of providing routine patient care services. The departments recognize, however, that no rules can be developed which might not result in some inequities if applied rigidly and indiscriminately in all situations. Inequities could be in the form of rates that are unduly low or rates that are unduly high.

(c) Accordingly, in the case where a NF believes that, owing to an unusual situation, the application of these rules results in an inequity, the departments are prepared to review the particular circumstances with the NF. Appeals on the grounds of inequity should be limited to circumstances peculiar to the NF affected. They should not address the broader aspects of the rules themselves.

(d) On the other hand, these rules are not purported to be an exhaustive list of unreasonable costs. Accordingly, notwithstanding any inference one may derive from these guidelines, the departments reserve the right to question and exclude from any unreasonable costs, consistent with the provision of N.J.S.A.30:4D-1 et seq.

(e) All rates established pursuant to these rules will be subject to onsite audit verification of costs and statistics reported by NFs.

(f) The nursing facility reimbursement formulae contained in this subchapter have been developed to meet the following overall goals:

1. To comply with Federal requirements that rates are reasonable and adequate to meet the cost that efficiently and economically

operated facilities must incur to provide care in conformity with applicable State and Federal laws, rules, regulations and quality and safety standards.

2. To provide sufficient incentive to attract nursing facility investment, thereby reducing the reported Medicaid bed storage; and

3. To end opportunities for excessive property cost reimbursement.

10:63-3.2 Timing

(a) Commencing with fiscal year ending with November 30, 1977, NFs shall furnish required cost studies to the Department of Health, Health Facilities Rate Setting within 90 days of the close of each fiscal year. For rate review purposes, the period for which these actual data are reported will constitute the "base period" for establishing prospective per diem reimbursement rates commencing six months after the end of the base period. These rates will not be subject to routine retroactive adjustments except for matters specified in this subchapter. As required by Federal Regulations at 42CFR 447.304, prospectively determined payment rates will be redetermined at least annually.

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

(d) The Director, Division of Medical Assistance and Health Services, may mitigate or waive the penalties specified in (b) above, for "good cause" shown:

1. "Good cause" shall include but shall not be limited to, circumstances beyond the control of the nursing care facility, such as fire, flood or other natural disaster;

2. Acts of omission and/or negligence by the nursing facility, its employees, or its agents, shall not constitute "good cause" for waiving the penalty provisions;

3. All requests for mitigation and/or waiver of the penalty provisions must be submitted in writing, and accompanied by such documentation and/or supporting affidavits as the Director may require.

(e) The penalty rates indicated in (b) above will be applied to cost studies commencing with the reporting periods ending May 31, 1980.

10:63-3.3 Rate components

(a) The prospective rates will be "screened" CFA rates per day calculated by applying standards and reasonableness criteria ("screens") for three classes of NFs:

1. Class I Proprietary and Voluntary NFs:

2. Class II Governmental NFs:

i. To qualify as a Class II Governmental NF, the NF shall meet all of the contractual requirements of the Division of Medical Assistance and Health Services and be a governmental operation.

3. Class III (Special Care) Nursing Facilities (SCNFs)

i. To qualify as a SCNF, the NF shall meet all of the contractual requirements of the Division of Medical Assistance and Health Services and be approved by the Division as a SCNF.

ii. SCNFs shall be grouped by the following types for separate screening purposes:

(1) Ventilator/Respirator;
(2) TBI/Coma;
(3) Pediatric;
(4) HIV;
(5) Neurologically Impaired (NIP); and
(6) Behavioral Management.

(b) (No change.)

(c) Reimbursement for therapy services will be made as follows:

1. For Class I and Class II programs, reimbursement will be made for physical, speech, and occupational therapy services to Medicaid patients for treatments which are not reimbursable by any other third party payor.

i. A per diem will be calculated for each facility by multiplying the number of otherwise unreimbursable base period Medicaid patient therapy sessions by $7.00 and dividing the product by the total number of base period Medicaid patient days.

2. For Class III programs, all therapy costs for other than respiratory therapy will be reimbursed by a per diem, calculated by dividing total base period therapy costs for Medicaid patients (less recoveries for medicaid patients) by total base period Medicaid patient days for each facility.

3. Respiratory therapy will be reimbursed to all Class III programs with respiratory therapy costs subject to a reasonableness limit determined for all Class III programs providing respiratory therapy services. The limit will originally be calculated at 150 percent of the median per diem respiratory therapy cost per diem for ventilator patients in the base period. When the calculation of the respiratory therapy services cost limit includes one full year of costs for all Class III NFs under the regulations implementing Class III cost limits, the limit will thereafter be calculated at 120 percent of the median respiratory therapy cost per diem. Class III programs without reported costs will be excluded from the calculation of this limit.

(d) The development of the "screens" for Class I, Class II, and Class III NFs includes the governmental NFs' and SCNFs' reported costs and statistics in the following areas:

1. Administrator;
2. Assistant administrator; and
3. Median days per bed.

(e) Administrator and assistant administrator screens determined by (d) above, for NFs which combine Class I or Class II, and Class III programs will be allocated in the ratio of applicable (that is, Class I or Class II or Class III) patient days to the total NF patient days.

(f) The screen for each cost component of a Class III NF administered by a governmental facility will be the screen established for the Class III NF and not the Class II governmental screen.

(g) (No change in text.)

(h) All lease costs incurred as a result of related party transaction, will be excluded for reimbursement purposes.

1. A "related party" is defined in the "CARE" guidelines under Schedule F as:

i. (No change.)

ii. An individual:

(1) (No change.)

(2) Who has a beneficial interest of 10 percent or more in an entity related by (h)1i(2) or (3) above; or

(3) Who is a relative of an individual who is related by the definition in (h)1ii(1) or (2) above;

(4) (No change.)

(i) (No change in text.)

(j) Any legal expenses and related fees associated with any action initiated by the facility that is dismissed on the basis that no reasonable ground existed for the institution of such action will be excluded for reimbursement purposes.

10:63-3.4 (No change in text.)

10:63-3.5 Raw food costs

(a) Raw food costs per patient day for voluntary and proprietary NFs which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be determined. NFs which contract for their dietary operations will be excluded. These per diem costs will be ranked in descending order on a Statewide basis. The reasonableness limit will be set at 120 percent of the median cost per day.

1. Governmental NFs which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be ranked separately and the reasonableness limit will be set at 120 percent of their median cost per day.

2. SCNFs which provide their own food service will be ranked separately for each type of Class III NF and a reasonableness limit for each type will be set at 120 percent of the median cost per day.

(b) For NFs below this limit, prospective rates will be based upon actual costs. Where homes report unit costs 15 percent or more below the median, the Department of Health, Health Facilities Inspection, will be asked to inspect the food operations for compliance with State standards.

(c) For NFs above this limit, the excess of actual raw food costs will be added to other general service expenses and subjected to a screen of the combined total as described in N.J.A.C. 10:63-3.5. Accordingly, a credit may be applied to excess raw food costs if non-

food general service costs are below the reasonable limit where an excess raw food costs is indicated. Any such credit is limited to amount of raw food cost excess.

10:63-3.6 General service expenses

(a) (No change.)

(b) The bases for screen development and reported costs subject to applicable screens, are as follows:

1. (No change.)

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the Department of Health, Health Facilities Rate Setting.

i. The regression will utilize as variables: fringed salaries of unrelated administrators and facility bed size. The constants resulting from the regression formula will then be used in the following formula to produce reasonableness limits for each long term care provider

$$* \left[\frac{x + y}{\text{Median Days Per Bed}} \times \text{NF Patient Days} \times 1.1 = \text{Limit} \right] *$$

$$* \left[x + \left(\frac{y}{\textbf{Median Days Per Bed}} \times \textbf{NF Patient Days} \right) \right] \times \textbf{1.1} = \textbf{Limit} *$$

x = Salary constant from regression
y = Per bed salary constant from regression
1.1 = 10 percent Uniqueness factor

ii. The administrator screen will be applied to the aggregate reported costs of management, administrator, and assistant administrator, for facilities with less than 100 licensed nursing facility beds.

iii.-iv. (No change.)

3. Assistant Administrator: Limited to 125 percent of median unrelated assistant administrator compensation.

i. This cost category will apply only to facilities which exceed 99 licensed nursing facility beds.

4. (No change.)

5. Reasonableness limits for other general services category will be established at:

i. 105 percent of median costs as reported by Class I facilities which had over 20 percent Medicaid patient days.

ii. 105 percent of median costs as reported by Class II facilities which had over 20 percent Medicaid patient days.

iii. 105 percent of median costs for each type of Class III program as reported by SCNFs.

6. The level of reasonableness for legal fees will be established at:

i. 250 percent of median costs of Class I and Class III facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting Class I and Class III NFs which had over 20 percent Medicaid days.

ii. 250 percent of median costs of Class II facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting Class II NFs which had over 20 percent Medicaid days.

7.-8. (No change.)

10:63-3.7 Property operating expenses

(a) Property operating expenses include property taxes and utilities.

1. (No change.)

2. For this purpose, reasonable plant square feet (and related property taxes) for voluntary and proprietary NFs will be determined as follows:

i. The ratio of plant square feet to licensed beds will be determined for all proprietary and voluntary NFs;

(1) (No change.)

(2) Which had at least 20 percent Medicaid patient days in the base period.

(A) Reasonable plant square feet for governmental NFs will be determined separately as in N.J.A.c. 10:63(a)1 above.

(B) Reasonable plant square feet for Class III NFs will be determined as in (a)2 above.

ii. This ratio will establish the "normal" plant square feet for a NF with a given number of licensed beds.

iii. The reasonableness limit for each NF's plant square feet will be established at 110 percent of the norm for its licensed beds. (see N.J.A.C. 10:63-3.11 for NFs with residential or sheltered care patients).

3. For NFs whose plant square feet exceeds this limit, the property taxes related to the excess will be excluded from the rate base. For this purpose, it will be assumed that assessed values for buildings vary directly in relation to their areas. The latitude set forth in paragraph 2iii of this subsection is intended to provide for inequities that could result from this assumption. The department will review on an individual basis, any additional inequities which owners believe are brought about by unusual circumstances.

4. For NFs whose Department of Transportation (D.O.T.) appraised value per plant square foot is greater than 110 percent of the median construction costs at 1977 pricelevels, the property taxes attributable to the excess will be excluded from the rate base unless the owners can demonstrate unusual circumstances. For screening new NFs, this figure will be revised each year for inflation and for effects of standards changes upon construction cost. (See N.J.A.C. 10:63-3.11 for the methodology for calculating this limit at 1977 price levels.)

5. Reasonable land area (and related taxes) is established as follows:

i. For urban NFs two acres;

ii. For nonurban NFs five acres;

iii. (No change.)

6. (No change.)

7. After making any adjustments per (a)6 above, taxes bases upon land appraisals in excess of 140 percent of the median appraisal value of five acres, rural and two acres, urban of all NFs in the county will also be considered unreasonable. In the case of counties with fewer than five NFs neighboring counties may be combined in determining the median value to be used.

8. (No change.)

(b) As noted in the instructions for the submission of cost studies, where a lessor is paying the property taxes, the actual property taxes paid by the lessor are to be reported by the NF operator as a property tax expense and deducted from the amount reported as rent. The property tax component of such leases will be subject to the above screens.

(c) Utility costs will be screened for reasonableness as follows:

1. Base period utility costs per bed will be deemed apparently unreasonable to the extent that they exceed 150 percent of the Statewide median cost per bed, as determined for each class/type of NF indicated in N.J.A.C. 10:63-3.3.

i. (No change.)

10:63-3.8 Special amortization

(a) (No change.)

(b) In approving the amortization of special expenditures, the departments will also consider the extent to which a NF's rates are based on capital and cost levels of fully complying NFs.

10:63-3.9 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. The minimum nursing requirements in terms of hours worked will be calculated for each Class I and Class II NF based upon the case mix patient classification (see N.J.A.C. 10:63-3.20(a)5ii) and standards in effect during the base period, except that, beginning October 1, 1990, minimum nursing requirements in terms of hours shall be calculated for each nursing facility based upon:

i.-iv. (No change.)

2. The minimum nursing requirements in terms of hours worked will be calculated for each Class III program as follows:

i. A base of 2.5 hours per patient day (20 percent RNs and LPNs; 80 percent Aides);

ii. An additional three hours per patient day (60 percent RNs, 40 percent LPNs);

iii. The total minimum hours per year for each type of nurse will be at least 8,760 (that is, allowing staff of one RN, LPN and Aide on each shift.

3. The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary NFs in the State. Separate rankings will be developed for governmental NFs and each type of SCNF. The percentage for the median NF for each class of facility will be selected as the Statewide norm for the percentage of hours paid but not worked for that class of facility.

4. The hours developed in (b)1i-iv and (b)2i-iii above will be incremented by the applicable percentage for each class of NF.

5. The average equalized hourly compensation rate of each type of nurse (see N.J.A.C. 10:63-3.4) will be calculated separately for Class I, Class II, and each type of Class III facility.

i. The average equalized compensation rate for the median NF for each class/type of NF will be selected as the norm for the State.

6. The compensation rates for each class/type of facility will be multiplied by the paid hours developed in (b)4 above for each type of nurse and aggregated for all three types of nurses.

7. The reasonableness limit for total nursing care will be established at 115 percent of this total for Class I and Class II facilities and 125 percent of this total for Class III facilities, in order to allow for variations in staffing patterns, mix of nursing personnel, and so forth. This total will be adjusted for timing differences to each NF's base period.

(c) Reasonableness limits for the below listed special patient care services other than nursing will be established for each class of NF.

1. (No change.)

(d) Reasonableness limits for medical supplies and patient activities will be established:

1. 150 percent of the median per diem cost of Class I NFs which had over 20 percent Medicaid days in the base period.

2. 150 percent of the median per diem cost of Class II NFs which had over 20 percent Medicaid days in the base period.

3. 150 percent of the median per diem cost for each type of Class III NF, excluding any facility without reported costs.

(e) Reasonableness limits for medical director, pharmaceutical consultant, non-legend drugs, social services and oxygen will be established at:

1. 110 percent of the median per diem cost of Class I NFs which had over over 20 percent Medicaid days in the base period.

2. 110 percent of the median per diem cost of Class II NFs which had over over 20 percent Medicaid days in the base period.

3. 110 percent of the median per diem cost for each type of Class III NF, excluding any facility without reported costs.

(f) Where actual base period costs for routine patient care are below the limits established, the actual costs will be included in the rate base. The Department of Health, Health Facilities Inspection, will be notified of all cases where a NF patient care costs per day are less than 75 percent of the limits in N.J.A.C. 10:63-3.8(b)6 and of all cases where nursing hours worked appear to be below State standards.

10:63-3.10 Property—Capital Costs (including Return on Investment (ROI))

(a) Included in this category are the following rate components:

1.-8. (No change.)

9. Fees and other expenses incurred in financing or refinancing of the NF itself or any of its assets.

(b) The rules promulgated herein have been developed with the following objectives and considerations:

1. The departments should not concern themselves with the method and attendant costs with which individuals NFs are financed and constructed or the arrangements under which they are acquired or leased.

2. While not concerning themselves about the costs, financing and so forth, of individual NFs the departments mandate with respect to the reasonableness of cost requires it to develop this rate component upon the presumption of reasonable facility costs and prudent financing.

3. Private capital should be attracted into the industry with a reasonable rate of return, which should recognize that:

i. The existence of the certificate of need process to control the supply of NFs in relation to demand, removes several risks inherent in most free enterprise situations.

ii. (No change.)

(c) The departments believe that the above objectives can best be met by establishing an aggregate "capital facilities allowance" (CFA) which would replace all of the rate components noted above.

(d) The following considerations will be addressed in determining the CFA:

1. Buildings (see N.J.A.C. 10:63-3.11);
2. Land and land improvements (see N.J.A.C. 10:63-3.12);
3. Equipment (routine moveable) (see N.J.A.C. 10:63-3.13);
4. Maintenance and replacements (see N.J.A.C. 10:63-3.14);
5. Property insurance (see N.J.A.C. 10:63-3.15);
6. Economic occupancy level (see N.J.A.C. 10:63-3.16).

10:63-3.11 Buildings

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

(c) Reasonableness limits on plant square feet will be set at 110 percent of the median plant square feet per available bed of all proprietary and voluntary NFs which had over 20 percent Medicaid patient days in the base period. Separate reasonableness limits will be developed for governmental NFs by the same method. NFs not substantially complying with current State and Federal space requirements or carrying space waivers will be excluded from this calculation.

(d) A reasonableness limit on appraised value per square foot will be established at 110 percent of the median appraised values, at 1977 price levels, of proprietary and voluntary NFs which had over 20 percent Medicaid days in the base period. The limit for Class I NFs will also be applied to Class III NFs. A separate reasonableness limit will be developed for governmental NFs by this method.

(e) (No change.)

(f) Two rates will be developed for calculating the CFA for NFs:

1.-2. (No change.)

(g) For the first 25 years of the life of a NF beginning with the year of construction, the amortization rate will be applied to the 1977 reasonable appraised value of the building and fixed equipment.

(h) (No change.)

(i) For NFs built-in multiple stages, a weighted average year of original construction will be established by weighing licensed beds by the age of the component multiple stages of the building in which the beds are located. Where inequities could result from this calculation, homes with suitable records may request that the weighted average year of construction be calculated based upon plant square feet constructed.

(j) For NFs with residential and/or sheltered care patients, data relative to common areas will be apportioned to nursing patients based upon base period licensed beds. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c), (d) and (e) above and, where applicable, to the weighted average year of construction calculations described in (i) above. This proration will not be redetermined for subsequent years in the absence of significant changes in facilities or in patient mix.

(k) For LTCF's NFs which were converted to NFs use from other uses, the year of conversion will be used provided the conversion cots exceeded the acquisition cost of the building and building equipment. Otherwise, the original year of construction will be used.

(l) For existing NFs the State will not increase the CFA rate in future years should the Medicare return on equity rate increase. Should this rate decrease by more than the reasonable cost of refinancing, both the interest rate and the amortization rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with the Medicare return on equity factor.

(m) For new NFs or for additions to existing NFs the amortization rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return on equity factor. The provisions of (l) above will apply in subsequent years.

(n) The departments will review, on an individual basis, situations where the strict application of the provisions of this section would be inappropriate under particular circumstances, such as:

1. Situation where an existing debt must be refinanced in connection with obtaining funds to expand existing NFs;

2. The inability of NFs to obtain 25-year financing.

(o) With respect to new NFs and significant additions to existing NFs, the appraised value will be determined based upon price levels at the time the construction is completed.

(p) Expenses incurred by NFs in obtaining financing through a governmental authority may be allowable. These expenses should be presented for treatment under the special amortization provision of the rates, and they will be evaluated on an individual basis in accordance with N.J.A.C. 10:63-3.8(a) and (b).

10:63-3.12 Land

(a) The 1977 value of land and land improvements as appraised by the State Department of Transportation will be basis for determining the CFA with respect to land, subject to reasonableness limits as defined for property taxes on land in N.J.A.C. 10:63-3.7, with respect to:

1. Reasonable land area;

2. The total reasonable appraised value of reasonable land area.

(b) The interest rate developed per N.J.A.C. 10:63-3.11(f) will be applied to the reasonable 1977 appraised value.

(c) The provisions of N.J.A.C. 10:63-3.11(l) through (p) will also apply to CFA for land in years subsequent to 1977.

(d) (No change.)

10:63-3.13 Movable equipment

(a) The moveable equipment allowance will be based upon the median requirements per bed at 1977 price levels. This median will be determined by:

1. Selecting new NFs built since 1969 which had over 20 percent Medicaid days in the base period.

2. Incrementing their original expenditures for moveable equipment to 1977 price levels by applying an appropriate index of inflation in equipment costs.

3. Converting these inflated expenditures to cost per bed and ranking Statewide.

(b) The allowance per licensed bed will be determined by applying to this median cost the interest rate developed per N.J.A.C. 10:63-3.11(f), (l), (m).

(c) Inasmuch as this allowance will be based upon the current replacement cost of new equipment, it will be deemed to provide for unusually large expenditures for maintaining old equipment (the departments consider it to be purely a management prerogative as to when to replace, rather than repair, old equipment). A provision for ongoing routine equipment maintenance and replacements will be included in the maintenance and replacements allowance as described in N.J.A.C. 10:63-3.14.

10:63-3.14 Maintenance and replacements

(a) An allowance for the maintenance of land, land improvements, building and equipment and for replacement of equipment will be developed for Class I and Class II facilities and each type of Class III facility as follows:

1. Expenditures for this purpose in the base period for Class I, Class II and each type of Class III of NF which had over 20 percent Medicaid days in the base period will be adjusted to price levels at the midpoint of the base period through the application of the inflation factor to reported costs for fiscal years ending prior to December. Class III NFs will not be excluded due to percentage of Medicaid days.

2. Homes which were substantially expanded or remodernized during this period will be excluded from calculations described in (a)3 below.

3. For the remaining NFs, maintenance and replacement costs per plant square foot at base period price levels will be calculated for each class of NF. Mathematical techniques will be used to determine a general formula describing the relationships between expenditures per plant square foot for maintenance and replacements and factors such as age of buildings, estimated building replacement costs, and so forth.

4. The 15 percent highest and 15 percent lowest extremes in actual expenditures compared with this general formula will then be removed from further calculations, except for Class III NFs. The same mathematical techniques will then be applied to the remaining 70 percent of the data to develop the formula to be used to calculate a reasonable allowance for each class of NF for maintenance and replacement.

5. Seventy percent of the costs of leasing equipment will be recognized as "maintenance and replacement" costs.

6. Each NF's maximum total allowance per reasonable plant square foot for any one year will developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.7(a)1 and 2.

7. Base period expenditures in excess of this maximum allowance may be carried forward and applied in future years in which expenditures are below their respective maximum allowances.

i. Actual expenditures that are below the limits for the base period, may be carried and applied to excess expenditures in subsequent years. The following example illustrates how two typical NFs would be affected.

YEAR No. 1	NF A	NF B
Actual expenditures	$130.00	$ 80.00
Limit	100.00	100.00
Excess (savings carried forward)	$ 30.00	$ 20.00
YEAR No. 2 NF A	EXAMPLE 1	EXAMPLE 2
Actual expenditures	$ 60.00	$ 85.00
Carried forward	+30.00	+30.00
Total eligible	$ 90.00*	$115.00
Limit	$105.00–$105.00*	
Carried forward to Year No. 3	$ 15.00	$ 10.00
YEAR No. 2 NF B	EXAMPLE 1	EXAMPLE 2
Actual expenditures	$120.00	$130.00
Limit	$105.00	$105.00
Plus Carried Forward	+20.00	+20.00
Revised limit	-125.00	-125.00*
Carried forward to Year No. 3	$ (5.00)	$ 5.00

*Included in rates

8. Expenditures for replacements, capitalized maintenance and leases will be prorated to nursing patients, based upon the ratio of nursing square feet (including a prorated of common areas) to total plant square feet.

10:63-3.15 Property insurance

(a) An allowance for property insurance will be developed for each home as follows:

1. Base period property insurance costs per dollar of appraised value and per dollar of 1977 replacement costs will be calculated for all Class I NFs. Separate calculations will be made for Class II facilities and each type of Class III facility.

2. Mathematical techniques will be applied to this data to develop formulas describing the normal relationships between property insurance costs and appraised values and estimated replacement costs. Separate formulas will be develpoed for urban and non urban NFs.

3. The procedures described in N.J.A.C. 10:63-3.14 will be used to eliminate extremes and to develop the formula to be used to calculate the reasonableness limit for property insurance, except for the calculation of Class III limits.

4. Each NF's reasonableness limit per reasonable plant square foot will be developed by applying this formula to its particular

factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.7(a)1 and 2.

10:63-3.16 Target occupancy levels

(a) (No change.)

(b) For Class III NFs, if the base period Medicaid occupancy is 80 percent or greater, the target occupancy for the rate components in (a) above will be 90 percent.

(c) The per diem amounts for all other expenses will be based upon reasonable base period costs divided by actual base period patient days.

(d) For new Class I and Class II facilities an occupancy rate of 80 percent will be used for provisional rates during the first year of operation subject to retroactive adjustments to actual occupancy should it exceed 80 percent (but no higher than 95 percent will be used).

(e) For new Class III NFs, an occupancy rate of 80 percent will be used for provisional rates during the first year of operation. The retroactive adjustment from an interim to an actual rate for the first year of operation shall use actual occupancy should it exceed 80 percent (but no higher than 95 or 90 percent will be used, as determined by (a) or (b) above).

10:63-3.17 Restricted funds

(a) Where donor restricted funds have been expended for operating purposes and, accordingly have been reported as an expense recovery/elimination, the availability and use of such funds will not be taken into account in establishing rates to the extent that they produce actual unit costs below the median unit costs and NF's developed for determining reasonableness. (It should be noted that the availability or use of such funds will not be taken into account at all with respect to CFA calculations.)

(b) (No change.)

10:63-3.18 Adjustments to base period data

(a) (No change.)

2. NFs may also request that cost in addition to base period expenditures be included in the prospective rates owing to:

i.-ii. (No change.)

3. With respect to requests for management changes, the departments will take the position that it is not a prerogative of a rate setting body to unilaterally make or amend social policies, especially with respect to the appropriateness of current allocations of State resources to the care of indigent NF patients. Accordingly, in the absence of other compelling reasons, management changes will be approved only in areas where quality has been found to be marginal by health facility inspection and actual costs are commensurately low.

4. Where legal and management changes have been approved and the approved costs are not expended in the prospective rate period, the unspent amount will be recovered from the NF.

5.-6. (No change.)

10:63-3.19 Inflation

(a) A provision will be added to reasonable base period costs to provide for inflation/deflation between the base period and the prospective rate period. Changes in two factors will be used to develop this provision.

1. (No change.)

2. The (consumer price index) Consumer Price Index as published by the Bureau of Labor Statistics (weighted 40 percent).

(b) This inflation factor will be developed by the Division of Medical Assistance and Health Services and the Department of Health, Health Facilities Rate Setting.

(c) Should the economic factor as developed for hospitals include a provision for changes in legally mandated fringe benefits, a similar provision will be included in prospective nursing NF rates.

(d) If, for reasons beyond the control of a NF, rates have not been redetermined within three months after receipt of its reports, an interim adjustment for inflation may be made to existing rates for cash flow purposes. The inflation increment would be based upon the number of months from the midpoint of the current rate period to the beginning point of the new rate period. The interim rate will be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in these guidelines.

(e) NFs may also request interim adjustments to rates during a prospective rate period for either legally mandated matters or for extraordinary factors beyond their control. Such adjustments, if approved, would not apply retroactively unless, for reasons beyond the control of the NF, costs are affected retroactively.

(f) No provision for inflation will be made with respect to costs for buildings, land, moveable equipment, interest and lease, nor to special amortization.

10:63-3.20 Working capital provision and total rates

(a) Following the additions of the provision for inflation (N.J.A.C. 10:63-3.19), and approved legal and approved legal land management changes, a working capital provision will be added to rates as follows:

1. The State's planned timetable for reimbursing NFs for the care of Medicaid patients will be converted into an average expected days of accounts receivable.

2.-4. (No change.)

5. The nursing care component of the rates shall be adjusted six months after the effective date of each facility's prospective rate (see N.J.A.C. 10:63-3.2) in order to allow for changes (if any) in the patient mix of each facility related to additional services requiring additional minimum nursing time. This adjustment shall be based upon the patient mix, as reported monthly by each facility, during a six month period ending three months prior to the effective date of the adjustment. Each facility shall maintain an individual patient classification form for each patient to record additional minimum nursing services required under N.J.A.C. 8:39-25.2(b).

i.-iii. (No change.)

10:63-3.21 Appeals process

(a) When a NF believes that, owing to an unusual situation, the application of these guidelines results in an inequity, two levels of appeals are available; a Level I Appeal heard by representatives from the Department of Health and Department of Human Services; and a Level II Appeal heard before an Administrative Law Judge.

1. Level I Appeal: A request for a Level I appeal should be submitted in writing to the Department of Health, Health Facilities Rate Setting, Health and Agriculture Building, Room 600, John Fitch Plaza, CN-360, Trenton, New Jersey, 08625. Requests for Level I appeals will be considered timely filed if they are submitted within 30 days of receipt of the notification of rates.

i. The first level of appeal will be heard by analysts from the Department of Health, and supervisory-level representatives from both the Department of Health and the Department of Human Services, as required. NFs should be prepared to provide such substantiating material as may be required for an informal discussion of the subject matter.

ii. Level I appeals will endeavor to reach equitable resolutions of matters peculiar to individual NFs. They will not be expected to resolve items which have policy implications or broad applicability.

iii. The analyst's recommended resolutions will first be received at appropriate levels within the Department of Health, Health Facilities Rate Setting, and will then be forwarded to the Division of Medical Assistance and Health Services for the approval of the Director or a designee of the Director.

iv.-v. (No change.)

2. Level II Appeal (Administrative Law Appeal): If the NF is not satisfied with the results of the Level I Appeal, It may request a hearing before an Administrative Law Judge.

i. Request for an administrative hearing must be submitted in writing to the New Jersey State Department of Health, Health Facilities Rate Setting, Health and Agriculture Building, Room 600, John Fitch Plaza, CN 360, Trenton, New Jersey 08625.

ii. (No change.)

iii. The Administrative hearing will be scheduled by the Office of Administrative Law and the facility will be notified accordingly.

iv. At the Administrative hearing the burden is upon the NF to demonstrate entitlement to cost adjustments under CARE

Guidelines (Cost Accounting and Rate Evaluation System). A complete set of CARE Guidelines may be obtained from: New Jersey State Department of Health, Health Facilities Rate Setting, Health and Agriculture Building, Room 600, John Fitch Plaza, CN 360, Trenton, New Jersey 08625.

10:63-3.24 Transitional relief for salary region adjustment; State Fiscal Year 1995

(a) In order to provide transitional relief for those nursing facilities most negatively impacted by the adjustment to a single statewide salary region which began July 1, 1992, a rate adjustment will be made for qualifying facilities. Nursing facilities which are expected to incur reductions in Medicaid reimbursement in excess of $27,500 for services to be provided to Medicaid recipients for the period July 1, 1994 to December 31, 1994, as a result of the implementation of the single statewide salary region, will receive a prospective per diem rate adjustment.

(b) Facilities will be reimbursed the six-month reduction of Medicaid reimbursement in excess of $27,500 for the period effective July 1, 1994 to December 31, 1994. The per diem add-on will be calculated for each facility as follows:

1. Determine for each facility the prospective or interim to actual per diem rate(s) for the period from July 1, 1994 to December 31, 1994 using the salary region system effective prior to July 1, 1992;

i. These calculations will not include the (six month) acuity adjustment of rates for patient mix.

2. Determine the difference between the corresponding single salary region per diem reimbursement rate(s) for the period from July 1, 1994 to December 31, 1994 (excluding the acuity adjustment of rates) and the per diem rate as calculated in (1) above;

3. Multiply the per diem rate difference(s) from (b)2 above by the number of the facility's Medicaid patient days paid (allocated to the applicable rate periods if appropriate) for the period from July 1, 1993 to December 31, 1993;

4. From the product determined in (b)3 above deduct the amount of $27,500;

5. Divide the remainder from (b)4 above by the total number of the facility's Medicaid patient days paid for the period from July 1, 1993 to December 31, 1993;

6. Multiply the quotient by six;

7. Divide the product by five.

(c) The resulting per diem amount will be as an add-on to each eligible facility's routine prospect rate for a five month period commencing August 1, 1994.

Recodify existing N.J.A.C. 10:63-5 as 10:63-4 (No change in text).

APPENDIX A

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

PROVIDER APPLICATION

1. _____ Legal Name of Provider
2. _____ Type of Business or Facility

_____ Business Name, if Different From Above

3. _____
Address (Service Location Only) Street City County State Zip Code

4. _____ Employer ID Number
5. _____ Telephone Number
6. _____ Lenth of time at above address

7. _____ Billing Address, if different
8. _____ Name of Administrator, Chief Executive Officer, or other responsible official.

_____

9. Indicate legal status of your organization: Profit _____. Non-Profit _____. Private _____. Public _____. Municipal _____. State _____. Charity _____. School Nurse _____. County _____. Other _____. If other, please specify: _____

10. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program.

_____

11. Do you operate from more than one location? _____ Yes _____ No. If yes, list all other subsidiary or affiliated organizations below: (Name and service address)

1. _____ _____
2. _____ _____
3. _____ _____

Please attach additional sheet if necessary.

12. Please indicate if you are a member of a chain organization. _____ Yes _____ No. If yes, indicate name: _____

13. Please indicate your preference to receive central or local reimbursement:

_____ to each satellite location;
_____ to central location at _____

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.

14. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? _____ Yes _____ No. If yes, attach a copy of the Certificate of Need. If no, explain why you do not require a certificate.

15. If your business or facility requires a license/permit, indicate type _____ and number _____ Please attach a copy of the license/permit, i.e., Independent Laboratory Certification.

16. CERTIFICATION, ACCREDITATION OR APPROVAL Specify type and attach copy. For example JCAHO (hospitals); New Jersey Department of Health (clinics); Division of Mental Health and Hospitals (mental health clinics); State Board of Dentistry (dental clinics); State Board of Pharmacy (providers offering pharmaceutical services); American Board for Certification in Prosthetics and Orthotics (Prosthetist and/or Orthotist). See Item 16.

17. Approved by Medicare? _____ Yes _____ No. If yes, please indicate Medicare provider number _____ and attach copy of your Medicare approval.

18. Are you currently or have you ever been an approved provider of services under the New Jersey Medicaid Program or the Medicaid Program of any other state or jurisdiction? _____ Yes _____ No. If Yes, list types of services provided and current status. If you were approved at one time and you no longer participate, explain the reason(s).

FD-20 (12 90)

19. Have any of the entities named in response to questions I. or II. or their officers or partners, or any of the individuals named in response to questions 8. ever been the subject of any license suspension, revocation, or other adverse licensure action in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain.

20. Have any of the entities named in response to question I. or II. or their officers or partners, or any of the individuals named in response to questions 8. ever been indicted, charged, convicted of, or pled guilty or no contest to any federal or state crime in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain.

21. Have any of the entities named in response to questions I. or II. or their officers or partners, or any of the individuals named in response to questions 8. ever been the subject of any Medicaid (Title XIX) or Medicare (Title XVIII) suspension, debarment, disqualification or recovery action in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain. _____

22. Do any of the entities named in response to question I. or II. or their officers or partners, or any of the other individuals named in response to questions 8. own or have any financial interest in any other provider participating in the New Jersey Medicaid (Title XIX) Program or the Medicaid (Title XIX) Progam of any other state or jurisdiction? _____ Yes _____ No. If yes, please list provider name and nature of relationship.

23. Do you charge for goods and/or services? TO ALL _____. TO NONE _____, TO CERTAIN GROUPS ONLY _____. If you charge to all or only certain groups, please explain your arrangement and attach a copy of your fee schedule.

24. List days and hours of operation.

25. List the names, SSA Number, License/Permit Number and Degree(s) for all professional staff in the organization. Include physicians, dentists, psychologists, pharmacists, registered nurses, licensed practical nurses, registered physical therapists, optometrists, etc. If more space is needed, attach additional sheets. (NOTE: Not required for health care providers certified for Medicaid and/or Medicare participation by the State Department of Health and/or HCFA.)

NAME	SSA NUMBER	DOB	LICENSE/PERMIT NUMBER	DEGREE, e.g., MD, DO, DDS, RPT, PhD, CPO, OD, RN, LPN, etc.
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

26. For the purpose of establishing eligibility to receive direct payment for services to recipients under the New Jersey Medicaid (Title XIX) Program, I certify that the information furnished on this application is true, accurate, and complete. I am aware that if any of the statements made by me in this application are willfully false, I am subject to punishment, including but not limited to suspension, debarment or disqualification from the New Jersey Medicaid Program in accordance with N.J.A.C. 10:49-1.17(d)22. I agree to notify the Division of Medical Assistance and Health Services' Provider Enrollment Unit, at least quarterly, of all future additions to any of those named in questions 19. - 22. for whom the response to those same questions would be affirmative.

Signature of Provider Representative _____ Title _____ Date _____

FOR DIVISION AND/OR FISCAL AGENT USE ONLY

[ ] Approve [ ] Disapprove [ ] Other _____ Initial _____ Date

[ ] Approve [ ] Disapprove [ ] Other _____ Initial _____ Date

Provider Type(s)	Category of Service	Specialty

APPENDIX B

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

NURSING FACILITY PARTICIPATION AGREEMENT
NEW JERSEY MEDICAID PROGRAM

Name of Facility _____

Address _____

State License No. _____ Medicaid Provider No. _____

FOR DIVISION USE ONLY

★★

Agreement Begin Date: _____ **Agreement End Date:** _____

★★

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 Medicaid program are in need of medical care in the form of skilled nursing care, or intermediate nursing 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 responsbile 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 Nursing Facility must: (1) be licensed under the laws of New Jersey; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a licensed nursing facility administrator who holds a current license and who is not suspended, debarred or disqualified from participation in the New Jersey Medicaid program; (4) meet on a continuing basis Federal requirements for participation in Title XIX; and (5) accept the terms and conditions of participation set out herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is agreed by and between the parties hereto as follows:

A. FACILITY AGREES:

1. That it will render all services which have been recognized as an element of cost as set forth in the cost survey report submitted;
2. That it will accept the payment approved under the Mediciad program for a Medicaid recipient in semi-private accommodations, as payment in full and will not make any additional charges

to the patient or others on his behalf for Medicaid covered services. Payment shall be based on the net amount of the per diem rate times the number of patient days minus the patient's available income, the collection of which is the responsibility of the facility;

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 authorized Mediciad recipients who reside only in those areas of this Facility which are certified for participation in the New Jersey Medicaid program;
5. That it will reserve beds for Medicaid recipients on therapeutic home leave in accordance with State and Federal regulations;
6. That it will maintain all financial records for a period of at least one year after it is notified that such records will not be audited, or for a period of at least one year after they are audited, or for a period of one year after the conclusion of all hearings, appeals and/or other litigation with respect to such audits, whichever is later, and to 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 treatments, drugs, and services for which vendor payments are to be made under the Title XIX program, including the authority for and the date of administration of such treatments, drugs, or services;
   c. Documentation in each patient'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; and
   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 States Department of Health and Human Services or by the Department.
7. That it will comply with the provisions of N.J.S.A. 10:5-12.2 prohibiting any skilled nursing or intermediate care facility whose Medicaid occupancy level is less than the statewide occupancy level as established by the Commissioner of the Department of Human Services from denying admittance to a qualified Medicaid applicant when a nursing home bed becomes available;
8. That it will place a Medicaid recipient only in a unit of the Facility approved by the Division of Medical Assistance and Health Services and covered by this agreement;
9. That it will cooperate fully in permitting and assisting representatives of the Department to make assessments and evaluations of services provided to patients generally, and of the needs and circumstances of individual patients who are recipients of the Medicaid program;
10. That it will secure and arrange for other health services as may be available for Medicaid recipients pursuant to Program regulations;
11. That it will comply with State and Federal Medicaid laws, and rules and regulations promulgated pursuant thereto;
12. That it will comply with the disclosure requirements specified in 42 CFR 455.100 through 42 CFR 455.106;
13. That it will comply with the provisions of the Patient Self Determination Act set forth in Section 4751 of the Federal Omnibus Budget Reconciliation Act of 1990 (OBRA 1990).

14. 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 Nursing Facilities;
15. That it will notify the Division of Medical Assistance and Health Services, within five working days, of any change in the status of its license to operate as issued by the New Jersey State Department of Health;
16. That it will not initiate, request or otherwise cause the removal of a Medicaid recipient for the purpose of making an additional bed available for private paying or other non-Medicaid patients, other than in accordance with the Department's regulations on the involuntary transfer of Medicaid recipients;
17. That it will give priority to the readmission of a Medicaid recipient who has been transferred from the Facility to a hospital for medical reasons;
18. That it will provide the Medicaid program with written notice at least 90 days in advance of any change in ownership and/or operation of the Facility;
19. 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 a false statement or representation of a material fact in order to receive any benefit or payment under the New Jersey Medicaid 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);
20. To notify the Department within 30 days of filing State or Federal Bankruptcy Proceedings, Receivership Proceedings, or Assignment for the Benefit of Creditors Proceedings;
21. That it will not employ or engage any person who has been suspended, debarred or disqualified from participating in the Medicaid and/or Medicare program by either the Federal Government or any State in the country;
22. 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:

1. That it will pay for authorized services provided by the Facility in keeping with the availability of State appropriation, on the basis of the net amount of the per diem rate times the number of patient days minus the patient's available income, the collection of which is the responsibility of the Facility, for care required by the Medicaid recipient, including bed and board in semi-private accommodations, as determined by the Department acting under applicable regulations, but in no event will payment be made for any Medicaid recipient determined not to require nursing care;
2. That it will reimburse the Facility through the use of rates that are reasonable and adequate to meet the cost that efficiently and economically operated facilities must incur to provide care in conformity with applicable State and Federal laws, regulations and quality and safety standards;
3. That it will pay the Facility for reserving beds for Medicaid recipients on therapeutic home leave in accordance with State and Federal regulations;
4. 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. However, in the event the Department determines that irregularities, deficiencies, or other similar conditions exist, from any cause, it may withhold payments until such irregularities are adjusted;
5. That it will make proper adjustment in the billing errors, as is indicated, to compensate for either overpayment or underpayment subject to existing time limitations;

6. That it will give the Facility, (subject to paragraph 22), 30 days notice of any impending changes in its status as a participating Nursing Facility;
7. That it will notify the Facility of any change in Title XIX rules and regulations and to work with the individual Facility with the view toward providing the best care available within the limitations of the law and available money;
8. That the Facility may terminate its participation in the Medicaid program at the expiration of this agreement upon a minimum of 90 days written notice to the Department.

C. DEPARTMENT AND FACILITY MUTUALLY AGREE:

1. 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 the result of amendments or judicial interpretations, then, 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 the termination;
2. That this agreement shall be transferable and assignable upon a change in ownership and/or operation;
3. That, in the event a participating Facility is sold, the Department shall make no division of the reimbursable proceeds for services rendered to Medicaid recipients between the new and former owner, but rather will reimburse the owner of record as of the billing month for all services rendered. The new and former owner shall make the necessary adjustments; and
4. That this agreement may be terminated for any of the following reasons: (1) upon decertification of the Facility by the New Jersey State Department of Health or the Health Care Financing Administration (HCFA), (2) by mutual consent of the parties, (3) for cause under applicable clauses herein, (4) without cause, by the Department, upon 90 days written notice to the Facility, or (5) because of Federal and/or State government withdrawal from Program participation.

_____

Signature of Authorized Representative of Facility

_____

Title

_____

Division of Medical Assistance and Health Services
Department of Human Services

MCNH-38 (rev. 5/92)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

APPENDIX C

FORM APPROVED
OMB No 0938-0086

INSTRUCTIONS FOR COMPLETING DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT (HCFA-1513)

Completion and submission of this form is a condition of participation, certification, or recertification under any of the programs established by Titles V, XVIII, XIX, and XX, or as a condition of approval or renewal of a contractor agreement between the disclosing entity and the secretary of appropriate state agency under any of the above-titled programs, a full and accurate disclosure of ownership and financial interest is required. Failure to submit requested information may result in a refusal by the Secretary or appropriate State agency to enter into an agreement or contract with any such institution or in termination of existing agreements.

SPECIAL INSTRUCTIONS FOR TITLE XX PROVIDERS

All title XX providers must complete Part II(a) and (b) of this form. Only those Title XX providers rendering medical, remedial, or health related homemaker services must complete Parts II and III. Title V providers must complete Parts II and III.

General Instructions

For definitions, procedures and requirements, refer to the appropriate Regulations:

Title V - 42CFR 51a.144
Title XVIII - 42CFR 420.200-206
Title XIX - 42CFR 455.100-106
Title XX - 45CFR 228.72-73

Please answer all questions as of the current date. If the yes block for any item is checked, list requested additional information under the Remarks Section on page 2, referencing the item number to be continued. If additional space is needed use an attached sheet.

Return the original and second and third copies to the State agency; retain the first copy for your files.

This form is to be completed annually. Any substantial delay in completing the form should be reported to the State survey agency.

DETAILED INSTRUCTIONS

These instructions are designed to clarify certain questions on the from. Instructions are listed in question order for easy reference. No instructions have been given for questions considered self-explanatory.

IT IS ESSENTIAL THAT ALL APPLICABLE QUESTIONS BE ANSWERED ACCURATELY AND THAT ALL INFORMATION BE CURRENT.

Item I (a) Under identifying information specify in what capacity the entity is doing business as (DBA), example, name of trade or corporation.

(b) **For Regional Office Use Only.** If the yes box is checked for Item VII the Regional Office will enter the 5-digit number assigned by HCFA to chain organizations.

Item II - Self-explanatory.

Item III - List the names of all individuals and organizations having direct or indirect ownership interests, or controlling interest separately or in combination amounting to an ownership interest of 5 percent or more in the disclosing entity.

Direct ownership interest is defined as the possession of stock, equity in capital or any interest in the profits of the disclosing entity. A disclosing entity is defined as a Medicare provider or supplier, or other entity that furnishes services or arranges for furnishing services under Medicaid or the Maternal and Child Health program, or health related services under the social services program.

Indirect ownership interest is defined as ownership interest in an entity that has direct or indirect ownership interest in the disclosing entity. The amount of indirect ownership in the disclosing entity that is held by any other entity is determined by multiplying the percentage of ownerwhip interest at each level. An indirect ownership interest must be reported if it equates to an ownership interest of 5 percent or more in the disclosing entity. Example: if A owns 10 percent of the stock in a corporation that owns 80 percent of the stock of the disclosing entity, A's interest equates to an 8 percent indirect ownership and must be reported.

Controlling interest is defined as the operational direction or management of a disclosing entity which may be maintained by any or all of the following devices: the ability or authority, expressed or reserved, to amend or change the corporate identity (i.e., joint venture agreement, unincorporated business status) of the disclosing entity; the ability or authority to nominate or name members of the Board of Directors or Trustees of the disclosing entity; the ability or authority, expressed or reserved, to amend or **change the by-laws, constitution, or other operating or management direction of the disclosing entity; the right to control any or all of the assets or other property of the disclosing entity upon the sale or dissolution of that entity; the ability or authority, expressed or** reserved, to control the sale of any or all of the assets, to encumber such assets by way of mortage or other indebtedness, to dissolve the entity, or to arrange for the sale or transfer of the disclosing entity to new ownership or control.

Items IV-VII - Changes in Provider Status

Change in provider status is defined as any change in management control. Examples of such changes would include: a change in Medical or Nursing Director, a new Administrator, contracting the operation of the facility to a management corporation, a change in the composition of the owning partnership which under applicable State law is not considered a change in ownership, or the hiring or dismissing of any employees with 5 percent or more financial interest in the facility or in an owning corporation, or any change of ownership.

For Items IV-VII, if the yes box is checked, list additional information requested under Remarks. Clearly identify which item is being continued.

Item IV - (a & b) If there has been a change in ownership within the last year or if you anticipate a change, indicate the date in the appropriate space.

Item V - If the answer is yes, list name of the management firm and employer identification number (EIN), or the name of the leasing organization. A management company is defined as any organization that operates and manages a business on behalf of the owner of that business, with the owner retaining ultimate legal responsibility for operation of the facility.

Item VI - If the answer is yes, identify which has changed (Administrator, Medical Director, or Director of Nursing) and the date the change was made. Be sure to include name of the new Administrator, Director of Nursing or Medical Director, as appropriate.

Item VII - A chain affiliate is any free-standing health care facility that is either owned, controlled, or operated under lease or contract by an organization consisting of two or more free-standing health care facilities organized within or across State lines which is under the ownership or through any other device, control and direction of a common party. Chain affiliates include such facilities whether public, private, charitable or proprietary. They also include subsidiary organizations and holding corporations. Provider-based facilities, such as hospital-based home health agencies, are not considered to be chain affiliates.

Item VIII - If yes, list the actual number of beds in the facility now and the previous number.

Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0086

DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT

I. Identifying Information

(a). Name of Entity	D/B/A	Provider No.	Vendor No.	Telephone No.
Street Address		City, County, State		Zip Code

(b) *(To be completed by HCFA Regional Office)* Chain Affiliate No. ☐☐☐☐☐ LB1

II. Answer the following questions by checking "Yes" or "No". If any of the questions are answered "Yes", list names and addresses of individuals or corporations under Remarks on page 2. Identify each item number to be continued.

A. Are there any individuals or organizations having a direct or indirect ownership or control interest of 5 percent or more in the institution, organizations, or agency that have been convicted of a criminal offense related to the involvement of such persons, or organizations in any of the programs established by Titles XVIII, XIX, or XX?

☐ Yes ☐ No LB2

B. Are there any directors, officers, agents, or managing employees of the institution, agency or organization who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX, or XX?

☐ Yes ☐ No LB3

C. Are there any individuals currently employed by the institution, agency, or organization in a managerial, accounting, auditing, or similar capacity who were employed by the institution's, organization's, or agency's fiscal intermediary or carrier within the previous 12 months? (Title XVIII providers only)

☐ Yes ☐ No LB4

III. (a) List names, addresses for individuals, or the EIN for organizations having direct or indirect ownership or a controlling interest in the entity. (See instructions for definition of ownership and controlling interest.) List any additional names and addresses under "Remarks" on Page 2. If more than one individual is reported and any of these persons are related to each other, this must be reported under Remarks.

Name	Address	EIN
		LB5

(b) Type of Entity: ☐ Sole Proprietorship ☐ Partnership ☐ Corporation LB6
☐ Unincorporated Associations ☐ Other (Specify)

(c) If the disclosing entity is a corporation, list names, addresses of the Directors, and EINs for corporations under Remarks.

Check appropriate box for each of the following questions

(d) Are any owners of the disclosing entity also owners of other Medicare/Medicaid facilities? (Example, sole proprietor, partnership or members of Board of Directors.) If yes, list names, addresses of individuals and provider numbers.

☐ Yes ☐ No LB7

Name	Address	Provider Number

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Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0086

IV. (a) Has there been a change in ownership or control within the last year?
If yes, give date _____ ☐ Yes ☐ No LB8

(b) Do you anticipate any change of ownership or control within the year?
If yes, when? _____ ☐ Yes ☐ No LB9

(c) Do you anticipate filing for bankruptcy within the year?
If yes, when? _____ ☐ Yes ☐ No LB10

V. Is this facility operated by a management company, or leased in whole or part by another organization?
If yes, give date of change in operations _____ ☐ Yes ☐ No LB11

VI. Has there been a change in Administrator, Director of Nursing or Medical Director within the last year? ☐ Yes ☐ No LB12

VII. (a) Is this facility chain affiliated? (If yes, list name, address of Corporation, and EIN)
Name EIN # ☐ Yes ☐ No LB13

Address

LB14

VII. (b) If the answer to Question VII.a. is No, was the facility ever affiliated with a chain?
(If YES, list Name, Address of Corporation and EIN)
Name EIN # ☐ Yes ☐ No LB18

Address

LB19

VIII. Have you increased your bed capacity by 10% or more or by 10 beds, whichever is greater, within the last 2 years? ☐ Yes ☐ No LB15

If yes, give year of change _____
Current beds _____ LB16 Prior beds _____ LB17

WHOEVER KNOWINGLY AND WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF THIS STATEMENT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS. IN ADDITION, KNOWINGLY AND WILLFULLY FAILING TO FULLY AND ACCURATELY DISCLOSE THE INFORMATION REQUESTED MAY RESULT IN DENIAL OF A REQUEST TO PARTICIPATE OR WHERE THE ENTITY ALREADY PARTICIPATES, A TERMINATION OF ITS AGREEMENT OR CONTRACT WITH THE STATE AGENCY OR THE SECRETARY, AS APPROPRIATE.

Name of Authorized Representative (Typed)	Title

Signature	Date

Remarks

APPENDIX D

STATE OF NEW JERSEY

DEPARTMENT OF HEALTH *DEPARTMENT OF HUMAN SERVICES*

COST STUDY FOR NURSING FACILITY

SCHEDULE 1

D.O.H. Provider Number: _____ **Unisys Number:** _____	**Provider Name:**	**Provider Telephone:**
Our latest natural 12 month reporting period was: to:		**Number of Months:**

GENERAL ADMINISTRATIVE INFORMATION

(Check all applicable blocks)

A. TYPE OF FACILITY

1. ☐ Hospital: _____
2. ☐ Nursing Facility
3. ☐ Residential Unit
4. ☐ Medical Day Care
5. ☐ *Special Care:* _____ UNISYS Number: _____
6. ☐ *Special Care:* _____ UNISYS Number: _____
7. ☐ *Special Care:* _____ UNISYS Number: _____
8. ☐ *Other - Specify:* _____ UNISYS Number: _____

B. TYPE OF OWNERSHIP

1. ☐ Proprietary
2. ☐ Voluntary
3. ☐ Governmental
4. ☐ Other - Specify: _____

	Building	Land
Owned by Operator	5. ☐	8. ☐
Leased from Related Organization	6. ☐	9. ☐
Leased from Unrelated Organization	7. ☐	10. ☐

Name of Licensee Corporation Owning Facility: _____

Name of Organization Operating Facility: _____

These documents have been prepared by the Department of Health in conjunction with the Department of Human Services.

EXPENSES

SCHEDULE A

Provider Name: _____ **Period Ending:** _____

Provider Number: _____ **Unisys Number:** _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		Cost Center	(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net (1) Routine Expenses	(F) Expenses Applicable To NF	(G) Expenses Applicable Non-NF (5)	(H) Allocation Basis *(Per Sch. A-5)*
1	GFRB	General Fringe Benefits, A-7	//////////	0	//////////	0	0	0	0	AA
		GENERAL SERVICES								
2	MGMT	Management, Per Sch. A-1	0	0	0	0	0	0	0	AA
3	ADM	Administrator, Per Sch. A-1	0	0	0	0	0	0	0	AA
4	ASAD	Assistant Administrator, A-1	0	0	0	0	0	0	0	AA
5	OADM	Other Administrative, A-2	0	0	0	0	0	0	0	AA
6	DIET	Dietary (2)	0	0	0	0	0	0	0	AA
7	FOOD	Food	//////////	//////////	0	0	0	0	0	AA
8	LDLI	Laundry and Linen	0	0	0	0	0	0	0	AA
9	HSKP	Housekeeping	0	0	0	0	0	0	0	AA
10	OGSR	Other General Services, A-7	0	0	0	0	0	0	0	AA
11		Total General Services	0	0	0	0	0	0	0	
		PROPERTY OPERATING (3)								
12	MAIN	Maintenance (exclude auto)	0	0	0	0	0	0	0	AA
13	PTXL	Property Taxes (Land)	//////////	//////////	0	0	0	0	0	AA
14	PTXB	Property Taxes (Building)	//////////	//////////	0	0	0	0	0	AA
15	UTIL	Utilities, Per Sch. A-7	//////////	//////////	0	0	0	0	0	AA
16	PRIN	Property Insurance	//////////	//////////	0	0	0	0	0	AA
17		Total Property, Operating	0	0	0	0	0	0	0	
		PROPERTY CAPITAL (3)								
18	DPAM	Depreciation and Amortization	//////////	//////////	0	0	0	0	0	AA
19	RTLE	Net Rentals and Leases	//////////	//////////	0	0	0	0	0	AA
20	INTR	Allowable Interest	//////////	//////////	0	0	0	0	0	AA
21		Total Property Capital	//////////	//////////	0	0	0	0	0	

EXPENSES

SCHEDULE A

Provider Name: _____ **Period Ending:** _____

Provider Number: _____ **Unisys Number** _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		Cost Center	(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net (1) Routine Expenses	(F) Expenses Applicable To NF	(G) Expenses Applicable To Non-NF (5)	(H) Allocation Basis *(Per Sch. A-5)*
		PATIENT CARE								
22		Reserved	////////////	////////////	////////////	////////////	////////////	////////////	////////////	
23	RNS	Nursing, RN's - Salaried	0	0	////////////	0	0	0	0	AA
24	RNCT	Nursing, RN's - Contracted	0	0	////////////	0	0	0	0	AA
25	LPNS	Nursing, LPN's - Salaried	0	0	////////////	0	0	0	0	AA
26	LPCT	Nursing, LPN's - Contracted	0	0	////////////	0	0	0	0	AA
27	OSAL	Nursing, Other - Salaried	0	0	////////////	0	0	0	0	AA
28	OSCT	Nursing, Other - Contracted	0	0	////////////	0	0	0	0	AA
29	MDDR	Medical Director	0	0	0	0	0	0	0	AA
30	PTAC	Patient Activities	0	0	0	0	0	0	0	AA
31	PHCS	Pharmaceutical Consultant	0	0	0	0	0	0	0	AA
32	NLDG	Non-Legend Drugs	////////////	////////////	0	0	0	0	0	AA
33	MDSP	Medical Supplies	////////////	////////////	0	0	0	0	0	AA
34	SOSR	Social Services	0	0	0	0	0	0	0	AA
35	OXYG	Oxygen	////////////	////////////	0	0	0	0	0	AA
36		Total Patient Care	0	0	0	0	0	0	0	
37	NRNA	Non-Routine/Non-Allowable Expenses (per Schedule A-3)	0	0	0	0	0	0	0	
38	TOT	Total Expenses	0	0	0	0	0	0	0	

(1) See Instructions for definition and instructions.

(2) ☐ *Check this block if Dietary is 100% contracted.*

(3) Amounts paid by lessor for property operating, should be netted from line 19 and reported on line(s) 12, 13, 14, 15, and 16, as applicable. For related lease, report depreciation and interest on lines 18 and 20.

(4) Report nursing contracted service under Column A for hours and Column B for cost. For all other contracted services report the cost only, under Column C.

(5) Defined as "Expenses Applicable to Residential, Sheltered, Medical Day Care, Other or Special Care Programs".

MANAGEMENT AND ADMINISTRATION SCHEDULE A-1

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net Routine Expenses
A	**Details of Management**					
1	Management Fees and Related Expenses	0	0	0	0	0
2	Home Office Costs, Not in Line 1 above.	0	0	0	0	0
3	Director's Fees and Expenses (Limit $1,000)	////////	0	0	0	0
4	Related Party Compensation	0	0	0	0	0
5	Auto Leasing and Depreciation	////////	//////////	0	0	0
6	Other Auto Expenses	////////	//////////	0	0	0
7	Out of State Travel	////////	//////////	0	0	0
8	General Fringe Benefits *	////////	//////////	0	0	0
9	Special Fringe Benefits	////////	0	0	0	0
10	Dues	////////	//////////	0	0	0
11	Other:	0	0	0	0	0
12	Total to Schedule A, Line 2	0	0	0	0	0
B	**Details of Administrator's Costs**					
13	Salary	0	0	0	0	0
14	General Fringe Benefits *	////////	//////////	0	0	0
15	Special Fringe Benefits	////////	0	0	0	0
16	Out of State Travel	////////	//////////	0	0	0
17	Dues	////////	//////////	0	0	0
18	Auto Depreciation and Leasing	////////	//////////	0	0	0
19	Other Auto Expenses	////////	//////////	0	0	0
20	Other:	0	0	0	0	0
21	Total to Schedule A, Line 3	0	0	0	0	0
C	**Details of Assistant Administrator's Costs**					
22	Salary	0	0	0	0	0
23	General Fringe Benefits *	////////	//////////	0	0	0
24	Special Fringe Benefits	////////	0	0	0	0
25	Out of State Travel	////////	//////////	0	0	0
26	Dues	////////	//////////	0	0	0
27	Auto Depreciation and Leasing	////////	//////////	0	0	0
28	Other Auto Expenses	////////	//////////	0	0	0
29	Other:	0	0	0	0	0
30	Total to Schedule A, Line 4	0	0	0	0	0

☐ ***Check if Management Costs include Home Office Costs. A separate Schedule of Home Office Costs must be attached.***

☐ ***Check if actual Fringe Benefits are reported on Management, Administrator, and/or Assistant Administrator Salary. Salary and Actual Fringe Benefits must be reported in Column C, Fees and Other Expenses.***

NOTE: The cost of related parties who work at the facility less than 20 hours per week should be reported in the Management Cost Center.

*** If General Fringe Benefits are not reported on Schedule A, Line 1.***

DETAILS OF OTHER ADMINISTRATIVE SCHEDULE A-2

Provider Name: _____ **Period Ending:** _____

Provider Number: _____ **Unisys Number:** _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.	(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net Routine Expenses
1 Home Office/Management Fees	0	0	0	0	0
2 Office Personnel	0	0	0	0	0
3 Office Supplies and Expenses	//////////	//////////	0	0	0
4 Telephone	0	0	0	0	0
5 License and Dues #	//////////	//////////	0	0	0
6 Data Processing	0	0	0	0	0
7 Insurance not related to property or employees	//////////	//////////	0	0	0
8 Business Taxes	//////////	//////////	0	0	0
9 Travel	//////////	//////////	0	0	0
10 Accounting Fees *	//////////	//////////	0	0	0
11 Legal Fees *	//////////	//////////	0	0	0
12 Other Administrative Fees *	//////////	//////////	0	0	0
13 Seminars	0	0	0	0	0
14 Medical Records	0	0	0	0	0
15 Allowable Contributions	//////////	//////////	0	0	0
16 Help Wanted Ads	//////////	//////////	0	0	0
17 Services and Supplies Sold, Per Schedule A-4	//////////	//////////	//////////	0	0
18 Purchase Discounts and Rebates, Per Schedule A-4	//////////	//////////	//////////	0	0
19 Other OADM Recoveries, Schedule A-4, Lines 14 - 16	//////////	//////////	//////////	0	0
20 Amortization of Start-Up Costs **	//////////	//////////	0	0	0
21 Nursing Administration, Per Schedule A-7, Line 22	0	0	0	0	0
22 Allowable Employee Gifts and Party	0	0	0	0	0
23 Other:	0	0	0	0	0
24 Other:	0	0	0	0	0
25 Other:	0	0	0	0	0
26 Other:	0	0	0	0	0
27 Total To Schedule A, Line 5	0	0	0	0	0

** See Instructions for Schedule A-2.* *** Amount not reported in other cost centers.*

 # Exclude Line 10, Line 17, and Line 26, Schedule A-1.

NON-ROUTINE/NON-ALLOWABLE EXPENSES

SCHEDULE A-3

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

Report all Non-Routine/Non-Allowable Expenses only on this Schedule. Totals are brought forward to Schedule A, Line 37.

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Revenues
1	Personal Expenses	0	0	0	0
2	Interest Assessed by DMAHS	/////////	/////////	0	0
3	Fines, Penalties and Non-Allowable Interest	/////////	/////////	0	0
4	Amoritization of Organization Cost	/////////	/////////	0	0
5	Prescribed Drugs	/////////	/////////	0	0
6	Laboratory and X-Ray	0	0	0	0
7	Payments to Physicians (exclude Medical Director)	0	0	0	0
8	Physical, Speech, Hearing and Occupational Therapy	0	0	0	0
9	Income Taxes, including N.J. Corporate Business Tax	/////////	/////////	//////////	0
	on Net Income and subsequent years liability	/////////	/////////	0	0
10	Gift Shop and Snack Bar	0	0	0	0
11	Barber and Beauty Shop	0	0	0	0
12	Contributions, except for Voluntary Fire and First	/////////	/////////	//////////	0
	Aid Companies in the vicinity of the Nursing Home	/////////	/////////	0	0
13	Collection cost for over due private patient accounts. (1)	/////////	/////////	0	0
14	Promotional and Directory advertising except for	/////////	/////////	//////////	0
	bold print yellow page ads.	/////////	/////////	0	0
15	Expenses relating to future expansion, to include	/////////	/////////	//////////	0
	Architect Fees	/////////	/////////	0	0
16	Fund Raising Expenses	0	0	0	0
17	Utilization Review	0	0	0	0
18	Dental Services	0	0	0	0
19	Employee Gifts and Party (including Christmas Party)	0	0	0	0
20	Home Office/Management Fees	0	0	0	0
21	Bad Debts (2)	/////////	/////////	0	0
22	Other:	0	0	0	0
23	Other:	0	0	0	0
24	Other:	0	0	0	0
25	Other:	0	0	0	0
26	Other:	0	0	0	0
27	Total of Columns A, B, and C to Schedule A, Line 37	0	0	0	0

NOTE: (1) Collection Agency costs only.

NOTE: (2) Bad debts are not expense items, but reductions to income. (Do not include in costs.)

DETAILS OF RECOVERIES AND ELIMINATIONS

SCHEDULE A-4

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE PRE-PRINTED
WORDING ON THIS SCHEDULE.

		(1)		(2)
A	INCIDENTAL REVENUES	AMOUNT		COST CENTER
1	Meals sold to Guests or Employees	0		FOOD
2	Rooms rented to Employees	0		RTLE
3	Equipment rentals excluding routine care	0		RTLE
4	Services and Supplies sold	0		OADM
5	Telephone Commissions	0		OADM
6	Purchase Discounts and Rebates	0		OADM
7	Laundry Service to Employees	0		LDLI
8	Private Nursing Services	0	*	RNS
9	Medical Supplies sold to other than patients	0		MDSP
10	Property rentals	0	0	RTLE
11	Interest	0		INTR
12	General Fringe Benefits	0		GFRB
13	General Fringe Benefits	0	0	GFRB
14	Other:	0		OADM
15	Other:	0		OADM
16	Other:	0	0	OADM
17	Other:	0		
18	Other:	0		
19	Other:	0		
20	Other:	0		
21	Other:	0		
22	Other:	0		
23	Total:	0		//////////
B	RESTRICTED FUNDS EXPENSED FOR OPERATING COSTS			
24	Other:	0		
25	Other:	0		
26	Other:	0		
27	Other:	0		
28	Other:	0		
29	Total:	0		//////////
30	TOTAL: (Sum of Section A, Line 23 and Section B, Line 29)	0		

** Indicate the center that the majority of cost are credited, for this center and all others.*

(1) Enter the line item amounts on Schedule A, Col. D for the appropriate cost centers.

(2) Enter the cost center syntex (i.e.; ADM, DIET, HSKP) from Schedule A where the line items for eliminations and recoveries appear on Schedule A, Column D. Cost Center abbreviations which may be used on lines 17 through 22 include: DIET, DPAM, HSKP, LDLI, MAIN, MDDR, MDSP, NLDG, OGSR, OSCT, OXYG, PHCS, PRIN, PTAC, PTXB, PTXL, and SOSR.

BASIS OF ALLOCATION SCHEDULE

SCHEDULE A-5

Provider Name: _____ Period End: _____ No 100% Nursing Facility

Provider Number _____ Unisys Num: _____ No Special Care Program(s)

PLEASE COMPLETE FOR ALLOCATION BASIS USED:

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

CODE (Report on Sch A., Col. H)	BASIS	Applicable To NF	Applicable To Non-NF	Total	Percent Applicable To NF
A	Patient Days	0	0	0	0.0000%
B	Accumulated Costs	0	0	0	0.0000%
C	Number of Meals Served	0	0	0	0.0000%
D	Pounds of Laundry	0	0	0	0.0000%
E	Square Feet	0	0	0	0.0000%
F	Other:	0	0	0	0.0000%
G	Other:	0	0	0	0.0000%
H	Other:	0	0	0	0.0000%
I	Other:	0	0	0	0.0000%
J	Other:	0	0	0	0.0000%
K	Other:	0	0	0	0.0000%
L	Other:	0	0	0	0.0000%
M	Other:	0	0	0	0.0000%
N	Other:	0	0	0	0.0000%
O	Other:	0	0	0	0.0000%
P	Other:	0	0	0	0.0000%
Q	Other:	0	0	0	0.0000%
R	Other:	0	0	0	0.0000%
S	Other:	0	0	0	0.0000%
T	Other:	0	0	0	0.0000%
U	Other:	0	0	0	0.0000%
V	Other:	0	0	0	0.0000%
W	Other:	0	0	0	0.0000%
X	Other:	0	0	0	0.0000%
Y	Other:	0	0	0	0.0000%
Z	Other:	0	0	0	0.0000%
AA					0.0000%

Informational Accumulated Costs, Sched. A Total	0	0	0	0.0000%

The following allocation bases are acceptable. Only one allocation base may be used per line. This form MUST be completed for ALL applicable lines. Use of any other basis MUST BE accompanied by a letter of approval from the Medicaid Bureau of Institutional and Provider Reimbursement.

COST CENTER	*Allocation Basis*
1. *General Fringe Benefits, Management, Administrator, Assistant Administrator, Other Administrative*	*Patient Days or Accumulated Costs (Schedule A, Lines 6-36)*
2. *Dietary, Food*	*Patient Days or Number of Meals Served*
3. *Laundry*	*Patient Days of Pounds of Laundry*
4. *Housekeeping, Other General Services, All Property Operating and Fixed Property Cost Centers*	*Square Feet*
5. *Nursing, All Special Patient Care Cost Centers*	*Patient Days or Actual Cost*

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SCHEDULE A-6

Period Ending _____

MEDICAL DAY CARE EXPENSES

This schedule is for facilities that have both Residential and Medical day care expenses. These expenses should be combined and reported on Schedule A, Column F. Report on this schedule only those expenses from Schedule A, Column F that are medical day care expenses.

COST CENTER	SALARY	FEES AND OTHER EXPENSES	TOTAL

DISTRIBUTION: White, Green, Canary and Pink - N.J.S.D.H.
Goldenrod - Facility

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OTHER COST DETAILS

SCHEDULE A-7

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(A)	(B)	(C)	(D)	(E)	(F)	(G)
	Cost Center	Hours	Salaries	Supplies	Contracted Services	Other Expenses	Recovery and Eliminations	Total Applicable Expenses
UTIL	**Utilities**							
1	Electric	////////////	////////////	////////////	////////////	0	0	0
2	Fuel Oil	////////////	////////////	////////////	////////////	0	0	0
3	Natural Gas	////////////	////////////	////////////	////////////	0	0	0
4	Water & Sewage	////////////	////////////	////////////	////////////	0	0	0
5	Total: (To Schedule A, Line 15)	////////////	////////////	////////////	////////////	0	0	0
GFRB	**General Fringe Benefits**							
6	FICA - OASDI	////////////	////////////	////////////	////////////	0	0	0
7	FICA - Medicare	////////////	////////////	////////////	////////////	0	0	0
8	Workers' Compensation	////////////	////////////	////////////	////////////	0	0	0
9	Unemployment Insurance	////////////	////////////	////////////	////////////	0	0	0
10	Disability Insurance	////////////	////////////	////////////	////////////	0	0	0
11	Medical Insurance	////////////	////////////	////////////	////////////	0	0	0
12	Life and Other Insurance	////////////	////////////	////////////	////////////	0	0	0
13	Other: (Specify)	////////////	////////////	////////////	////////////	0	0	0
14	Other: (Specify)	////////////	////////////	////////////	////////////	0	0	0
15	Other: (Specify)	////////////	////////////	////////////	////////////	0	0	0
16	General Fringe Benefit Recovery, A-4	////////////	////////////	////////////	////////////	////////////	0	0
17	Total: (To Schedule A, Line 1)	////////////	////////////	////////////	////////////	0	0	0
NADM	**Nursing Administration**							
18	Inservice Coordinator	0	0	0	0	0	0	0
19	Quality Assurance	0	0	0	0	0	0	0
20	Ward Clerk	0	0	0	0	0	0	0
21	Other: (Specify)	0	0	0	0	0	0	0
22	Total: (To Schedule A-2, Line 21)	0	0	0	0	0	0	0
OGSR	**Other General Services**							
23	Disposal Service	0	0	0	0	0	0	0
24	Exterminating Service	0	0	0	0	0	0	0
25	Grounds Maintenance	0	0	0	0	0	0	0
26	Medical Library	0	0	0	0	0	0	0
27	Motor Pool	0	0	0	0	0	0	0
28	Plant Security	0	0	0	0	0	0	0
29	Snow Removal	0	0	0	0	0	0	0
30	Other: (Specify)	0	0	0	0	0	0	0
31	Total: (To Schedule A, Line 10)	0	0	0	0	0	0	0

PATIENT DAYS AND ROUTINE REVENUES — SCHEDULE B

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE ANY PRE-PRINTED WORDING ON THIS SCHEDULE.

ACTUAL BASE PERIOD PATIENT DAYS

From: _____ To: _____

A. PATIENT DAYS	*(A) Nursing Facility NF*	*(B) Residential/ Shelter*	*(C) Special Program #1:*	*(D) Special Program #2:*	*(E) Special Program #3:*	*(F) Other Hospital: ***	*(G) Total*
1. Private	0	0	0	0	0	0	0
2. Medicaid	0	//////////	0	0	0	0	0
3. Medicare	0	0	0	0	0	0	0
4. Therapeutic Leave	0	0	0	0	0	0	0
5. Other:	0	0	0	0	0	0	0
6. Sub Total	0	0	0	0	0	0	0
7. Medicaid Bed Hold Days	0	0	0	0	0	0	0
8. Other Bed Hold Days	0	0	0	0	0	0	0
9. Total	0	0	0	0	0	0	0
10. Medical Day Care Days	0						

ROUTINE REVENUES

B. GROSS REVENUES FROM ROUTINE SERVICES							
11. Private	0	0	0	0	0	0	0
12. Medicaid	0	0	0	0	0	0	0
13. Medicare	0	0	0	0	0	0	0
14. Other:	0	0	0	0	0	0	0
15. Other:	0	0	0	0	0	0	0
16. Other:	0	0	0	0	0	0	0
17. Total	0	0	0	0	0	0	0

C. MAXIMUM BED DAYS		*(A) Number Of Beds*	*(B) Number Of Days In Period*	*(C) Maximum Bed Days*	*(D) TOTAL NF BEDS*
18. Licensed LTC Beds *					
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	*(D) WEIGHTED NF BEDS*
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	
19. Quiet Beds		0	0	0	
20. Acute Care Hospital Beds **		0	//////////	//////////	
21. Sheltered/Residential Beds		0	//////////	//////////	
22. Special Program #1 Beds *			//////////	//////////	*PROGRAM #1 BEDS*
From:	To:	0	0	0	
From:	To:	0	0	0	
23. Special Program #2 Beds *			//////////	//////////	*PROGRAM #2 BEDS*
From:	To:	0	0	0	
From:	To:	0	0	0	
24. Special Program #3 Beds *			//////////	//////////	*PROGRAM #3 BEDS*
From:	To:	0	0	0	
From:	To:	0	0	0	
25. Total			0	0	

** If there has been a change in Licensed Beds during this reporting period, report data on the appropriate lines and refer to Schedule B Instructions for the calculation. ATTACH D.O.H. Licensing approval letter(s).*

*** Use this section ONLY if hospital costs are reported on Schedule A.*

SELECTED DATA

SCHEDULE D

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Num: _____

A. NURSING HOURS REQUIREMENT:		TOTAL HOURS PAID REPORTED ON SCH. A COL. A	TOTAL HOURS WORKED	PERCENT WORKED
1	Nursing, RN's - Salaried, Schedule A, Line 23	0	0	
2	Nursing, LPN's - Salaried, Schedule A, Line 25	0	0	
3	Nursing, Other - Salaried, Schedule A, Line 27	0	0	
4	Total Nursing - Salaried Hours	0	0	

B. EMPLOYEE MEALS:

5	Estimated Meals served to Employees per year	0	Enter (0) if employees are
6	Estimated Average Price Charged Employees	$0.00	not charged

C. CURRENT PROPERTY DATA		Expenditures CAPITALIZED Maintenance & Replacement D	Additions E	Net Rental & Leases F
	Expenditures for Acquisition (Net of Trade-Ins) or Use of Property			
7	Land	0	0	0
8	Land Improvements	0	0	0
9	Buildings Including Additions	0	0	0
10	Building Equipment	0	0	0
11	Reimbursable Moveable Equipment	0	0	0
12	Non-Reimbursable Moveable Equipment	0	0	0
13	Motor Vehicles (Other than for Administrator)	0	0	0
14	Leasehold Improvements & Other Amortization Items	0	0	0
15	***Special Program:***	0	0	0
16	***Special Program:***	0	0	0
17	***Special Program:***	0	0	0
18	TOTAL EXPENDITURES	0	0	0
	List referenced expenditures made to comply with Mandated Requirements			
19		0	0	0
20		0	0	0
21	Total of Line 18 Expenditures Made to Comply	0	0	0

22	Special Program #1 Plant Square Feet	0
23	Special Program #2 Plant Square Feet	0
24	Special Program #3 Plant Square Feet	0

DATA REGARDING RELATED PARTIES AND SELECTED EMPLOYEES

SCHEDULE F

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Num: _____

Data Concerning Related Parties other than Employees

	Related Party Type (2)	Related Party Name	Loans		Equity	Reporting Period Tranactions (4)	
			Ending Balance	Annual Interest Rate	Percent of Total	Nature of Transaction(s)	Schedule A Costs
	A	B	C	D	E	F	G
1							
2							
3							
4							
5							

	Data regarding selected Employees including Related Parties (3)	Name Of Employee	Live on Premises? Yes/No	Hours Worked	Annual Compensation	Special Fringe Benefits	Auto Expense and Other	Related Party Yes/No
		H	I	J	K	L	M	N
☐ 1)	6 Administrator			0	0	0	/////	NO
☐ 1)	7 Assistant Administrator			0	0	0	0	NO
☐ 1)	8 Nursing Director			0	0	0	0	
☐ 1)	9							
☐ 1)	10							
☐ 1)	11							

Name of Employee (1)	S.S. Number	Facility Name	Position	Hours worked

(1) Check if Employee works in another facility. The bottom section MUST be completed for any employee listed on Lines 6 - 11 above working at another facility.

(2) Code related parties consistent with this definition (i.e.; Type 1b, 2d, etc.).

(3) Enter data for these three positions and for any other employees who meet either of the following criterib:

Related to facility per instructions for this form.

Compensation exceeds $25.00 per hour worked.(Does not include Related Party Agency Fees.)

(4) Include compensation, purchases, interest expense, leases and any other transaction affecting data reported on Schedule A.

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SCHEDULE G

RECONCILIATION

Provider No. _____

Period Ending _____

	EXPENSES	SCHEDULE	COLUMN	LINE	AMOUNT
1	Total Gross Salaries Reported	A	B	11, 17, 36, 37	
2	Total Gross Salaries per Form 941				
3	Difference (Line 1 less Line 2)	/ / / /	/ / / /	/ / / /	
4	Explanations of Line 3:				/ / / /
5					
6					
7					
8	Total Expenses Reported	A	B & C	38	
9	Total Expenses per Financial Statements				
10	Difference (Line 8 less Line 9)	/ / / /	/ / / /	/ / / /	
11	Explanations of Line 10:				/ / / /
12					
13					
14					
15					
16					
17					

REVENUES

1	Routine Revenues	B	E	5	
2	Incidential Revenues	A-4	1	19	
3	Other Operating Revenues	A-3	D	25	
4	Unrestricted Income				
5	Total Revenues Reported				
6	Total Revenues per Financial Statements				
7	Difference (Line 5 less Line 6)	/ / / /	/ / / /	/ / / /	
8	Explanations of Line 7:				/ / / /
9					
10					
11					
12					

MCNH-1 (Rev. 4/79)

DISTRIBUTION: White, Green, Canary and Pink - N.J.S.D.H.
Goldenrod - Facility

Provider Num: _____ Unisys Number: _____ Period Ending: _____

SCHEDULE H

CERTIFICATION BY TRUSTEE, OWNER, OFFICER, PARTNER OR ADMINISTRATOR OF PROVIDER

_____, _____
(Name) (Title)

of the _____
(Facility)

_____
(Street Address) (City) (State) (Zip Code)

MISREPRESENTATION OR FALSIFICATION OF ANY INFORMATION CONTAINED IN THIS COST REPORT MAY BE PUNISHABLE BY FINE AND/OR IMPRISONMENT UNDER STATE OR FEDERAL LAW.

I HEREBY CERTIFY that I have read the above statement and that I have examined the accompanying Cost Report, supporting schedules, and financial information prepared for the _____ _____, _____(Provider name(s) and numbers) for the Cost Report period beginning _____ and ending on _____, and that to the best of my knowledge and belief, it is a true, correct, and complete statement prepared from the books and records of the provider(s) in accordance with applicable instructions, except as noted.

SIGNED: _____
Officer or Administrator of Provider(s)

_____
Title

_____
Date Signed

IF THESE SCHEDULES WERE COMPLETED BY OTHER THAN THE OFFICER OR ADMINISTRATOR OF THE FACILITY, THEN THE PREPARER MUST SIGN THE FOLLOWING STATEMENT:
TO THE BEST OF MY KNOWLEDGE, ALL THE COSTS CONTAINED IN THESE SCHEDULES REASONABLY RELATE TO PATIENT CARE.

_____ _____
(Name of Preparer) (Signature of Preparer)

_____
_____
_____
_____ _____
(Address) (Telephone Number) (Date Signed)

DID AN INDEPENDENT PUBLIC ACCOUNTANT PREPARE FINANCIAL STATEMENTS FOR THE COST REPORTING PERIOD? ☐ **YES** ☐ **NO**
IF YES, A COPY MUST BE ATTACHED; IF NO, A COPY OF ALL WORK PAPERS MUST BE ATTACHED.

PROVIDER NO._____

_____

_____

_____

_____

PROVIDER CERTIFICATION STATEMENT
LONG TERM CARE

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

BILLING MONTH/YEAR_____

I CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE AND THAT THE ACCOMPANYING BILLING TRANSACTION FORMS CONTAIN ALL TERMINATIONS AND ADJUSTMENTS IN AMOUNTS DUE FOR PATIENTS THROUGH THE ENDING DATE OF THE BILLING MONTH. THOSE PATIENTS FOR WHOM PAYMENT IS REQUESTED WERE PROVIDED NURSING CARE IN THOSE AREAS ONLY OF THIS FACILITY WHICH ARE CERTIFIED FOR PARTICIPATION IN THE NEW JERSEY MEDICAID PROGRAM. I ALSO CERTIFY THAT FOR EACH MEDICAID PATIENT, A PHYSICIAN, HAS ESTABLISHED/REVISED A WRITTEN PLAN OF CARE AND CERTIFIED/RECERTIFIED, IN WRITING, THE NEED FOR NURSING CARE IN ACCORDANCE WITH N.J.A.C 10:63-1.5. I FURTHER CERTIFY THAT I AGREE TO KEEP SUCH RECORDS AS ARE NECESSARY TO DISCLOSE FULLY THE EXTENT OF SERVICES PROVIDED, AND TO FURNISH INFORMATION FOR SUCH SERVICES AS THE STATE AGENCY MAY REQUEST; AND THAT THE SERVICES COVERED BY THIS CLAIM AND THE AMOUNT CHARGED THEREFORE ARE IN ACCORDANCE WITH THE REGULATIONS OF THE NEW JERSEY MEDICAID PROGRAM AND THAT NO PART OF THE NET AMOUNT PAYABLE UNDER THIS CLAIM HAS BEEN PAID; AND THAT PAYMENT OF SUCH AMOUNT IS FROM FEDERAL AND STATE FUNDS AND WILL BE ACCEPTABLE AS PAYMENT IN FULL WITHOUT ADDITIONAL CHARGE TO THE PATIENT OR TO OTHERS ON HIS BEHALF. I ALSO CERTIFY THAT THE SERVICES HAVE BEEN FURNISHED IN FULL COMPLIANCE WITH THE NON-DISCRIMINATION REQUIREMENTS OF TITLE VI OF THE FEDERAL CIVIL RIGHTS ACTS AND SECTION 504 OF THE REHABILITATION ACT OF 1973.

NUMBER OF PRIVATE PATIENTS RECEIVING ADDITIONAL NURSING SERVICES

TRACHEOSTOMY	____	RESPIRATOR	____	I.V. THERAPY	
HEAD TRAUMA	____	OXY. THERAPY	____	N.G. TUBE FEEDING	____
WOUND CARE	____				

NUMBER OF PRIVATE PATIENTS RECEIVING THERAPIES

PHYSICAL ____ SPEECH ____ OCCUPATIONAL ____

CENSUS		
TOTAL GENERAL ASSISTANCE DAYS		
TOTAL MEDICAID DAYS	+	____
TOTAL DAYS	=	____
TOTAL NUMBER LICENSE BEDS		____

I UNDERSTAND THAT FRAUD OR CONCEALMENT WILL BE PUNISHABLE UNDER APPLICABLE FEDERAL OR STATE LAW OR BOTH AND THAT THE FACILITY IS NOT ELIGIBLE FOR PAYMENT WITHOUT TIMELY RECEIPT OF THIS CERTIFICATE.

SIGNED _____ DATE _____
(Administrator or Officer)

NAME AND TITLE _____
(Print or Type)

CP-I-47 (Rev. 3/20/90)

APPENDIX F

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

STATEMENT OF AVAILABLE INCOME FOR MEDICAID PAYMENT

Redetermination Date: _____ (MM/YY) SSA No.: _____ _____ (ELIG. EFF. DATE) _____ (PRINT DATE)

_____ (HSP (Medicaid) CASE NUMBER) _____ (LAST) _____ (FIRST) _____ (COUNTY)

Long-Term Care Facility: _____

Address: _____

SSI STATUS _ _ _ _ (LAC/PS) LTCF Provider No. _____ Previous Provider No.: _____

	LTCF		PA3L #1	PA3L #2	PA3L #3		Remarks
Effective Date							Admit, Change, Redetermination
Social Security Income							Claim #
Buy-In Amount							HIC #
Gross Social Sec. Benefit							
Railroad / Veteran							Claim #
Pension / Other Benefit							Specify
Other Income							Specify
Indemnity							Specify
Total Other Income	$						**Spouse's S.S.A. #**
Total Gross Income			$	$	$		M = Married Couple same LTCF G = VA A&A F = Foreign Pension P = VA Improved Pension
Workshop / Other							
Maint. / Home							Specify
Maint. / Spouse Dependent							Specify
Health Premium	$						Policy #
Total Exempt Income			$	$	$		
PNA	$						
Available Income			$	$	$		R = Representative Payee
Month of Adm. / Disch. Exempt							Specify
Resources	SPECIFY (i.e., address)						Circle One Yes No

Name and Address of Representative Payee

Signature: IM Worker: _____ Date: _____

Supervisor: _____ Date: _____

PA-3L (rev. 7/93)

BUREAU OF CLAIMS & ACCOUNT

APPENDIX G

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

NOTIFICATION FROM LONG-TERM CARE FACILITY OF ADMISSION OR TERMINATION OF A MEDICAID PATIENT

I. PATIENT INFORMATION:

1. Name: _____ (LAST / FIRST) 2. Social Security Account No.: ___ - ___ - ____
3. HSP(Medicaid) Case No.: _____ Confirmed By: _____ (CWA) ☐ Medicaid Only ☐ SSI
4. Authorized by: _____ Medicaid District Office

II. PROVIDER INFORMATION:

1. Provider Number: ____
2. LTCF Name: _____ 5. MEDICAID DISTRICT OFFICE
3. Address: _____ MDO Street Address: _____
4. City, State, Zip: _____ City, State, Zip: _____

III. ADMISSION INFORMATION:

1. Admission Date: ___ / ___ / ___ 2. Is this a new admission? ___Yes ___ No (If yes, send copy of MCNH-33 to CWA.)
3. Admitted to room number: _____ Bed number: _____
4. Admitted from: ___ Community/Boarding Home ___ Medicare to Medicaid ___ Psychiatric Hospital
   ___ Private to Medicaid (anticipated Medicaid effective date: ___ / ___ / ___ (Attach PA-4 to MDO copy)
   ___ Hospital ___ Other LTCF ___ Other (identify) _____
5. Name and Address of hospital/LTCF: _____ Admission Date: ___ / ___ / ___
6. If admitted from hospital/LTCF give the name/address of previous residence:
   _____
   (Hospital Name and Address or Home Address)

IV. TERMINATION INFORMATION:

1. Discharge Date: ___ / ___ / ___ 2. Has discharge been ordered by physician? ___Yes ___ No
3. Bed will be reserved in room number: ____ Bed number: ____
4. Discharged to hospital _____ (do not send MCNH-33 to CWA)
   NAME OF HOSPITAL
5. Discharged to: ___ Community (from LTCF/Hospital) ___ Other LTCF ___ Other (identify)
6. Death: ___ in LTCF ___ in hospital

V. CERTIFICATION: The facility certifies that the patient will reside only in those areas of the facility which are certified for participation in the New Jersey Medicaid Program at the level of care authorized for this patient by the New Jersey Medicaid Program. The facility also certifies that upon discharge to a hospital, the patient's room/bed will be reserved for the full period of time covered by the New Jersey Medicaid Bed Reserve policy.

This form completed by: _____ (Name) _____ (Title) _____ (Date) _____ (Signature)

VI. CWA USE ONLY:

Medicaid Effective Date: ___ / ___ / ___
- ___ Medicaid Only - PA-3L attached
- ___ SSI only - no PA-3L required
- ___ Not eligible
- ___ Transcript requested - Date: ___ / ___ / ___

Remarks:

COUNTY WELFARE OFFICE

Street Address: _____

City and Zip: _____

Signature of Case Worker: _____ Date: _____

MCNH-33 (rev. 10/88) ORIGINAL — CWA CANARY/PINK — MDO GOLDENROD — PROVIDER

APPENDIX H

CERTIFICATION OF NEED FOR PATIENT CARE IN FACILITY OTHER THAN PUBLIC OR PRIVATE GENERAL HOSPITAL

Form PA-4

To be completed by Public Assistance Agency _____ *(Identify Agency)*

Case Name _____ County Registration No. _____

Home Address _____ *(Street)* *(Municipality)* *(County)*

Health Services Program Case No. _____ *(10 Digits)* Person No. _____ *(2 Digits)* Date of Eligibility _____

Birth Date (or age) _____ Sex: M F *(Circle correct letter)* Veteran: Yes No *(Circle correct word)* Medicare No. _____ *(If applicable)*

Describe Current Living Arrangement _____

If in an Institution, Name _____ Admission Date _____

CERTIFICATION OF PHYSICIAN

This is to certify that the above named individual requires patient care for the chronically ill because:

1. *Diagnosis* (complete) _____

2. *Medication and/or treatment* _____

3. *Other therapy contemplated* _____

4. *Functional capacity of the patient:*	Independent	Needs Assistance	Potential for Independence	Comments
a. Bathing and personal hygiene				
b. Dressing				
c. Eating				
d. Toiletry				
e. Communication				
f. Ambulation				
g. Nursing care				

5. *Instructional needs*

a. [ ] Teaching for independence in activities of daily living.
b. [ ] Self-administration of drugs and medications.
c. [ ] Diet and nutrition.
d. [ ] Self care for special condition; e.g. colostomy, etc.
e. [ ] Understanding medical condition.
f. [ ] Prevention, care and treatment or complications.
g. [ ] Counseling, emotional and motivational support.

6. *Emotional, behavior or social problems (explain):* _____

7. *Characteristics of major disability:* [ ] Static or stable [ ] Progressive [ ] Improving

8. *Is patient now receiving any medication or treatment?* [ ] Yes [ ] No (If "Yes," give details.) _____

9. *Is surgery or other therapy contemplated?* [ ] Yes [ ] No (If "Yes," give details.) _____

10. *Is care in nursing home or public medical institution NOW necessary?* [ ] Yes [ ] No

11. *If "Yes," in question 10, is future discharge contemplated?* [ ] Yes [ ] No

12. *Could patient be adequately cared for now in a facility providing a lower level of care than that provided by a skilled nursing home?* [ ] Yes [ ] No

13. *Could this patient be adequately cared for NOW in boarding home?* [ ] Yes [ ] No
His own home? [ ] *Yes* [ ] *No Other facility?* (Describe) _____

14. *I further certify that, in my opinion, this patient does not require treatment for:* [ ] Active tuberculosis; or
[ ] *A mental disease, defect or impairment in an institution for the mentally ill or mentally deficient.*

_____, M.D. Date _____

APPENDIX I

P S Y C H I A T R I C E V A L U A T I O N

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: LAST FIRST M.I.

1 CLIENT LOCATION AND IDENTIFIERS - TO BE COMPLETED BY PERSON REFERRING CLIENT FOR EVALUATION

1.1 CODE OF COUNTY WHERE CLIENT IS TODAY (2 DIGITS; USE CODES AT RIGHT): CODE

NOTE: FOR ANCORA, ENTER CODE 04. FOR CLIENTS OUTSIDE NJ, ENTER COUNTY CODE WHERE MEDICAID OFFICE WAS CONTACTED AND/OR WHERE CLIENT WILL RESIDE.

NEW JERSEY COUNTY CODES

01 - ATLANTIC	08 - GLOUCESTER	15 - OCEAN
02 - BERGEN	09 - HUDSON	16 - PASSAIC
03 - BURLINGTON	10 - HUNTERDON	17 - SALEM
04 - CAMDEN	11 - MERCER	18 - SOMERSET
05 - CAPE MAY	12 - MIDDLESEX	19 - SUSSEX
06 - CUMBERLAND	13 - MONMOUTH	20 - UNION
07 - ESSEX	14 - MORRIS	21 - WARREN

1.2 ORGANIZATION REFERRING THE CLIENT FOR A PSYCHIATRIC EVALUATION. __ CHECK HERE IF CLIENT IS IN THE COMMUNITY NOW.

1.3 TYPE OF ASSESSMENT A. __ INITIAL B. __ ANNUAL RESIDENT REVIEW

C. __ CHANGE IN BEHAVIOR (NURSING FACILITY RESIDENTS) D. __ OTHER (SPECIFY) _____

1.4 MEDICAID NUMBER (12 DIGITS) __ CHECK HERE IF NO MEDICAID NUMBER ASSIGNED

1.5 SOCIAL SECURITY NUMBER (9 DIGITS)

1.6 DATE OF BIRTH MONTH DAY YEAR

1.7 ADMISSION DATE MONTH DAY YEAR

1.8 DOES THE CLIENT USE A PRIMARY LANGUAGE OTHER THAN ENGLISH?

A. __ NO B. __ YES (SPECIFY) _____

C. IF "YES," PLEASE DESCRIBE HOW LANGUAGE NEEDS WERE MET TO CONDUCT THE PSYCHIATRIC EVALUATION.

_____

2 HEALTH AND ILLNESS - TO BE COMPLETED BY PERSON CONDUCTING THE PSYCHIATRIC EVALUATION

2.1 WHAT IS THE PRESENTING PROBLEM AND CHIEF COMPLAINT?

_____

_____

2.2 WHAT IS THE HISTORY OF THE PRESENT PSYCHIATRIC ILLNESS?

_____

_____

_____

PSYCHEVI.PRN 7/20/94

P S Y C H I A T R I C E V A L U A T I O N

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

2 HEALTH AND ILLNESS (CONTINUED FROM PAGE 1)

2.3 WHAT IS KNOWN ABOUT THE PAST PSYCHIATRIC HISTORY; COURSE OF ILLNESS; AND MEDICAL HISTORY?

_____

_____

_____

2.4 PLEASE DESCRIBE PERTINENT CLIENT AND FAMILY HISTORY. INCLUDE THE CLIENT'S AGE, SEX, MARITAL STATUS, LIVING SITUATION AND PRIOR VOCATIONS. ALSO INCLUDE THE CLIENT'S RACIAL/ETHNIC, GEOGRAPHIC, AND RELIGIOUS BACKGROUND AND AFFILIATIONS.

_____

_____

_____

_____

_____

2.5 DID A LEGAL REPRESENTATIVE, FAMILY MEMBER, AND/OR SIGNIFICANT OTHER PARTICIPATE IN THE EVALUATION?

A. __ YES (SPECIFY): _____

B. __ NO (PLEASE EXPLAIN): _____

_____

2.6 WHAT SIGNIFICANT CLINICAL CHANGES HAVE OCCURRED IN THE PAST SIX MONTHS, I.E., IN SOCIAL FUNCTIONING AND/OR MENTAL AND PHYSICAL STATUS?

_____

_____

_____

3 MENTAL STATUS EXAMINATION

3.1 APPEARANCE AND ATTIRE: _____

3.2 ATTITUDE AND BEHAVIOR: _____

3.3 AFFECT AND MOOD: _____

3.4 ASSOCIATION AND THOUGHT PROCESS: _____

3.5 HALLUCINATIONS/DELUSIONS: _____

3.6 SUICIDAL/HOMICIDAL: _____

3.7 PERCEPTION: _____

P S Y C H I A T R I C E V A L U A T I O N

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

3 MENTAL STATUS EXAMINIATION (CONT. FROM PAGE 2)

3.8 SENSORIUM, MEMORY AND ORIENTATION: _____

3.9 INTELLECTUAL FUNCTIONING: _____

3.10 INSIGHT AND JUDGEMENT: _____

4 REVIEW OF SYSTEMS

4.1 H.E.E.N.T.: _____

_____

4.2 CARDIOVASCULAR: _____

_____

4.3 PULMONARY: _____

_____

4.4 GASTROINTESTINAL: _____

_____

4.5 GENITOURINARY/OB-GYN: _____

_____

4.6 NEUROMUSCULAR: _____

4.7 SKIN: _____

5 NEUROLOGICAL FINDINGS:

5.1 CRANIAL NERVES: _____

5.2 MOTOR SYSTEM: _____

5.3 SENSORY SYSTEM: _____

5.4 DEEP TENDON REFLEXES AND PLANTAR REFLEXES (BABINSKI) OR OTHER PATHOLOGICAL REFLEXES:

_____

5.5 STATION AND GAIT: _____

5.6 TREMORS/ABNORMAL MOVEMENT: _____

5.7 OTHER PERTINENT FINDINGS: _____

PSYEVIII.PRN 7/20/9

P S Y C H I A T R I C E V A L U A T I O N

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) | | | | | | | | | | | | | | | (FIRST) | | | | | | | | | | (M.I.) |

6 NARRATIVE SUMMARY (INCLUDING THE CLIENT'S POSTIVE TRAITS, STRENGTHS, AND WEAKNESSES)

7 DIAGNOSES

7.1 AXIS I (PSYCHIATRIC DIAGNOSIS): _____

_____

A. CODE FOR DIAGNOSIS ABOVE (FIVE DIGITS): | | | | | |

B. DSM EDITION USED (CHECK ONE):

__ III-R __ IV

7.2 AXIS II (DEVELOPMENTAL DISORDERS AND PERSONALITY DISORDERS): _____

_____

7.3 AXIS III (PHYSICAL DISORDERS AND CONDITION): _____

_____

8 MEDICATIONS, TESTS, AND STUDIES

8.1 IDENTIFY ALL CURRENT MEDICATIONS AND DAILY DOSAGES OF EACH.

_____

_____

_____

8.2 IDENTIFY MEDICATION (AND OTHER) ALLERGIES, INTOLERANCES, AND/OR INCOMPATIBILITIES.

_____

_____

PSYEVIV.PRN 7/21/94

P S Y C H I A T R I C E V A L U A T I O N

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) | | | | | | | | | | | | | | | (FIRST) | | | | | | | | | (M.I.) |

8 MEDICATIONS, TESTS, AND STUDIES (CONTINUED FROM PAGE 4)

8.1 SUMMARIZE BELOW RESULTS OF ANY SIGNIFICANT LABORATORY TESTS OR SPECIAL NEUROLOGICAL DIAGNOSTIC STUDIES.

_____

_____

8.3 ARE PSYCHOTROPIC MEDICATIONS PRESCRIBED? A. __ NO (SKIP TO SECTION B. ON PAGE 6) B. __ YES (GO TO 9 BELOW)

9 PSYCHOTROPIC MEDICATIONS

9.1	NAME OF MEDICATION	DAILY DOSAGE	TYPE OF THERAPY (CHECK ONE)	TYPE OF ADMINISTRATION (CHECK ONE)
A.	_____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
B.	_____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
C.	_____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
D.	_____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
E.	_____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED

9.2 ARE MEDICATIONS GIVEN TO AUGMENT THE ACTION OF MEDICATIONS ABOVE? A. __ NO B. __ YES (LIST NAMES, DOSAGES)

_____

9.3 SIDE EFFECTS OF MEDICATIONS ABOVE

A. __ NONE ARE KNOWN
B. __ AKATHISIA
C. __ AKINESIA
D. __ ANTICHOLINERGIC SYMPTOMS
E. __ EXTRA-PYRAMIDAL SYMPTOMS
F. __ PARKINSONIAN SYMPTOMS
G. __ POSTURAL HYPOTENSION
H. __ SEDATION
I. __ TARDIVE DYSKINESIA
J. __ OTHER/OR ELABORATION ON SIDE EFFECT

_____

9.4 MEDICATIONS NOW PRESCRIBED TO CONTROL THESE SYMPTOMS

A. __ NONE
B. _____
C. _____
D. _____
E. _____
F. _____
G. _____
H. _____
I. _____
J. _____

9.5 BASED ON THE SEVERITY OF SIDE EFFECTS, OR FOR OTHER REASONS, SHOULD MEDICATIONS OR DOSAGES BE ADJUSTED?

A. __ NO B. __ YES (PLEASE EXPLAIN): _____

_____

PSYCHV.PRN 7/20/94

PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

NOTE: THIS DOCUMENT SERVES AS A ONE-PAGE NOTIFICATION LETTER FOR OFFICIAL PURPOSES. NURSING FACILITIES RECEIVING THIS LETTER ARE REQUIRED TO PLACE A COPY IN THE CLIENT'S MEDICAL RECORD.

SECTION A. - TO BE COMPLETED BY PERSON REFERRING CLIENT FOR EVALUATION.

FAX OR MAIL FINDINGS TO:

A.1 FOR ANNUAL RESIDENT REVIEWS ONLY, ENTER FULL NAME OF NURSING FACILITY (NF) WHERE CLIENT RESIDES.
FOR ALL OTHER PSYCHIATRIC EVALUATIONS, ENTER NAME (NOT CODE) OF NJ COUNTY SELECTED ON PAGE 1, ITEM 1.1.

A.2 PERSON REFERRING CLIENT FOR EVALUATION: _____ (NAME) _____ (ORGANIZATION OR RELATIONSHIP TO CLIENT)

MAILING ADDRESS FOR REFERRAL SOURCE: _____

VOICE PHONE: (_ _ _) _ _ _ - _ _ _ _ FAX PHONE: (_ _ _) _ _ _ - _ _ _ _

SENDER: CAROL I. WEISS, M.S.W., PH.D., PASARR COORDINATOR, DMH&H - VOICE (609) 777-0821 FAX (609) 777-0662

RE: CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) _

A.3 CLIENT'S DATE OF BIRTH: MONTH ☐☐ DAY ☐☐ YEAR ☐☐

A.4 __ CHECK HERE FOR A "RUSH" IN PROCESSING THIS EVALUATION

A.5 __ CHECK HERE IF THE CLIENT USES A PRIMARY LANGUAGE OTHER THAN ENGLISH (SPECIFY): _____

SECTION B. - TO BE COMPLETED BY THE PERSON CONDUCTING THE PSYCHIATRIC EVALUATION

HAVING ASSESSED THIS CLIENT AND THE AVAILABLE CLINICAL RECORDS, IT IS MY PROFESSIONAL OPINION THAT THE CLIENT:

B.1 __ NO __ YES HAS AN ACTIVE PSYCHOSIS

B.2 __ NO __ YES HAS A MAJOR MENTAL ILLNESS

B.3 __ NO __ YES HAS MENTAL HEALTH TREATMENT NEEDS THAT CAN BE MET IN A NURSING FACILITY (NF)
NOTE: B.3 AND B.4 CANNOT BOTH BE "YES," SINCE THE NF CANNOT PROVIDE SPECIALIZED SERVICES.

B.4 __ NO __ YES NEEDS "SPECIALIZED SERVICES" (FORMERLY KNOWN AS "ACTIVE TREATMENT") FOR BEHAVIORAL SYMPTOMS THAT REQUIRE 24-HOUR PSYCHIATRIC INPATIENT CARE.

B.5 FUTURE NEEDS FOR LESS THAN SPECIALIZED SERVICES (CHECK ALL THAT APPLY):

__ MEDICATION MONITORING __ LABORATORY TESTING (SPECIFY): _____

__ SUPPORTIVE COUNSELING __ FOLLOW-UP FOR CHEMICAL DEPENDENCY OR ABUSE

__ FOLLOW-UP CONSULTATIONS (SPECIFY): _____

SIGNATURE AND TITLE OF EXAMINER: _____ EXAM DATE: MONTH ☐☐ DAY ☐☐ YEAR ☐☐

PRINT NAME AND TITLE: _____ PHONE: (_ _ _) _ _ _ - _ _ _ _

SECTION C. - TO BE COMPLETED BY PSYCHIATRIST AT THE NEW JERSEY DIVISION OF MENTAL HEALTH & HOSPITALS

C.1 __ NO __ YES THIS CLIENT NEEDS "SPECIALIZED SERVICES" (SEE B.4 ABOVE)

C.2 __ NO __ YES THIS CLIENT NEEDS AN ANNUAL RESIDENT REVIEW FOR SERIOUS MENTAL ILLNESS

SIGNATURE: _____ REVIEW DATE: MONTH ☐☐ DAY ☐☐ YEAR ☐☐

PSYCHVI.PRN 7/20/94

APPENDIX J

AT-RISK CRITERIA FOR NURSING FACILITY PLACEMENT REFERRAL TO THE MEDICAID OFFICE FOR PAS EVALUATION

The following is a list of "at-risk" criteria to assist the hospital in determining if a referral for long term care services, either in a nursing facility or in the community, is indicated.

I. **Medical**—Has the patient experienced any of the following:

1. **Catastrophic Illness** requiring major changes in life style and/or living conditions, i.e. Multiple Sclerosis, Stroke, Multiple Trauma, AIDS, Amputation, Neurological Disease, Cancer, Birth Defect(s), End Stage Renal Disease.
2. **Debilitation and/or Chronic Illness** causing progressive deterioration of self-care skills, i.e. Diabetes, Fractures, Progressive Pulmonary Disease, Severe Chronic Diseases, Spina Bifida.
3. **Multiple Hospital Admissions** within the past six (6) months. (Do not refer patients admitted directly from nursing facilities.)
4. **Previous Nursing Facility Admissions** within the past two (2) years.
5. **Major Health Needs,** i.e. tube feedings, special equipment or treatments, rehabilitative/ restorative services.

II. **Social**—In addition to the medical criteria, does patient meet any of the following social situations:

1. Homeless.
2. Lives alone and/or has no immediate support system.
3. Primary caregiver is not able to provide required care services.
4. Lack of adequate support systems.

III. **Financial** (as of 01/01/94)—Does the patient meet any of the following income/assets tests:

1. Currently eligible for Medicaid.
2. Monthly income at/or below the current (as of 01/01/94) Medicaid institutional cap of $1,338.00 and:
   a) **Has no spouse in the community** and resources no greater than $2,000.00 (plus $1,500.00 burial fund), or
   b) **Has no spouse in the community** and resources at/or below $26,000.00 (plus $1,500.00 burial fund). This is an indication that the patient may **become** Medicaid eligible within the next six (6) months by spending down assets in a nursing facility as private pay, or
   c) **Has a spouse in the community** with combined countable resources at/or below $52,000.00 (plus $1,500.00 burial fund). This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988.
3. Monthly income at/or below the current New Jersey Care . . . Special Medicaid Programs maximum monthly income limit of $581.00 and:
   a) **Has no spouse in the community** and resources no greater than $4,000.00 (plus $1,500.00 burial fund), or
   b) **Has no spouse in the community** and resources at/or below $28,000.00 (plus $1,500.00 burial fund). This is an indication that the patient may **become** Medicaid eligible within the next six (6) months by spending down assets in a nursing facility as private pay, or
   c) **Has a spouse in the community** with combined countable resources at/or below $56,000.00 (plus $1,500.00 burial fund). This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988.

APPENDIX K

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

PREADMISSION SCREENING ASSESSMENT

AUTHORIZATION LEVEL MOS	LOCUS OF CARE	SPECIAL CARE SERVICES
1. ___ ___	___TRACK I-LONG-TERM PLACEMENT	___RESPIRATORY
2. ___ ___	___TRACK II—SHORT TERM PLACEMENT	___COMA
3. ___ ___	___TRACK III-COMMUNITY PLACEMENT	___NEUROLOGICALLY IMPAIRED YOUNG ADULT
	___CCPED (MODEL WAIVER)	___PEDIATRIC LTC
	___ACCAP	___AIDS/LTC
	___COMMUNITY	___MR/MI
	___DENIAL OF SERVICES	

___ /___ /___ Date Ref. to DDD/DMH&H

APPLICANT'S NAME (Last, First, Middle)	D.O.B. / /	SEX M( ) F( )	MARITAL STATUS S( ) M( ) W( ) D( ) SEP( )
ADDRESS	TELEPHONE NUMBER		
MEDICARE NUMBER SSA NUMBER	H.S.P. (Medicaid) Case Number		

RACE/ETHNICITY CODE: ___ (For Data Collection Purposes Only)

1 = American Indian/Alaskan Native
2 = Asian or Pacific Islander
3 = Black, Non-Hispanic Origin
4 = Hispanic
5 = White/Anglo, Non-Hispanic
6 = Other: _____

NAME OF FACILILTY (Current)	DATE OF ADMISSION / /	FLOOR WARD BLDG. / /
ADDRESS		ROOM NUMBER

INITIALLY ADMITTED FROM	NAME AND ADDRESS
Home ( ) Facility or Other ( )	

ATTENDING PHYSICIAN, TITLE	TELEPHONE NO.	RSN	ASSESSMENT DATE / /
ATTENDING PHYSICIAN, TITLE	TELEPHONE NO.	RSN	ASSESSMENT DATE / /
ATTENDING PHYSICIAN, TITLE	TELEPHONE NO.	RSN	ASSESSMENT DATE / /

PRIOR HOSPITALIZATIONS:

1. _____

2. _____

3. _____

( ) Preadmission Level of Care Determination
( ) Community Care Evaluation
( ) Psychiatric Hospital
( ) ICF/MR (Developmental Disabilities)
( ) Admission Level of Care Determination
( ) Periodic Review for Level of Care
( ) Request for Change in Level of Care
( ) Other: _____

PAS-1 (6/90)

II. CLINICAL ASSESSMENT

Recent Hospitalization Dates: _____
Primary Diagnosis: _____
Secondary Diagnosis: _____

Does patient have a history of any of the following? (Circle Appropriate)	If YES, specify current treatments, compliance, unmet needs, problems.
A. **SKIN:** Rashes, Bedsores, Lesions, Infection	
B. **EYE:** Glaucoma, Cataracts, Blindness, Glasses, Discharge, Pain, Itching, Assymetry	
C. EAR: Deafness, Hearing Aid, Discharge, Pain, Infection	
D. **MOUTH/THROAT:** Difficulty Chewing/Swallowing, Missing Teeth, Gum Disease	
E. **BREAST:** Lump, Cyst, Pain, Discharge, Mammogram	
F. **RESPIRATORY:** Dyspnea, Asthma, Emphysema, TB, Apnea, Tracheostomy	
G. **CARDIOVASCULAR:** Heart Attack, Chest Pain, Irregular Rate, High Blood Pressure, Leg Ulcers, Edema	
H. **G.I.:** Ulcers, Bleeding, Diarrhea, Constipation, Liver/Gall Bladder Problems, Ostomy, Incontinency	
I. **G.U.:** Pain, Burning, Frequency, Urgency, Infection, Stones, Catheters, Ostomy, Incontinency	
J. **GYN:** Discharge, Abnormal Bleeding, Menses	
K. **MUSCULO-SKELETAL:** Paralysis, Missing Limbs, Pain, Weakness, Broken Bones, Congenital/Acquired Impairments, Arthritis, Edema	
L. **NEUROLOGICAL:** Effects of a Stroke, Speech Impairment, Seizures, Headaches, Coma	
M. **ENDOCRINE DISORDERS:** Diabetes, Thyroid	
N. **HEMATOLOGIC:** Anemia, Transfusions, Bleeding	
O. **ONCOLOGIC:** Tumor, Cancer	
P. **IMMUNE SYSTEM:** Allergy (Drugs/Food), Chronic Infection, AIDS, ARC, HIV+	
Q. **MENTAL ILLNESS:** (Schizophrenia, Paranoid, Major Affective)	
R. **MENTAL RETARDATION**	
S. **DEVELOPMENTAL DISABILITIES:** (CP, Epilepsy, Spina Bifida)	
T. **PROSTHESIS:** Limb, Joint, Dental, Eye	
U. **SURGERIES:** Type, Date	
V. **ACCIDENT/INJURY:** Recent	
W. **SUBSTANCE ABUSE:** Alcohol, Drugs, Tobacco	
X. **OTHER DISABILITIES-HEALTH PROBLEMS**	

III. PEDIATRIC ASSESSMENT

A. Name of Parents/Foster Parents:: _____

B. Address:_____ City/Town _____ St _____ Zip _____

C. Telephone Number: ( )_____

D. BIRTH HISTORY: Gestational Age at Birth _____
APGAR Score: 1 Min. _____ 5Min._____ Unknown _____
Birth Weight: _____ Head Circumference: _____

E. Prenatal Problems (Specify): _____

F. Neonatal Problems (Specify): _____

G. ACQUIRED INFECTIOUS DISEASES:
Chicken Pox ( ) Measles ( ) Mumps ( ) Rubella ( )
Meningitis ( ) Hepatitis ( ) AIDS ( ) Whooping Cough ( )
Other (Specify): _____

H. IMMUNIZATION STATUS: (Refer to Approved Schedule)

TYPE	DATES

I. GROWTH & DEVELOPMENT:
Current Wt. _____ Current Ht. _____ Current Head Circumference _____
Wt % For Age _____ Ht % For Age _____ H.C. % For Age _____

J. MILESTONES (Refer to Growth and Developmental Charts):
On Time ( ) Delayed ( ) (Specify): _____

K. Sleep Pattern & Environment: _____

L. Appearance/Dress: _____

M. Potential Risks/Safety: _____

COMMENTS (If required):

IV. TREATMENTS AND DIAGNOSTIC STUDIES

A. RESULTS & DATES OF LAB AND OTHER DIAGNOSTIC STUDIES

B. MEDICATION (Administered by Self or Other____)

Drugs	Dose	Sig.

C. TREATMENTS, REHABILITATIVE THERAPIES SPECIAL EQUIPMENT

Type and Frequency:

O.T.

S.T.

P.T.

Other — e.g., Chest Therapy, Percussion/ Postural Drainage, Psychosocial, Skin Care

D. NUTRITIONAL STATUS

Diet (Specify: _____
Current Weight: _____
Weight Gain/Weight Loss _____
Appetite: Good ( ) Fair ( ) Poor ( )
Describe Nutritional & Hydration Status
Naso-Gastric Feedings _____
Gastrostomy _____
TPN _____

V. MENTAL AND BEHAVIORAL STATUS

CHECK (X) APPROPRIATE STATUS	YES	NO	SOME TIME	COMMENTS
A. MENTAL — BEHAVIORAL				
01. Disoriented				
02. Confused				
03. Withdrawn				
04. Lethargic				
05. Fearful				
06. Anxious				
07. Suspicious (more than reasonable)				
08. Bizarre Behavior				
09. Inappropriate Behavior				
10. Agitated				
11. Assaultive				
12. Verbally Abusive				
13. Noisy				
14. Wanders				
15. Ritualistic				
16. Compulsive				
17. Delusional				
18. Hallucinatory				
19. Depression				
20. Sundowning				
21. Other				

B. COGNITIVE FUNCTIONS

	INTACT	IMPAIRED
1. Long-Term Memory		
2. Short-Term Memory		
3. Judgement		
4. Insight		

COMMENTS (If required):

VI. FUNCTIONAL ASSESSMENT

	INDE-PENDENT	PARTIAL ASSIS-TANCE	TOTAL ASSIS-TANCE	COMMENTS RECENT CHANGES IN STATUS
A. ADL				
1. Eat/Feed				
2. Bathing				
3. Dressing				
4. Toileting				
5. Grooming				
6. Oral Hygiene				

	YES	NO	COMMENTS: (INCLUDE RECENT CHANGES IN STATUS)
B. INCONTINENCE			
1. Bladder			
2. Bowel			

	INDE-PENDENT	PARTIAL ASSIS-TANCE	TOTAL ASSIS-TANCE	COMMENTS RECENT CHANGES IN STATUS
C. MOBILITY				
1. Walking With/Without Aids				
2. Transfers				
3. Wheeling				
4. Climb Stairs				
5. Change Position				
6. Distance Walks				
7. Can Be Transported In A Car				
8. Wheelchair In Room				
9. Wheel/Walker In Hall				

	YES	NO	COMMENTS: (INCLUDE RECENT CHANGES IN STATUS)
D. IMPAIRMENT			
1. Hearing With/Without Aids			
2. Vision With/Without Aids			
3. Speech			
4. Communications			
5. Contractures			
6. Paralysis			
7. Amputation			
8. Memory			
9. Swallowing			
10. Chewing			

	INDE-PENDENT	PARTIAL ASSIS-TANCE	TOTAL ASSIS-TANCE	COMMENTS RECENT CHANGES IN STATUS
E. IADL'S				
1. Handles Own Finances				
2. Can Bank and Shop				
3. Can Prepare Simple Meals				
4. Can Do Own Light Housekeeping				
5. Personal Laundry				
6. Can Do Own Heavy Housekeeping				
7. Can Use Telephone				
8. Takes Own Medication				

VII. SOCIAL ASSESSMENT

A. Caregiver/Friend

Name _____ Relationship _____

Address _____

Telephone Number: Home ( ) _____ Work ( ) _____

Employment: ____ Full Time ____ Part Time ____ Not Employed

Days/Hours Assisting: _____

Caregivers' health problems/limitations/concerns. (Please describe any problems or questions the caregiver has.)

B. Client's/Family's Perception of Care Needs:

( ) Patient wants to return home
( ) Household members want patient to return
( ) Unwilling to return, specify: _____
( ) Unable to return, specify: _____
( ) Willing to go to nursing facility
( ) Willing to return — environment unsafe

C. Identify Services/Social Support Client Family Requires:

ASSESSMENT CONCLUSION

APPENDIX L

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

HEALTH SERVICE DELIVERY PLAN (H.S.D.P.)

1. Applicant Name ____ (PRINT LAST) ____ (FIRST) ____ (MI)

2. Male ☐ Female ☐ 3. Birthdate MM☐☐ DD☐☐ YY☐☐

4. Medicaid (HSP) # ☐☐☐☐☐☐☐☐☐☐

Primary Diagnosis: _____
Secondary Diagnosis: _____
Allergies: _____

NURSING DIAGNOSIS **RELATED TO**

I. EXCHANGING:
   a. Altered Nutrition: More than/less than Body Requirements _____
   b. Potential for Infection _____
   c. Constipation _____
   d. Diarrhea _____
   e. Bowel Incontinence _____
   f. Altered Patterns of Urinary Elimination _____
   g. Fluid Volume Excess/Deficit _____
   h. Decreased Cardiac Output _____
   i. Impaired Gas Exchange _____
   j. Potential for Injury _____
   k. Impaired Tissue Integrity _____
   l. Potential/Impaired Skin Integrity _____

II. COMMUNICATING:
   a. Impaired Verbal Communication _____

III. RELATING:
   a. Impaired Social Interaction _____

IV. VALUING:
   a. Spiritual Distress _____

V. CHOOSING:
   a. Ineffective Individual Coping _____
   b. Impaired Adjustment _____
   c. Ineffective Family Coping _____

VI. MOVING:
   a. Impaired Physical Mobility _____
   b. Activity Intolerance _____
   c. Impaired Home Maintenance Management _____
   d. Altered Health Maintenance _____
   e. Feeding Self-Care Deficit _____
   f. Bathing/Hygiene Self-Care Deficit _____
   g. Dressing/Grooming Self-Care Deficit _____
   h. Toileting Self-Care Deficit _____

VII. PERCEIVING:
   a. Sensory/Perceptual Alterations (Specify) (Visual, auditory, kinesthetic, gustatory, tactile, olfactory) _____

VIII. KNOWING:
   a. Altered Thought Processes _____

IX. FEELING:
   a. Pain _____
   b. Potential for Violence: Self-directed or directed at others _____
   c. Anxiety _____

OTHER: _____

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NAME: _____ HSP# _____

REQUIRED CARE NEEDS (Circle Appropriate)

	YES	NO	COMMENTS
1. **Additional Nursing Services:**			
a. Tracheostomy			
b. Respirator (ventilator)			
c. Head Trauma Stimulation/ ADV. NEUROMUSCULAR/ ADV. ORTHOPEDIC CARE			
d. Intravenous Therapy			
e. Wound Care			
f. Oxygen Therapy			
g. NGT &/or Gastrostomy			
2. **Basic Facility Nursing Services**			
a. PRN Oxygen/Inhalation Rx			
b. Suctioning			
c. Apnea Monitoring			
d. Temperature Control			
e. Injectable Medications			
f. Venipuncture			
g. Preparation of Medications			
h. Cath/Tube Insert/Irrigate			
i. Aseptic Dressings			
j. Preventive Skin Care			
k. Ostomy Care			
l. Special Skin Care			
m. Decubitus Ulcer/Dec Bed			
n. Mobility Assistance			
o. Speech Therapy			
p. Occupational Therapy			
q. Physiotherapy			
r. Durable Medical Equipment			
s. Bathe/Dress/Feed/Assist			
t. Positioning/Transfer			
u. Toilet Assist/B&B Retr.			
v. Meal Prep/Food Shopping			
w. Housekeeping/Laundry Assist			
x. Transportation			
y. Sensory Stimulation/Assist			
z. Medical Day Care			
zz. Respite Care			
aa. Supervision for Confused or Disruptive Behavior			
bb. Community Support Services Assist			
cc. Legal/Financial Assist			
dd. Alternative Housing Arrangements			
ee. Mental Health Support			
ff. Pt/Fam. Teaching Counseling			
gg. Monitor Health Status/Medical Regimen Cardiac, Resp, Seizure			
hh. Other			

ii. PASARR

1) Neurological (date completed) _____

Cat Scan _____ H&P _____ Thyroid Studies _____ Other _____ ___

2) MI _____

3) MR _____

HEALTH SERVICE DELIVERY PLAN (H.S.D.P.)

1. Applicant Name PRINT LAST FIRST MI

DETERMINATION SUMMARY

SERVICE AUTHORIZATION

NF
YES _____
2.5 HOURS _____
ADDITIONAL NURSING SERVICES _____
DENIAL OF NF SERVICES _____

LOCUS OF CARE

_____ TRACK I
(LONG TERM PLACEMENT)
_____ TRACK II
(SHORT TERM PLACEMENT)
_____ TRACK III
(COMMUNITY PLACEMENT)

SPECIAL CARE BEDS
_____ Respirator
_____ Coma
_____ Neurologically Impaired
Young Adult
_____ Pediatric LTC
_____ AIDS LTC
_____ Other _____

WAIVER PROGRAMS
_____ CCPED
_____ Model Waiver
_____ ACCAP

_____ Community

_____ Months

RSN: _____

DATE: _____

PAS 1(a) (rev. 10/90)

APPENDIX M

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

ALAN J. GIBBS
Commissioner

SAUL M. KILSTEIN
Director

DATE:

Dear:

The _____County Medicaid District Office has recently assessed your health care needs and reviewed your medical, nursing and social records during the pre-admission screening or periodic reassessment process. The evaluation process has resulted in the following determination:

( ) **You are approved for Track III home care services.** The hospital discharge planning staff will arrange for services to be provided in your home. Shortly after you are discharged home, a case manager from this office will be contacting you to discuss how the services are being provided.

( ) **You are approved for nursing facility placement.**
( ) Track I long-term placement
( ) Track II short-term placement

Please present this letter to the nursing facility admission's office as proof of Medicaid's authorization for your care in a nursing facility. In the event you are not admitted to a nursing facility within six (6) months from the date of this letter, the approval is no longer valid. After you are in a nursing facility, you will periodically be reassessed to determine whether you continue to meet the Medicaid requirements for nursing facility placement.

( ) **You are approved for placement in _____ which is a special care unit of a nursing facility.** In the event you are not admitted to this nursing facility within six (6) months from the date of this letter, the approval is no longer valid. After you are in a nursing facility, you will periodically be reassessed to determine whether you continue to meet the Medicaid requirements for nursing facility placement.

NOTE: THE APPROVAL CHECKED ABOVE IS CONTINGENT UPON THE FINANCIAL ELIGIBILITY DETERMINATION FOR MEDICAID BY YOUR COUNTY WELFARE AGENCY/BOARD OF SOCIAL SERVICES.

The form PA-3L (Statement of Availability Income for Medicaid Payment), informing you of your financial obligation, will be sent to you by the County Welfare Agency/Board of Social Services. You may be required to contribute

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towards the cost of your nursing facility care from your monthly income. For questions regarding this statement, please contact the County Welfare Agency/Board of Social Services at _____.

Further, as a Medicaid resident of a nursing facility, you are entitled to an amount of money each month for your personal needs. The personal needs allowance (PNA) comes from your monthly income and is your money to spend as you wish. You are also allowed to maintain your supplemental insurance (i.e. Blue Cross/Blue Shield) and have the premiums deducted from your monthly income. Medicaid will pay the Medicare medical insurance premium (Medicare Part B) if you are eligible for such coverage. If you have any questions about your PNA, contact the social worker in the nursing facility or call the local Medicaid District Office in your county.

If you have any questions concerning the Medicaid Program or this letter, please contact this Medicaid District Office at ( )_____.

Sincerely,

_____
Medicaid Regional Staff Nurse

_____
Medicaid District Office

_____
Address

c: County Welfare Agency/Board of Social Services

APPENDIX N

State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION MEDICAL ASSISTANCE AND HEALTH SERVICES

LOCAL AREA OFFICE

TELEPHONE
AREA CODE

ADDRESS REPLY TO
POST OFFICE BOX

Date

Dear

The Medicaid District Office has recently reviewed your medical, nursing and social history during the PreAdmission Screening process. Based upon the available evidence during this review:

( ) You **do not** meet the requirements for nursing facility care as defined by the New Jersey Health Services Program and set forth in N.J.A.C. 10:63-1.2 and 10:63-2.

( ) You **no longer** meet the requirements for nursing facility care as defined by the New Jersey Health Services Program and set forth in N.J.A.C. 10:63-1.2 and 10:63-2. Medicaid payment for your care in a nursing facility will continue until discharge, but not beyond twenty (20) days from the date of this letter.

If you or your family wish to exercise your right to appeal this decision, you or someone authorized to act on your behalf, may submit a request for a fair hearing in accordance with N.J.A.C. 10:49-10.3 to:

Office of Legal and Regulatory Liaison
Division of Medical Assistance and Health Services
Mail Code #3
CN-712
Trenton, NJ 08625-0712

Such requests must be submitted in writing within twenty (20) days from the date of this letter. If a hearing is granted and you are currently Medicaid eligible, Medicaid will continue to pay for your care until a final decision is made.

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Please be advised you may represent yourself, obtain legal counsel or authorize a friend, relative, or other spokesperson to represent you at the hearing.

Sincerely,

_____
Medicaid Regional Staff Nurse
_____ Medicaid District Office

cc: CWA

APPENDIX O

SECTION Q: Resident Classification

1.	Payment Source	Private	
		Medicare	
		Medicaid	
		Other	_____
2.	Requires Basic Nursing Services (NJAC 10:63-1.3)		
3.	Requires Additional Nursing Services (NJAC 10:63(f)4) as below:		
	Trachestomy		a
	Use of Respirator		b
	Head Trauma Stimulation/ advanced neuromuscular/ orthopedic care		c
	Intravenous Therapy		d
	Wound Care		e
	Oxygen Therapy		f
	Nasogastric tube feeding and/or Gastrostomy		g

_____ _____ _____
Signature of RN Coordinator License Number Date

Signatures of Others Who Completed Part of the Assessment:

_____ _____
Name Title

_____ _____
Name Title

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

APPENDIX P

REQUEST FOR PRIOR AUTHORIZATION FOR MENTAL HEALTH SERVICES

PA#12 00138003

1. Recipient's Last Name	First Name	MI	2. Recipient's Street Address	Telephone Number

3. HSP (MEDICAID) Case No.	4. Person No.	5. Date of Birth	6. Sex ☐ Male ☐ Female	City	State	ZIP Code

7. Place of Service - Name and Address

8. PROVIDER OF SERVICE INFORMATION

Telephone Number

Medicaid Provider Number (Enter only when not printed below)

Name and Address

CLINICAL INFORMATION

9. Brief Clinical History

10. Present Clinical Status (To support request)

11. Diagnosis and Code (Must Conform With ICD-9-CM)

12. Treatment Request

	Frequency Indicate Number			Length Of Session (Check)				
	Per Week	Per Month	Per Year	1 1/2 HR	1 HR	1/2 HR	1 Day	1/2 Day
A. Psychotherapy, Individual								
B. Psychotherapy, Group								
C. Family Therapy								
D. Family Therapy/Conference								
E. Partial Hospitalization								
F. Partial Care								
F. Medication Management								
H. Psychological Testing By Code Number								

13. REQUESTED DATE(S)
From: _____ Thru: _____

14. AUTHORIZED DATE(S)
From: _____ Thru: _____

15. Reviewer ID / Review Date

16. PRIOR AUTHORIZED SERVICES DETAIL (MAXIMUM OF 5 SERVICES) GRAY SHADED AREA FOR DIVISION USE ONLY

A.	B. PROCEDURE & MODIFIER CODE REQUESTED	C.	D. Units Requested	E.	F.	G.	H. Description of Service	I. TOTAL FEE REQUESTED	J.	K.	L.

FD-07 (Rev. 9/91)

FISCAL AGENT COPY

Medicaid Part 1 of 2

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the Fiscal Agency Billing Supplement, write to:

UNISYS
P.O. Box 4801
Trenton, New Jersey 08619-4801

or contact:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN-049
Trenton, New Jersey 08625-0049

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual

Eligibility Effective Date and Applicant Responsibilities in the Application Process

Adopted Amendments: N.J.A.C. 10:69A-5.3, 5.6, 6.2 and 6.12.

Proposed: August 1, 1994 at 26 N.J.R. 3142(a).
Adopted: December 5, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: December 6, 1994 as R.1995 d.10, **without change.**

Authority: N.J.S.A. 30:4D-20 and 24.
Agency Control Number: 94-A-26.

Effective Date: January 3, 1995.
Expiration Date: March 26, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:69A-5.3 Eligibility effective date

(a) (No change.)

(b) The Division shall conduct periodic redeterminations of the eligibility of PAAD beneficiaries. Generally, renewals of eligibility shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD beneficiary's income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 10:69A-6.2.

1. (No change.)

2. Those beneficiaries required to renew annually or biennially must submit a valid renewal application 45 days prior to their expiration date to insure that their PAAD benefits continue uninterrupted; however, if beneficiaries are late in submitting their renewal applications, but apply within 90 days after the expiration date, their PAAD benefits will continue uninterrupted. If the renewal application is submitted more than 90 days after the expiration date, the eligibility effective date will be the date when a valid and completed renewal application is processed by the PAAD Bureau. If the PAAD beneficiary is late in filing his or her renewal application by more than 90 days after the expiration date, the PAAD program shall not make reimbursement until the new eligibility period has been established.

3. (No change.)

10:69A-5.6 Responsibilities in the application renewal process

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

(c) The applicant or beneficiary has the responsibility to:

1.-5. (No change.)

6. Complete his or her renewal application in person if selected as part of a sample group by PAAD. PAAD eligibility will not be renewed if the beneficiary refuses an in-person eligibility review; and

7. If the application mailed by PAAD is lost in the mail, misplaced or not received due to the applicant's change of address, it is the applicant's responsibility to contact the PAAD Bureau for a new application within 60 days after the expiration date.

(d) The beneficiary has the responsibility to:

1. (No change.)

2. Return his or her eligibility card to the Bureau of Pharmaceutical Assistance to the Aged and Disabled whenever becoming ineligible due to one of the following:

i.-iv. (No change.)

v. When requested by the PAAD Bureau because required information to confirm eligibility was not submitted, or scheduled recovery payments are in arrears.

3. (No change.)

10:69A-6.2 Income standards

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

(c) All income from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:

i.-vi. (No change.)

vii. Interest taxable and nontaxable;

viii.-xiii. (No change.)

xiv. Annuities (contributory and non-contributory);

xv. Retirement benefits including distribution from Individual Retirements Arrangements (IRA's);

xvi. Business income (net);

xvii. Fair market value of prizes and awards.

2. (No change.)

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

(f) Since PAAD eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the PAAD income standard, the person will become ineligible for the entire calendar year and shall be required to repay for all prescriptions from January 1 through December 31 of the calendar year.

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

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns, must combine their income for PAAD eligibility purposes for the same time period and their

eligibility determination shall be based on the joint income standard, except when (b)2 above applies.

(k) Medical or other expenses are not considered or deducted from gross income for PAAD eligibility purposes.

(l) Net losses in one income category shall not be used to offset income in another category.

10:69A-6.12 Appeal process

(a) When the Bureau of PAAD determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Pharmaceutical Assistance to the Aged and Disabled, Division of Medical Assistance and Health Services, CN 715, Trenton, New Jersey 08625-0715, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

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

(d) When the PAAD beneficiary requests a fair hearing, he or she shall clearly indicate the existence of a disputed question of fact or law arising from the requirements and standards of the rules and statutes of the PAAD program. If the beneficiary fails to establish a contested case, the PAAD bureau shall deny the hearing request.

1. Hearings are not intended to be informational or to provide a forum for the expression of public sentiment on PAAD actions or policies.

PUBLIC NOTICES

EDUCATION

(a)

THE COMMISSIONER

Public Notice for Special Education
Continued Conditional Approval of the State Plan for Special Education

Take notice that the New Jersey Department of Education has received continued conditional approval of the State Plan for Special Education under Part B of the Individuals with Disabilities Education Act (IDEA) for fiscal years 1995 through 1997 by the federal Office of Special Education and Rehabilitative Services (OSERS) in the United States Department of Education. Approval of the Plan entitles New Jersey to receive an IDEA Part B grant award of $76.6 million and a Preschool Grant award of $11 million under Section 619 of IDEA for fiscal year 1995. Eligible agencies receive notice of grant application procedures through the Department of Education.

Copies of the approved 1995-1997 State Plan, which includes the Preschool Grant, are available to interested parties through the Office of Special Education Programs, CN 500, Trenton, New Jersey 08625.

For further information regarding the State Plan, contact Carol Kaufman at (609) 292-7605.

ENVIRONMENTAL PROTECTION

(b)

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking
N.J.A.C. 7:9-6 (Table 1)

Petitioner: CPS Chemical Company, Inc.

Take notice that on November 28, 1994, the Department of Environmental Protection (Department) received a petition for rulemaking concerning an amendment to the Department's Specific Ground Water Quality Criteria—Class II-A and Practical Quanitation Levels at N.J.A.C 7:9-6 Table 1.

Petitioner, CPS Chemical Co., Inc. represented by the law firm of Schwartz, Tobia and Stanziale requests that the Department amend the groundwater quality standard for chlorobenzene found in Table 1 of N.J.A.C. 7:9-6 from the present standard of four ug/l (four parts per billion) to 50 ug/l (50 parts per billion).

Petitioner asserts that the present groundwater quality standard for chlorobenzene is more stringent than necessary to protect the health, safety and welfare of New Jersey citizens and it does not fulfill the Department's stated purpose of adopting standards that are "more comprehensive and more consistent with recent scientific and technological advances" to reflect current toxicological knowledge 24 N.J.R. 182 (1992).

The Department is currently engaged in revising, updating and clarifying the water pollution control rules in N.J.A.C 7:9. Chapter 9 expires on January 18, 1996. The Department intends to publish proposed regulations in the New Jersey Register by 1995.

In accordance with the provisions of N.J.A.C 1:30-3.6, the Department will subsequently mail to petitioner and file with the Office of Administrative Law a notice of action on the petition.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan
Public Notice

Take notice that on November 22, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment identifies a new discharge to ground water of 10,000 gallons per day at Block 10801, Lots 21 and 22 of Monroe Township, Gloucester County. This new discharge will serve the Tall Pines Day Camp, Inc., a proposed children's day camp weekdays and family camp on weekends. This discharge would only remain operational at this flow rate from June through August weekdays and June through September weekends. The remainder of the year, the site will be used as a children's preschool/dayschool facility. During these months, the projected wastewater flow at the site will be 2,250 gallons per day. The project site lies within a Pinelands Agricultural Production Area and appears to be consistent with the Pinelands Comprehensive Management Plan.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(d)

LAND USE REGULATION PROGRAM

Notice of Action on Petition for Rulemaking
Shellfish Habitat
N.J.A.C. 7:7E-3.2
Shellfish Growing Water Classification
N.J.A.C. 7:12-2.1

Petitioners: Levin and Hluchan, P.C., and Picco Mack Herbert.

Take notice that on September 26, 1994, the Department of Environmental Protection received a petition for rulemaking requesting amendments to the Department's rules at N.J.A.C. 7:7E-3.2, Shellfish Habitat, and N.J.A.C. 7:12-2.1, Shellfish Growing Water Classification. The Department filed a notice of receipt of the petition with the Office of Administrative Law on September 29, 1994 which was published in the New Jersey Register on November 7, 1994 at 26 N.J.R. 4450(a). By this notice, the Department is informing the public that it recognizes the potential conflict between the desire to place recreational docks adjacent to single-family lots, and the protection of shellfish habitat. The Department will initiate a thorough one-year study to produce updated data on the impact of recreational boat docks on adjacent shellfish habitat. The Department is currently drafting a request for proposal which will be distributed to interested parties in early 1995. Therefore, the Department will consider amending N.J.A.C. 7:7E-3.2 and 7:12-2.1 following the completion and review of the scientific study. The reasons for this action are set forth below.

The petitioners, represented by the law offices of Levin and Hluchan P.C., and Picco Mack Herbert, stated that N.J.A.C. 7:7E-3.2 and 7:12-2.1 as written often result in the denial of permit applications for the construction of recreational docks at single family homes even though the water areas lack the physical features necessary to support shellfish populations. The petitioner proposed language to be added to N.J.A.C. 7:7E-3.2, which would allow the construction of a dock at a single family home within an area designated as shellfish habitat provided the area has a riparian grant or tidelands lease and there is an existing dock on an adjacent property. The petitioners also proposed revisions to N.J.A.C. 7:12-2.1 to classify as prohibited for the harvest of shellfish all waters within 100 feet of marinas or anchorages or other places where docking or mooring facilities are provided for boats and all waters within 100 feet of any storm sewer discharge.

On July 18, 1994, the Department adopted amendments to the Rules on Coastal Zone Management (Rules) N.J.A.C. 7:7E including an amendment of the Shellfish Habitat Rule (N.J.A.C. 7:7E-3.2) to clarify

the definition of a productive shellfish habitat. The amendment clarifies that the rule limits the shellfish resources protected to those areas with a current shellfish density of .20 shellfish per square foot (the level deemed viable for commercial harvesting), those found productive based on historical data, those areas designated as shellfish culture areas, pursuant to N.J.S.A. 50:1-1 et seq. (including estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development), or areas designated as "productive" pursuant to N.J.A.C. 7:25-24, Leasing of the Atlantic and Delaware Bay Bottom for Aquaculture. The rule as amended provides a mechanism to demonstrate that an area should not be classified as shellfish habitat due to its current physical characteristics.

As a result of the amendments, water areas that are less productive are not protected under the Shellfish Habitat rule, even though these areas are valuable to recreational clammers and produce clams which are used as forage foods for a variety of finfish and waterfowl. Waters already prohibited for harvest are also acceptable for dock construction.

The amendments also impose additional requirements on marinas with five or more slips to be located on the Navesink, Shrewsbury and Manasquan Rivers, and St. George's Thorofare. These four waterways are particularly important shellfish habitats. The Navesink and Shrewsbury Rivers are unique in that they are the only two estuaries within the State which have soft clams in commercially viable densities. St. George's Thorofare contains high densities of hard clams according to the 1985 Shellfish inventory conducted by the Department's Division of Fish, Game and Wildlife, containing approximately 6.2 million hard clams in a 107 acre area. The high abundance of hard clams, together with the fact that this water body is poorly flushed makes St. George's Thorofare critical to the shellfish industry and extremely sensitive to any potential pollution producing activity. These requirements include a ban on the use of pressure treated lumber or other lumber treated with any other substance for bulkhead sheathing and planking, and dock planking. In addition, the amendments require an on-site restroom and on-site pumpout station or marine septic disposal facility (according to boat size and capacity for on-board septic) as well as requiring monthly fecal coliform water monitoring for the first two full seasons of operation.

The rule as amended intended to balance the competing interests of boating related development and shellfish protection. The Department's rate of approval of dock applications indicates that this balance has been struck. Since January 1991, the Department has approved 91 percent (560) of the individual applications for construction of docks in tidal waters. In addition, the Department has approved 100 percent (474) of the general permit applications for the construction of docks in man-made lagoons during the same time period. It should be noted that the Department's denial of a permit to construct a new dock does not preclude the applicant from boating in New Jersey waters as boat trailering and docking at existing marinas are both viable options. The rules are now more lenient for construction or expansion of marinas or boat ramps. In adopting the above amendments, the Department has attempted to protect the shellfish resources and to protect the health of human consumers of these resources while allowing the boating community continued use of these water areas.

The petitioner's supposition that all areas within 100 feet of existing docks or stormwater outfalls should be classified as "prohibited" is without any current scientific basis. In contrast, the Department's classificaiton of shellfish growing waters as defined at N.J.A.C. 7:12-2.1 is based on actual data collection. The Department annually collects and analyzes over 18,000 water samples from approximately 4,000 locations and conducts shoreline surveys of potential pollution sources in order to accurately classify shellfish-growing waters. This classification is based on actual water quality data designated to protect public health.

The petitioners proposed that all waters within 100 feet of docking or mooring facilities be prohibited for harvest, whereas for individual docks only the footprint of the dock and mooring is presently prohibited. Because new docks are permissible within waters classified as prohibited, this change in classification would permit the construction of additional docks within 100 feet up and down stream of any existing dock which would in turn expand the area of prohibition, in a domino effect, as 100 feet from the new dock would also be prohibited. Thus, such a change would have a far reaching effect and should only be made if supported by scientific evidence. The Department is initiating a cooperative study with the Sea Grant Marine Advisory Service which is managed by the National Oceanic and Atmospheric Administration to investigate the environmental impacts of single, recreational boat docks on water quality and shellfish harvestability. Upon completion of this study, the Department will revisit this issue.

As required under N.J.A.C. 1:30-3.6, the Department has mailed the notice of action on the petition to the petitioners.

HUMAN SERVICES

(a)

BUREAU OF ECONOMIC RESEARCH, RUTGERS UNIVERSITY WITH FUNDING FROM NEW JERSEY DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grant Funds
Title of Grant: Basic Research in Disability

A. **Name of program:** Disability Research Consortium 1995

B. **Purpose:** (1) To conduct research on topics pertaining to disability, including topics of interest specified by the State Plan of the New Jersey Developmental Disabilities Council. These include, but are not limited to, health care, housing, community development, employment, consumer choice, and evaluation of Federally-funded programs and agencies in New Jersey serving people with developmental disabilities. (2) To encourage basic academic research on the topic of disability in New Jersey.

C. **Amount of available funding for the program:** $357,850 in total research grants; $60,000 per project maximum, depending on the project.

D. **Qualifications:** This is a grant award program for academics doing research in the field of developmental disability. Faculty or staff of a publicly-funded State college or university in New Jersey are eligible to apply, that is, Rutgers, UMDNJ, the State Colleges, and the Community Colleges.

E. **Procedure for eligible persons to apply:** Interested applicants may request a Request for Proposals (RFP) by writing on their letterhead or calling:

Disability Research Consortium
Bureau of Economic Research
New Jersey Hall, Room 307
New Brunswick, NJ 08903
(908) 932-7891

F. **Address to which applications must be submitted:** Same as E above.

G. **Deadline by which applications must be received:** By close of business, January 23, 1995.

H. **Date the applicant is to be notified of acceptance or rejection:** March 1, 1995. Grant funds are available for projects lasting 12 months or less, beginning no sooner than March 1, 1995.

(b)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Notice of Availability of Grant Funds
Title of Grant: Prevention of Developmental Disabilities Public Education Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services anticipates the following availability of funds.

A. **Name of the grant program that has funds available:** Prevention of Developmental Disabilities Public Education Program (FY96)

B. **Purpose for which the grant program funds shall be used:** The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities anticipates the availability of State funds specific to the goal of public education and information relative to the 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.

Prevention education programs must address issues that are associated with increased risks of sustaining a developmental disability in one of three periods of the life cycle:

(1) Preconceptional health education programs may address such issues as prevention of adolescent pregnancy, alcohol and substance abuse, family life education, HIV/AIDs, special women's health problems, nutritional factors, and/or other related issues;

(2) Prenatal health educational programs may address such issues as improved access to prenatal care, the effects of prenatal alcohol and drug abuse, genetics, prevention of low birth weight, and/or other related issues;

(3) Childhood health education programs may address improved access to preventive health care, injury prevention, immunization, lead poisoning, and/or other related issues.

C. **Amount of money in the grant program:** Approximately eight grants will be awarded for no more than $50,000. Grants may be renewed up to two years, dependent upon the availability of funding and the performance of the grantee. Funds granted will decrease in the second and third years of the program by approximately 20 percent each year.

Contracts may also be awarded for a one- or two-year period, dependent upon the availability of funds, the ability of the provider agency to complete the prevention education program in a shorter period of time, and the recommendation of the Review Committee.

D. **Multi-Year Contract Requirements** Provider agencies with multi-year contracts may not earn more than a one year (12 month) pro rata amount of a Multi-Year Contract ceiling during a given 12 month period of the Contract term. Carry-forward of funds, not exceeding 15 percent of the yearly total from the previous 12 month period of the Multi-Year Contract, may be granted. All carry-forward of funds will require written prior approval from the Office for Prevention. Unexpended funds at the end of a Multi-Year Contract may not be carried forward to a successor contract.

If a provider agency is awarded a multi-year contract, an audit per Policy Circular P7.06, Single Audit and a fiscal-year end report on an organization-wide basis will be required annually.

Provider agencies that are awarded a multi-year contract shall receive equitable treatment from the Office for Prevention with regard to all required funding increases or decreases consistent with one year Contracts. The fact that a provider agency has a multi-year contract shall not be used as rationale to penalize a provider agency if additional funding becomes available for contract services or for cost of living adjustments (COLA's). Similarly, if there is a reduction in funding, a provider agency with a multi-year contract shall be as vulnerable to any necessary contract reductions as a provider agency with a one year contract.

Any subsequent fiscal adjustments (COLA's, loss of federal dollars, etc.) to a multi-year contract shall be applicable only to the funding in the original allocation year, prior to any carry forward action. Funds that have been carried forward to subsequent years of a multi-year contract shall not be used as a basis for adjustment(s).

E. **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.

Public agencies shall not be awarded multi-year contracts because of restrictions in the New Jerey Local Public Contracts Law (N.J.S.A. 40A:11-15) which prohibits local public agencies from entering into a contract for a term longer than 12 months.

F. **Qualifications needed by applicant to be considered for the grant program:** Agencies must have demonstrated experience in designing and implementing public education prevention projects. Agencies must demonstrate the ability to contribute financially to the program by the second year of the multi-year contract.

All applicants that are applying for support for a multi-year contract must:

1. Demonstrate the ability to contribute fiancially to the program after the first year of funding;
2. Demonstrate plans to maintain the program at the conclusion of the funding cycle;
3. Submit a proposal that delineates all proposed activities, timelines, cooperative agreements (Annex A), and proposed budget for the multi-year period (Annex B).
4. Include a description of evaluation plans in the proposal that assess the effectiveness of the program both in terms of process and outcome. In the final year of funding, a minimum of 20 percent of the budget must be dedicated to evaluation.

G. **Procedure for eligible organizations to apply for grant funds: Proposal 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 08625-0700
609-984-3351

H. **Address of division, office or official receiving application:** Same as G above.

I. **Deadline by which applications must be submitted to the office:** Proposals must be submitted by March 17, 1995.

J. **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 19, 1995.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES
DIVISION OF ENERGY PLANNING AND CONSERVATION

Notice of Availability of the Draft 1994 New Jersey Energy Master Plan Phase I Report

Take notice that the New Jersey Energy Master Plan Committee (Committee), through Herbert H. Tate, Chairman of the Committee and President of the Board of Public Utilities (Board), announces the availability of the Draft 1994 New Jersey Energy Master Plan (EMP) Phase I Report, prepared pursuant to the authority set out in N.J.S.A. 52:27F-14. In addition to the Board, the Committee is composed of the heads of the following departments and agencies: Community Affairs; Environmental Protection; Health; Human Services; Transportation; Treasury and the Division of Ratepayer Advocate. The Department of Commerce and Economic Development and the Department of State have also been invited to participate to help integrate the State's economic policies with energy policies.

The Draft Plan is a part of a three-phase process. Phase I will result in the adoption of the EMP Phase I Report, a policy document that identifies the overall energy goals and policies for the State. Phase II, to be completed in 1995, will set forth implementation strategies for the policies in the Plan, further define energy policy and objectives, and include energy issues currently under study. Phase III, which will also be undertaken in 1995, will provide an assessment of energy sources and energy use.

The Draft Plan was developed through a series of meetings with interested members of the public. Two advisory councils, the Industrial Advisory Council and the Consumer Advisory Council, were formed, along with 12 subcommittees, representing a diversity of experience and expertise from the private, nonprofit and government sectors to guide the Committee in the development of the Draft Phase I Report. In addition to the informal public meetings, **three formal public hearings,** pursuant to N.J.S.A. 52:27F-14b, will be held to receive written and oral testimony on the Draft Phase I Report. The hearings will be held:

Monday, January 23, 1995 2:00 P.M.	Board of Public Utilities Two Gateway Center Newark, New Jersey
Tuesday, January 24, 1995 5:00 to 7:00 P.M.	44 S. Clinton Ave. Hearing Room, First Floor Trenton, New Jersey

Thursday, January 26, 1995
2:00 P.M.

Vineland City Hall
Council Chambers, First Floor
640 Wood St.
Vineland, New Jersey

Sessions will start at the times noted and continue until each person or organization has been given an opportunity to testify. The Committee appreciates the submission of prefiled testimony. Requests to present oral testimony should indicate the name of the individual, organization represented and hearing location intended for presentation of the testimony. All communication pertaining to the hearings, including the submission of testimony, requests to testify, or for copies of the Draft Phase I Report, should be submitted to:

Michael Ambrosio, Director
Division of Energy Planning and Conservation
Board of Public Utilities
Two Gateway Center, Newark, New Jersey 07102
(201) 648-2160

The three public hearings have also been announced in newspaper advertisements in the Star Ledger, Bergen Record, Asbury Park Press, Atlantic City Press, and the Trenton Times on November 21, 1994.

Written comments relevant to the Draft Phase I Report may be submitted to the attention of Mr. Ambrosio at the Board's address cited above until February 2, 1995. Upon completion of the hearings, the Committee will take into consideration all written and oral testimony in developing the Final EMP Phase I Report. Upon adoption of the Phase I Report, sufficient copies will be printed for distribution to the Governor, Legislature, and interested members of the public.

STATE

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS

Grants Applications Available for Organization Grants
Fiscal Year 1996 (July 1, 1995-June 30, 1996)

Take notice that the New Jersey State Council on the Arts, acting under the authority of Public Law 1966, c. 214, hereby announces the availability of the following grant program:

Name of program: Organization grant program, Fiscal Year 1996
General Operating Support
Special Project Support
Arts Basic to Education Expansion Project Support
Folk Arts Programs and Project Support
Major Impact Organization Designation

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations. Matching grants under this program are exclusively to support arts projects, programs and services and the operation of arts organizations during the fiscal year 1995/96 (July 1, 1995 to June 30, 1996).

Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt 501(c)3 or 4 by determination of the Internal Revenue Service; must have been in existence and active for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finances; and must comply with all existing State and Federal regulations and laws as described in Guidelines and Application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY96.

Match: All grants offered under this program must be matched at least dollar-for-dollar. Inkind contributions are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must indicate at least a 4:1 match of applicant cash to NJSCA dollars, Special Project applicants who are arts organizations, at least 1:1 match of applicant cash to NJSCA dollars; and Special Project applicants, who are **not** an arts organization, at least 3:1 match of applicant cash to NJSCA dollars. Indirect costs, however, may not be included. **Matches may be different for Folk Arts Organizations and Projects.**

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices not later than **January 20, 1995** (5:00 P.M. if delivered in person to office). All prospective applicants that **are not** direct recipients of FY95 NJSCA grants must submit a Letter of Intent.

Letters of intent are due on DECEMBER 15, 1994 (5:00 P.M. receipt)—All organizations that are **not** FY95 NJSCA grantees must submit a letter of intent, **as must all Folk Arts applicants.** The Letter of Intent is a form contained in the Guidelines and Application, which when completed briefly describes the prospective applicant organization and the purposes for which funds would be sought.

Decisions: Each complete application by eligible applicants will be evaluated by an independent panel of experts appropriate to the category or arts discipline of the applicant and by the NJSCA according to the published criteria for evaluation. The consensus of the panel is further reviewed by the Council. The Council's final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 25, 1995. Applicants are notified in writing of the Council's decision immediately following the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after **December 1, 1994.** Call (609) 292-6130 (Voice) or (609) 633-1186 (TDD) or write GRANTS 96, NJ State Council on the Arts, CN 306, Trenton, NJ 08625.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Petroleum Products Gross Receipts Tax
Notice of Tax Rate; January 1, 1995-June 30, 1995

This notice is to advise petroleum products gross receipts taxpayer that for the period January 1, 1995 through June 30, 1995 the applicable tax rate for fuel oils, aviation fuels, and motor fuels, as converted to a cents per gallon rate pursuant to N.J.S.A. 54:15B-3 will be $0.04 per gallon. The rate is effective for tax due for months ending during that period, and this rate remains unchanged from the per gallon rate effective during the prior six month period.

OTHER AGENCIES

(c)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Third Quarter of 1994, ending September 30, 1994

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the third quarter of 1994, accompanied by a Summary of the Quarterly Report.

At the conclusion of the third quarter of 1994, the Notices of Representation filed with this office reflect that 571 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for third calendar quarter of 1994, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the

Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, their business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the third calendar quarter of 1994:

No. 842- 2 Steven S. Goldenberg of Buchanan Ingersoll representing Systems Control, Inc.
No. 773- 4 Arnold Cohen representing Non-Profit Affordable Housing Network of NJ
No. 932- 1 Michael J. Lukas representing DuPont Environmental Remediation Services
No. 933- 1 William C. Murtha representing Merv Griffin's Resorts Casino Hotel
No. 935- 1 Eugene Deutsch representing Amax Realty Development, Inc.
No. 936- 1 Frank B. Holman of Frank B. Holman Associates representing New Jersey Toll Road Towing Association
No. 209- 3 Julie A. Strout representing Jersey Central Power & Light Company
No. 2- 6 Nicholas L. Ribis representing Casino Association of NJ
No. 549- 4 Russell J. Mayer representing AT&T
No. 583-14 Joseph F. Farren representing Policy Management & Communications
No. 913- 3 Stacey Peterson representing New Jersey Citizen Action
No. 72- 2 Richard T. Corbett representing New Jersey Association of Realtors
No. 22-11 Margaret Foti of LeBoeuf, Lamb, Greene & Maciae representing Garden State Cancer Center
No. 937- 1 Deborah Alford representing Texaco/Star Enterprise
No. 45-11 James Meredith representing New Jersey Savings League
No. 938- 1 Robert Roe representing Robert A. Roe Associates, Inc.
No. 939- 1 M. Robert DeCotiis of DeCotiis, Fitzpatrick & Gluck representing Association of Trial Lawyers of America, New Jersey
No. 939- 2 William Harla of DeCotiis, Fitzpatrick & Gluck representing Association of Trial Lawyers of America, New Jersey
No. 939- 3 Jeanne Stiefel of DeCotiis, Fitzpatrick & Gluck representing Association of Trial Lawyers of America, New Jersey
No. 939- 4 Michael Gluck of DeCotiis, Fitzpatrick & Gluck representing Association of Trial Lawyers of America, New Jersey
No. 85- 4 Eric DeGesero representing Fuel Merchants Association of New Jersey
No. 551-16 Frank Oliveri representing MWW/Strategic Communications, Inc.
No. 828-10 Marylou Delahanty representing Picco Mack Herbert
No. 53-13 Nancy Wittenberg representing New Jersey Builders Association
No. 934- 1 Kenneth D. Merin of Peterson & Ross representing Public Entity Risk Management Administration
No. 934- 2 Verice Mason representing Peterson & Ross
No. 10- 5 Cori Fisher-McRae representing New Jersey Hospital Association
No. 932- 1 Nicole Brossoie representing New Jersey Hospital Association
No. 939- 5 Elizabeth Litten of DeCotiis, Fitzpatrick & Gluck representing New Jersey Association of Non-Profit Homes for the Aging
No. 940- 1 Susan Howland of the Howland Group representing Holt Cargo Systems and Holts Hauling and Warehousing
No. 941- 1 Michael Facemyer representing Bell Atlantic—New Jersey
No. 942- 1 Ellen M. Dotto representing Bell Atlantic—New Jersey
No. 943- 1 Norman Adelman representing New Jersey Coalition for Fair Competition
No. 944- 1 Peter Guzzo representing T T P Government Relations
No. 945- 1 Thomas R. Ryan representing Ford Motor Company
No. 946- 1 Anthony Carracino representing Laborers International Union of North America
No. 947- 1 John Shaw representing Dupont Merck Pharmaceutical Company

Following is a listing of all Legislative Agents who have filed Notices of Termination during the third calendar quarter of 1994.

Legislative Agent	Registration Number
Sandra Ayres	789- 1
Celso Balan	817- 1
G. Donald Bates	209- 1
Marci Berger	10- 3
Paul Blume	679- 1
Nancy Bradish	863- 2
Ann Glass Bucciero	45- 8
Gabrielle Charette	665- 2
Christopher Cooney	45-10
Katherine Cooney	670- 1
Emily Crandall	790- 1
Michele Davis	737- 2
Ralph Dean	651- 2
Keith Ebenholtz	903- 1
Francis Ferraro	796- 1
Joan Fizulich	22- 8
Roger Friskey	235- 1
Susan Geiser	828- 9
Shannon Gibson	19- 7
Michael Gluck	150- 1
Loretta Brennan Glucksman	243- 1
Barbara Hauke	612- 1
Mark Herr	150- 2
Peter Hutcheon	532- 1
Houston Ingram	546- 1
R. Thomas Jannarone	394-11
Ann Levine	678- 1
Kenneth Mack	828- 3
Michael McGuiness	53-11
Hope Menard	895- 2
Edward Murphy	755- 2
George Otlowski	767- 1
Richard Ott	917- 1
Barbara Pancari	854- 1
Hugo Pfaltz	97- 1
Cynthia Povich	868- 1
Robert Reder	712- 1
Dennis Rodkin	549- 3
Martin Rothfelder	566- 5
Thomas Shusted	825- 1
Richard Siderko	45- 9
Gordon Ur	45- 7
Stanley Van Ness	638- 1
Andrew Weber	905- 1
Leander Woods	827- 1
Charles Worthington	829- 1
Raymond Zawacki	650- 1

For further information, contact the staff of the Commission at (609) 292-8700.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 7, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 17, 1994

NEXT UPDATE: SUPPLEMENT NOVEMBER 21, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
26 N.J.R. 1417 and 1554	April 4, 1994	26 N.J.R. 4121 and 4244	October 17, 1994
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
26 N.J.R. 1739 and 1904	May 2, 1994	26 N.J.R. 4471 and 4720	November 21, 1994
26 N.J.R. 1905 and 2166	May 16, 1994	26 N.J.R. 4721 and 4856	December 5, 1994
26 N.J.R. 2167 and 2510	June 6, 1994	26 N.J.R. 4857 and 5138	December 19, 1994
26 N.J.R. 2511 and 2692	June 20, 1994	27 N.J.R. 1 and 262	January 3, 1995

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:7A	Department of Environmental Protection cases	26 N.J.R. 4124(a)		
1:7A-1.1, 8.1	Department of Environmental Protection Cases: public hearing and extension of comment period	26 N.J.R. 4863(a)		
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
	Most recent update to Title 1: TRANSMITTAL 1994-5 (supplement September 19, 1994)			
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2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biological products for diagnostic or therapeutic purposes	26 N.J.R. 3784(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:34	Equine Advisory Board rules	26 N.J.R. 3919(a)	R.1995 d.7	27 N.J.R. 89(a)
	Most recent update to Title 2: TRANSMITTAL 1994-6 (supplement September 19, 1994)			
BANKING—TITLE 3				
3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds	26 N.J.R. 2832(a)	R.1994 d.558	26 N.J.R. 4347(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-16.2, 16.5	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)	R.1994 d.559	26 N.J.R. 4347(b)
3:2-1.4	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)	R.1994 d.559	26 N.J.R. 4347(b)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:18-1.1, 1.3, 3.2, 7.4, 8.1, 8.2, 12	Secondary Mortgage Loan Act rules	26 N.J.R. 3920(a)	R.1995 d.14	27 N.J.R. 89(b)
3:22	Insurance premium finance companies	26 N.J.R. 2697(a)	R.1994 d.562	26 N.J.R. 4348(a)
3:23-2.1	Check cashing businesses	26 N.J.R. 4863(b)		
3:24	Check cashing businesses	26 N.J.R. 4863(b)		
3:33	Acquisitions by out-of-State entities: application requirements	26 N.J.R. 3235(a)	R.1994 d.560	26 N.J.R. 4349(a)
3:38-1.1, 1.10, 5.3	Net worth of mortgage lenders	26 N.J.R. 4124(b)	R.1994 d.629	26 N.J.R. 4999(a)
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:40-1.9	New Jersey Cemetery Board: organizational meetings	26 N.J.R. 4475(a)		
3:40-6	New Jersey Cemetery Board: applications	26 N.J.R. 3785(a)	R.1994 d.579	26 N.J.R. 4597(a)
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
3:41-13.8–3.10	New Jersey Cemetery Board: applications	26 N.J.R. 3785(a)	R.1994 d.579	26 N.J.R. 4597(a)
	Most recent update to Title 3: TRANSMITTAL 1994-6 (supplement August 15, 1994)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
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4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment	26 N.J.R. 3507(a)	R.1994 d.618	26 N.J.R. 5000(a)

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4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:4-1.10	Personnel action freezes	26 N.J.R. 3510(a)	R.1994 d.619	26 N.J.R. 5002(a)
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.15, 5.2	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:6-1.1, 1.3, 1.6, 1.8, 1.10, 1.21, 1.21B, App.	Family and medical leave	26 N.J.R. 3511(a)	R.1994 d.620	26 N.J.R. 5002(b)
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:7-1.3, 3.3, 3.4	Sexual harassment	26 N.J.R. 3507(a)	R.1994 d.618	26 N.J.R. 5000(a)
4A:8	Layoffs	26 N.J.R. 3518(a)		
4A:8-2.4	Voluntary furlough program	26 N.J.R. 4126(a)	R.1995 d.12	27 N.J.R. 145(a)
4A:8-2.4	Family and medical leave	26 N.J.R. 3511(a)	R.1994 d.620	26 N.J.R. 5002(b)

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5:1	Standards of conduct for officers and employees of the Department	26 N.J.R. 4866(a)		
5:12	Homelessness Prevention Program	26 N.J.R. 4248(a)		
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)		
5:18	Uniform Fire Code	26 N.J.R. 4258(a)		
5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13	Uniform Fire Code requirements	26 N.J.R. 4249(a)		
5:18-2.4A	Uniform Fire Code: overnight camps life hazard use category	26 N.J.R. 4254(a)		
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:18A	Fire Code Enforcement	26 N.J.R. 4258(a)		
5:18B	High Level Alarms	26 N.J.R. 4258(a)		
5:18C	Standards for Fire Service Training and Certification	26 N.J.R. 4258(a)		
5:18C-2.4	Fire service training facilities	26 N.J.R. 4249(a)		
5:23-2.9, 2.34–2.37, 4.40	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:23-3.4, 3.18	Uniform Construction Code: energy subcode	26 N.J.R. 4872(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-3.15	Uniform Construction Code: abandonment of septic systems	26 N.J.R. 4874(a)		
5:23-3.20	Uniform Construction Code: mechanical subcode	26 N.J.R. 4874(b)		
5:23-4.3	Uniform Construction Code: administrative changes regarding municipal enforcing agencies	———	———	26 N.J.R. 5007(a)
5:23-8.11	Asbestos safety control monitor: administrative correction	———	———	26 N.J.R. 4760(a)
5:23-9.4	Uniform Construction Code: seismic zones	26 N.J.R. 4875(a)		
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)	R.1994 d.609	26 N.J.R. 5007(b)
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)	R.1994 d.610	26 N.J.R. 5010(a)
5:26-8.2	Planned real estate developments: community association meeting location	26 N.J.R. 4277(a)	R.1995 d.17	27 N.J.R. 91(b)
5:31	Local authorities	26 N.J.R. 4128(a)	R.1995 d.27	27 N.J.R. 91(a)
5:34-7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 4724(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)	R.1994 d.578	26 N.J.R. 4600(a)
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)	R.1994 d.563	26 N.J.R. 4349(a)

Most recent update to Title 5: TRANSMITTAL 1994-9 (supplement October 17, 1994)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)

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6:7	State-operated school districts	26 N.J.R. 3524(b)	R.1994 d.616	26 N.J.R. 5010(b)
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7:1C-1.5	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)	R.1994 d.576	26 N.J.R. 4606(a)
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		
7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:2-17.1, 17.4	Berth and launch ramp use fees at State marinas: administrative change	27 N.J.R. 92(a)		
7:4A-2.3	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:4B-3.1	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:4C	Historic Preservation Bond Program	26 N.J.R. 3253(b)	R.1994 d.541	26 N.J.R. 4350(a)
7:5C	Endangered Plant Species Program	26 N.J.R. 3790(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:9	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)		
7:11-4.3, 4.4, 4.9, 4.13	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)		
7:12-1.2, 2.1, 3.2, 4.1, 4.2, 9.1	Shellfish growing water classifications	26 N.J.R. 4475(b)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14-8.1, 8.3, 8.4, 8.15	Water supply allocation	26 N.J.R. 4912(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19	Water supply allocation	26 N.J.R. 4912(a)		
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:19A	Water supply allocation	26 N.J.R. 4912(a)		
7:19B	Water supply allocation	26 N.J.R. 4912(a)		
7:22A	Sewage Infrastructure Improvement Act grants	26 N.J.R. 3793(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)	R.1994 d.577	26 N.J.R. 4611(a)
7:25-6.9	1995-96 Fish Code: administrative correction	26 N.J.R. 3258(a)		
7:25-18.1, 18.4, 18.5, 18.13–18.15	Marine fisheries management: winter flounder, bluefish, weakfish, Atlantic sturgeon, American lobster	26 N.J.R. 4277(b)		
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)	R.1994 d.615	26 N.J.R. 5011(a)
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-3A.1, 4.1, 4A.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:26A-2.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		

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7:27-16.3, 16.7, 16.13, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds: administrative corrections	———	———	26 N.J.R. 4793(a)
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-26	Low Emission Vehicles Program: extension of comment period	26 N.J.R. 4482(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)	R.1994 d.537	26 N.J.R. 4355(a)
7:27A	Air pollution control: civil administrative penalties	26 N.J.R. 3566(a)	R.1995 d.5	27 N.J.R. 93(a)
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:28	Radiation protection	26 N.J.R. 4942(a)		
7:28-3.12	Ionizing radiation-producing machines: application and annual registration renewal fees	26 N.J.R. 3797(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)	R.1995 d.6	27 N.J.R. 99(a)
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)	R.1994 d.590	26 N.J.R. 4795(a)
7:60-1.2, 1.3, 1.4, 1.6	Assessment of generators for cost of siting and developing low-level radiactive waste disposal facility	26 N.J.R. 4946(a)		
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8:18	Catastrophic Illness in Children Relief Fund Program	26 N.J.R. 3573(a)	R.1994 d.572	26 N.J.R. 4380(a)
8:18	Catastrophic Illness in Children Relief Fund Program: corrections to proposal statements	26 N.J.R. 3805(a)		
8:23	Veterinary public health	26 N.J.R. 4129(a)		
8:23A	Veterinary public health	26 N.J.R. 4129(a)		
8:31	Health facilities construction plan review fee	26 N.J.R. 4135(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33I	Megavoltage radiation oncology services: certificate of need	26 N.J.R. 4875(b)		
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)	R.1994 d.582	26 N.J.R. 4641(a)
8:39-2.2, 2.12	Long-term care facilities: application for licensure; add-a-bed	26 N.J.R. 4641(a)		
8:43E	Health care facilities: enforcement of licensure standards	26 N.J.R. 4527(a)		
8:43F	Adult day health care facilities: standards for licensure	26 N.J.R. 4532(a)		
8:43G	Hospital licensing standards	26 N.J.R. 4537(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)	R.1994 d.535	26 N.J.R. 4380(b)
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:62	Certification of lead abatement workers, supervisors, inspectors, project designers	26 N.J.R. 3575(a)		
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b))	26 N.J.R. 1190(b)	R.1994 d.546	26 N.J.R. 4387(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a))	26 N.J.R. 1821(a)	R.1994 d.547	26 N.J.R. 4388(a)

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8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b))	26 N.J.R. 1822(a)	R.1994 d.548	26 N.J.R. 4388(b)
8:71	Interchangeable drug products (see 26 N.J.R. 3720(a))	26 N.J.R. 2723(a)	R.1994 d.545	26 N.J.R. 4386(a)
8:71	Interchangeable drug products	26 N.J.R. 3583(a)	R.1994 d.549	26 N.J.R. 4390(a)
8:71	Interchangeable drug products	26 N.J.R. 4288(a)		
8:71	Interchangeable drug products	26 N.J.R. 4293(a)		
8:71	Interchangeable drug products	26 N.J.R. 4294(a)		
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9:9-7.1, 7.2, 7.3	Eligibility criteria for NJCLASS loans	26 N.J.R. 3242(a)	R.1994 d.617	26 N.J.R. 5012(a)
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9A:15	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 4879(a)		
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10:15A	Child Care Services Manual	26 N.J.R. 3327(a)	R.1994 d.628	26 N.J.R. 5012(b)
10:15B	Child Care Services Manual	26 N.J.R. 3327(a)	R.1994 d.628	26 N.J.R. 5012(b)
10:15C	Child Care Services Manual	26 N.J.R. 3327(a)	R.1994 d.628	26 N.J.R. 5012(b)
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10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
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10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)	R.1995 d.13	27 N.J.R. 152(a)
10:52-8.2	Charity care component of Health Care Subsidy Fund	26 N.J.R. 3485(a)	R.1994 d.536	26 N.J.R. 4392(a)
10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:54-1.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:55	Medicaid program: Prosthetic and Orthotic Services Manual	26 N.J.R. 4979(a)		

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10:58-1.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.3	Home Care Services: accreditation of private duty nursing agencies	26 N.J.R. 2840(a)	R.1994 d.623	26 N.J.R. 5021(a)
10:61-1.3, 3.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994 d.600	26 N.J.R. 4762(a)
10:63	Long-Term Care Services	26 N.J.R. 3614(a)	R.1994 d.624	27 N.J.R. 156(a)
10:66-2.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)	R.1994. d.600	26 N.J.R. 4762(a)
10:69A-5.3, 5.6, 6.2, 6.12	Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria	26 N.J.R. 3142(a)	R.1995 d.10	27 N.J.R. 242(a)
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10:81-2.6, 3.9, 3.10, 13.3	Public Assistance Manual: AFDC-N segment eligibility of aliens	26 N.J.R. 3930(a)	R.1994 d.612	26 N.J.R. 5022(a)
10:81-11.6A, 11.6B, 11.15	Child Support Hotline; locator processing fees	26 N.J.R. 3353(a)	R.1994 d.566	26 N.J.R. 4616(a)
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82-2.3	Assistance Standards Handbook: AFDC-N segment eligibility of aliens	26 N.J.R. 3932(a)	R.1994 d.613	26 N.J.R. 5022(b)
10:82-3.14	Assistant Standards Handbook: administrative correction regarding guardians of adolescent parents	_____	_____	26 N.J.R. 4765(a)
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10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:87-2.31	Food Stamp Program: applications in pending status	26 N.J.R. 4298(a)		
10:89	Home Energy Assistance Handbook	26 N.J.R. 4726(a)		
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)	R.1994 d.561	26 N.J.R. 4394(a)
10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1–9.5	Manual of Requirements for Child Care Centers	26 N.J.R. 4139(a)		
10:123-3.4	Personal needs allowance for SSI and GPA recipients in residential health care facilities and boarding home	_____	_____	26 N.J.R. 5023(b)
10:126-1.2, 1.4, 2.2–2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1–5.4, 5.6–5.10, 6.1–6.6, 6.8, 6.9, 6.13, 6.18, 6.20	Manual of Requirements for Family Day Care Registration	26 N.J.R. 3144(a)	R.1994 d.625	26 N.J.R. 5023(c)
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10A:26	Bureau of Parole: policies and procedures	26 N.J.R. 4143(a)		
10A:71	State Parole Board rules	26 N.J.R. 4150(a)		
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11:3-33.2, 44.3, 44.4	Automobile insurance: provision of coverage to all eligible persons	26 N.J.R. 3591(a)	R.1994 d.598	26 N.J.R. 4777(a)
11:4-25	Funeral insurance policies	26 N.J.R. 4727(a)		
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11:17B	Insurance producers and limited insurance representatives: commissions and fees	26 N.J.R. 4307(a)		
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12:235-1.6	Workers' Compensation 1995 maximum benefit rate: administrative correction	———	———	26 N.J.R. 5032(a)
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		
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13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
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