

NEW JERSEY REGISTER



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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 16, 1988

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 21, 1988

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **May 18, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Gypsy Moth

Voluntary Suppression Program

Proposed Readoption: N.J.A.C. 2:23

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

Authority: N.J.S.A. 4:7-36 through 4:7-40.

Proposal Number: PRN 1988-211.

Submit comments by May 18, 1988 to:

John D. Kegg, Chief
Bureau of Plant Pest & Disease Control
Division of Plant Industry
Department of Agriculture
CN 330
Trenton, NJ 08625

The agency proposal follows:

Summary

The gypsy moth is the most destructive forest insect pest to infest New Jersey's forest. Repeated defoliation by the gypsy moth represents a serious threat to New Jersey woodland and shade tree resources.

The Department of Agriculture has developed an Integrated Pest Management Program which utilizes both a biological insecticide and biological agents to reduce gypsy moth feeding and subsequent tree loss. However, when gypsy moth cycles are at a peak and biological agents have difficulty in preventing severe defoliation, the Department of Agriculture recommends selective aerial spray treatments of residential and recreational areas.

The rules proposed for re-adoption, which will expire on June 6, 1988 pursuant to Executive Order No. 66(1978) if not re-adopted, are applicable to those municipal and county entities that wish to enter into the Department of Agriculture's Voluntary Gypsy Moth Suppression Program. These rules define both the Department's and the municipality's or county's duties and responsibilities and establishes spraying priorities and notification requirements.

Social Impact

The rules will affect property owners and inhabitants in affected communities and municipal and county entities planning to conduct gypsy moth aerial suppression programs. The rules would require that municipalities and counties planning to conduct aerial suppression work announce that a gypsy moth resolution will be discussed at a specific time and place so the public has an opportunity for input into options available to the governing body. In past years, local governing bodies have adopted the gypsy moth resolution without proper advertisement, and many residents were unaware that a spray program was to take place in their community. Furthermore, some municipalities and counties have expanded gypsy moth aerial spray programs to sections of the municipalities or counties which have little or no infestation. Under these rules, the Department of Agriculture recommends spraying only those areas in need of protection and not an overall aerial spraying.

Economic Impact

The requirement that local and county entities that participate in this voluntary program follow the Department of Agriculture's procedures serves to reduce unnecessary aerial spray treatments. These procedures require municipalities and counties to properly notify all residents in the affected area, by legal advertisement and first class mailing, as well as a published advertisement of plans to adopt a gypsy moth resolution. These mailings and searching tax rolls will have an economic impact; however, this is minor compared to the overall economic damage that can be expected from repeated gypsy moth infestations. It is difficult for woodland homeowners to control high infestations of the gypsy moth. Since the pest infests trees as high as 100 feet or more, it is costly to physically remove egg masses, trap larvae, or spray with small application equipment. Ground spraying is also very expensive and can range from \$50.00 to \$180.00 per lot. If trees are killed by repeated infestations, the

hazard of dead trees and their removal presents a great economic burden upon the homeowner. On the other hand, the average cost of spraying a full acre of residential area, which may have as many as four homes upon it, would run from \$11.00 to \$22.00 per acre, depending on the insecticide used, which is much less than the cost of ground spraying. Also, the municipality or county would benefit from State supervision by insuring that the pesticide is applied under the best weather conditions and at the recommended dosage rate.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these rules only apply to government entities.

Full text of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:23.

PERSONNEL

MERIT SYSTEM BOARD

The following proposals are authorized by the Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.

Public hearings concerning the proposed amendment and proposed new rules will be held on:

May 5, 1988 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

May 12, 1988 at 6:00 P.M.
Pennsauken Middle School
Cafeteria
8201 Park Avenue
Pennsauken, New Jersey

May 17, 1988 at 6:00 P.M.
Essex County College
Lecture Hall 2131
303 University Avenue
Newark, New Jersey

Please contact Ms. Dolores Carvill at (609) 292-6568 if you plan to attend and to be included on the list of speakers.

Submit written comments by May 18, 1988 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

(b)

General Rules and Department Organization Definitions

Proposed Amendment: N.J.A.C. 4A:1-1.3

Authority: N.J.S.A. 11A:2-6(d).

Proposal Number: PRN 1988-200.

The agency proposal follows:

Summary

In the process of developing proposed new rules on Classification, Services and Compensation, published in this issue of the New Jersey Register, the Merit System Board (Board) determined that the term "department" used in the new rules needed to be defined. Thus, the Board proposed that the term be defined in an amendment to N.J.A.C. 4A:1-1.3.

Social Impact

The proposed amendment to N.J.A.C. 4A:1-1.3 is not substantive. Its effect should be limited to making it easier to understand and use the rules found in Title 4A of the New Jersey Administrative Code.

Economic Impact

The proposed amendment should not have an economic impact on State and local government because the amendment is technical rather

than substantive. As noted above, the effect of the amendment will be to facilitate the use of merit system rules.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required because this proposal will have no effect on small businesses.

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

4A:1-1.3 Definitions

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

“Department” in local service, where not otherwise defined by statute, means the largest type of organizational unit established by ordinance or resolution, as appropriate, that is not a sub-unit of any other organizational unit for the purpose of administering the political subdivision. In State service, “department” means a principal executive department of State government.

(a)

Classification, Services and Compensation

Proposed New Rules: N.J.A.C. 4A:3-1 through

4A:3-5

Proposed Repeals: N.J.A.C. 4:1-6, 4:1-7, 4:1-10.1, 4:1-27; 4:2-6.4 through 4:2-6.10, 4:2-7, 4:2-27; and 4:3-2

Authority: N.J.S.A. 11A:3-1 through N.J.S.A. 11A:3-7 and N.J.S.A. 11A:6-24.

Proposal Number: PRN 1988-219.

Summary

In response to the enactment of N.J.S.A. 11A:1-1 et seq. (the Civil Service Act), all of Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect necessary changes in language, organization and policy. In this proposal, 4:1-6.1 through 4:1-6.8, 4:1-7.1 through 4:1-7.5, 4:1-7.11, 4:1-10.1, 4:1-27.1, 4:2-6.4 through 4:2-6.10, 4:2-7.1 through 4:2-7.13, 4:2-27.1 through 4:2-27.8, and 4:3-2.2, rules that concern employee classification and compensation, are proposed for repeal and new rules N.J.A.C. 4A:3-1 through 4A:3-5 are proposed to replace them.

Subchapter 1 of N.J.A.C. 4A:3 covers provisions on the career and unclassified services. Along with the other four subchapters, this subchapter applies to both State and local service except where it is otherwise specifically noted.

N.J.A.C. 4A:3-1.1 concerns the allocation of titles between the three services: career, senior executive and unclassified. Two options are proposed as possible alternatives for the determination of the rights of permanent employees whose titles are reallocated to the unclassified service.

The competitive and noncompetitive divisions in the career service are provided for in N.J.A.C. 4A:3-1.2, which includes criteria for the reallocation of a title to the noncompetitive division, a notice and comment period for such a reallocation, and rights of employees serving in a title that has been reallocated to the noncompetitive division.

N.J.A.C. 4A:3-1.4 provides State appointing authorities with a procedure to follow for the appointment of unclassified secretaries and confidential assistants in State service.

The new Senior Executive Service (SES), created by N.J.S.A. 11A:3-3 and applicable only to State service, is the subject of Subchapter 2. N.J.A.C. 4A:3-2.1 provides for the maximum number of positions which may be allocated to the SES and the minimum percentage of such positions that must be filled by employees with permanent status. The rule also requires the Commissioner of the Department of Personnel to establish an SES office in the Department of Personnel.

Next, N.J.A.C. 4A:3-2.2 defines positions that qualify to be allocated to the SES. The SES selection process is set out in N.J.A.C. 4A:3-2.3. The rule provides for notice of an SES vacancy, application and interview procedure, and the status of an employee whose position has been allocated to the SES but who has not been chosen or has declined to join the SES.

Evaluation of the job performance of SES members is provided for in N.J.A.C. 4A:3-2.4, while compensation of SES members is addressed in N.J.A.C. 4A:3-2.5. Vacation leave, payment for unused vacation pay, and other benefits for SES members are all provided for in N.J.A.C. 4A:3-2.6. A concept called “gainsharing” is found in N.J.A.C. 4A:3-2.7. This rule establishes the eligibility of SES members and other State employees working under members’ supervision to participate in a project approved by the Department of Personnel which increases governmental service and efficiency and for which SES members and other State employees share a monetary incentive.

N.J.A.C. 4A:3-2.8 concerns movements and transfers within the SES and provides procedures that appointing authorities must follow to effect such changes.

Finally, N.J.A.C. 4A:3-2.9 enumerates procedures for the separation of an SES member and provides for seniority and related rights and salary adjustments for the former SES member who has career service status.

Subchapter 3 deals solely with the classification of positions in nine, clearly organized rules.

N.J.A.C. 4A:3-3.1 requires assignment of positions in the career and unclassified services to a job title pursuant to a job analysis of each position. This rule includes the requirement that titles be sex-neutral. The establishment of classification plans by the Commissioner of the Department of Personnel for titles in the career, senior executive and unclassified services is provided for in N.J.A.C. 4A:3-3.2. The rule delineates the content of classification plans which are to include a job specification for each title. N.J.A.C. 4A:3-3.3 concerns the administration of all classification plans by the Commissioner. The rule enumerates the necessary steps for the administration of the plans, and procedures for appointing authorities to follow when organizational changes occur. It also provides for the auditing of positions in the career, unclassified and senior executive services by the Department of Personnel. N.J.A.C. 4A:3-3.4 preserves the current requirement that a person appointed to a given title only be assigned duties pertaining to that title.

The reclassification of positions is covered by N.J.A.C. 4A:3-3.5. There, if certain criteria are met, the Commissioner of the Department of Personnel will reclassify the position or take other action as requested by a particular appointing authority. The rule requires, in paragraph (c)1, that the appointing authority must effect the required changes within 30 days of receipt of the Commissioner’s determination. The proposed rule also differs from the current rule in that the Commissioner may delegate a reclassification function pursuant to the new N.J.A.C. 4A:1-4.1 subject to a post-audit.

N.J.A.C. 4A:3-3.6 describes the procedure for an appointing authority to follow to request a new title, and requires the appointing authority to show that an existing title cannot be used. N.J.A.C. 4A:3-3.7 concerns the establishment of trainee titles, the duration of an employee’s service in such a title, and the requirements for advancement to the “primary” title (formerly called the journeyman title). Two options are offered for possible inclusion in subsection (b). One option would preserve the current prohibition on filling trainee titles on a promotional basis. The other option would allow promotions to trainee titles provided that any open competitive requirements for the titles are met.

A completely new rule, N.J.A.C. 4A:3-3.8, has been proposed to cover intermittent titles in State service. This rule implements the Department of Personnel’s phase-out of special services titles. The rule cross-references a proposed rule contained in the proposed N.J.A.C. 4A:4 (See the February 16, 1988 New Jersey Register at 20 N.J.R. 327(a)) concerning working test periods for intermittent employees and new rules on vacation and sick leave which also pertain to intermittent employees.

The appeal procedure for classifications, reclassifications and requests for new titles is found in N.J.A.C. 4A:3-3.9. The rule contains a cross-reference to the enforcement powers of the Commissioner of Personnel.

Subchapter 4 concerns compensation of employees. N.J.A.C. 4A:3-4.1 provides for the establishment of compensation plans in State and local service and the auditing of appointing authority payroll records by the Department of Personnel. One concise new rule thus will take the place of two current rules.

In State service, class codes will be designated for job titles following a job evaluation of each title, pursuant to N.J.A.C. 4A:3-4.2. The rule also explains the determination of salary ranges for all titles according to the type of workweek and work year assigned to each title. N.J.A.C. 4A:3-4.3 deals with job reevaluation requests and appeals in State service for the determination of a title’s proper class code. This proposed rule serves as a clarification of the current rule.

N.J.A.C. 4A:3-4.4 includes provisions on a State employee’s salary rate in a situation where the employee has entered State service for the first

time, and in a situation where an employee begins State employment following, without a break in service, employment with another State appointing authority. Anniversary date is defined in N.J.A.C. 4A:3-4.5 for purposes of State service. The rule describes the calculation of an anniversary date in different situations. It also cross-references proposed N.J.A.C. 4A:3-4.9 for the determination of an anniversary date change in the case of an advancement pay adjustment and N.J.A.C. 4A:3-4.6 which applies when an employee has spent time in non-pay status. It should be noted that N.J.A.C. 4A:3-4.5 also includes a new provision concerning the calculation of the anniversary date of an intermittent State employee.

N.J.A.C. 4A:3-4.6 describes how a State employee's anniversary date must be changed when an employee has spent time in non-pay status and provides a list of the types of non-pay status that would not affect an employee's anniversary date. This rule recognizes a leave without pay under a voluntary alternative to layoff program, to be proposed at a future date, as a form of non-pay status that would not affect an employee's anniversary date.

The determination of types of pay adjustments that may occur in State service is illustrated by way of a chart in a completely new rule, N.J.A.C. 4A:3-4.7. The lateral pay adjustment in State service is defined in N.J.A.C. 4A:3-4.8. The language of the current rule has been vastly simplified and an example has been added.

The advancement pay adjustment in State service is defined in N.J.A.C. 4A:3-4.9. The rule combines provisions of three current rules to comprehensively explain the conditions under which such a pay adjustment may be made and how an affected employee's new salary will be calculated in several distinct situations. The rule includes six examples for an easier understanding of its provisions.

The demotional pay adjustment in State service is defined in N.J.A.C. 4A:3-4.10. The rule distinguishes between disciplinary and non-disciplinary demotions, providing a different method of adjustment for each. The rule includes a notice provision for affected employees for this kind of salary adjustment. N.J.A.C. 4A:3-4.11 defines the downward title reevaluation pay adjustment in State service. This rule also includes a notice provision.

N.J.A.C. 4A:3-4.12 sets out provisions on salary and anniversary date adjustments for an employee in State service whose title goes from a no range or single rate category to a range in the Compensation Plan. The salary increment for a State employee whose annual salary is between steps in a salary range is covered in N.J.A.C. 4A:3-4.13.

N.J.A.C. 4A:3-4.14 provides for a salary freeze in place of lowering the salary of certain State employees where the employee is appointed to a trainee title which has a lower salary range than that of the employee's prior permanent title.

Employees appointed to tentative titles in State service will have their salaries calculated pursuant to N.J.A.C. 4A:3-4.15. An employee appointed to a trainee title who goes on military leave during the trainee period will receive a salary calculated pursuant to the provisions in N.J.A.C. 4A:3-4.16. The rule also states that the employee's seniority will not be affected by the military leave.

N.J.A.C. 4A:3-4.17 provides three options to choose from for setting a State employee's salary and anniversary date when the employee has been appointed from a special reemployment list. The salary and anniversary date of an employee who is appointed to a title in State service from a regular reemployment list are calculated pursuant to criteria enumerated in N.J.A.C. 4A:3-4.18.

The Commissioner of the Department of Personnel is authorized by N.J.A.C. 4A:3-4.19 to annually review and update the Compensation Plan in State service for certain employees and in certain situations. The application of a retroactive personnel action to State employees is limited by N.J.A.C. 4A:3-4.20.

Lastly, N.J.S.A. 11A:3-7 has been codified in N.J.A.C. 4A:3-4.21, which permits the Commissioner of the Department of Personnel to waive repayment by a State employee of a salary overpayment based on a consideration of three factors, one of which is resultant economic hardship to the employee.

Subchapter 5 deals with overtime compensation. N.J.A.C. 4A:3-5.1 leaves overtime compensation in local service to local appointing authorities which must follow the Fair Labor Standards Act. The rule states that overtime compensation for specified categories of employees in State service will be paid pursuant to N.J.A.C. 4A:3-5 and cross-references an illustrative chart appearing at the end of the subchapter as an appendix.

N.J.A.C. 4A:3-5.2 signifies the simplification of terminology to be used in this subchapter by the deletion of some terms used in the current rule

and the addition of others in the proposed rule's list of term definitions. For example, the term "non-exempt position" found in the current rules has been changed to "covered position."

The types of employees and the situations in which these employees will be eligible for overtime compensation where the employees work 40 hours or less in a week are enumerated in N.J.A.C. 4A:3-5.3. That rule also delineates the method of payment of overtime compensation in the relevant situations. N.J.A.C. 4A:3-5.4 includes the criteria for employees who are exempt from the Fair Labor Standards Act. The rule includes the caveat that a position may be exempt if it meets the enumerated criteria for being exempt even if the position is in a covered title, and cross-references proposed N.J.A.C. 4A:3-5.10 on appeals of such matters.

N.J.A.C. 4A:3-5.5 determines overtime compensation eligibility for employees in covered positions in 35, 40 and NE titles who have worked more than 40 hours in a workweek and delineates the method of overtime compensation payment for such employees. The rule includes a chart which illustrates how firefighters and law enforcement officers will receive overtime compensation for time worked over the maximum number of hours normally permitted under the rule. The determination of overtime compensation eligibility for employees in covered positions in 3E, 4E, NL and N4 titles who have worked more than 40 hours in a workweek is covered in N.J.A.C. 4A:3-5.6 and delineates the method of payment of overtime compensation to such employees.

Overtime compensation for on call employees, employees required to participate in job-related training or to travel and employees required to work in certain types of emergency situations, is provided for in N.J.A.C. 4A:3-5.7. An alternative to overtime compensation, Special Project Rate compensation, is provided in that rule for employees performing specific types of work during extra hours. N.J.A.C. 4A:3-5.8 includes provisions on eligibility of employees for overtime compensation for work performed on a holiday.

Actions that the State appointing authority must take to administer the overtime compensation rules described above are set out in N.J.A.C. 4A:3-5.9. The rule states that the procedures which the appointing authority adopts must be approved by the Commissioner of the Department of Personnel. It also requires that each appointing authority keep certain records and provide information to the Commissioner on required overtime for the past, present and upcoming fiscal years.

Finally, N.J.A.C. 4A:3-5.10 describes procedures for position designation appeals and title designation appeals. The rule notes that other overtime payment issues may go through the grievance process, to which a cross-reference is provided.

Social Impact

The proposed new rules include numerous technical changes and substantive additions to and deletions from provisions found in the current rules concerning classification and compensation of persons employed in State and local government services. One major change is the clarity and superior organization of the proposed rules which should effectively implement the purposes and requirements of the new N.J.S.A. 11A. Another major change, which will make these rules easier to use, is that all rules are applicable to both State and local service, with exceptions clearly stated.

Subchapter 1, which concerns the career and unclassified services, provides more definite standards for allocations to one of those two categories. Also, clear criteria are set out in N.J.A.C. 4A:3-1.2 for the allocation of titles to the competitive and noncompetitive and divisions. This rule provides a process where all interested parties may have input before a final determination is made on this important issue.

The subchapter on the Senior Executive Service (SES) may be the most significant new development in these proposed rules. The opportunities offered by the SES should attract highly capable women and men to State service and, in particular, to the positions awarded SES designations and promote an overall improvement in State government services to people throughout the State of New Jersey. The possibilities posed by the introduction of the SES are made all the more exciting by the fact that most members of the SES will be employed within the framework of the merit system, and all SES candidates and members can be assured a fair and orderly selection and appointment process and the smooth administration of related issues.

Subchapter 3 deals with the classification of positions and includes rules which are more concise than the current ones. Because the rules in this subchapter apply to both State and local government services, close similarity of job titles in both services is all the more attainable. This goal, recognized in the subchapter, carries out the statutory mandate found in N.J.S.A. 11A:3-1(c), which requires the Commissioner of the

Department of Personnel to "(e)nsure the grouping in a single title of positions with similar qualifications, authority and responsibility. . . ." Trainee titles will, for the first time, be available in local government services. Subchapter 3 also helps to make job titles broader in general, but provides the flexibility to permit appointing authorities to utilize functional titles for purposes other than personnel administration. The right of an employee to perform duties solely found in the job specification for the employee's title continues to be protected in N.J.A.C. 4A:3-3.4. N.J.A.C. 4A:3-3.5 offers a more timely implementation of reclassification determinations than currently exists. The potential for creation of unnecessary, new job titles is limited by N.J.A.C. 4A:3-3.6, thus helping to promote more efficient government services. Finally, the subchapter affords certain employees the chance to appeal reclassification decisions with which they disagree, which should help to boost employee morale.

Subchapter 4 does not include any substantial changes in the compensation system for State service. Rather, it is intended to provide an improved explanation of the compensation system so that all employees may understand it without having any prior knowledge of the system. However, N.J.A.C. 4A:3-4.21, which permits the Commissioner of the Department of Personnel to waive a repayment by a State employee of a salary overpayment, provides a notable benefit to State employees who, through no fault of their own, have received excessive salary overpayments.

Subchapter 5, which concerns overtime, contains no substantive changes from current rules, although the rules have been reorganized so that they will be more understandable.

Economic Impact

These proposed new rules will have at least a partial economic impact upon employees, appointing authorities and the public at large.

Generally, the rules' intention of streamlining the classification and compensation systems should promote cost-effectiveness in government. The emphasis on comparability between job titles in State service and in local government services will eliminate the high volume of work necessary in such areas as the drafting of job specifications, the construction of examinations and many other functions. However, in the case of salary overpayments, dealt with in N.J.A.C. 4A:3-4.21, a waiver by the Commissioner of the Department of Personnel of a State employee's repayment obligation in certain situations will cost the State some money. By the same token, it will save the employee from the economic hardship of having to pay back large sums of money initially paid to the employee in error.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these proposed new rules will have no effect on small businesses.

Full text of the rules proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 4:1-6, 4:1-7, 4:1-10.1, 4:1-27; 4:2-6.4 through 4:2-6.10, 4:2-7, 4:2-27; and 4:3-2.

Full text of the proposed new rules follows:

**CHAPTER 3
CLASSIFICATION, SERVICES AND COMPENSATION**

Old Citation	New Citation
4:1-6.1	4A:3-3.2
4:1-6.2	4A:3-3.3
4:1-6.3	4A:3-3.1
4:1-6.4	4A:3-3.4
4:1-6.5	4A:3-3.5
4:1-6.5A	4A:3-3.9
4:1-6.6	REPEALED
4:1-6.7	4A:3-1.1
	4A:3-1.3
4:1-6.8	4A:3-3.1
4:1-7.1	4A:3-4.1
4:1-7.2	REPEALED
4:1-7.3	4A:3-4.1
4:1-7.4	REPEALED
4:1-7.5	4A:3-4.19
4:1-7.11	REPEALED
4:1-10.1	4A:3-1.2

4:1-27.1	4A:3-5.1
4:2-6.4	REPEALED
4:2-6.5	REPEALED
4:2-6.6	4A:3-3.6
4:2-6.7	REPEALED
4:2-6.8	4A:3-3.7
4:2-6.9	4A:3-1.4
4:2-6.10	REPEALED
4:2-7.1	4A:3-4.3
4:2-7.1A	4A:3-4.1
4:2-7.2	4A:3-4.5
4:2-7.3	4A:3-4.9
4:2-7.4	4A:3-4.9
4:2-7.5	4A:3-4.6
4:2-7.6	4A:3-4.10
4:2-7.7	4A:3-4.9
	4A:3-4.11
4:2-7.8	4A:3-4.8
4:2-7.9	4A:3-4.7
4:2-7.10	4A:3-4.7
4:2-7.11	4A:3-4.16
4:2-7.12	4A:3-4.4
4:2-7.13	REPEALED
4:2-27.1	4A:3-5.1
4:2-27.2	4A:3-5.2
4:2-27.3	4A:3-5.3
4:2-27.4	4A:3-5.4
	4A:3-5.5
	4A:3-5.6
4:2-27.5	4A:3-5.7
4:2-27.6	4A:3-5.8
4:2-27.7	4A:3-5.9
4:2-27.8	4A:3-5.10
4:3-2.2	4A:3-1.3

SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

4A:3-1.1 Career service

(a) All job titles shall be allocated to the career service, except for those job titles allocated by the Board to the unclassified service as provided in N.J.A.C. 4A:3-1.3 and those positions in State service allocated by the Board to the Senior Executive Service as provided in N.J.A.C. 4A:3-2.

(b) Before a title in the career service is reallocated to the unclassified service, the Board shall hold a public hearing to solicit comment with respect to the criteria set forth in N.J.A.C. 4A:3-1.3.

OPTION ONE

(c) When a title is reallocated from the career service to the unclassified service by the Board or by legislative enactment, incumbents with permanent status in the title shall retain all career service rights so long as they remain in that title. When a permanent incumbent is appointed to a different, unclassified title, the employee shall retain only those rights to a Merit System Board hearing available to career service employees upon separation from government service for disciplinary reasons (see N.J.A.C. 4A:2-2) or due to layoff (see N.J.A.C. 4A:8).

OPTION TWO

(c) When a title is reallocated from the career service to the unclassified service by the Board or by legislative enactment, incumbents with permanent status in the title shall retain all career service rights so long as they remain in that title.

4A:3-1.2 Divisions within the career service

(a) The Commissioner shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

(b) A career service job title in the competitive division is subject to the competitive examination procedures. See N.J.A.C. 4A:4-2.

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Com-

missioner that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;

2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or

3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

(d) All appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

(e) Prior to any reallocation from the competitive to non-competitive divisions, whether on an ongoing or interim basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

1. Data, reports, analyses and other information utilized in the determination shall constitute the administrative record, and shall be available for review by affected employees, appointing authorities and negotiations representatives.

2. After the comment period and the public hearing, if any, the Commissioner shall issue a final administrative decision containing findings and conclusions with respect to the proposed reallocation, based upon the administrative record and any comment received, and implementation procedures.

(f) When a job title is reallocated from the competitive to non-competitive divisions, the Commissioner's decision shall specify an effective date for reallocation.

1. Permanent employees in that title as of the effective date shall retain their permanent status in the noncompetitive division.

2. Probationary employees in that title as of the effective date shall continue serving their working test periods and, upon successful completion, attain permanent status in the noncompetitive division.

3. Provisional employees who remain in that title as of the effective date shall receive regular appointments and begin serving their working test periods on the effective date.

(g) If a title is designated noncompetitive on an interim basis, at the end of the interim non-competitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim non-competitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

4A:3-1.3 Unclassified service

(a) A job title shall be allocated by the Board to the unclassified service when:

1. In State service, the title is so designated under N.J.S.A. 11A:3-4;

2. In local service, the title is so designated under N.J.S.A. 11A:3-5;

3. The title is designated unclassified by another specific statute;

4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or

5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates subject only to the legislative power of the governing body and applicable statutes.

(c) In local service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-5(h) and (j), is a

managerial title which is independent of other executive authority, and is established by statute or designated by the Merit System Board.

(d) In State service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-4(h), is one who is appointed by the Governor with the advice and consent of the Senate.

4A:3-1.4 Unclassified secretaries and confidential assistants: State service

(a) In State service, each department head, principal executive officer, board and commission may appoint one unclassified secretary and one unclassified confidential assistant.

(b) Requests for such unclassified appointments shall be made to the Commissioner, accompanied by documentation showing that no more than one person is serving in each such unclassified title in the requesting authority. In the case of boards and commissions, the following criteria must be satisfied:

1. The board or commission must have the actual power to administer a statutorily designated function; and

2. The board or commission must have the full power of an appointing authority with regard to its personnel.

(c) Upon recommendation by the Commissioner, such appointments may thereafter be approved by the Merit System Board and recorded in the Board minutes.

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.1 General provisions: State service

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the Merit System Board to the SES in accordance with N.J.S.A. 11A:3-3 and this subchapter.

(b) No more than 1,200 positions shall be allocated to the SES in all departments.

(c) No less than 85 percent of all positions allocated to the SES shall be filled by individuals with career status. Career status means permanent status in a career service title in State government, including those on an approved leave of absence from a permanent career position.

(d) The Commissioner shall establish and maintain an SES office within the Department of Personnel to administer and monitor the SES and to maintain the SES training and development program.

4A:3-2.2 Designation of SES positions: State service

(a) To be allocated to the SES, a position must have substantial managerial, policy influencing or policy executing responsibilities. Allocations to SES shall be determined on the basis of specific positions, not by job titles or category.

1. A substantial managerial or policy executing position is one which has significant control of substantial resources, responsibility for major programmatic outcomes and/or responsibility for a major organizational unit.

2. A policy influencing position is one which has influence on the department's/agency's direction, mission, priorities, major goals or objectives. This does not include those positions which only influence internal operations.

(b) An SES position shall only report to a department head, higher level unclassified position, or higher level SES position.

(c) The Commissioner shall establish procedures for submission of SES position requests.

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of the SES opening shall be filed with the Department of Personnel by the applicable department and posted in all departments. The posting requirement may be waived when a position is first allocated to the SES and the department head wishes to fill the position with the incumbent.

2. Applications shall be made to the department head on a form prescribed by the Department of Personnel.

3. The departmental selection process may consist of an interview, a structured interview before a panel, or an assessment-type evalu-

ation or any combination thereof. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

4. The department head shall forward his or her selection(s) to the Commissioner along with the supporting materials, a description of the selection process, and detailed reasons for the selection(s).

5. Final appointment shall be subject to approval by the Commissioner, which approval may include modification of requirements.

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same department for which he or she is qualified.

1. The position shall be in the same salary level as the incumbent's permanent career service title, or, if no career service position remains in the department at that level, then, the next lower level at which there are career service positions in that department for which the non-appointed incumbent is qualified.

2. In the event of movement to a position with a lower salary level, the non-appointed incumbent shall be placed at the closest lower step. The department head may, in his or her discretion, recommend to the Commissioner placement of a non-appointed incumbent at a salary higher than this minimum standard.

4A:3-2.4 SES performance evaluation: State service

(a) The performance of all SES members shall be evaluated annually by the department head or designee in accordance with evaluation procedures set by the Commissioner.

(b) Evaluations shall be based upon a performance agreement jointly developed by the SES member and the department head or designee and reviewed by the Commissioner.

4A:3-2.5 SES compensation: State service

(a) The initial salary of all appointees to the SES shall be no less than the minimum of the salary level assigned to the position, and shall be no more than the midpoint unless approved by the Commissioner.

(b) Incumbents with career status whose positions are allocated to the SES shall, upon initial appointment to the SES, also receive a one-time lump sum payment as authorized by the Commissioner.

(c) SES members shall be paid an annual salary no less than the minimum and no more than the maximum of the salary level assigned, not including performance or other awards.

(d) After initial appointment, salary advancement shall be based upon performance. There shall not be specific steps within each salary level, nor increments based upon length of service.

4A:3-2.6 SES benefits: State service

(a) SES members shall receive paid vacation leave as follows:

1. Up to 12 years of continuous State service, 20 working days;
2. After 12 and up to 20 years of continuous State Service, 25 working days;
3. Over 20 years of continuous State service, 30 working days.

(b) In December of each year, accrued vacation days carried over from the preceding year, up to a maximum of one-half year's allotment, may be converted to cash.

1. Paid to the employee; or
2. Invested by the State and paid to the employee, with accumulated interest, at the time of separation from SES.

(c) SES members shall be entitled to the same sick and administrative leave benefits as employees in the career service. See N.J.A.C. 4A:6-1.3 and 4A:6-1.9.

(d) In addition to those benefits provided to career service employees, SES members shall receive such other non-salary benefits approved by the Commissioner.

4A:3-2.7 SES gainsharing: State service

(a) SES members and State employees working under their supervision may be eligible for gainsharing projects. A gainsharing project is one in which a group of employees shares a monetary incentive for a project which measurably saves money, avoids cost or increases the value of a governmental service.

(b) All gainsharing projects shall be headed by an SES member or members, and shall be in addition to their normal duties and responsibilities.

(c) Before commencing a gainsharing project, a proposal shall be approved by the department head and be submitted to and approved by the Commissioner. The proposal shall contain, among other things:

1. A complete description of the project; and
2. The amount and percentage split of the monetary incentive between the SES members and the members of the project team.

4A:3-2.8 Movement within the SES: State service

(a) Temporary movement within the SES may take place as follows:

1. Loaned executive assignments for renewable six month periods, with the consent of the departments involved and the participating SES member; or

2. Participation in a program in which a group of SES members is assigned to work, for a specific duration, on matters which cross departmental lines or other special issues.

(b) During such temporary movement, the department head may make an interim appointment to the temporarily vacated SES position using the selection procedures set forth in N.J.A.C. 4A:3-2.3.

(c) Transfer to an SES position in another department may take place upon notice of at least 30 days by the SES member to the department he or she is leaving, unless a shorter time period is agreed to by that department.

1. Approval of the transfer by the department from which the SES member transfers shall not be required. If that department determines that the services of the SES member are essential beyond the notice period, and the SES member agrees to remain for an extended period, that department shall pay the difference in salary, if any, during the extension period.

2. Upon transfer, an SES member with career status shall have the right to return to a career service position only in the new department.

4A:3-2.9 Separation from the SES: State service

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the Commissioner at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An SES member with career status who is separated from the SES shall have a right to return to a career service position in the same department.

1. The position shall be at the same salary level of the employee's permanent title immediately prior to SES appointment, if there are career service titles in the department at that level. If there are no career service titles in the department at the same salary range, then the position shall be at the next lower level.

2. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

3. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

i. The salary shall in no event be greater than the salary earned in the SES; and

ii. If the minimum guaranteed in (c)3 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary;

iii. The department head may, at his or her discretion, recommend to the Commissioner placement of the employee at a higher salary than the minimum.

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.1 Classification of positions

(a) Each position in the career and unclassified services shall be assigned by the Department of Personnel to a job title.

(b) Positions in the career service shall, on the basis of job analysis, be assigned the title which:

1. Describes the duties and responsibilities to be performed and the level of supervision exercised and received;

2. Establishes the minimum education and experience qualifications necessary for successful performance; and

3. In State service, sets the level of compensation.

(c) Assigned job titles shall be used in all records and communications relating to personnel and payroll, including budgets. Appointing authorities may designate official titles to be used for other purposes, such as correspondence with the public.

(d) Titles shall be identified by language which does not specify or imply a fixed gender.

(e) See N.J.A.C. 4A:3-3.9 for classification appeal procedures.

4A:3-3.2 Establishment of classification plans

(a) The Commissioner shall establish and maintain classification plans for all job titles in the career, senior executive and unclassified services.

(b) The classification plans shall consist of:

1. A list of job titles; and

2. A job specification for each title, which shall include a descriptive summary of duties and responsibilities of a position or group of positions which are sufficiently similar in content to be assigned a job title.

(c) A single specification may be used for a title series. In such cases, the distinction between different titles in the series will be set forth in the specification.

(d) To the extent feasible, the same job titles shall be used in the State and local classification plans.

4A:3-3 Administration of classification plans

(a) The Commissioner shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;

2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility;

3. Modify specifications for existing titles or series to ensure their accuracy; and

4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the Department of Personnel of new positions to be established, the authority and reasons for their establishment and of all organizational changes or changes in the duties and responsibilities of individual positions, and such additional information as may be required.

(c) Appointing authorities shall provide the Department of Personnel with updated organization charts on an annual basis.

(d) Positions in the career, unclassified and senior executive services shall be subject to job audit by the Department of Personnel to ensure accurate classification and compliance with Title 11A, New Jersey Statutes and Title 4A, N.J.A.C.

4A:3-3.4 Title appropriate to duties performed

No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules.

4A:3-3.5 Reclassification of positions

(a) When the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Commissioner shall after review:

1. Reclassify the position to a more appropriate title if there is one;

2. Establish a new title to which the position shall be reclassified; or

3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) A request for reclassification shall be submitted by the appointing authority to the Department of Personnel in a manner and form as determined by the Commissioner.

(c) No reclassification of any position shall become effective until notice is given affected permanent employees and approval is given by the Commissioner. However, the Commissioner may provide for delegation of reclassifications as provided in N.J.A.C. 4A:1-4.1, subject to post-audit.

1. Within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or redesign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be affected in accordance with all applicable rules.

2. Should an appointing authority or an employee in the career or unclassified service disagree with reclassification, an appeal may be filed in accordance with N.J.A.C. 4A:3-3.9.

4A:3-3.6 Requests for new titles

(a) Requests for new titles must be submitted in writing by the appointing authority to the Department of Personnel on a designated form. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;

2. Designation of any title to be abolished or replaced; and

3. Any other information requested by the Department of Personnel.

(b) If the Department of Personnel staff makes an initial determination that there is a need for the requested new title, a new job specification will be prepared and in State service the title will be evaluated for compensation purposes. Thereafter, the matter will be presented to the Commissioner for approval or disapproval.

(c) Pending approval by the Commissioner, the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State Service.

(d) Appeals from the denial of a new title request will be processed in accordance with N.J.A.C. 4A:3-3.9. In State service, appeals from a salary evaluation will be processed in accordance with N.J.A.C. 4A:3-4.3.

(e) The effective date of the creation of a new title by the Commissioner will be:

1. In State service, the beginning of the pay period immediately after 14 days from the date the Department of Personnel receives the new title request and all requested information; or

2. In local service, an appropriate date as established by the Commissioner.

4A:3-3.7 Trainee titles

(a) Trainee titles may be established in State and local service to provide for entry level employment.

1. This section applies to all titles designated by the term "trainee" and to other titles where the specification designates the application of the trainee rule, for example, Correction Officer Recruit.

2. A single trainee title may provide entry level employment for more than one title or title series, under appropriate circumstances.

3. In State service, trainee positions are established by the temporary downward classification of another title.

OPTION ONE

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, regular or special re-employment lists, or, in the absence of such lists, by provisional appointments subject to open competitive examination. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists.

OPTION TWO

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular or special reemployment lists, or, in the absence of such lists, by provisional appointments. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists. Eligibility for promotion to a trainee title shall include open competitive requirements.

(c) Upon regular appointment, trainees must successfully complete their working test periods.

(d) Advancement to the lowest title in the related title series, referred to in this section as the primary title, shall take place only upon successful completion of the training period. The length of the training period shall be designated in the specification for the particular trainee title. The training period must be continuous, except if interrupted by leave or layoff from the trainee title, and may include provisional service in the trainee or higher related title.

(e) The training period shall be extended, upon approval by the Department of Personnel, beyond the time designated in the specification when:

1. The trainee has not yet completed the working test period; or
2. A trainee is serving provisionally and an eligible list for the title has not yet been issued.

(f) The training period may be reduced, upon approval by the Department of Personnel, to a shorter period than designated in the specification when:

1. The trainee has completed the working test period;
2. The trainee meets the minimum qualifications for the primary title; and

3. All trainees in that title in the same appointing authority who meet these conditions are provided with a reduced training period.

(g) The advancement of the successful, permanent trainee to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by reclassifying the trainee position to an appropriate primary title and by concurrent regular appointment of the trainee to the position.

1. To effect advancement, the appointing authority must certify the trainee's successful completion of the training period, and, for those primary titles requiring extra training courses or the attainment of a proficiency standard over the trainee title requirements, that the trainee has successfully completed such requirements.

2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.

3. The inability of a permanent trainee to attain a level of performance warranting advancement to the appropriate primary title shall be considered cause for separation.

4. Trainees advanced to a primary title shall be required to complete a working test period in the primary title.

4A:3-3.8 Intermittent titles: State service

(a) In State service, the designation "intermittent" shall be used for those titles in the career service where work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular, year-round, full-time or part-time assignments.

(b) Intermittent employees may be subject to furlough when due to managerial needs, the employee cannot be scheduled for work within the next week.

1. A furlough shall not be considered a layoff, nor shall the notice obligations or layoff rights set forth in N.J.A.C. 4A:8 be applicable to intermittent employees subject to furlough. However, reasonable advance written notice shall be given to furloughed employees.

2. Furloughing shall be done in the inverse order of seniority in the designated work unit based on official records at the end of the last pay period. Prior to use by the appointing authority, designated work units must be submitted to and approved by the Department of Personnel.

3. Recall from furlough shall be made in seniority order from among furloughed employees assigned to the designated work unit.

4. In case of equal seniority, the tie shall be broken based on the number of hours in pay status under temporary employment during

the last two years immediately preceding conversion to an intermittent title.

5. Recall may be extended on a regional or Statewide basis if the recall list for the designated work unit is exhausted.

6. Additional furlough procedures may be set by the Commissioner.

(c) Records for intermittent employees, including hours worked, recall lists, telephone contact lists and benefit time accumulation, shall be maintained by the appointing authority in a manner acceptable to, and subject to audit by, the Department of Personnel.

(d) See N.J.A.C. 4A:4-5.2 for working test periods for intermittent employees.

(e) See N.J.A.C. 4A:6-1.2(d), 4A:6-1.3(b) and 4A:6-1.9(c) for vacation, sick and administrative leave provisions applicable to intermittent employees. See N.J.A.C. 4A:6-2.4(a) for holiday pay.

4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) In State service, a classification appeal from an employee or union representative shall be submitted, in writing, to the appointing authority personnel officer. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different existing title for the position, an explanation of how that title more accurately describes the duties of the position than the current or proposed title.

1. The appointing authority shall review the appeal and notify the appellant of its decision within 30 days of receipt of the appeal. This decision letter must include a summary of the duties of the position, findings of fact, conclusions, notice of appeal rights, and a determination that:

- i. The position is properly classified;
- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the appointing authority shall order, in writing, the immediate removal of inappropriate duties; or
- iii. The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

2. An appeal may be filed with the Department of Personnel within 20 days of receipt of the appointing authority's determination or, if the appellant does not receive a timely decision letter from the appointing authority, within 20 days from the final day for the appointing authority's decision.

3. Appeals from an employee or union representative to the Department of Personnel are second level appeals. Appeals from an appointing authority are first level appeals.

i. An appeal from an appointing authority shall include the same information as an appeal from an employee or union representative as stated in (c) above.

ii. An employee or union representative submitting a second level appeal must submit a copy of all materials submitted at the first level and a copy of an appointing authority's decision letter, if issued. The appeal must state what specific portions of the decision are contested and the basis for appeal. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

4. A representative of the Department of Personnel shall review the appeal, order a desk audit where warranted, and issue a written decision. The decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.

(d) In local service an appeal from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate regional office of the Department of Personnel. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title.

1. A representative of the Department of Personnel shall review the appeal, order a desk audit where warranted, and determine that:
 - i. The position is properly classified;
 - ii. The position is properly classified, but that out-of-title duties are being performed, in which case the representative shall order, in writing, the immediate removal of inappropriate duties; or
 - iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.
2. The representative's decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.

(e) All appeals to the Commissioner shall be submitted, in writing, within 20 days of receipt of the decision letter and must include copies of all materials submitted and determinations received from the lower levels, state which determinations are being disputed and the basis for appeal. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

1. The Commissioner may render a decision based on the written record or appoint an independent classification reviewer. If the Commissioner appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commissioner within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within ten days of receipt of exceptions.

(f) If an appeal is upheld, the effective date of implementation shall be:

1. In State service, the pay period immediately after 14 days from the date the Department of Personnel received the appeal or reclassification request, or at such earlier date as directed by the Commissioner; or

2. In local service, an appropriate date established by the Commissioner.

(g) The decision by the Commissioner is the final administrative determination.

(h) See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commissioner.

SUBCHAPTER 4. COMPENSATION

4A:3-4.1 General provisions

(a) In local service, appointing authorities shall establish compensation plans which provide for paying employees in reasonable relationship to their job titles.

1. Each appointing authority shall provide a current copy of its compensation plan to the Department of Personnel, and shall provide any subsequent modifications within 20 days after adoption.

2. When a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range.

3. An appointing authority may request information and technical assistance from the Department of Personnel in developing compensation plans.

(b) In State and local service, the Department of Personnel may audit an appointing authority's payroll records to determine compliance with Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., and orders issued by the Commissioner or the Board.

(c) In local service, payroll records may be audited through on-site examinations, submission of payrolls for specified time periods, or a combination of both. Upon request by the Department of Personnel, an appointing authority shall submit a payroll, certified by an authorized financial officer, which contains the following information and such other information as may be requested:

1. Name of jurisdiction;
2. Name of department;
3. Names, titles and social security numbers of employees;
4. Actual amount of pay for pay period, including dates employed;
5. Annual rate of pay; and
6. Beginning and ending dates for current pay period.

(d) In State service, the Commissioner shall establish, maintain and approve changes in a compensation plan for all employees in the career and unclassified services. See N.J.A.C. 4A:3-2.5 for Senior Executive Service compensation.

1. The compensation plan shall establish pay rates and a series of salary ranges.

2. Each employee in the career and unclassified services shall be paid within the salary range or at the pay rate assigned to the employee's job title and pay shall be adjusted in accordance with this subchapter, except as otherwise provided by law, rule or action of the Commissioner.

4A:3-4.2 Job evaluation: State service

(a) Each new job title shall be evaluated, and existing job titles reevaluated based upon the New Jersey Job Content Evaluation System as approved by the Commissioner. Class codes shall be designated for job titles through this evaluation process. However, the Commissioner may, in appropriate circumstances, designate a job title as no-range, meaning that no class code is designated, or may assign a single rate, and may include restrictions on salary payments for such titles.

(b) Once the class code for a job title is designated, the salary range shall be determined according to workweek and work year as follows (see N.J.A.C. 4A:6-2.2 and 2.3 for designation of workweek):

1. The salary range for NL and NE titles shall be the same as the class code;

2. The salary range for 35 hour and 3E titles shall be one range lower than the class code;

3. The salary range for 40 hour, 4E and N4 titles shall be one range higher than the class code;

4. The salary range for 10 month titles shall be three ranges lower than the class code.

EXAMPLE: A job title has been designated class code 18 through the evaluation process. The salary range will be determined based on work week and work year as follows:

Work Week	Salary Range
NL, NE	18
35, 3E	17
40, 4E, N4	19
Work Year	
10 Month (NL or NE)	15

(c) For use of class codes in determining types of pay adjustments, see N.J.A.C. 4A:3-4.7.

4A:3-4.3 Job reevaluation requests and appeals: State service

(a) Employees, authorized employee representatives, or appointing authorities may request a reevaluation of a job title to determine its proper class code. A request by an employee or the employee's representative shall first be submitted to the appointing authority when the title exists only in that appointing authority. All other requests shall first be submitted to the Department of Personnel.

(b) A request for a reevaluation must identify and explain the areas of substantive change in job content or other change in job evaluation factors through written narrative and a revised job specification, which shall be marked to indicate changes, and include evidence that the change in job content affects all employees in the title.

(c) An appointing authority that receives a request for reevaluation shall conduct a review based on the New Jersey Job Content Evaluation System and notify all parties of its decision, including appeal rights to the Department of Personnel, within 30 days of receipt of the request. The decision letter shall indicate either that there is no substantive change in job content or that the request will

be submitted to the Department of Personnel, in which case the appointing authority shall submit a request for reevaluation pursuant to (b) above.

1. An employee who disagrees with the appointing authority's decision may appeal the decision within 20 days of notification to the Department of Personnel. The appeal shall include a copy of the initial request, the appointing authority's decision letter, a statement identifying the specific portions of the decision being contested, and the basis for the appeal.

2. If the employee requesting reevaluation does not receive a decision letter from the appointing authority within the specified 30 days, he or she may, in the following 20 days, submit an appeal, with a copy of the original request, to the Department of Personnel.

(d) The Department of Personnel shall review and render a written decision on evaluation requests under (a) above and appeals under (c) above within 60 days.

(e) Any affected party may appeal the first level determination in (d) above to the Commissioner within 20 days of its receipt. The appeal shall contain all information which was presented to the prior levels, a statement identifying the specific portions of the prior level determination being contested, the basis for appeal, and copies shall be provided by the appellant to all parties.

(f) The Commissioner may render a decision based on the written record or appoint an independent salary reviewer. All parties, either personally, through counsel or authorized union representative, shall have the opportunity to present argument. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

1. If a salary reviewer is appointed, he or she shall submit a report and recommendation to the Commissioner within 30 days after the review.

2. The report and recommendation shall be sent to all parties. Exceptions may be filed within 15 days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(g) A decision by the Commissioner is the final administrative determination.

(h) If a title is approved for reevaluation, the effective date of the reevaluation shall be the first full pay period following the receipt of a filing with the Department of Personnel of a fully documented request for reevaluation under (a) above or a fully documented appeal under (c) above.

4A:3-4.4 Salary rates for initial appointments: State service

(a) An appointing authority may place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title. A new employee, for purposes of this section, is one who has had no immediate prior State service with that appointing authority.

(b) When the employee has separated from another State appointing authority, Rutgers, the State University, the New Jersey Institute of Technology, or the University of Medicine and Dentistry of New Jersey, and has been hired without an interruption in service, the employee may be placed up to and including that step of the salary range that the employee would receive if the employee had been continuously employed in the new agency.

(c) An authorized hiring rate (AHR) is the set salary for initial appointments to particular job titles as established by the Commissioner. When an AHR is established or changed, current employees in such titles whose salaries are below the AHR shall be advanced to the AHR, and current employees in such titles whose salaries are the same as the AHR may be advanced by the Commissioner.

4A:3-4.5 Anniversary dates: State service

(a) An anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range, for a salary increase.

1. An employee's anniversary date shall be assigned upon initial appointment to the first pay period following the completion of 26

full pay periods after appointment. In years which contain 27 pay periods, anniversary dates shall be determined in accordance with a schedule issued by the Department of Personnel.

EXAMPLE: An employee is appointed to a position on Monday, August 10, 1987. The first full pay period following the date of appointment is pay period 18, which begins on August 15, 1987. The employee's anniversary date is pay period 18 in calendar year 1988, expressed as 18/88.

2. An employee who starts work on the first Tuesday of a pay period immediately following a Monday holiday or special day off shall be assigned the anniversary date of that pay period.

3. An employee at the eighth step of the range only becomes eligible for advancement to the ninth step, if warranted by performance, following the completion of 39 pay periods.

(b) A current employee's anniversary date may change as a result of an advancement pay adjustment. See N.J.A.C. 4A:3-4.9. If changed, the new anniversary date is the first pay period following the completion of 26 full pay periods after the date of that adjustment.

1. An employee's anniversary date may also change as a result of time spent in non-pay status. See N.J.A.C. 4A:3-4.6.

(c) Employees in intermittent titles shall receive initial and subsequent anniversary dates which correspond to the first pay period after completion of 1827 work hours (NL, NE, 35 and 3E titles) or 2088 work hours (40, 4E and N4 titles) in regular pay status. When an employee moves from an intermittent title, 80 hours of service in an intermittent title shall equal one pay period for 40, 4E and N4 titles and 70 hours of service in an intermittent title shall equal one pay period for NL, NE, 35 and 3E titles.

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) Except as provided in (b) below, time spent by employees in non-pay status, including suspensions, shall not be included in total time of employment when calculating eligibility for annual increments.

1. An employee's anniversary date shall be advanced by one full pay period for each full pay period in non-pay status.

2. If an employee is in non-pay status on an intermittent basis during the course of a calendar year, the employee's anniversary date shall be advanced by one pay period for each 10 working days in non-pay status.

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1. Military leave;
2. Educational leave;
3. The two month period when employees in 10 month job titles are not scheduled to work;
4. Leave without pay following exhaustion of sick leave injury;
5. Leave without pay while receiving workers' compensation benefits; and
6. Leave without pay under a voluntary alternative to layoff program.

(c) When an employee returns from one full pay period or more in non-pay status, or when an employee accumulates 10 or more working days in non-pay status on an intermittent basis, the appointing authority shall notify the Department of Personnel and the employee in writing that the anniversary date is to be changed.

4A:3-4.7 Determining types of pay adjustments: State service

When an employee moves to a different title, including a change in workweek and/or work year, the type of pay adjustment shall be determined according to class code change as follows:

Class Code of New Title Compared to Old Title	Type of Pay Adjustment	Applicable Section
Same	Lateral	N.J.A.C. 4A:3-4.8
Higher	Promotion, upward title reevaluation, and other advancements	N.J.A.C. 4A:3-4.9
Lower	Demotion Downward title reevaluation	N.J.A.C. 4A:3-4.10 N.J.A.C. 4A:3-4.11

4A:3-4.8 Lateral pay adjustments: State service

(a) A lateral pay adjustment occurs when an employee moves to a title having the same class code. An employee affected by such lateral pay adjustment shall not be considered to have been promoted or demoted, even if actual salary changes.

(b) Employees affected by a lateral pay adjustment shall have their pay adjusted to the same step in the salary range of the new title as that step at which they were paid in the salary range of the former title. The employee's anniversary date shall not be changed.

EXAMPLE: An employee currently on step four, salary range A10 (\$15,800.94), in a 35-hour workweek title (class code 11), is appointed to a 40-hour workweek title in class code 11. The new salary range will be A12, and the employee will be placed on step four (\$17,415.44). **NOTE:** Salaries effective September 12, 1987.

4A:3-4.9 Advancement pay adjustments: State service

(a) Employees in the following situations shall have their pay advanced under (b) below, and anniversary date set under (e) below when there is no workweek change or under (f) below when their workweek changes:

1. Employees promoted from one title to a title with a higher class code following or subject to a promotional examination;
2. Employees serving in a title which is reevaluated to a higher class code; or
3. Employees appointed to a title with a higher class code, when that action will not be subject to promotional examination, provided the following criteria are met:
 - i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement;
 - ii. The higher title is in the same occupational group as the lower title; and
 - iii. The service in the lower title provided significant preparation and training for service in the higher title.

(b) Employees under (a) above shall have their salaries calculated as follows:

1. When there is no change in workweek or workweek decreases, the employee shall have his or her salary in the lower range increased by one increment in that range. Then, the employee's salary in the higher range will be set at the lowest step in that range that equals or exceeds this increased salary.

EXAMPLE: An employee on step four on salary range A10 (\$15,800.94) is promoted to a title with salary range A13. An increase of one increment in the lower salary range would bring the employee to step five in range A10, or \$16,487.30. The step in the higher range which would provide at least this increase is step two of salary range A13, or \$16,699.13. **NOTE:** Salaries effective September 12, 1987.

2. If workweek increases (for example, 35 to NL or NL to 40), the employee's salary is determined by the following three steps:

- i. Performing the workweek adjustment (see (f) below);
- ii. Increasing the employee's salary by one increment in the workweek adjusted range; and

- iii. Setting the employee's salary at the lowest step in the new range that equals or exceeds the increased salary in the workweek adjusted range.

EXAMPLE: An employee at step four, range A10, in a 35 hour workweek is promoted to a title in range A13 with a 40 hour workweek. The workweek adjustment, as seen in the example under (f)1 below, would bring the employee to the same step (four) two ranges higher (A12), or \$17,415.44. One additional increment in range A12 would bring the employee to step five, or \$18,171.15. The step in range A13 which would provide at least this increase is step four, or \$18,289.35. **NOTE:** Salaries effective September 12, 1987.

3. When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b)1 or 2 above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

4. When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, the employee shall receive, if warranted by performance, an additional increment in the new range beyond the advancement under (b)1 or 2 above, providing:

- i. The employee is not already at the maximum of the new range; and
- ii. The total salary increase, after workweek adjustment if applicable, is not greater than three increments of the employee's previous range.

(c) Employees in the following situations shall have their pay advanced under (d) below, and anniversary date set under (e) below when there is no workweek change or under (f) below when their workweek changes:

1. Employees appointed to a title with a higher class code when that action will not be subject to a promotional examination and the conditions specified in (a) 3 above are not met;
2. Employees appointed to an upwardly reevaluated title after the effective date of the reevaluation but prior to the implementation date.

(d) Employees under (c) above shall receive the lowest step of the new range that equals or exceeds the prior salary.

EXAMPLE: An employee on step four on salary range A10 (\$15,800.94) is appointed to an unrelated, unclassified title with salary range A13. The lowest step in range A13 that equals or exceeds the prior salary is step one, or \$15,904.02. **NOTE:** Salaries effective September 12, 1987.

1. When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, he or she shall also receive, if warranted by performance, an increment in the new range, provided:

- i. The employee is not already at the maximum of the new range; and
- ii. The total salary increase, after workweek adjustment if applicable (see (f) below), is not greater than three increments of the employee's previous range.

(e) When there is no change in workweek, the anniversary date of an employee whose pay is advanced under (a) or (c) above shall be determined as follows:

1. If the pay increase due to advancement is less than two increments in his or her previous range, the employee shall retain his or her anniversary date.
2. If the pay increase due to advancement is equal to or greater than two increments in his or her previous range, the employee's anniversary date shall be advanced based on the effective date of the advancement.
3. If the employee has been at the eighth or ninth step of a range for less than 39 pay periods before advancement:
 - i. If an advancement results in step seven or less, the employee's anniversary date will be the pay period which reflects the difference between the time previously served at step eight or nine and 39 pay

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periods, but in no case shall the anniversary date exceed one year from the effective date of the advancement;

ii. If an advancement results in step eight, the anniversary date is retained;

iii. If an advancement results in step nine, the anniversary date is advanced based on the effective date of the advancement.

(f) When there is a change in workweek, the anniversary date of an employee whose pay is advanced under (a) or (c) above shall be determined by following two steps: first, computing the workweek adjustment as provided in (f)1 below; second, applying one of the formulas in (f)2 or (f)3 below, as appropriate. However, if an employee has been at the eighth or ninth step in the prior range for less than 39 pay periods before advancement which results in step seven or less, the workweek adjustment is skipped and the anniversary date is determined under (e)3 above.

1. The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step on the former range.

WORKWEEK OF EMPLOYEE'S NEW TITLE				
		35 or 3E	NL or NE	40, 4E or N4
Workweek of Employee's Former Title	35 or 3E	NO CHANGE	+1	+2
			SALARY RANGE	SALARY RANGES
	NL or NE	-1	NO CHANGE	+1
		SALARY RANGE	SALARY RANGE	
	40, 4E or N4	-2	-1	NO CHANGE
		SALARY RANGES	SALARY RANGE	

EXAMPLE: An employee on step four in salary range A10 in a 35-hour week title is appointed to a 40-hour week title. Adjusting salary range A10 (35 hours) to the 40-hour week (+2 salary ranges) will result in a range A12, step four.

2. When an employee receives a pay increase after workweek adjustment which is less than two increments in his or her workweek adjusted range, the employee shall retain his or her anniversary date.

EXAMPLE: An employee at step four, range A10, in a 35 hour workweek is promoted to a title in range A13 with a 40 hour workweek. The workweek adjustment, as seen in the example above, would bring the employee to the same step (four) two ranges higher (A12), or \$17,415.44. The employee's new pay rate, as seen from the example in (b)2 above, is \$18,289.35. Since the pay increase after workweek adjustment (\$18,289.35 minus \$17,415.44 = \$873.91) is less than two increments in the workweek adjusted range (\$755.71 + \$755.71 = \$1511.42), the anniversary date is retained. NOTE: Salaries effective September 12, 1987.

3. When an employee receives a pay increase after workweek adjustment which is equal to or greater than two increments in his or her workweek adjusted range, the employee's anniversary date shall be advanced based on the effective date of the advancement.

EXAMPLE: An employee at step four, range A10, in a 40 hour workweek, is promoted to a title in range A13 with a 45 hour workweek. The workweek adjustment would bring the employee to the same step (four) two ranges lower (A8), or \$14,336.32. The employee's new pay rate is \$16,699.13 (step two, range A13). Since the pay increase after workweek adjustment (\$16,699.13 minus \$14,336.32 = \$2,362.81) is more than two increments in the workweek adjusted range (\$624.46 = \$1,248.92), the anniversary date is advanced. NOTE: Salaries effective September 12, 1987.

(g) When an employee's work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is

increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

EXAMPLE: An employee on step four, range A10 in a 10 month title, is promoted to a 12 month title with salary range A15. There is no change in workweek. The work year adjustment would bring the employee to step four, range A13 (\$18,289.35). Then, salary is calculated based on (b) above and anniversary date set under (e) above.

4A:3-4.10 Demotional pay adjustments: State service

(a) The salary of an employee who receives a disciplinary demotion shall be adjusted by reducing the employee's salary one increment in the higher range. Then, the employee's salary in the lower range will be set at the step that is equal to or next lower than such reduced salary. The anniversary date is retained.

EXAMPLE: An employee on step four, range A18 (\$23,341.28) is demoted to a job title in range A15. First, the employee's salary is reduced one increment in range A18 to step three (\$22,326.77). Then, the step in range A15 that is equal to or next lower than this reduced salary is step six (\$21,912.36). NOTE: Salaries effective September 12, 1987.

(b) When an appointing authority demotes an employee in lieu of removal due to loss of qualifications for job title (for example, a Truck Driver whose license is suspended is demoted to a Building Maintenance Worker), salary and anniversary date shall be determined as provided in (a) above.

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range. Then the employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary. The anniversary date is retained.

EXAMPLE: An employee on step four, range A18 (\$23,341.28) is demoted in lieu of layoff to a job title in range A15. First, the employee's salary is reduced one increment in range A18 to step three (\$22,326.77). Then, the step in range A15 that is equal to or next higher than this reduced salary is step seven (\$22,788.11).

(d) For all non-disciplinary demotions except voluntary demotions and those provided in (b) above, an employee demoted to a title lower than the class code of his or her permanent title must be given 45 days' notice of demotion by the appointing authority.

4A:3-4.11 Downward title reevaluation pay adjustments: State service

(a) When a title is reevaluated to a lower class code, or when a title is eliminated and incumbents are placed in a title having a lower class code, each employee in that title shall remain at his or her current base salary. The part of an employee's base salary that is above the nearest lower step in the lower range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is at the maximum step, the employee will remain at that salary until the maximum step of the lower range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the lower range.

1. The effective date of a downward title reevaluation shall be the first pay period that is 60 days after the date of the reevaluation determination by the Commissioner.

2. All employees affected by a downward title reevaluation shall be given notice by the appointing authority of the reduction in range at least 45 days prior to the effective date.

3. When a title has been eliminated and incumbents placed in a title having a lower class code, the Commissioner may provide for additional adjustments for affected employees.

4A:3-4.12 Movement of employees from no-range or single rate titles to titles having salary ranges: State service

(a) When a title is changed from a no-range or single rate category to a range in the Compensation Plan, or when an employee moves from a no-range title to a title having a salary range, the salary and anniversary dates of employees serving in that title shall be adjusted in accordance with N.J.A.C. 4A:3-4.9(d), providing the following two criteria are met:

1. The service in the no-range title provided the employee with significant experience and training for service in the range title; and
2. The employee has served in the former title for four months or more.

(b) When the employee's appointment does not satisfy the conditions in (a) above, salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had been serving in the range title on the date the employee was appointed to the no-range title.

(c) This section shall not apply to employees appointed from a Tentative Title or to a Trainee Title. See N.J.A.C. 4A:3-4.14 regarding Trainee Titles and 4A:3-4.15 regarding Tentative Titles.

4A:3-4.13 Salaries of employees whose annual salaries are not on a step in their salary range: State service

Except as otherwise provided by the Commissioner, an employee whose base salary is not on a step in his or her salary range shall remain at his or her current base salary. That part of an employee's salary that is above the nearest lower step in the salary range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment.

4A:3-4.14 Movement of employees to trainee titles from titles having higher pay rates: State service

(a) Except as provided in (b) below, an employee with permanent status or with at least six months' continuous service may, at the option of the appointing authority, retain his or her base salary when appointed to a trainee title. The employee shall remain at his or her salary until the salary rate of the trainee title exceeds the employee's salary, the employee advances to the primary title after completing the training period, or the employee is advanced to a higher title. Upon advancement from the trainee title to the primary title, the employee's salary shall be determined by reconstruction (see N.J.A.C. 4A:3-4.10(a)), or by the normal advancement from a trainee to a primary title, whichever is greater.

(b) An employee in (a) above shall not be paid higher than the maximum step of the primary title.

4A:3-4.15 Salaries for employees appointed to tentative title positions: State service

(a) When appointed to positions designated "Tentative Title":

1. New employees, at the discretion of their appointing authority, may be appointed at a salary up to the fourth step of the salary range initially recommended for the title by the Department of Personnel, based on the new title request materials submitted by an appointing authority.

2. Current employees of an agency will have their salaries adjusted in accordance with rules which would be applicable if, in fact, the title were actually compensated at the salary range specified in (a)1 above.

(b) If the final evaluated range is lower than the initially recommended range, the salaries of employees serving in affected Tentative Title positions shall be adjusted in accordance with downward title reevaluations. See N.J.A.C. 4A:3-4.11.

(c) Anniversary dates shall be set based on the date of appointment to the Tentative Title.

4A:3-4.16 Salaries of employees on military leave during a trainee period: State service

(a) Upon return from military leave, a regularly appointed employee in a trainee title shall receive a salary at the six months rate, provided the total time in the trainee title on the job and on leave equals six months or more.

(b) Upon successful completion of the total 12 months of trainee service on the job, including the required working test period, the employee will be advanced to the primary title at the salary rate the employee would have received had the employee not been on military leave.

(c) The employee's personnel record shall indicate seniority in all pertinent titles retroactive to dates on which the employee would have gained such seniority had the employee not gone on military leave.

4A:3-4.17 Salaries and anniversary dates for employees appointed from a special reemployment list: State service

(a) The salary and anniversary date of an employee appointed from a special reemployment list shall be set in accordance with the most beneficial of the following:

1. The appropriate pay adjustment under N.J.A.C. 4A:3-4.8 through 4A:3-4.11;

2. When the appointment is to the employee's permanent title at the time of the layoff, the same step the employee was on at the time of the layoff; or

3. Setting the anniversary date to the same pay period in the current year as the anniversary date at the time of the layoff.

4A:3-4.18 Salaries and anniversary dates for employees appointed from a regular reemployment list: State service

(a) A current State employee who is appointed from a regular reemployment list shall have the salary and anniversary date determined in accordance with N.J.A.C. 4A:3-4.8 through 4A:3-4.11, as appropriate. If the employee would receive a greater salary under the provisions of (b) below, the appointing authority may request application of those provisions.

(b) An individual not currently employed by the State who is appointed from a regular reemployment list shall receive an anniversary date based on the new date of appointment and, at the request of the appointing authority, be paid:

1. When re-appointed to the prior permanent title, up to the same step in the salary range which the employee was receiving in that title; or, if the employee was serving in an unclassified title or provisionally in another title at the time of the separation, up to the same step in the salary range which the employee would have received had the employee been returned to his or her permanent title on the date of the separation.

2. When reappointed to a title other than the prior permanent title, up to the same step in the salary range which the employee would have received if the employee had been appointed to the title on the date of the separation.

(c) When an employee has been reappointed to a title which has been reevaluated since the separation, the employee's salary shall be set up to an amount determined by reconstruction. See N.J.A.C. 4A:3-4.10.

4A:3-4.19 Other forms of compensation: State service

The Commissioner shall issue annual updates to the Compensation Plan regarding computing pay for temporary employees, extra compensation on special projects, emergency rates and other allowances to employees.

4A:3-4.20 Retroactive pay: State service

Personnel actions having retroactive effective dates shall apply only to employees who remain on a State payroll on the date of the retroactive payment and employees who retire during the period of retroactive application.

4A:3-4.21 Salary overpayments: State service

(a) The Commissioner may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;

2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status; or

3. The terms of the repayment schedule would result in economic hardship to the employee.

(b) An employee may request a waiver of repayment in accordance with the procedure for written record appeals. See N.J.A.C. 4A:2-1.

SUBCHAPTER 5. OVERTIME COMPENSATION

4A:3-5.1 General provisions

(a) In local service, overtime compensation shall be paid pursuant to standards prepared and administered by the appointing authority in accordance with the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

(b) In State service, overtime compensation for employees in the career, senior executive and unclassified services shall be paid pursuant to this subchapter. See chart (Appendix A) at the end of this subchapter which outlines these overtime provisions.

(c) See N.J.A.C. 4A:6-2 for State service hours of work and workweek designation rules.

4A:3-5.2 Definitions: State Service

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

“Base salary” means the employee’s rate of pay exclusive of any additional payments or allowances.

“Cash overtime compensation” means payment at a rate of one and one-half times the hourly proration of the employee’s base salary, or one and one-half times the employee’s regular rate, as specified.

“Compensatory time off” means the granting of time off in lieu of cash payment where permitted for excess or unusual work time.

“Covered position” means a position which is subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

“Exempt position” means a position which is excluded from the provisions of the Fair Labor Standards Act.

“Fixed workweek title” means a title specified in the State Compensation Plan as having a 35 hour (35, 3E) or 40 hour (40, 4E) workweek. See N.J.A.C. 4A:6-2.2.

“Holiday” means a legal holiday or a special holiday authorized by law or executive order.

“Non-limited title” means a title having irregular or variable work hours. Such titles may be designated as exempt non-limited (NL, N4), or covered, also known as non-exempt, non-limited (NE). See N.J.A.C. 4A:6-2.3.

“Overtime compensation” means cash overtime compensation or compensatory time off as permitted.

“Pay period” means the period beginning 12:01 A.M. Saturday and ending midnight the second Friday following. (Note: A schedule of pay periods is published annually by the New Jersey Department of the Treasury).

“Regular rate” means the hourly proration of the employee’s annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees in covered non-limited titles (NE) shall be deemed to have a 40 hour workweek for determining the hourly proration. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

“Seven day coverage position” means a position assigned to an area where work coverage is required on a seven day basis throughout the year.

“Workweek” means the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Commissioner or his or her representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations.

4A:3-5.3 40 hours or less in a workweek: State service

(a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

1. Employees in 35 hour fixed workweek titles (35, 3E) for time worked in excess of the regular workweek.

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

3. State Police law enforcement officers, at the request of the Office of Employee Relations.

4. Part-time employees only when they work beyond the regular workweek established for full-time employees in their titles.

(b) Temporary employees shall not be eligible for overtime compensation under this section.

(c) An employee shall be eligible for overtime compensation under this section only when:

1. The employee is in pay status for the full number of hours in his or her regular workweek;

2. The employee works at least one hour beyond the regular workweek; and

3. The work is covered by the job specification for the employee’s title, except for emergencies as provided in N.J.A.C. 4A:3-5.7(d).

(d) Overtime compensation under this section shall be paid as follows:

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the appointing authority with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek but not more than 40 hours.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee’s base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

ii. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time. They shall have no entitlement to cash overtime compensation.

3. Work credited toward overtime compensation must be in one-half hour units of continuous work beyond each regular work day.

4A:3-5.4 Criteria for exemption from Federal Fair Labor Standards Act: State service

(a) The following are the criteria for exemption from the Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.:

1. An unclassified employee is exempt if he or she:

- i. Holds a public elective office of the State;
- ii. Is a member of the personal staff of an elected office holder;
- iii. Is appointed by such an office holder to serve on a policy making level;
- iv. Is an immediate adviser to such an office holder with respect to the constitutional or legal powers of the office; or
- v. Meets one of the criteria for exemption set forth in (a)2 through 6 below.

2. An executive employee paid at least \$250.00 a week on a salary basis exclusive of board, lodging and other facilities is exempt if the employee regularly directs the work of two or more other employees and the employee’s primary duty is management of the enterprise or a recognized department or subdivision thereof.

3. An administrative employee who is paid on a salary or fee basis at least \$250.00 a week, exclusive of board, lodging or other facilities, is exempt if his or her primary duty is responsible office or non-manual work directly related to management policies or general business operations or responsible work in the administration of an educational institution and his or her work requires the exercise of discretion and independent judgment.

4. A professional employee who is paid at least \$250.00 per week is exempt if his or her primary duty requires advanced knowledge in a field of science or learning or involves work as a teacher, and requires the consistent exercise of discretion of judgement; or his or her primary duty involves artistic work in a recognized field of artistic endeavor.

5. Executive, administrative and professional employees who are paid less than \$250.00 per week may be exempt under conditions specified in Federal regulations. See 29 C.F.R. 541.

6. Employees engaged in law enforcement or fire protection activities, including security personnel in correctional institutions, who

are employed by a public agency that employs less than five law enforcement or five fire protection workers in a workweek, are exempt.

(b) An individual position may be exempt if it meets the criteria in this section, even if it is in a covered title. See N.J.A.C. 4A:3-5.10(b) for position designation appeals.

4A:3-5.5 Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40 and NE titles: State service

(a) Employees in covered positions may be eligible for overtime compensation under this section as follows:

1. Employees in covered fixed workweek titles (35, 40) and covered non-limited titles (NE), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week, provided that compensatory time off in lieu of cash overtime compensation is permitted by one of the following agreements:

i. Applicable provisions of a collective negotiations agreement, memorandum of understanding, or any other agreement between the State and representatives of such employees;

ii. In the case of employees who do not have a collective negotiations representative, an agreement or understanding made between the appointing authority and the employee before the performance of the overtime work. For such employees who were hired prior to April 15, 1986, the regular practice in effect on April 15, 1986 regarding compensatory time off in lieu of cash overtime compensation shall constitute an agreement or understanding.

2. The Commissioner or his or her designee may approve an alternate work period and corresponding maximum hour designation for covered law enforcement and fire protection employees as set forth in the table below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours in the work period.

Maximum Hours in Work Period

Work Period (days)	Firefighters	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

3. A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the Commissioner or his or her designee, use a work period of 14 consecutive days for computing overtime compensation for covered employees.

4. Temporary employees shall be entitled to overtime compensation unless their work duties meet the criteria for exemption under the Fair Labor Standards Act.

(b) Overtime compensation under this section shall be paid as follows:

1. Covered employees (35, 40 or NE titles) shall be compensated either in cash payment or compensatory time off at the discretion

of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week as provided in (a)1 above. However, if an alternate work period is adopted pursuant to (a)2 above, overtime compensation shall be paid in accordance with that schedule.

2. Cash compensation for overtime work shall be at the rate of one and one-half times the regular rate.

3. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

4. Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of compensatory time off. Employees engaged in any other work may accrue not more than 240 hours of compensatory time off.

5. Cash compensation for accrued compensatory time off shall be paid at the regular rate earned by the employee at the time such employee receives such payment. However, upon termination of employment, an employee shall be paid for unused compensatory time at a rate not less than the average regular rate received during the last three years of employment, or the final regular rate received by such employee, whichever is higher.

6. Overtime compensation for work in excess of 40 hours for covered employees who work at different pay rates during the same workweek shall be paid as follows:

i. Cash overtime compensation shall be at the rate of one and one-half times the weighted average of the different rates paid during that workweek.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

7. If a 14 day work period is elected for hospital employees under (a)3 above, covered employees shall receive overtime compensation for work in excess of eight hours in a workday or 80 hours in a work period at a rate representing one and one-half times the regular rate of pay. The extra compensation at the premium rate paid for hours worked in excess of eight in a workday may be credited toward any overtime compensation payable for hours worked in excess of 80 in the 14 day work period.

4A:3-5.6 Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL and N4 titles: State service

(a) Employees in exempt positions may be eligible for overtime compensation under this section as follows:

1. Employees in exempt fixed workweek titles (3E, 4E) shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week.

2. Employees in exempt non-limited titles (NL, N4) shall not be eligible for cash overtime compensation except as provided in N.J.A.C. 4A:3-5.7(d).

(b) Overtime compensation for employees in exempt positions shall be as follows:

1. Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each of unusual work time. See N.J.A.C. 4A:3-5.7(e)2 as to special project rates.

4A:3-5.7 Special circumstances: State service

(a) Eligibility for overtime compensation for on call employees shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to remain on call and cannot use their own time effectively shall be considered to be working and shall have such on call time included in the total hours worked. In those situations where employees are merely required to remain at home or leave word with appropriate officials where they may be reached, they are not considered to be working while on call unless their freedom to engage in personal activities during that period is severely restricted.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. Employees in exempt positions (3E, 4E, NL, N4) shall have no entitlement to compensation for such time.

(b) Eligibility for overtime compensation for training shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(c) Eligibility for overtime compensation for travel shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to travel contiguous to the normal workday in excess of normal commutation time shall have such hours included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:

i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 35 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

ii. Overtime compensation for work not covered by the job specification. See N.J.A.C. 4A:3-5.3(c)3.

2. An agency head shall file with Commissioner two reports concerning an exceptional emergency as follows:

i. Within seven days of the declaration of the exceptional emergency, a fully detailed justification for the declaration. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.

ii. Within 30 days of the conclusion of the exceptional emergency, a list of the names, titles, hours of work designations and number of hours of emergency related overtime work of employees who performed emergency related work on an overtime basis.

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the State. The Commissioner shall establish special project rates for these circumstances.

(e) Eligibility for special project rate compensation shall be as follows:

1. If an employee works on a part time, occasional or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the Commissioner.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Commissioner.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the Commissioner or his or her representative for review and approval.

4A:3-5.8 Holiday pay: State Service

(a) Full-time and part-time employees in fixed workweek titles shall be entitled to overtime compensation in addition to their regular rate of compensation for all work performed on a holiday, except as provided in (d) below, even if they are not in pay status for a full workweek.

(b) Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided in N.J.A.C. 4A:3-5.6. However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation.

(c) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular workday of an employee, the employee is entitled to overtime compensation for all work performed on that holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as a result of an emergency, the employee is required to work on the additional day, he or she shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, he or she shall not be eligible for overtime compensation or an alternate day off.

(d) A part-time or full-time employee in a fixed workweek title, in conjunction with his or her appointing authority, may agree to work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

(e) Eligibility for overtime compensation for temporary employees shall be as follows:

1. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to overtime compensation for work performed on a holiday, except as provided in N.J.A.C. 4A:3-5.5(a)(4).

2. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to any form of compensation for a holiday not worked.

4A:3-5.9 Appointing authority responsibilities: State service

(a) Each appointing authority shall develop procedures for administering overtime that are consistent with this subchapter and at a minimum provide for:

1. Written authorization by the appointing authority or his or her designee in advance of overtime to be worked. Whenever circumstances are such that prior authorization is not possible, the overtime must be authorized in writing immediately thereafter;

2. Records of approved overtime requests and work accomplished;

3. Systems for continuous and periodic review of overtime requirements with a view toward accomplishing the work during regular work time; and

4. Written procedures for supervisory personnel to follow in the authorization of either compensatory time or cash payment for overtime.

(b) A copy of each department's procedures, written interpretations and any subsequent changes are to be filed with the Commissioner or his or her designee and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year, and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the Commissioner or his or her representative.

(d) The following records shall be kept:

1. Name of employee in full;

2. Home address, including zip code;

3. Date of birth, if under 19;

4. Sex and occupation;

5. Time of day and day of week on which the employee's work-week begins;

6. Regular hourly rate of pay in any workweek in which overtime premium is due, or other basis of wage payment (such as "\$5.00 hr.," "\$40.00 day," "\$200.00 wk.");

7. Daily and weekly hours of work;

8. Total daily or weekly straight time earnings;

9. Total overtime compensation for the workweek;

10. Total additions to or deductions from wages paid;

11. Total wages paid each pay period;

12. Date of payment and the pay period covered by payment; and

13. Approved overtime requests and a summary of work accomplished.

(e) Upon demand, the appointing authority shall make available to the Commissioner or his or her representative all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Procedures for payments of compensable overtime will be published as part of the payroll manual.

4A:3-5.10 Appeal procedures: State service

(a) Appeals may be filed under this subchapter as follows:

1. Position designation appeals, in which the issue is the status of a particular position as exempt or covered under the Fair Labor Standards Act, 29 U.S.C. 201 et seq. and/or

2. Title designation appeals, in which the issue is the status of an entire job title in the State classification plan as exempt or covered under the Fair Labor Standards Act.

(b) Position designation appeals may be filed by an employee and shall be submitted, in writing, to the appointing authority through the personnel office.

1. The appeal must identify the specific duties at issue and must be accompanied by a Classification Questionnaire, DPF-44, signed by the employee and the supervisor. If the appellant proposes a different status for the position (exempt or covered), he or she must explain how the requested status more accurately reflects the duties of the position under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4.

2. The appointing authority shall review the appeal and notify the appellant of its decision within 20 days of receipt of the appeal. This decision letter must include the duties of the position, findings of fact, conclusions and the determination that:

i. The position is properly classified as exempt or covered; or

ii. The position is improperly designated, in which case the appointing authority shall provide appropriate duties or designate the appropriate status.

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, he or she may file an appeal, in writing, within 10 days from the final day for the appointing authority's decision. All second level appeals shall be submitted to the Department of Personnel.

i. An employee submitting a second level appeal must include a copy of the initial appeal letter to the appointing authority, a copy of the completed Classification Questionnaire, DPF-44, and the appointing authority's decision letter, if issued. The appeal must state what specific portions of that decision are contested and the reasons.

4. The appropriate section of the Department of Personnel shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the Commissioner.

5. All appeals to the Commissioner must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter from the prior level in the Department of Personnel.

i. The Commissioner shall render a decision based on the written record or such other procedures as he or she deems appropriate.

ii. The decision of the Commissioner shall be the final administrative decision.

(c) Title designation appeals may be filed either by the appointing authority or an affected employee.

1. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4. Such appeals shall be submitted, in writing, to the Department of Personnel.

2. The appeal shall be reviewed and a written decision issued in accordance with (b)4 above.

3. An appeal of the first level decision may be filed with the Commissioner in accordance with (a)5 above.

(d) Other issues relating to overtime payments may be reviewed through the grievance process. See N.J.A.C. 4A:2-3.

APPENDIX A: OVERTIME ELIGIBILITY AND COMPENSATION CHART

ELIGIBILITY STATUS		COMPENSATION	
	Comp Plan Code	In excess of 35 but not more than 40 hours per workweek	In excess of 40 hours per workweek as prescribed by FLSA
35 (covered)	35	Cash compensation at one and one-half times the hourly proration of the base salary or compensatory time off (CTO) at one and one-half times the hours worked.	Cash compensation at one and one-half times the regular rate ¹ or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. ²
35 (exempt)	3E	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.
40 (covered)	40	Not applicable	Cash compensation at one and one-half times the regular rate ¹ or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. ²
40 (exempt)	4E	Not applicable	Cash compensation at one and one-half times the regular proration of the base salary or CTO at one and one-half times the hours worked.
NL (covered)	NE	No cash compensation CTO for unusual work time to a maximum of hour for hour (discretionary).	Cash compensation at one and one-half times the regular rate ¹ or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. ²
NL (exempt)	NL	No cash compensation. CTO for unusual work time to a maximum of hour for hour (discretionary).	No cash compensation. ³ CTO for unusual work time to a maximum of hour for hour (discretionary).
NL4 (exempt)	N4	Not applicable.	No cash compensation. ³ CTO for unusual work time to a maximum of hour for hour (discretionary).

¹Regular rate is the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

²Note: Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of CTO.

³Except as provided in N.J.A.C. 4A:3-5.7(d) (Exceptional Emergencies).

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Affordability Controls

Proposed Amendments: N.J.A.C. 5:80-26.1, 26.2, 26.3, 26.11, 26.16 and 26.21

Authorized By: New Jersey Housing and Mortgage Finance Agency, James L. Logue, III, Executive Director/Secretary.
 Authority: N.J.S.A. 52:27D-321 and 324 and N.J.S.A. 55:14K-5g.
 Proposal Number: PRN 1988-208.

Submit comments by May 18, 1988 to:
 Anthony W. Tozzi
 Administrative Practice Officer
 3625 Quakerbridge Road
 Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

Under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), the New Jersey Housing and Mortgage Finance Agency (the Agency) is responsible for assisting communities in meeting their obligation to provide low and moderate income housing. The general types of assistance the Agency

will provide include the making of grants or loans for the purchase of owner-occupied housing and for the construction of multi-family rental housing. The Fair Housing Act authorizes the Agency to establish controls to ensure that such housing remains affordable as low and moderate income housing. The Act also authorizes the Agency to administer affordability controls for municipalities developing such housing without financial assistance from the Agency. The proposed amendments are designated to ensure that housing assisted by the Agency remains affordable as low and moderate income housing and to establish procedures for the Agency to administer affordability controls for municipalities developing housing without the financial assistance of the Agency.

In meeting its responsibilities under the Fair Housing Act, the Agency adopted rules at N.J.A.C. 5:80-26 (see adopted new rules in this issue of Register). The proposed amendments to the rules are summarized as follows:

N.J.A.C. 5:80-26.1(b) has been added to exempt housing in urban target areas from the provisions of these rules.

N.J.A.C. 5:80-26.2 the definitions of "owner-occupied unit" and "urban target area" have been added to the rules.

N.J.A.C. 5:80-26.3(a)1, the new definition of "owner occupied unit" includes one to four family housing units. The words "single family housing" have been deleted in order to be consistent with the new definitions.

N.J.A.C. 5:80-26.3(c) has been added to specify the exact dates on which the affordability control period begins.

N.J.A.C. 5:80-26.3(d) has been amended to permit the controls to extend beyond the established expiration date for rental units in occupancy by households whose income is less than 80 percent of median income.

N.J.A.C. 5:80-26.11 has been amended to clarify the Agency's position for permitting the lease/rental of owner-occupied units.

N.J.A.C. 5:80-26.16(c) has been added to specify the date on which rent controls begin.

N.J.A.C. 5:80-26.21(a) has been amended so that controls will terminate upon foreclosure of owner-occupied units only and only upon foreclosure by a first money mortgagee.

N.J.A.C. 5:80-26.21(b) has been amended to conform to the language of a similar provision in the Council of Affordable Housing's rules.

Social Impact

The proposed amendments will impact on low and moderate income households in New Jersey by providing them with opportunities to obtain affordable housing that will be constructed under the Fair Housing Act. The rules will continue to impact on such households by ensuring that the housing remains affordable to subsequent owners or renters of the housing.

Economic Impact

The affordability controls established by the proposed amendments will result in the sale or rental of housing at rates which are affordable to low and moderate income households. This provides an economic benefit to initial occupants of such housing, but also to subsequent owners and renters who will occupy the housing during affordability control periods. Owners of rental property for low and moderate income households are constrained in the amounts of rent and increases they may charge, as rents must be approved by the Agency or an appropriate municipal entity. Additionally, the financing of such housing by the Agency will stimulate the housing construction industry throughout the State.

Regulatory Flexibility Statement

As these rules govern the provision by the Agency of grants and loans to municipalities, rather than to small businesses, a Regulatory Flexibility Analysis is not required.

Full text of the current rules may be found in the Adoption Notice section of this issue of the Register.

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

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

5:80-26.1 Purpose and applicability

(a) The rules within this subchapter are promulgated to establish requirements and controls to ensure that housing assisted under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) remains affordable to low and moderate income households for time periods established herein by the Agency, in consultation with the Council on Affordable Housing. The rules also establish procedures for the administration of affordability controls by the Agency for housing which has not been assisted under the Act.

(b) **The rules in this subchapter shall not apply to housing which is located in urban target areas.**

5:80-26.2 Definitions

...
 "Owner-Occupied Unit" means a building containing one, two, three or four family housing units in which one of the units is occupied by the owner of the building.
 ...

"Urban target area" means those geographical areas of the State which are designated by the Agency as an area of chronic economic distress in accordance with Section 143(j) of the Internal Revenue Code of 1986, as amended, and any regulations adopted thereunder.

5:80-26.3 Length of controls on affordability

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

(c) **The affordability control periods established in (a) above shall begin as follows:**

1. **For owner-occupied units, on the date a Certificate of Occupancy is issued.**

2. **For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Agency or municipality administering controls.**

3. **For single-family housing which is rented, on the date the unit is first occupied.**

[(c)] (d) **For all owner-occupied units and vacant rental units, the [All] resale and rent restrictions shall expire at the end of the sixth, tenth, or twentieth year from the date the initial restrictions encumbered the unit, as set forth in (a)1, 2, 3 and 4 above, unless a lesser or greater period of time has been approved by the Agency as set forth herein. For rental units which are occupied by households with a gross household income less than 80 percent of median income, as defined herein, at the end of the sixth, tenth or twentieth year from the date the initial restrictions encumbered the unit, the controls shall continue to remain in effect and shall only expire at the time the then current tenant vacates the unit.**

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

5:80-26.11 Lease or rental of owner-occupied units

[Unless otherwise prohibited by the terms of contractual documents entered into by the owner or other applicable controls, the owner may lease or rent the unit provided that the unit remains affordable. The owner shall submit a written request to the Agency or municipality administering affordability controls for approval of the rent amount. The Agency or municipality may limit the amount of rent to be charged for the unit. Once the rent amount is approved, any increases in the rent must be approved by the Agency or municipality.]

(a) **The owner of an owner-occupied two, three or four family housing unit may lease or rent the non-owner-occupied units subject to the lease/rental provisions of N.J.A.C. 5:80-26.12 through 20.**

(b) **The owner of a single family housing unit may lease or rent the unit, unless the owner finances the unit with a mortgage loan from the Agency or lease/rental of the unit is prohibited by the terms of any contractual documents entered into by the owner or prohibited by other applicable controls. The owner of a two, three or four family housing unit may lease or rent the unit in which he or she resides unless any of the aforesaid lease/rental prohibitions apply. Such units may be leased or rented by the owner subject to the lease/rental provisions of N.J.A.C. 5:80-26.12 through 20.**

5:80-26.16 Rent adjustments

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

(c) **The rent controls established in (a) and (b) above shall begin on the date the first rental unit is occupied.**

5:80-26.21 Foreclosure: owner-occupied and rental units

(a) A judgment of foreclosure by a first money mortgagee on any restricted owner-occupied unit will result in a termination of resale controls, unless otherwise ordered by the court. **The affordability controls of this subchapter shall remain in effect in the event of judgments of foreclosure on rental units (except for rental units contained in owner-occupied units).**

(b) [Upon notification of impending foreclosure, the municipality, in lieu of default on resale/rent restrictions, may exercise an option to purchase the unit at an approved price and hold, rent or convey the unit to a eligible household, if such right is exercised prior to a judgment of foreclosure.] **Notice of foreclosure shall allow the municipality to purchase the unit at the maximum approved price and hold, rent or convey the unit to an eligible household, provided the municipality purchases the unit prior to the judgment of foreclosure.**

(c) (No change.)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

The following proposals are authorized by the New Jersey Council on Affordable Housing, James L. Logue III, Chairman.

Submit comments by May 18, 1988 to:

Douglas V. Opalski, Executive Director
 New Jersey Council on Affordable Housing
 CN 813
 Trenton, NJ 08625-0813

(a)

Procedural Rules

Time for Serving and Filing Motions

Proposed Amendment: N.J.A.C. 5:91-13.4

Authority: N.J.S.A. 52:27D-301 et seq.

Proposal Number: PRN 1988-189.

The agency proposal follows.

Summary

The Council on Affordable Housing proposes to amend its procedural rules regarding motions before the Council in order to simplify the procedure and make it more efficient. The present rule, which was patterned after the Court Rules, provides that any opposing affidavits, briefs, or cross-motions are to be served and filed at least 10 days before the return date of the motion. Answers or responses are to be served and filed at least five days before the return date. In practice, this rule has caused difficulty in the scheduling of motions. Due to the Council's meeting schedule, it is difficult to schedule return dates for motions. The Council has found that tying the response period to the return date unnecessarily complicates the scheduling of motions.

Accordingly, the Council proposes to amend N.J.A.C. 5:91-13.4 to relate the response date to the filing of the motion papers rather than the return date. The proposed amendment would require parties to file responsive papers within 10 days of receipt of the motion and any reply thereto would be due five days from receipt of the response.

Social Impact

Adoption and implementation of this proposed rule will enable the Council to schedule motions more efficiently, thereby improving the administrative process before the Council. Such a result is desirable since it will reduce potential for unnecessary delays in scheduling motions which in turn will allow the Council to act upon petitions for substantive certification that much more quickly. This, of course, will benefit low and moderate income households.

Economic Impact

The proposed amendment should have no economic impact since it merely changes the procedural requirements in filing motions.

Regulatory Flexibility Statement

The proposed amendment will have no impact on small businesses, since it merely simplifies the procedure regarding motions before the Council.

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

5:91-13.4 Time for serving and filing motions and affidavits or briefs

[A notice of motion shall be served and filed not later than 20 days before the time specified for the return date unless otherwise ordered by the Council]. **A notice of motion shall establish a return date at least 20 days from the date of service upon the opposing party.** All motions, except for those which seek emergent relief, shall be made returnable on the regularly scheduled meeting days of the Council. A party seeking emergent relief shall contact the Executive Director to arrange for an emergency hearing by the Council. If a motion is supported by affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 10 days [before the return date] **after receipt of the moving papers.** Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than five days [before the return date unless the Council otherwise orders] **after receipt of the opposing papers.**

(b)

Substantive Rules: Definition of Rehabilitation; Indigenous Need

Proposed New Rules: N.J.A.C. 5:92-1.3 and 5:92-17.1 through 17.3

Authority: N.J.S.A. 52:27D-301 et seq.

Proposal Number: PRN 1988-188.

The agency proposal follows:

Summary

The Council on Affordable Housing proposed a definition for a rehabilitation component on October 19, 1987 at 19 N.J.R. 1863(a). This proposal established a minimum dollar figure for future rehabilitation activity. The \$8,000 figure in actual capital costs reflected the Council's belief that the standard units identified as part of the statewide need required substantial rehabilitation.

It was correctly represented during the proposed rule's comment period that it may be possible to rehabilitate units for less than \$8,000; and that the imposition of an \$8,000 standard could result in the disqualification of substandard units due to insufficient deficiencies. It would also provide incentive for overestimating rehabilitation costs in order to qualify low and moderate income units.

The Council has revised its proposal to recognize that some rehabilitation costs will be less than \$8,000. However, the Council believes that many of the units identified in the need will require more substantial rehabilitation and does not want to see these units overlooked because there may be less expensive rehabilitation that could be performed. Thus, the Council is requiring that rehabilitation average \$8,000 in actual capital costs.

Social Impact

The proposed new rules will have a positive social impact in allowing communities to provide standard housing for low and moderate income residents without building new housing developments that could place a strain on municipal services. The rules will also have a positive impact because they will allow communities to help low and moderate income households in marginally deficient housing without creating financial incentives for postponing the rehabilitation of more deficient housing units.

Economic Impact

The proposed rules should benefit the contracting industry in encouraging municipalities to support substantial rehabilitation activities.

Regulatory Flexibility Statement

The proposed standards for future rehabilitation activity should have a positive impact on small contractors throughout the State, since the amendment will encourage municipalities to support substantive rehabilitation activities. No additional compliance requirements are imposed on small businesses.

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

5:92-1.3 Definitions

...

"Rehabilitation component" means the number of units that are to be rehabilitated as part of a municipality's fair share obligation. The rehabilitation component is the result of subtracting spontaneous rehabilitation from indigenous need.

SUBCHAPTER 17. REHABILITATION OF INDIGENOUS NEED

5:92-17.1 Rehabilitation cost standards

Municipalities that choose to rehabilitate their indigenous need shall provide a minimum of \$10,000 per unit of which at least \$8,000 shall be allocated to actual capital costs. Municipalities shall be expected to expend all moneys provided for actual capital rehabilitation costs.

5:92-17.2 Annual monitoring reports

Municipalities that rehabilitate their indigenous need shall file annual monitoring reports with the Council.

5:92-17.3 Rehabilitation costs less than \$8,000

Municipalities may rehabilitate deficient units that meet the Council's criteria, even if the actual capital costs are less than \$8,000. However, at the end of each two year period, the rehabilitation shall average at least \$8,000 per unit.

(a)

**Substantive Rules
Developer Agreements**

Proposed Amendment: N.J.A.C. 5:92-8.4

Authority: N.J.S.A. 52:27D-301 et seq.

Proposal Number: PRN 1988-198.

The agency proposal follows:

Summary

The Fair Housing Act requires that, in order to receive substantive certification, a municipality's housing element and fair share plan provide a realistic opportunity for the provision of its fair share of lower income housing. To insure this, the Council's rules provide a presumptive requirement of a 20 percent set-aside and a gross density of six units per acre for inclusionary developments, N.J.A.C. 5:92-8.4(c). The set-aside and density figures contained in the rule were utilized by the courts, and were adopted following analysis by the Council. They provide a reasonable balance necessary to insure that the project is realistic and will actually be constructed.

Following receipt of several plans that deviate from the requirements of N.J.A.C. 5:92-8.4(c), the Council determined that it was necessary to develop standards. The Council analyzed developer agreements throughout the State, and determined that deviations should be permitted subject to the following conditions:

1. That the agreement continues to provide the requisite realistic opportunity;
2. That the agreement not unduly burden the market units; and
3. That the developer must have the experience and financial ability to perform its obligations. The burden is on the municipality proposing the agreement.

The proposed amendment also sets forth general standards with reference to developer agreements where the market units are both single family detached dwellings and multi-family dwellings, in order to insure compliance with the three-part test.

Social Impact

The proposed amendment will provide for deviations from the presumptive requirements as long as the developer's agreement meets the test set out in the rule. The amendment would therefore benefit the developer and municipality in their attempt to reach a suitable agreement.

Economic Impact

One of the goals of the proposed amendment is to insure that developer agreements are economically feasible, and thus workable. It thus has an economic impact by restricting the type of developer agreements that will be approved by the Council. However, the impact should not be substantial, as the Council has always required that a proposed developer agreement provide the requisite realistic opportunity.

Regulatory Flexibility Statement

The proposed amendment should not have an effect on small businesses, since the Council has always required that developer agreements provide a realistic opportunity to achieve fair share.

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

5:92-8.4 Vacant sites

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

(d) All agreements, including those contemplated in (e) and (f) below, that vary from the presumptive requirements of a 20 percent set-aside and a gross density of six units per acre, as set forth in (c) above, must satisfy the following conditions:

1. **The agreement must continue to provide the requisite realistic opportunity for creation of the low and moderate income units, giving consideration to market conditions;**

2. **The agreement must not impose an excessive burden on the market units, giving due consideration to the due process and equal protection clauses of the Constitutions of both New Jersey and the United States, as well as fundamental fairness in the exercise of governmental power; and**

3. **The developer must have the experience and financial ability to perform its obligations under the agreement.**

4. **The burden of meeting the test in (d)1.-3. above shall be upon the municipality proposing the agreement. Deviation from the presumptive requirements will not permit a municipality to lessen the standards required to meet its obligation to provide a realistic opportunity for its fair share of low and moderate income housing.**

(e) All agreements where the market units are single family detached dwellings may provide that, in exchange for an increase over existing density, the developer either: construct low and moderate income units as part of an inclusionary development; or pay a voluntary fee to be utilized by the municipality for an RCA or municipally constructed low and moderate income housing. The developer's expense in either case must bear a reasonable relationship to the increase in density, such that the agreement does not violate the test in (d)1.-3. above.

(f) Agreements where the market units are multi-family dwellings may permit deviations from the presumptive requirements of a 20 percent set-aside:

1. **Where there is also an increase over existing density. For example, in cases where the allowable density exceeds the presumptive minimum density requirement (for example, 10 to 16 units per acre on a multi-family development) it may be reasonable to have a set-aside higher than 20 percent.**

2. **Where the developer builds a higher proportion of moderate to low income units; or**

3. **Where the agreement contains a comparable incentive.**

4. **Absent such incentives, a deviation from the presumptive requirement is not permitted. For example, an ordinance which requires a set-aside higher than 20 percent or a 20 percent set-aside plus additional fees, and which permits only the minimum six units per acre and an equal split of low to moderate income units without any additional bonus densities or without other significant cost reductions or other incentives to the developer would not meet the test of (d) above since it results in a significant reduction of the realistic opportunity.**

5. **No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive.**

EDUCATION

(b)

STATE BOARD OF EDUCATION

**Teacher Preparation and Certification
Certification Fees**

Proposed Amendment: N.J.A.C. 6:11-3.3

Authorized By: State Board of Education, Saul Cooperman, Secretary.

Authority: N.J.S.A. 18A:1-1, 4-15, 6-7, 6-34, 6-38 and 26-10.

Proposal Number: PRN 1988-66.

Submit comments by May 18, 1988 to:

Irene Nigro
New Jersey Department of Education
225 West State Street
CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The amendment to the rule concerning basic certification fees are being proposed to increase the various fees associated with certification. The need for the proposed increase in fees is elaborated below.

Revenues and Expenditures: The Certification Division is funded entirely by the revenues it earns in the form of collected fees. It has been five years since increases were last proposed in order to maintain the balance

between revenues and expenditures. At that time, the basic certification fee, which had not been raised in several prior years, was increased by 50 percent from \$20.00 to \$30.00.

During the last five years, fee amounts have remained the same while the cost of operating the Certification Division has increased steadily, with normal changes in State salaries accounting for most of the increases. In Fiscal Year 1983 through Fiscal Year 1985, the newly set fees produced excesses in revenues that were carried forward to subsequent years in order to offset growing costs. However, expenditures began to outstrip revenues in Fiscal Year 1986. As a result, a small deficit was carried forward from Fiscal Year 1986 to Fiscal Year 1987, and a deficit of \$151,631 was carried forward from Fiscal Year 1987 into the current fiscal year.

At the same time that the cost of operating the division was inflating, the theoretical ability of candidates to pay for the certification services has increased annually. For example, average teacher salaries in New Jersey have increased by about 30 percent since the 1982-1983 school year.

Proposed Fees: The following is a list of fees currently charged and the proposed increases:

	Current	Proposed
Standard Certificate	\$30	\$40
Alternate Route Certificate	30	40
Emergency Certificate	30	40
County Substitute Certificate	20	30
Renewal of Emergency & Provisional	10	25
Credentials Evaluation	10	25
Duplicate Certificate	10	20

The proposed fees are fair in relation to the amount and complexity of work associated with the issuance and monitoring of the various processes. In addition, the new fees would place New Jersey in the mid-range of fee amounts charged by various other states. Nationally, basic certification fees range from \$2.00 to \$75.00 for states operating on a fee basis.

Academic Qualifying Certificates: The Certification Division also processes academic qualifying certificates for applicants in the fields of accounting, mortuary science, dental hygiene, etc. The current fee for these individuals is \$30.00, which is the same fee charged for teaching certificates. The proposed increase for this fee is \$40.00.

The fee for academic qualifying certificates is established by State law and each increase requires legislative adoption. Therefore, the fee for academic qualifying certificates is not included in the proposed rule change.

Recruitment/Placement Fees: In recent years, a growing number of districts and candidates have requested assistance from the department in facilitating the exchange of information about available jobs and available candidates, particularly in areas where the pool of both is relatively small. This activity, which has long been a function of the certification division, is an important resource. However, the service consumes resources but generates no revenues.

Therefore, the proposed amendment includes a provision which allows the department to set and charge a voluntary fee for this and any other services which are offered but not required. In other words, no candidate would be required to pay such a fee; however, for those who choose to do so, the division could, for example, compile and include their names in a directory of eligible teaching candidates which would be distributed annually to local districts. The department will specify the specific service to be provided for any such voluntary fee, should one be set.

Social Impact

The proposed amendment will have a minor social impact in that users of the certification division services will be required to pay increased fees to acquire professional licenses. The proposed fee increases are nominal, compared with other costs associated with professional preparation, such as college tuition, and are comparable to or less than similar fees charged by other states. The fees do not represent a significant or unfair obstacle to gaining entry to public education careers and are more than offset by recent increases in teacher salaries in New Jersey.

Economic Impact

The proposed amendment will assure that certification applicants, rather than the public at large, bear the cost of State services which benefit them personally. In effect, those applicants who seek licenses of their own accord to qualify them for employment in publicly funded professional careers would pay all fees associated with the source. Costs associated

with the processing of personal licenses and maintaining the preparation process should continue to be borne by candidates.

Regulatory Flexibility Statement

The proposed amendment will have no reporting, recording or compliance requirements for small businesses. All requirements of the amendment impact upon applicants for professional licenses to qualify them for employment.

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

6:11-3.3 State Board of Education responsible for rules; fees required

(a) The State Board of Education may make and enforce rules [and regulations] for the granting of appropriate certificates or licenses to teach or to administer, direct, or supervise[,] the teaching, instruction or educational guidance of pupils in public schools operated by district boards of education. [For each certificate, a fee of \$30.00 shall be charged.]

(b) Rules for certification fees include the following:

1. For each standard, provisional or emergency certificate, a fee of \$40.00 shall be charged.

2. For each county substitute certificate, a fee of \$30.00 shall be charged.

3. For each renewal of an emergency or provisional certificate, a fee of \$25.00 shall be charged.

4. For each request for a duplicate copy of a certificate or change of holder's name, a fee of \$20.00 shall be charged.

[1.]5. [A] For each request for evaluation of credentials [for the purpose of determining] to determine eligibility to take a particular State licensing examination or [for] to obtain[ing] information concerning qualification for [issuance of any particular certificate shall be accompanied by a fee of \$10.00 for each certificate or test to be considered.] certification, a fee of \$25.00 shall be charged.

[2.]6. Fees and refunds for obtaining a ["qualifying academic certificate"] as defined in N.J.S.A. 18A:6-40 are provided in N.J.S.A. 18A:6-41 [(L.1980, c.80, 1 eff. July 13, 1984)].

(c) The State Board may establish from time to time a fee schedule for services related to the issuance of certificates[,] which [including] includes, but is not limited to, fees charged by local districts to provisional teachers to pay for their training. [, fees for a duplicate certificate and for renewal of a substandard certificate; said] This fee schedule shall be in addition to any tuition and fees charged by institutions of higher education for courses and credits offered in connection with State-approved training programs.

(d) The State Board of Education may establish fees which candidates shall pay in order to obtain services which are offered but not required, such as the inclusion of candidates' names or other personal information in publications of available candidates.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

General Net Rules

Proposed Amendment: N.J.A.C. 7:25-18.5

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 23:2B-1 et seq., specifically 23:2B-6 and 23:5-24.2.

DEP Docket Number: 014-88-03.

Proposal Number: PRN 1988-206.

Submit written comments by May 18, 1988 to:

Martin J. McHugh, Esq.

Office of Regulatory Services

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment implements P.L. 1987, c. 68, (S-1649) which was signed into law on March 4, 1987, P.L. 1987, c. 68, amends N.J.S.A. 23:5-24.2 by replacing the existing bait seine license requirement with a general bait net license requirement. The proposed amendment allows the use of net types in addition to bait seines, specifically certain dip nets, cast nets, lift or umbrella nets, and killipots, for the harvest of bait fish under the new general bait net license. Therefore, a number of net types, not previously permitted for commercial use, will be permissible for the harvest and sale of bait fish. The amendment also provides for the use of pots to harvest killifish commercially. The fee for each bait net license is set at \$10.00

Social Impact

Adoption of this proposed amendment should have a positive social impact by providing for the use of killipots to harvest bait for a \$10.00 license fee rather than a \$100.00 license fee. The amendment will also have a positive impact by allowing the use of dip nets, cast nets and lift nets for the harvest and sale of bait fish.

Economic Impact

Adoption of this proposed amendment should produce mainly positive economic impacts. The license fee for killipots will be reduced by \$90.00 and several small types of nets will be permitted to be used for the commercial harvest of bait fish. One possible negative impact will occur for these individuals purchasing the \$10.00 bait net license solely for bait seines over 50 feet in length, since the cost was \$3.00 prior to the statutory change in N.J.S.A. 23:5-24.2.

Environmental Impact

The proposed amendment should have no immediate impact on the environment, but may have some long-term positive impact. By legalizing the use of several types of small nets traditionally used for taking bait species, the management agency will be able to track the numbers of people involved in the fishery, and if necessary, require the keeping of records which could be used to assess population trends for management and environmental review purposes.

Regulatory Flexibility Statement

The proposed amendment applies to recreational and commercial bait fishermen. It is estimated that of the total number of approximately 300 license holders impacted by this amendment, the majority are "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c. 169) and will be impacted. In order to comply with this amendment, the small businesses will have to comply with the requirements set forth in the Summary above. It is unlikely that small businesses will need additional services or incur additional capital costs, to comply with this amendment. In developing this amendment, the Department has balanced the need to protect the environment against the economic impact and has determined that to minimize the impact of the amendment would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

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

7:25-18.5 General net regulations

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

(g) Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the [c]Commissioner for a license. Upon receipt of the application and the prescribed license fee, the [c]Commissioner may, in his or her discretion, issue single season licenses as specified for each net type for the taking of fish with nets only as follows:

1.-3. (No change.)

4. Bait seines shall have a length over 50 feet but not exceeding 150 feet and the mesh shall not be larger than 2.5 inches stretched.

i. The bait seine season shall begin on January 1 and end on December 31;

iii. The bait seine resident fee shall be \$3.00 per net.]

4. The bait net season shall begin on January 1 and shall end on December 31. Bait net resident fees shall be \$10.00 per license and the use of bait nets shall be subject to the following conditions:

i. Bait nets shall be limited to one or more of the following types:

(1) Dip nets 24 inches in diameter or less;

(2) Bait seines not exceeding 150 feet and mesh not exceeding 2.5 inches stretched;

(3) Cast nets not exceeding 20 feet in diameter;

(4) Lift or umbrella nets not exceeding four feet square; and

(5) Killipots not exceeding 10 inches in diameter or 25 inches in length if cylindrical or 2,000 cubic inches for any other conformation for the taking of killifish (Cyprinodontidae spp.) only;

ii. No person shall take more than 35 alewife or blueback herring in the aggregate per day with any dip net, cast net or bait seine;

iii. The simultaneous possession of greater than 35 alewife or blueback herring in the aggregate and any dip net, cast net or bait seine shall constitute prima facie evidence of the violation of this rule.

5.-11. (No change.)

(h) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Imported and Exported Hazardous Waste; Rejected Hazardous Waste; Waste Minimization; Generator Annual Reports

Proposed Amendments: N.J.A.C. 7:26-7.3, 7.4, 7.5, and 7.6

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-6.

DEP Docket Number: 015-88-03.

Proposal Number: PRN 1988-205.

Submit comments by May 18, 1988 to:

Marlen Dooley, Esq.

New Jersey Department of Environmental Protection

Office of Regulatory Services

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments clarify and revise manifesting and reporting procedures concerning hazardous waste. In addition, new requirements concerning imported and exported hazardous waste, hazardous waste shipments, handling codes for the Uniform Hazardous Waste Manifest form, and waste minimization surveys are proposed.

The proposed amendments at N.J.A.C. 7:26-7.3(a)4 and 5, as well as those at N.J.A.C. 7:26-7.4(c)4 and 7.6(g), specify the hazardous waste manifesting requirements for exporting to and importing from a foreign country. The proposed amendment at N.J.A.C. 7:26-7.4(g)3 concerns filing of reports by the generators for hazardous wastes exported to foreign countries. The proposed amendment at N.J.A.C. 7:26-7.6(g) concerns the proper manifest to be used by hazardous waste facility operators for importing hazardous waste from a foreign country. These amendments are proposed in order to achieve equivalency with the Federal requirements of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, ("RCRA"). (See 40 CFR 262.50, July 15, 1985).

The proposed amendments at N.J.A.C. 7:26-7.4(a)6 and 7.5(d)11 concern rejected shipments of hazardous waste and provide that if a hauler of hazardous waste is unable to deliver it to the designated treatment, storage, or disposal facility, the hauler is required to contact the generator of the hazardous waste, who shall provide further instructions.

The proposed amendments to N.J.A.C. 7:26-7.6(a)6 and 7 clarify the proper completion and distribution of the Uniform Hazardous Waste Manifest form in those circumstances when a shipment of hazardous waste is rejected by a treatment, storage or disposal facility. Current rules set forth the duties of the generator, transporter and facility operator regarding such rejections, but do not address the completion and distribution of the manifest in such instances. The proposed amendment at N.J.A.C. 7:26-7.6(a)6 concerns the procedures governing documentation of the rejection of a hazardous waste shipment when it is returned to the generator. Reporting requirements regarding shipment of rejected hazardous waste to an alternate facility are addressed at N.J.A.C. 7:26-7.6(a)7.

The proposed amendment at N.J.A.C. 7:26-7.4(g)lxii modifies the annual reporting requirements for generators of hazardous waste by requiring a summary, by the unit of measure, of the hazardous waste shipped. This will aid the Department by reducing the time needed to process and review the generators' annual reports. The amendment is Federally-required pursuant to RCRA. (See 40 CFR 262.41, July 15, 1985).

The proposed amendment at N.J.A.C. 7:26-7.4(g)lxiii requires that a waste minimization survey be included in the annual report. The information requested is required by the United States Environmental Protection Agency (USEPA), at 40 CFR 262.41 (July 15, 1985), pursuant to RCRA, and indicates the practices used by hazardous waste generators to minimize the amount of toxicity of the hazardous waste they generate. It also requests the amount of waste reduction achieved during the reporting year.

The proposed amendment at N.J.A.C. 7:26-7.6(b)2 clarifies the responsibility of a hazardous waste facility operator to provide the handling code for each waste listed in the manifest.

Social Impact

The proposed amendments will expedite tracking the locations of rejected shipments of hazardous waste. In addition, the proposed amendments will have a positive social impact, as they clarify existing regulatory requirements, thereby facilitating understanding of and compliance with the requirements by the regulated community. The regulated community will be required to comply with waste minimization procedures relating to manifesting and annual reporting of hazardous waste. These procedures will reduce health risks to the general public by lessening the volume of pollutants.

The proposed amendments concerning manifesting imported and exported hazardous wastes and filing annual reports for exported hazardous wastes will have a positive social impact. Such wastes will be regulated in the same manner as domestic hazardous waste, thus affording greater protection for the public health and well-being.

Economic Impact

A limited negative economic impact may be experienced by generators due to the additional annual reporting requirements. The waste minimization survey will require a yearly review by generators of the practices used to minimize the amount and toxicity of their hazardous waste streams. In addition, generators shall report on the results of this review by indicating actions taken to minimize the amount and toxicity of hazardous waste generated and the amount of reduction achieved during the reporting year.

With reference to rejected shipments of hazardous waste, the proposed amendments are not expected to have a significant economic impact. The proposed amendments regarding imported and exported hazardous waste may have a limited negative economic impact due to increased administrative and clerical expenses. They will result in a positive impact for New Jersey businesses which currently operate at a competitive disadvantage to foreign companies, as foreign companies will be subject to full regulation when handling domestic wastes.

Environmental Impact

A beneficial environmental impact will result as this amendment will further enhance the State's ability to track hazardous waste. A positive impact will result from waste minimization requirements because it will focus generators' attention on their current waste disposal practices and possible methods by which to reduce the amount and toxicity of hazardous waste streams generated.

The proposed amendments concerning imported and exported hazardous waste will have a positive environmental impact. These wastes will be managed in accordance with standards similar to those regulating domestic hazardous wastes, thus affording increased protection of the environment.

Regulatory Flexibility Statement

According to the New Jersey Department of Labor, approximately 95 percent of all businesses in the State have fewer than 100 employees, and thereby qualify as "small businesses". The proposed amendments add three new requirements to already existing requirements for the annual reporting of hazardous waste activities. The waste minimization reporting requirements are necessary in order to maintain equivalency with the Federal hazardous waste program. These rules may impose additional expenses on small businesses that are associated with maintaining the necessary records. These costs should be minimal because the reporting requirements are similar to those already in existence.

The provisions regarding hazardous waste export reporting and waste minimization surveys are also required in order to maintain equivalency with the Federal program. These rules will impose a minimal additional financial burden on small businesses since reports of all manifest activities are presently required.

The rejected loads provision requires only that facility operators rejecting hazardous waste shipments make and retain a copy of the original manifest.

It is not anticipated that small businesses will require the services of accountants or consultants in order to comply with the proposed amendments.

In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the proposed amendments on small businesses and has determined that to minimize the impact on small businesses would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

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

7:26-7.3 Hazardous waste manifest forms

(a) For the purpose of [these rules] **this chapter**, only the [national] [u]niform **Hazardous Waste** [m]anifest forms as **described in the Appendix of 40 CFR 262** are to be used for hazardous waste shipments originating in or destined for New Jersey. Manifests shall be obtained in accordance with the procedures set forth **below at (a)1 through 5** [in 40 CFR 262.21.] **and filled out and distributed in accordance with N.J.A.C. 7:26-7.4, 7.5 and 7.6.**

1.-3. (No change.)

4. For shipments originating from a site in New Jersey and destined for export to a foreign country, manifest forms shall be those supplied by the Department. If the forms are unavailable from the Department, the manifest form may be obtained from any other source.

5. A person who imports hazardous waste from a foreign country into New Jersey shall use a manifest form supplied by the Department. If the form is unavailable from the Department, the manifest form may be obtained from any other source.

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

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

1.-5. (No change.)

6. [If the hauler is unable to deliver the hazardous waste to a designated facility] **If the designated facility rejects a shipment**, the hauler [must] **shall** contact the generator who [must provide further instructions.] **shall instruct the transporter to:**

- i. **Return the shipment to the generator; or**
- ii. **Deliver the shipment to an alternate facility.**

7. Manifests accompanying rejected shipments shall be filled out and distributed in accordance with the requirements set forth at N.J.A.C. 7:26-7.6(a)6 and 7.

Re-number 7. through 12. as **8. through 13.** (No change in text.)

(b) (No change.)

(c) When shipping hazardous waste outside the United States, the generator [must] **shall:**

1.-3. (No change.)

4. Obtain the manifest as directed under N.J.A.C. 7:26-7.3(a)4.

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

(g) Annual reporting requirements are as follows:

1. The hazardous waste generator shall submit to the Department by March 1 of each year a report of manifest activities during the previous calendar year. The report shall be on forms approved by the Department and [must] **shall** include the following information:

i.-xi. (No change.)

xii. **Summary by the unit of measure of hazardous waste shipped during the previous calendar year;**

xiii. **Waste minimization information, which shall include the following:**

(1) **A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and**

(2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

xiv. The year covered by the report;

xv. A report on any exports of hazardous waste in accordance with (g)4 below;

xvi. The name(s) of the hauler(s) used; and

xvii. The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative.

2.-3. (No change.)

4. Any person exporting hazardous waste shall file with the Department no later than March 1 of each calendar year, a report summarizing the types, quantities, frequency and ultimate destination of all such hazardous waste exported during the previous calendar year.

(h)-(j) (No change.)

7:26-7.5 Hazardous waste hauler responsibilities

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

(d) General requirements are as follows:

1.-10. (No change.)

11. If the hazardous waste [cannot be delivered in accordance with (d)10 above] is rejected by the designated facility, the hauler [must] shall contact the generator for further directions and [must] shall revise the manifest according to the generator's instructions and the manifest instructions set forth at N.J.A.C. 7:26-7.6(a)6 and 7.

12.-18. (No change.)

(e)-(i) (No change.)

7:26-7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1.-5. (No change.)

6. If the shipment of hazardous waste is immediately rejected by the facility and returned to the generator, the Uniform Hazardous Waste Manifest shall be completed as follows:

i. In the Discrepancy Indication space of the Uniform Hazardous Waste Manifest, the facility operator shall indicate the reason(s) for the rejection and that the waste is to be returned to the generator. The facility operator shall complete, sign and date the Certification of Receipt and date the Uniform Hazardous Waste Manifest;

ii. The transporter shall receive manifest copies 1, 2, 3 and 5 from the facility operator and return the shipment to the generator. The facility operator shall retain manifest copy 4;

iii. The generator, upon receiving the rejected shipment, shall certify the return receipt (signature and date) in the Special Handling Instructions and Additional Information section of the Uniform Hazardous Waste Manifest;

iv. The generator shall then distribute manifest copies 1, 2, 3, and 5 as indicated on the form; and

v. The generator shall arrange to dispose of the waste at an authorized facility using another manifest in accordance with N.J.A.C. 7:26-7.4.

7. If the shipment of hazardous waste is immediately rejected by a facility and the generator indicates an alternate facility to receive the waste:

i. The facility operator shall indicate the reason(s) for the rejection in the Discrepancy Indication Space of the Uniform Hazardous Waste Manifest, and that the waste is to be shipped to an alternate facility. The facility operator shall complete, sign and date the Certification of Receipt (Section 20) on the Uniform Hazardous Waste Manifest;

ii. The transporter shall indicate the alternate facility's name, address, EPA Identification Number, and telephone number in the Special Handling Instructions and Additional Information section;

iii. The facility operator shall photocopy the manifest and retain the copy;

iv. After receipt of the original manifest copies 1, 2, 3, 4 and 5 from the facility operator, the transporter shall transport the hazardous waste to the indicated alternate authorized facility;

v. Upon receipt of the originally rejected shipment, the alternate facility operator shall certify receipt (signature and date) in Section 15 of the Uniform Hazardous Waste Manifest; and

vi. The alternate facility operator will then distribute manifest copies 1, 2, 3 and 5 and retain copy 4.

(b) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his/her agent, [must] shall:

1. (No change.)

2. Complete Item K of the Uniform Hazardous Waste Manifest indicating the handling code for each waste listed on the manifest, as listed in the instructions contained on the manifest form.

Renumber 2. through 6. as 3. through 7. (No change in text.)

(c)-(f) (No change.)

(g) A person who imports hazardous waste shall obtain a manifest as directed under N.J.A.C. 7:26-7.3(a)5.

(a)

OFFICE OF GREEN ACRES

Green Acres Program: Extension of Comment Period

Proposed Repeals and New Rules: N.J.A.C. 7:36-1, 4 and 7

Proposed New Rules: N.J.A.C. 7:36-2, 3, 5 and 6

Take notice that the Department of Environmental Protection is extending until May 4, 1988 the period for submission of written comments on the proposed repeals and new rules establishing criteria and procedures for the disbursement of Green Acres Funds to counties and municipalities within the State. The proposal was published on December 21, 1987 in the New Jersey Register at 19 N.J.R. 2358(b). The comment period was initially extended to April 6, 1988 (see the March 7, 1988 New Jersey Register at 20 N.J.R. 552(b)). Please refer to the notice of proposal for additional information.

Interested persons may submit written comments on the proposal until May 4, 1988 to:

Michael P. Marotta, Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) Services

Proposed Amendment: N.J.A.C. 8:33B-1.3

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health (with approval of the Health Care Administration Board).

Proposal Number: PRN 1988-207.

Submit comments by May 18, 1988 to:

John A. Calabria, Acting Director
Health Policy, Planning and
Certificate of Need
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health, in conjunction with the Health Care Administration Board (HCAB), is proposing to extend the demonstration period for Extracorporeal Shock Wave Lithotripsy (ESWL) for an additional six month period beyond the two year demonstration period originally established under N.J.A.C. 8:33B-1.3.

Since the original demonstration period was scheduled to conclude on March 26, 1988, with only one of the three approved demonstration sites in operation for more than six months, an extension of the demonstration is being sought by the Department of Health. A Miscellaneous Notice extending the demonstration period for ESWL for six months was approved by the HCAB at their March 10, 1988 meeting. The publication date in the New Jersey Register for the Miscellaneous Notice was April 4, 1988. The amendments being proposed at this time are consistent with this HCAB action and are intended to permit the Department to gather additional data on the existing ESWL demonstration sites and consider additional policy alternatives during this additional six month period.

Since the date of operation of the initial ESWL demonstration site in New Jersey was March 26, 1986, the proposed six month extension will extend the statewide ESWL demonstration period until on or before September 26, 1988.

The specific amendments being proposed at N.J.A.C. 8:33B-1.3(b) and N.J.A.C. 8:33B-1.3(c) add six months to the existing two year demonstration period for ESWL services.

Social Impact

ESWL has the advantage of eliminating surgical procedures for kidney stone removal and reducing costs and time usually associated with those surgical procedures and its related post-operative recovery period. Average national hospital stays for kidney stone operations are typically between one and two weeks. Hospital stays for lithotripter treatment are typically four days or less.

The recovery period associated with the lithotripter procedure is considerably shorter and significantly less painful than the recovery period associated with conventional surgical treatment of kidney stones. Individuals who suffer from kidney stones and must undergo surgery usually require a month's recuperative period. Individuals who undergo a lithotripter procedure are able to resume their normal life style within a week of receiving the treatment.

The Department recognizes the profound impact this technology will have upon the health care delivery system and therefore is looking to have this service provided to residents of New Jersey in an expeditious manner.

Economic Impact

It has been estimated that approximately 100,000 kidney stone operations are performed annually in this country. The lithotripter treatment can potentially replace 90 percent of those kidney stone operations at an average savings of approximately \$2,000 per treatment. This can result in national annual savings of over half a billion dollars. This cost savings is, in part, the result of ESWL having a shorter associated length of stay and being a less labor intensive treatment modality. In addition, this noninvasive procedure allows for a faster recovery, and thereby reduces the number of workdays lost.

Lithotripsy can potentially replace surgical intervention in as many as 80 to 90 percent of those persons for whom surgical removal of kidney stones would have been the required treatment. This should result in the freeing up of surgical capacity within acute care facilities, thereby realizing greater efficiencies for the facilities.

While the lithotripter could have profound implications for those suffering from renal and ureteral calculi, it must be remembered that ESWL is a treatment which is targeted at a very small and specific population. There has been much discussion regarding the possibility of disintegrating other stones, namely gall stones, via shock waves; however, Dornier, the sole manufacturer of the lithotripter, has stated that the device, as it exists today, will never be used for any other type of stone except kidney stones and even among that population the treatment has limitations. The height and weight of the patient as well as the size of the stone are factors which need to be considered when determining eligibility for ESWL treatment.

The lithotripter device is estimated to cost approximately \$1.8 million. Appropriate site selection and facility renovation can cost a facility an additional \$200,000 or more, depending on the capabilities desired. The productive life of the lithotripter is estimated to be approximately five years.

Regulatory Flexibility Statement

The proposed amendment deals only with a proposal to extend the ESWL demonstration period by six months. This amendment merely reinforces the rules which were enacted to establish the demonstration projects for ESWL. No additional recordkeeping, reporting or other compliance requirements are being proposed by this amendment on the existing three ESWL providers. The Department is also unaware of the potential for other applicants at this time. Only the existing three ap-

proved ESWL providers that were approved under this subchapter and are participating in the demonstration are permitted to provide ESWL services in New Jersey.

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

8:33B-1.3 Demonstrations

(a) (No change.)

(b) The Statewide demonstration period will begin with the date of initial operation of the first approved unit and will continue for a period of two years **and six months**. However the demonstration period can be shortened by the Commissioner of Health upon the recommendation of the Statewide Health Coordinating Council. The applicant will be required to identify in its application the anticipated date of initial operation.

(c) Once the demonstration approvals, three units Statewide, are issued, the Department of Health shall not process any other applications for lithotripters until the conclusion of the demonstration period, not to exceed two years **and six months**, beginning with the date of operation of the first lithotripter demonstration.

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

DRUG UTILIZATION REVIEW COUNCIL

The following proposals are authorized by the Drug Utilization Review Council, Sanford Luger, Chairman.

Submit comments by May 18, 1988 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 108, CN 360
Trenton, N.J. 08625-0360
609-984-1304

(a)

Drug Evaluation and Acceptance Criteria Proposed Amendment: N.J.A.C. 8:70-1.4

Authority: N.J.S.A. 24:6E-7(g).

Proposal Number: PRN 1988-192.

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

May 10, 1988 at 4:00 P.M.
Board Room, Room 103 (First Floor)
Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

The agency proposal follows:

Summary

The Drug Utilization Review Council is empowered to make reasonable regulations to carry out its functions in an efficient manner. In two recent instances, implementation of the formal actions of the Drug Utilization Review Council were impeded through the intervention of manufacturers' attorneys, who objected by letter after the fact to the Council's formal decisions. These objections forced the Council to re-review their decisions one month after initially making them.

At its March, 1988 meeting, the Council decided that such last minute interventions are disruptive to the formal process in that those present at the Council's meeting when the decision is initially made have no assurance that the "final" actions are indeed dispositive of the issue if a simple letter from an attorney can interrupt the process. The Council directed their Executive Director to implement their actions as soon as possible, and also wishes to emphasize that those who disagree with the Council's final actions should reapply, citing additional information and again going through the full hearing process. (Of course, those who object to the Council's decisions also continue to be able to seek relief through the administrative law process as well.)

Social Impact

The social impact would be negligible to the public in that this proposal does not alter their accessibility to generics. The primary impact would be on manufacturers who object to the Council's actions, who would have to re-apply.

Economic Impact

There is no economic impact on consumers, in that several alternative manufacturers are usually included in the Formulary, thus any one manufacturer's product being delayed entry into the Formulary does not affect consumer savings.

Some manufacturers will suffer economically, because their products will not appear in the Formulary as soon as they might wish, and perhaps not at all. However, this has been true for any rejected manufacturer for the past 10 years.

Regulatory Flexibility Statement

The proposal would only require a minimal amount of paperwork for a selected few manufacturers who object to the Council's decisions.

Full text of the proposal follows:

8:70-1.4 Manufacturer and repackager criteria

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

(j) The Executive Director shall publish in the New Jersey Register at the earliest possible date a notice of the action taken by the Council on a drug product. The action taken by the Council on a drug product shall be effective on the date the notice of adoption appears in the New Jersey Register. A manufacturer who disagrees with the Council's action must follow the process outlined in (h) and (i) above.

(a)

Interchangeable Drug Products

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

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

Proposal Number: PRN 1988-193.

A public hearing concerning this proposal will be held on:

May 10, 1988 at 3:00 P.M.
Board Room, Room 103 (First Floor)
Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

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 clorazepate tablets could then be used as a less expensive substitute for Tranxene, a branded prescription medicine. Similarly, the proposed fenpropfen tablets could be substituted for the more costly branded product, Nalfon.

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 decides 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 this proposal 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 amendment 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 this proposal accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. This saving also cannot be estimated accurately.

Regulatory Flexibility Statement

The proposed amendments impact many small businesses: 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 proposal follows:

APAP/codeine tabs 15, 30, 60 mg	Mutual
Acetazolamide tabs 125, 250 mg	Mutual
Allopurinol tabs 300 mg	Cord
Amiloride/HCTZ tabs 5, 50	Barr
Amoxicillin caps 250, 500 mg	Novopharm
Butalbital/APAP/caffeine tabs	Halsey
Carisoprodol tabs 350 mg	Mutual
Cephalexin for susp 125, 5, 250 5 ml	Vitarine
Cephadrine caps 250, 500 mg	Barr
Cephadrine caps 250, 500 mg	Vitarine
Chloramphenicol ophth soln 0.5%	Americal
Chlordiazepoxide/amitrip 5 12.5, 10 25	PharmBasics
Chlorothiazide tabs 500 mg	Mylan
Chlorzoxazone tabs 500 mg	Barr
Clofibrate caps 500 mg	Pharmacaps
Clorazepate dipot. tabs 3.75, 7.5, 15 mg	Watson
Cortisone acetate tabs 25 mg	T-P
Cyclopentolate ophth soln 1%	Americal
Cyproheptadine syrup 2 mg, 5 ml	Naska
Desipramine tabs 10, 75, 100, 150 mg	Vitarine
Desipramine tabs 25, 50, 75 mg	Sidmak
Dexamethasone ophth soln 0.1%	Americal
Diphenhydramine elixir 12.5 mg, 5 ml	Cenci
Doxepin caps 75, 100 mg	Barr
Erythromycin estolate caps 250 mg	Barr
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Barr
Fenpropfen tabs 600 mg	Purepac
Fluphenazine tabs 1, 2.5, 5, 10 mg	Bolar
Flurazepam caps 15, 30 mg	Halsey
Flurazepam caps 15, 30 mg	W-C
Folic acid tabs 1 mg	T-P
Furosemide tabs 80 mg	Danbury
Gentamicin ophth soln 0.3%	Americal
Haloperidol tabs 5, 10, 20 mg	Barr
Hydrochlorothiazide tabs 25, 50, 100 mg	T-P
Hydrocodone/APAP tabs 5, 500	Barr
Hydroxyzine syrup 10 mg, 5 ml	Naska
Ibuprofen tabs 300, 400, 600, 800 mg	Halsey
Ibuprofen tabs 800 mg	Mutual
Ibuprofen tabs 800 mg	Mylan
Ibuprofen tabs 800 mg	PFI
Ibuprofen tabs 800 mg	Purepac
Indomethacin SR caps 75 mg	Vitarine
Isoetharine for inhalation 1% Unit Dose	Dey
Isoetharine inhal. .08, .1, .17, .25, 1.0%	Dey
Isoproterenol for inhalation 0.5%	Dey
Maprotiline tabs 25, 50, 75 mg	Amer. Ther.
Maprotiline tabs 25, 50, 75 mg	Bolar
Meperidine tabs 50, 100 mg	Barr
Metaproterenol inhalation 0.6% (2.5 ml)	Dey
Metaproterenol tabs 10, 20 mg	PharmBasics
Naphazoline ophth soln 0.1%	Americal
Nitrofurantoin macrocrystals 50, 100 mg	Bolar

Norethindrone/ethinyl est. 1 35 tabs
 Norethindrone/ethinyl est. 0.5 35, 1 35
 Nystatin oint 100,000 units g
 Nystatin susp 100,000 U, ml
 Nystatin tabs 500,000 units
 Oxazepam caps 10, 15, 30 mg
 Oxazepam caps 10, 15, 30 mg
 Oxazepam caps 10, 15, 30 mg
 Oxycodone/APAP tabs 5 325
 Oxycodones, ASA tabs 4.5, 0.38, 325
 Perphenazine tabs 2, 4, 8, 16 mg
 Phentermine resin E.R. caps 30 mg
 Pilocarpine HCl 0.5, 1, 2, 3, 4, 5, 6%
 Poly-Vitamin drops with F. 0.25 & 0.5 mg
 Potassium Cl 10% syrup
 Prednisolone acetate ophth soln 1%
 Prednisolone tabs 5 mg
 Prednisone tabs 2.5, 5, 20 mg
 Procainamide SR tabs 1000 mg
 Proparacaine ophth soln 0.5%
 Propoxyphene naps, APAP 50 325, 100 650
 Quinidine sulfate tabs 260 mg
 Racepinephrine inhalation 2.25% 0.25 ml
 Stuartnatal 1+1^(R) substitute
 Stuartnatal 1+1^(R) substitute
 Sulfacetamide ophth soln 10%, 15%, 30%
 Sulfacetamide, prednisolone ophth soln
 Theophylline elixir 80 mg 30 ml (sic)
 Thioridazine tabs 150, 200 mg
 Thiothixene caps 20 mg
 Tolazamide tabs 100 mg
 Trazodone tabs 50, 100 mg
 Trazodone tabs 50, 100 mg
 Tri-Vitamin drops with F: 0.25 & 0.5 mg
 Triamterene/HCTZ caps 50 25
 Triamterene/HCTZ tabs 75 50
 Triamterene/HCTZ tabs 75 50
 Triamterene/HCTZ tabs 75 50
 Trifluoperazine 1, 2, 5, 10 mg
 Trimethoprim tabs 100 mg
 Trimethoprim tabs 100 mg
 Tropicamide ophth. soln 1%
 Verapamil tabs 80, 120 mg
 Verapamil tabs 80, 120 mg

Sehering
 Watson
 Naska
 Thames
 Mutual
 Chelsea
 Cord
 Quantum
 Barr
 Barr
 Cord
 Quantum
 Steris
 Hi-Tech
 Cenci
 Americal
 T-P
 T-P
 Bolar
 Americal
 Halsey
 Danbury
 Dey
 Copley
 Amide
 Americal
 Americal
 Cenci
 Par
 Amer. Ther.
 PharmBasics
 Purepac
 Sidmak
 Hi-Tech
 Vitarine
 Amer. Ther.
 Danbury
 Vitarine
 Bolar
 Barr
 Danbury
 Americal
 Bolar
 Mutual

requirements for participating institutions to ensure compliance with procedures, standards by which institutions will be evaluated, corrective measures, and provisions for appeals.

Social Impact

The proposed new rules will help ensure that schools are providing proper administration to the student loan program by requiring compliance with established standards. By requiring this compliance, schools are encouraged to increase the effectiveness of support services provided to Guaranteed Student Loan (GSL) borrowers. Strengthening administration and support services of the institutions ensures the students of a stronger GSL Program.

Economic Impact

The proposed new rules set forth criteria whereby the Authority can assure itself that procedures are being followed. The economic impact of the new rules is minimal but will result in more timely payment of refunds to lenders, which will help ensure payment of student loans.

Regulatory Flexibility Statement

The proposed new rules may affect some small businesses, as that term is defined by the Regulatory Flexibility Act, in that these rules provide standards by which the GSL programs of such businesses will be evaluated. However, no recordkeeping, bookkeeping or compliance requirements are placed on such businesses by these rules which are not elsewhere imposed by other Federal or State regulations.

Full text of the proposal follows:

SUBCHAPTER 11. POLICY GOVERNING INSTITUTION COMPLIANCE WITH THE GUARANTEED STUDENT LOAN PROGRAM; CORRECTIVE MEASURES

9:9-11.1 Standards

(a) Institutions of higher education participating in the Guaranteed Student Loan Program shall comply with existing Federal and State regulations and standards governing the program.

(b) Individual institutions shall be periodically evaluated by the Authority program review to confirm their program compliance. Institutions determined to be in noncompliance as a result of this review shall be subject to corrective or disciplinary action initiated by the Authority.

9:9-11.2 Evaluation review procedures

(a) Program review findings utilized to ascertain program non-compliance shall include but not be limited to the following areas:

1. The student loan default rate;
2. Student withdrawals before completion of programs or academic year;
3. Failure to provide timely notification to the Authority of student enrollment status changes;
4. Failure to refund loan monies to lenders on behalf of students or refunds not made in a timely manner; and
5. Failure of student files to include information required pursuant to Federal regulations, or inaccurate or missing student files.

(b) The Authority shall annually establish and publish the default rate and standards of noncompliance for the categories set forth in (a) above which shall indicate a serious deficiency in institution program administration and shall subject the institution to corrective action by the Authority.

(c) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Guaranteed Student Loan Program participation where the program review indicates that the institution is in substantial violation of other Federal or state Guaranteed Student Loan Program regulations.

9:9-11.3 Sanctions

(a) The extent of corrective or disciplinary action initiated by the Authority for violations as established in N.J.A.C. 9:9-11.2 shall be determined by the number of categories where such violations are present.

1. Institutions with a violation in one of the categories set forth in N.J.A.C. 9:9-11.2 shall be allowed continued participation in the Guaranteed Student Loan Program but shall be required to provide

HIGHER EDUCATION

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program Policy Governing Institution Compliance; Corrective Measures

Proposed New Rules: N.J.A.C. 9:9-11

Authorized By: New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Authority: N.J.S.A. 18A:72-10.

Proposal Number: PRN 1988-202.

Submit comments by May 18, 1988 to:
 Grey J. Dimenna, Esq.
 Administrative Practice Officer
 Department of Higher Education
 225 West State Street
 CN 542
 Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (the Authority) is statutorily responsible for the supervision of the Guaranteed Student Loan Program in New Jersey. The proposed new rules set forth

an acceptable plan of corrective action to the Authority within 90 days of formal violation notification.

2. Institutions with violations in two of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to limit their participation in the Guaranteed Student Loan Program to 50 percent of their entering classes for a period of 18 months. Additionally, the institution shall submit to the Authority an acceptable plan of corrective action within 90 days of formal limiting notification.

3. Institutions with violations in three of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to suspend participation in the Guaranteed Student Loan Program for 18 months. The institution shall submit a plan of corrective action which must be approved by the Authority before formal reinstatement will be considered.

4. Institutions with violations in four or more of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with notice of intent to terminate participation in the Guaranteed Student Loan Program.

9:9-11.4 Appeal rights

(a) The Director of the Authority is authorized to institute any corrective action set forth in N.J.A.C. 9:9-11.3. Any institution which is sanctioned shall have the right to appeal the Director's action to the Authority within 20 days of the determination.

(b) To initiate an appeal, the following procedure shall be utilized:

1. The petitioner shall file with the Director the original copy of the petition, together with proof of mailing.

2. The petition must be verified and must state the name and address of the petitioner, and a statement of the essential facts giving rise to the contesting of the Authority imposed sanction.

(c) The Director shall bring the petition before the Authority in a timely manner. The institution shall be provided with the opportunity for a hearing pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Director shall notify the petitioner of the Authority's decision in the matter.

HUMAN SERVICES

The following proposals are authorized by Drew Altman, Commissioner, Department of Human Services.

(a)

Legal Assistance for Medicare Patients

Proposed New Rules: N.J.A.C. 10:13

Authority: N.J.S.A. 30:4H-4, P.L. 1987, c.59.

Proposal Number: PRN 1988-174.

Submit comments by May 18, 1988 to:

Barbara G. Rapkin, Director
Office of Legal and Regulatory Liaison
Department of Human Services
290 So. Warren Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 30:4H-1 et seq. (P.L. 1987, c.59), effective March 3, 1987, authorizes the Department of Human Services (Department) to establish a program to provide legal assistance to Medicare beneficiaries for the limited purpose of appealing denials of federal Medicare benefits. This proposal sets guidelines to govern a statewide Legal Assistance for Medicare Patients (LAMP) program within the Department.

Specific services provided under the LAMP program include the following: Outreach to Medicare beneficiaries; development and dissemination of educational materials pertaining to the Medicare Program and the claims appeal process; development and dissemination of materials to enable Medicare beneficiaries to submit their own appeals; and the offer of direct legal representation to appeal coverage denied under Part A and/or Part B of the Medicare Program.

The Department will phase in the LAMP program over a three year period. In accordance with the original impetus of the enabling legislation, P.L. 1987, c.59, Section 1, the Department has determined to limit

expenditure of LAMP program funds appropriated by the Legislature to outreach, education and appeals of Medicare covered home health services denials in the first year. LAMP program expansion is anticipated in the second year to include Medicare covered skilled nursing facility and rehabilitation hospital services. The extent of expansion in the third year, to include other services covered under Medicare Part A and/or Part B, will be determined by the Department based upon a review of first and second year results. Expansion in the second and third years will be based upon availability of funds.

Services under the LAMP program will be provided by the Community Health Law Project, through a contract between the Department and the contractor, who was chosen in accordance with the New Jersey Public Contracts Law (N.J.S.A. 52:34-6 et seq.).

Attorneys and paralegal staff will provide the program services of outreach, development and dissemination of materials to assist clients in submitting their own appeals, and direct legal representation of the clients before an Administrative Law Judge, Federal District Court judge or other appropriate court. Program efforts will be geared toward the appeal of denial of benefits for Medicare Part A and/or Part B covered services.

The proposed new rules are intended to clarify the enabling legislation and provide guidelines for the implementation of the program.

Social Impact

The proposed new rules will have a positive impact on the lives of elderly and disabled Medicare beneficiaries in New Jersey. The LAMP program will help prevent the abandonment of an appeal right for lack of knowledge and/or resources to pursue such an appeal. LAMP will thus safeguard the right of Medicare beneficiaries to be reimbursed for necessary health care services under Medicare Part A and/or Part B: Title XVII of the Social Security Act.

The proposed rules will improve access and insure effective delivery of the noted services for elderly and/or disabled persons in New Jersey who are entitled to Medicare benefits. These rules will implement a program that will provide outreach, education, and legal assistance to Medicare beneficiaries throughout the 21 counties.

Economic Impact

No adverse economic impact is anticipated as a result of the proposed new rules. With regard to the Department, the full cost of first-year operation of the program (\$235,000) has been appropriated by the enabling legislation. Approximately eight percent of the appropriation has been designated, in the first year only, for administrative expenses. Thereafter, the Department will obligate funds, subject to legislative appropriation, for total project costs.

The economic impact on individuals targeted for Program services is anticipated to be positive. Income eligibility and co-payment fees will be based upon the Department of Health and Human Services Consumer Administration Poverty Guidelines. A reduction in personal expenditures by this population is expected, thus alleviating some financial burden and concomitant stress on Medicare beneficiaries, many of whom live within the constraints of already limited financial resources.

Regulatory Flexibility Statement

The proposed new rules do not impact on small businesses, therefore, a regulatory flexibility statement is not required.

Full text of the proposal follows:

CHAPTER 13

LEGAL ASSISTANCE FOR MEDICARE PATIENTS (LAMP)

SUBCHAPTER 1 GENERAL PROVISIONS

10:13-1.1 Purpose of this chapter

Pursuant to N.J.S.A. 30:4H-1 et seq. (P.L. 1987, c.59) the purpose of this chapter is to implement the Legal Assistance for Medicare Patients (LAMP) program for legal assistance in New Jersey to Medicare beneficiaries who are denied Medicare coverage for health care services.

10:13-1.2 Scope; applicability

(a) The provisions of this chapter apply to all activities and services related to and persons participating in the LAMP program.

(b) Pursuant to N.J.S.A. 30:4H-1 et seq., the New Jersey LAMP program provides outreach, education and legal services to all Medicare beneficiaries denied Medicare payment for health care services.

10:13-1.3 Definitions

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

"Co-payment" means financial participation in service costs by eligible beneficiaries according to the fee scale established in N.J.A.C. 10:13-5.2(e).

"Denied claim" means a claim for Medicare covered health care services that has been denied as documented by receipt of the actual notice of denial sent to the beneficiary and/or the provider. Denied claim may also include notice of reduction or termination of Medicare covered services.

"Department" means the New Jersey Department of Human Services (DHS).

"Division" means the Division of Medical Assistance and Health Services in the Department of Human Services (DMAHS).

"LAMP contractor" means a non-profit corporation that contracts with the Department to provide LAMP program services authorized by N.J.S.A. 30:4H-1 et seq.

"Medicaid" means the Federal Medical Assistance Program as described in Title XIX of the Social Security Act and N.J.S.A. 30:4D-1 et seq.

"Medicare" means the Federal Medicare Program as described in Title XVIII of the Social Security Act.

"Medicare beneficiary" means any individual eligible for Medicare benefits under the requirements set forth in Title XVIII of the Social Security Act.

"Qualified non-profit organization" means an organization that has sufficient professional staff and resources to meet the requirements and implement the tasks outlined in the enabling legislation, N.J.S.A. 30:4H-1 et seq.

SUBCHAPTER 2. ELIGIBILITY

10:13-2.1 Client eligibility standards

(a) Recipients of Medicare benefits who have been denied coverage for eligible health care benefits shall be eligible for services provided under the LAMP program.

(b) Individual Medicare beneficiaries with Part A and/or Part B coverage under Title XVIII of the Social Security Act who have been denied payment for covered health care services as outlined in N.J.A.C. 10:13-2.2 are eligible for LAMP program services.

(c) Dually entitled Medicare beneficiaries with Part A and/or Part B coverage under Title XVIII of the Social Security Act and also Medicaid benefits under Title XIX of the Social Security Act who have been denied payment for Medicare covered health care services as outlined in N.J.A.C. 10:13-2.2 are eligible for LAMP program services.

10:13-2.2 Eligible services

(a) In the first contract year, LAMP program legal services will be provided for the purpose of appealing Medicare denials for eligible home health care services.

(b) LAMP program legal services will continue for home health care services appeals and, in the second contract year, or sooner, with Departmental approval, the LAMP program will be expanded to include Medicare eligible skilled nursing facility and rehabilitation hospital services. These services will be phased in between the first and second contract years of the Program.

(c) In the third contract year, LAMP program legal services will continue for home health care, skilled nursing facility and rehabilitation hospital appeals. The Department will identify other Medicare Part A and/or Part B services for inclusion in the LAMP program by means of amendments to these rules.

(d) In addition to the services described in (a), (b), and (c) above, basic outreach and education services shall begin in the first year and continue throughout the contract period.

10:13-2.3 LAMP contractor eligibility

The selected contractor shall be a qualified non-profit organization, as required by N.J.S.A. 30:4H-4.

10:13-2.4 Provider eligibility for LAMP services

(a) Health care providers who have rendered services to Medicare beneficiaries may apply to the LAMP contractor for legal services on their own behalf. Upon mutual agreement of the LAMP contractor and the health care provider, under the terms set forth in these rules, appeals of eligible denials for coverage may be pursued on behalf of the health care provider.

(b) LAMP monies shall not be used to cover the cost of requests for services noted in (a) above, unless the request involves a Medicare beneficiary with dual Medicare/Medicaid coverage or the beneficiary has paid or is liable to pay out-of-pocket expenses for covered services as described in N.J.A.C. 10:13-2.2.

SUBCHAPTER 3. ADMINISTRATIVE ORGANIZATION

10:13-3.1 LAMP program administration

(a) The Department of Human Services is charged with the responsibility for assuring that the contractor operates an efficient and effective program that provides LAMP services statewide. The LAMP Program Project Manager, Division of Medical Assistance and Health Services, 7 Quakerbridge Plaza, Trenton, N.J. will serve as direct liaison between the Department and the LAMP contractor.

(b) The project manager shall supervise LAMP program activities, including:

1. Monitoring the contract between the Department and the selected contractor;
2. Providing technical assistance to the contractor;
3. Approving letters, forms, documents, etc., to be used to carry out the Project; and
4. Compensating the LAMP contractor for work performed pursuant to contract provisions.

SUBCHAPTER 4. PROGRAM ADMINISTRATION

10:13-4.1 Access to services

(a) The LAMP contractor shall insure client access to LAMP program services during normal business hours. Such access may involve:

1. Availability of a 201 and a 609 area code number;
2. Acceptance of collect calls; or
3. Other access that provides eligible beneficiaries with the ability to apply for program services.

(b) Access to services shall also include the availability of office space and staff to insure reasonable access to program services on a statewide basis during normal working hours.

10:13-4.2 Procedures for utilization of services

(a) Upon receipt of an inquiry, the LAMP contractor shall instruct the applicant in the procedures for receiving services. This may be done face-to-face, through telephone contact, through mailings of information and/or through other means that insure accurate and timely transmittal of information regarding the procedures to be followed to receive LAMP program services.

(b) The LAMP contractor staff shall conduct a client interview to obtain the client information necessary to initiate the appeals process.

(c) The LAMP contractor staff shall provide the client with a description of the appeal process in easily understandable language.

(d) The LAMP contractor staff shall complete a client financial status determination utilizing the co-payment fee scale of N.J.A.C. 10:13-5.2(e).

(e) The LAMP contractor staff shall insure explanation, review and completion of the following client documents:

1. Representation agreement and authorization for appeal;
2. Authorization for Release of Information;
3. Request for Reconsideration for Part A appeals and/or Request for Review for Part B cases;

(f) In order to preserve confidentiality, records reported, released or accessed to the Department shall not identify client names except as provided for in N.J.S.A. 30:4D-7.1c et seq. The LAMP contractor shall supply a minimum of two arbitrary identifiers for each client for auditing purposes.

(g) The LAMP contractor staff shall review denials of reimbursement for Medicare covered health services by Fiscal Intermediaries

of the Health Care Financing Administration to determine whether an appeal of such denials is meritorious.

(h) The LAMP contractor shall follow the procedures for the appeals process for Part A and/or Part B denials as specified in Title XVIII of the Social Security Act.

(i) Upon receipt of a continued determination of denial by Medicare in a given case, the LAMP contractor staff shall, in each instance of loss, determine the merits of the case for further appeal.

10.13-4.3 Appeals

Any controversies arising between the LAMP program contractor and applicants or participants in the Program under the provision of this chapter shall be heard in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rule (N.J.A.C. 1:1).

SUBCHAPTER 5. FEES

10:13-5.1 Payment for services

The Department will reimburse the LAMP contractor for services rendered on a monthly basis upon submission of properly completed billing statements which have been accepted by the Department.

10:13-5.2 Co-payment fee scale

(a) Co-payment fees shall apply to Medicare beneficiaries rendered legal services under the LAMP program in accordance with the co-payment fee scale set forth in (e) below. The co-payment fee scale is based on the most current Federal Poverty Income guidelines (42 U.S.C. 9902(2)), as published annually in the Federal Register.

(b) Co-payment shall be determined based on current income levels and family size.

(c) Income level includes the income of the beneficiary and, if applicable, the income of the spouse of the beneficiary.

(d) Family size includes the beneficiary and, if applicable, the spouse and any dependent children of the beneficiary living in the same household as the beneficiary.

(e) The co-payment fee scale shall be as follows:

Income as a percentage of Federal Poverty Income guidelines	Beneficiary Share of Legal Fees
Below 250 percent	0 percent
251-275 percent	10 percent
276-300 percent	20 percent
301-325 percent	40 percent
326-350 percent	60 percent
351-375 percent	80 percent
376-400 percent	100 percent

(f) The LAMP contractor shall collect all co-payments where applicable.

SUBCHAPTER 6. REPORTING REQUIREMENTS

10:13-6.1 Monthly progress reports

(a) The LAMP contractor shall submit a report of project status to the Project Manager in writing by the tenth day of the next month following the reporting month.

(b) The monthly report shall include, in narrative form, at least the following information:

1. The number and type of appeals processed at each level, including the success or failure rate of those appeals and the status of unresolved appeals;

2. Delineation of cases of source of referral, noting all dual Medicare/Medicaid cases;

3. Variations, if any, from the formal contract work plan with an explanation of the deviation(s);

4. A cost-benefit analysis of individual cases by source of referral;

5. A list of all completed applications reviewed and the number of hours expended for each review; and

6. The total number of hours expended for each general area of the LAMP program (for example, outreach education, appeals).

10:13-6.2 Quarterly reports

(a) The LAMP contractor staff shall submit a quarterly report of project status to the Project Manager no later than the tenth day following the end of each contract quarter.

(b) The quarterly report shall include, in narrative form, at least the following information:

1. LAMP program progress including tasks accomplished, goals met, problems encountered and solved, methods of solution and recommendations for improvement of the LAMP program;

2. Enumeration with appropriate reason those cases determined to have insufficient merit to request an appeal or further appeal;

3. A financial status report that specifies expenditures made against the authorized budget which shall include:

i. Staff utilized per month, specified by title and level, salary, benefits, and person hours on an accrual basis;

ii. The costs of services rendered other than direct appeals; and

iii. A breakdown of costs incurred and income accrued from direct appeals categorized by appeals on behalf of individual beneficiaries; appeals on behalf of dual Medicare/Medicaid beneficiaries; and appeals on behalf of providers by type of service.

10:13-6.3 Annual reports

(a) The LAMP contractor shall submit an annual report to the Project Manager no later than 30 days after the completion of each year of the contract period.

(b) The annual report shall summarize all information required in monthly reports as well as a cost-benefit analysis of overall LAMP program operations.

(c) The annual report shall also include what the LAMP contractor has done or will do to seek additional funding with the intent of financial and program self-sufficiency at the end of the contract period.

10:13-6.4 Additional reports

The Department reserves the right to request additional reports and/or information as it deems necessary.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Services Manual Appendices B, C, D, E

Proposed Amendment: N.J.A.C. 10:51-1, Appendices B, C, D and E

Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, b, c; 30:4D-12; 30:4D-22, 24.

Proposal Number: PRN 1988-191.

Submit comments by May 18, 1988 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN-712

Trenton, NJ 08625

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services is updating and revising Appendices B, C, D and E of the Pharmaceutical Services Manual. Appendix B is the list of non-legend (over-the-counter) drugs for which Medicaid will reimburse pharmaceutical providers. Appendix C contains a list of hypodermic syringes and/or needles. Appendix D is a list of legend devices, which are covered by both the Medicaid and PAAD (Pharmaceutical Assistance to the Aged and Disabled) programs. Appendix E is a list of protein replacements.

In general, the primary reasons for the additions to the respective appendices include new products, reformulations, and reclassification from legend (prescription) to non-legend (over-the-counter) status. The main reasons for the deletions include changes in the formula, the manufacturer discontinues a product, and very infrequent usage of a product.

Social Impact

The issuance of this updated list will insure both Medicaid recipients and PAAD beneficiaries will be able to receive up-to-date pharmaceuticals, and that providers will be reimbursed for dispensing them.

Economic Impact

There is no change in the Division's reimbursement procedures, so there should be virtually no economic impact on either the Medicaid or PAAD programs.

Pharmaceutical providers will continue to be reimbursed in accordance with Medicaid policies, procedures, and fee schedules, so long as they use the updated listing.

There is no cost to the Medicaid patient. PAAD beneficiaries will continue to pay a \$2.00 co-payment as required by law (N.J.S.A. 30:4D-22).

Regulatory Flexibility Analysis

This proposal impacts small businesses. However, this proposal does not add any additional recordkeeping, reporting, or other compliance requirements. Pharmaceutical providers are already required to maintain records of pharmaceuticals stocked and dispensed, including the NDC number. Pharmaceutical providers that participate in Medicaid and/or PAAD are required to keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, the date the service was rendered, and the nature and extent of each such service rendered, and any additional information required by regulation. Therefore, the Division does not believe a regulatory flexibility analysis is required.

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

LISTING OF ADDITIONS TO N.J.A.C. 10:51-1
APPENDIX B

General Non-Legend Drugs

PRODUCT	SIZE	R.U.	NDC
Advil Caplets	100	TAB	0000573-0160-40
Alternagel Liquid	360cc	CC	0000038-0860-12
Anacin-3 Max Str Caplets	100	TAB	0000573-0285-30
Anacin-3 Max Str Tablets	100	TAB	0000573-0292-30
Apetimar Plain Liquid	120cc	CC	0012939-0999-33
Apetimar w/Iron Liquid	120cc	CC	0012939-0998-33
Beminal Stress Plus w/Iron Tabs	60	TAB	0000046-0818-60
Beminal Stress Plus w/Zinc Tabs	60	TAB	0000046-0820-60
Calciomar Tablets	60	TAB	0012939-0517-60
Citracal Tablets	100	TAB	0000178-0800-01
Dermaplast Lotion	90cc	EACH	0000046-1014-03
Dermaplast Spray	82.5cc	EACH	0000046-1008-02
Dristan Advanced Formula Tabs	48	TAB	0000573-1238-27
Dristan Long Lasting Spray	30cc	EACH	0000573-1191-30
Fedahist Exp Pediatric Drops	30cc	EACH	0000091-0051-30
Fiber Guard Tablets	100	TAB	0000046-0501-81
Glutofac Tablets	90	TAB	0000482-0153-90
Haltran Tablets 200mg	30	TAB	0000009-3402-02
Haltran Tablets 200mg	50	TAB	0000009-3402-03
Hydrocil Instant Powder	3.7gm	EACH	0000032-1808-57
Hydrocil Instant Powder	250gm	EACH	0000032-1808-66
Isoclor Liquid	480cc	CC	0000585-2264-01
Isoclor Tablets	100	TAB	0000585-2265-01
Isoclor Timesules	100	CAP	0000585-2266-01
Mardrops Pediatric Drops	30cc	EACH	0012939-0412-30
Medipren Caplets	100	CAP	0000045-0197-70
Medipren Tablets	100	TAB	0000045-0199-70
Os-Cal/500 Chewable Tabs	60	TAB	0000088-1657-41
Os-Cal/500+D Tablets	60	TAB	0000088-1654-41
Pediacare Chewable Tabs	24	TAB	0000045-0196-24
Pediacare Cold Formula	120cc	CC	0000045-0193-04
Pediacare Cough-Cold Formula	120cc	CC	0000045-0194-04
Peri-Wash Liquid	120cc	EACH	0011701-0014-01
Peri-Wash II Liquid	120cc	EACH	0011701-0009-01
Posture Tablets 300mg	100	TAB	0000046-0274-81
Posture Tablets 600mg	60	TAB	0000046-0275-60
Posture-D Tablets 300mg	100	TAB	0000046-0276-81
Posture-D Tablets 600mg	60	TAB	0000046-0277-60
Resol R.T.U. Solution	960cc	*EACH	0000008-0625-04
Riopan Plus Extra Str Susp	360cc	CC	0000046-0779-12
Singlet Tablets	100	TAB	0000068-0102-61
Tylenol Chew Tablets (Grape)	30	TAB	0000045-0477-30
Tylenol Jr Strength Tabs	30	TAB	0000045-0470-15
Xerac-BP 5 Gel	45gm	EACH	0000096-0790-45
Xerac-BP 5 Gel	90gm	EACH	0000096-0790-90
Xerac-BP 10 Gel	45gm	EACH	0000096-0791-45
Xerac-BP 10 Gel	90gm	EACH	0000096-0791-90

*Exception: Reimbursement will be based on multiple full package units.

Insulin Preparations

PRODUCT	R.U.	NDC
Insulin Humulin BR U100	CC	0000002-8216-01
Insulin Humulin Ultralente U100	CC	0000002-8615-01
Insulin Nordisk/Insulatard Human NPH U100	CC	0050445-0222-01
Insulin Nordisk/Velosulin Human REG U100	CC	0050445-0111-01

Diabetic Testing Material

PRODUCT	SIZE	R.U.	NDC
Ames GlucoSystem Lancets	100	EACH	0000193-5509-21
Bili-Labstix Reagent Strips	100	EACH	0000193-2814-21
Chemstrip BG Strips w/Accu Chek	100	EACH	0050924-0508-10
Chemstrip BG Strips w/Accu Chek	50	EACH	0050924-0502-50
Chemstrip UG Strips	100	EACH	0050924-0511-10
Glucolet Endcaps (Regular)	100	EACH	0000193-5633-21
Glucolet Endcaps (Super)	100	EACH	0000193-5634-21
Glucolet Lancing Device		EACH	0000193-5632-01
Multistix 7 Reagent Strips	100	EACH	0000193-2305-21
Multistix 8 Reagent Strips	100	EACH	0000193-2303-21
Multistix SG Reagent Strips	100	EACH	0000193-2741-21

APPENDIX C

Needles, Disposable

Product	R.U.	NDC
PenNeedle (for use with Novopen)	EACH	0000003-1852-35

APPENDIX D

Legend Devices

PRODUCT	R.U.	NDC
AeroChamber Device	EACH	0000456-3154-67
Intal Spinhaler Inhaler	EACH	0000585-1011-01
NovoPen Insulin Delivery Device	EACH	0000003-1852-30

APPENDIX E

Protein Replacements

PRODUCT	SIZE	R.U.	NDC
Lofenalac Powder	1 lb	EACH	0000087-0340-02
Resource Crystals Packets	2 oz	PKT	0000212-3233-25

LISTING OF CHANGES TO N.J.A.C. 10:51-1
APPENDIX B

General Non-Legend Drugs

PRODUCT	CURRENT	PROPOSED CHANGE
Allbee Caps w/Vit C	[0000031-0674-63	0000031-0673-66
Americaine Hemorrhoidal Oint	0000094-0002-01	0000235-0375-16
Calcium Lact Tabs 325mg	0000071-0533-24	0000047-0533-24
Calcium Lact Tabs 650mg	0000071-0604-24	0000047-0604-24
Cerose-DM Liquid	0000082-4128-01	0000008-4128-01
D-S-S Capsules 100mg	0000071-0247-24	0000047-0247-24
Dical-D Capsules	0000074-3594-04	0000074-3741-13
Doxidan Capsules	0000039-0004-10	0000039-0036-10
Dramamine Tabs	0000025-1701-31	0037000-7500-30
Emetrol Liquid	0000067-0240-58	0000013-2113-45
Fedahist Expectorant	0000067-0054-60	0000091-0057-04
Fedahist Syrup	0000067-0052-60	0000091-0052-04
Fedahist Tablets	0000067-0050-68	0000091-0050-01
Ferro-Sequels Capsules	0000005-4612-23	0000005-5267-23
Infalyte Powder	0000018-0837-62	0000018-0837-02
Ipsatol Syrup	0000369-0234-04	0000085-0650-04
Ircon Tabs 200mg	0000369-0055-01	0000085-0628-01
Konsyl Powder	0000224-1801-02	0000524-0203-31
Konsyl Powder	0000224-1801-03	0000524-0203-45
Metamucil Packets	0000025-2219-17	0037000-7401-60
Metamucil Packets	0000025-2219-31	0037000-7401-70
Metamucil Powder	0000025-2209-08	0037000-7400-70
Metamucil Powder	0000025-2209-14	0037000-7400-80

HUMAN SERVICES

PROPOSALS

Metamucil Powder	0000025-2209-21	0037000-7400-90
Modane Liquid	0000013-5033-51	0000013-5143-51
Modane Mild Tablets	0000013-5021-17	0000013-5121-17
Modane Plus Tablets	0000013-5041-17	0000013-5151-17
Modane Tablets	0000013-5011-17	0000013-5131-17
Ornex Capsules	0049692-0925-20	0049692-0927-24
Pedialyte R.S. Liquid	0000074-6472-08	*0000074-0162-01
Pedialyte R.T.U. Liquid	0000074-5759-06	0000074-6470-32
Pedialyte R.T.U. Liquid (Fruit)	0000074-5761-32	0000074-6471-32
Penntuss Suspension	0000018-0818-67	0000018-0818-38
Percogesic Tablets	0000056-0132-70	0025866-0049-50
Phazyme Tablets	0000021-0400-01	0000021-1400-01
Phazyme-95 Tablets	0000021-0420-01	0000021-1420-01
Robitussin D.A.C.	0000031-8680-25	0000031-8680-12
Sinulin Tablets	0000086-0250-10	0000086-0066-10
Sinutab-II Tablets	0011370-0114-12	0012547-3645-40
Sod. Chl. Oph Oint 5% (Muro-128)	0000451-1280-38	0000303-9905-38
Sod. Chl. Oph Sol 5% (Muro-128)	0000451-0128-30	0000303-9928-30
Sod. Chl. Oph Sol 5% (Muro-128)	0000451-0128-85	0000303-9928-15
Stuart Prenatal Tabs	0000038-0270-10	0000038-0071-10
Sudafed Syrup	0000081-0863-82	0000081-0862-82
Tedral Elixir	0000710-2242-23	0000071-2242-23
Tedral Tablets	0000710-0230-24	0000071-0230-24
Teldrin Spansules 12mg	0049692-0921-15]	0049692-0924-48

*See: Rehydralyte

APPENDIX D

Legend Devices

PRODUCT	CURRENT	PROPOSED CHANGE
Inhal-Aid Drug Delivery System	[0000369-4600-01]	0000085-4600-01
Inspirease Drug Delivery System	[0000369-4602-01]	0000085-4602-01

APPENDIX E

Protein Replacements

PRODUCT	CURRENT	PROPOSED CHANGE
Casec Powder	[0000087-0390-02]	0000087-0390-07

LISTING OF DELETIONS

FROM APPENDIX B

General Non-Legend

PRODUCT	SIZE	NDC
[Cortef Feminine Itch Cream 0.5%	15gm	0000009-3200-01
Cortef Rectal Itch Oint 0.5%	15gm	0000009-3205-01
Dical-D w/Iron Capsules	100	0000074-3676-03
Dical-D w/Vit C Capsules	100	0000074-3587-04
Eprolin Gelseals 50mg	100	0000002-0265-02
Ferrous Sulf Enseals/Green	100	0000002-0136-02
Hexa-Betalin Tabs 10mg	100	0000002-1056-02
Niacin Tablets 20mg/Lilly	100	0000002-1041-02
Pantholin Tablets 10mg	100	0000002-1053-02
Prefrin-Z Oph Solution	15cc	0000023-0071-15
Sinubid Tablets	30	0049692-0920-15
Teldrin Spansules 8mg	50	0049692-0920-15]

(a)

DIVISION OF PUBLIC WELFARE**General Assistance Manual
Travel Costs for Employment****Proposed Amendments: N.J.A.C. 10:85-3.2 and 3.3**

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1988-190.

Submit comments by May 18, 1988 to:

Marion E. Reitz, Acting Director

Division of Public Welfare

CN 716

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 10:85-3.2 and 3.3 allow payment under the General Assistance (GA) program for travel costs incurred in training for employment, in seeking employment, and in project activity or "workfare." Authority is granted for coverage of travel costs only for those situations in which no other reasonable means of transportation exists, thereby making maximum use of existing facilities and avoiding duplication with other programs. Specifically excluded is the payment of travel costs for those who are actively employed because such costs are covered in the "disregards" of earned income when determining the amount of countable income in order to establish eligibility and compute the assistance grant. Other technical amendments are included so as to make the payments subject to State Aid matching.

Social Impact

For those GA recipients for whom the lack of money for travel for the specified purposes of job preparation and job seeking has been a barrier to employment, the proposed amendments can result in removal of that barrier. For some individuals, this is expected to mean a return to employment, which is a dramatic beneficial impact.

Economic Impact

For those GA recipients who return to employment, the economic impact can be substantial. For those individuals who are still on the assistance rolls, the opportunity for improvement will be facilitated. The cost to the public treasury is expected to be about \$300,000 per year of which 75 percent will come from the State and 25 percent from the municipalities.

Regulatory Flexibility Statement

This proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This rulemaking action imposes no compliance requirements on small businesses, therefore, a regulatory flexibility analysis is not required.

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

10:85-3.2 Application process

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

(g) Work requirement: Eligibility for public assistance in New Jersey is directly related to an individual's willingness to work when he or she is able to do so. It is, therefore, a part of the application process to explain the work requirement to the applicant and to record in the case file the reasons for any exemption from this requirement.

1.-8. (No change.)

9. Travel costs: For an individual who is eligible for maintenance payments in the General Assistance Program, the MWD shall authorize payment, not to exceed \$40.00 per month, for costs of local travel by the least expensive feasible mode of transportation when the travel is for training for employment when such training has been approved by the MWD, for the seeking of employment at times and places approved by the MWD, or for participation in project activity in accordance with N.J.A.C. 10:85-10. Local travel shall be construed to mean travel within the area of normal commutation for employment from the home of the individual. No payment shall be authorized under this section to or for any person for whom disregards of earned income (N.J.A.C. 10:85-3.3(c)4) were applied in the calculation of the most recent grant

of assistance. No payment shall be made under the authority of this section for travel which is available without charge to the recipient or for travel costs available from any other source.

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

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows:

1. An allowance standard is the total amount of need recognized for a particular eligible unit for a specific period of time, other than payment for medical needs, homemaker[s] service, **travel costs**, or such emergency grants as may be deemed necessary under N.J.A.C. 10:85-4.6.

2. (No change.)

3. Recognized for State aid: State aid will be provided in accordance with the appropriate allowance standard when payments, as related to the periods of time described in N.J.A.C. 10:85-4.2, adhere to the standards and regulations in this manual.

i. A MWD providing additional amounts of assistance in any given month (other than for homemaker service, **travel costs**, emergency assistance, or medical care) will receive no State aid for the amount in excess of the applicable standard.

4.-5. (No change.)

(g) (No change.)

CORRECTIONS**THE COMMISSIONER**

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by May 18, 1988 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

(b)

Classification Process**Intensive Supervision Program****Work Credits for Inmates Housed in County****Facilities****Proposed Amendments: N.J.A.C. 10A:9-1.3 and 5.6**

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

Proposal Number: PRN 1988-201.

The agency proposal follows:

Summary

The proposed amendments provide a definition of the Intensive Supervision Program (I.S.P.) and authorize the granting of work credits to violators of the Intensive Supervision Program, who are in county correctional facilities, after these violators have been in custody for 15 days.

Social Impact

The proposed amendments will have an impact on inmates by authorizing the granting of work credits to Intensive Supervision Program (I.S.P.) violators housed in county correctional facilities.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act.

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

10A:9-1.3 Definitions

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

...
"Intensive Supervision Program" means the program which permits certain offenders sentenced to State correctional institutions to be sentenced by a Resentencing Panel of judges to an intermediate form of punishment between incarceration and probation.
 ...

10A:9-5.6 Work credits for inmates housed in county correctional facilities

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

(c) **Inmates that are Intensive Supervision Program (I.S.P.) violators, who are in county correctional facilities, will receive work credits after they have been in custody for 15 days.**

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

(a)

Classification Process**Gang Minimum Custody Status, In-and-Out Custody Status, and Full Minimum Custody Status****Proposed Amendment: N.J.A.C. 10A:9-4.6.**

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

Proposal Number: PRN 1988-203.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:9-4.6(i) and (j) deletes all references to "open charges" in an effort to clarify the rules related to the eligibility of inmates for reduced custody consideration when the inmates have detainees.

Social Impact

The proposed amendment will not have a significant social impact because it simply clarifies the intent of existing rules regarding the eligibility of inmates for reduced custody consideration when the inmates have detainees.

Economic Impact

The proposed amendment will not have an economic impact because no additional costs are necessary to implement or maintain these rules.

Regulatory Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses, therefore, a regulatory flexibility analysis is not required.

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

10A:9-4.6 Criteria for consideration for gang minimum custody status, in-and-out custody status, and full minimum custody status

(a)-(h) (No change.)

(i) Inmates with detainees from other jurisdictions outside New Jersey shall be eligible as follows:

1. (No change.)
2. Inmates with detainees [for open charges] (unadjudicated offense, parole violation or immigration) are not eligible unless the detainee is more than five years old.
3. Inmates with detainees [for open charges] more than five years old shall be eligible to be considered for gang minimum custody status and full minimum custody status provided the charges are not included on the list of serious offenses in (j) below, and the I.C.C. believes the inmate is not an escape risk.

(j) Inmates who have New Jersey detainees[, New Jersey open charges] less than five years old or who are on bail, are eligible to be considered for gang minimum custody status or in-and-out

custody status, and full minimum custody status unless the detainee[, the open charge] or the bail is for one of the following:

1.-13. (No change.)

(k) (No change.)

(b)

Inmate Discipline**Appeal to the Office of Administrative Law****Proposed Repeals: N.J.A.C. 10A:4-11.9****and 10A:4-12.****Public Hearing**

Take notice that the Department of Corrections will conduct a public hearing on May 18, 1988 at 10:00 A.M. at the Corrections Officers Training Academy (C.O.T.A.), Stuyvesant Avenue and Whittlesey Road, Trenton, New Jersey 08628, concerning the repeal of N.J.A.C. 10A:4-11.9 and N.J.A.C. 10A:4-12 "Appeal to the Office of Administrative Law" as proposed in the March 7, 1988 New Jersey Register at 20 N.J.R. 496(b). The repeal of N.J.A.C. 10A:4-11.9 and N.J.A.C. 10A:4-12 was proposed because the December 31, 1987 expiration date of N.J.S.A. 52:14F-8a, the enabling legislation which permitted an inmate who received a sanction of 365 days or more loss of commutation time to request a hearing by the Office of Administrative Law, passed without readoption.

The public hearing will be conducted in a quasi-legislative rather than in a quasi-judicial manner and is opened to interested individuals, representatives of government bodies, companies and associations. This hearing is prescribed by law. See N.J.S.A. 52:14B-4(a)3.

Interested persons are invited to participate through written comments or oral presentations at the May 18, 1988 public hearing, or written comments submitted on or before May 18, 1988, by notifying:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Office of the Deputy Commissioner

Department of Corrections

Whittlesey Road, CN 863

Trenton, NJ 08628

INSURANCE

(c)

DIVISION OF ACTUARIAL SERVICES**Guidelines for Hospital Preadmission Certification Programs****Proposed New Rules: N.J.A.C. 11:4-30.**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:26-1 and 17B:27-49.
 Proposal Number: PRN 1988-212.

Submit comments by May 18, 1988 to:

Verice M. Mason

Assistant Commissioner

Legislative and Regulatory Affairs

Department of Insurance

CN 325

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Hospital preadmission certification programs (HPCPs) are recently developed programs designed to provide an organized system of review for medical and surgical hospital admissions. A hospital preadmission review is conducted by a certifying agency, which is usually composed of physicians, nurses and/or other professionals who have knowledge of, and familiarity with, medical procedures. An important purpose of a hospital preadmission certification is the validation of the hospitalization as medically necessary and appropriate. Recently, commercial health insurers and health services corporations have begun to submit to the Department of Insurance for filing and approval, contracts containing

provisions which require the use of HPCPs. The proposed new rules establish guidelines to be followed by insurers who require the use of HPCPs.

Typically, these programs will assign an appropriate length of stay when a hospital admission is determined to be necessary. They also make extensions of assigned lengths of stay available by reviewing the patient's condition and assessing the need for continued hospital stay. However, under the proposed new rules, HPCPs which operate in New Jersey will not be authorized to determine the initial length of stay or to rule on continuing the length of hospitalization in all situations.

N.J.A.C. 11:4-30.1 and 30.2 establish the purpose and scope sections of the subchapter. As the terminology used in this subchapter is technical in nature, a definition section is established at N.J.A.C. 11:4-30.3. The information that is to be set forth by insurers that require HPCPs in their policy and certificate forms is outlined in N.J.A.C. 11:4-30.4. N.J.A.C. 11:4-30.5 contains the procedures to be followed in the certification of admission. The procedures to be followed for appeals from a denial of certification are provided at N.J.A.C. 11:4-30.6. N.J.A.C. 11:4-30.7 provides for the denial or reduction of benefits for noncompliance with HPCP requirements. N.J.A.C. 11:4-30.8 addresses the educational materials for consumer information to inform them about HPCPs. N.J.A.C. 11:4-30.9 identifies certain limitations imposed upon HPCPs. Finally, N.J.A.C. 11:4-30.10 sets forth various reporting requirements for insurers.

Social Impact

The proposed new rules establish the general principles which will govern the operation of HPCPs and set forth the guidelines for insurers to follow in their design and use of these programs. The new rules provide a regulatory framework for a system of health care which will enable insurers to provide a fuller spectrum of services to their policyholders. The new rules further provide a regulatory framework for the utilization of a more efficient use of medical resources.

The new rules require insurers to maintain and file with the Department, on an annual basis, certain information concerning their operations. The rules also require that HPCPs establish an appeal procedure and provide that HPCPs cannot themselves determine the initial length of stay or rule on continuing the length of hospitalization in all situations.

It is anticipated that the general public will be benefited by a system which will provide increased efficiency in the delivery of health care services.

Although the Department of Insurance will be required by the new rules to receive and review information from insurers and to monitor compliance, these new obligations are not expected to have any appreciable non-economic impact on the operation of the Department.

Economic Impact

Those insurers who elect to offer and are authorized to provide this program will add to the range of services they sell in the marketplace. By following the guidelines set forth in the new rules, insurers will be able to use HPCPs to reduce the overall medical costs of insureds. Employers who offer group health insurance to their employees will also realize cost savings by using this efficient medical care delivery system. It is expected that, on average, the total overall cost to employer-policyholders providing health services will be decreased. To the extent that employees participate in the savings to be experienced by employer-policyholders, they will realize an economic benefit.

The Department of Insurance is not expected to experience any significant economic impact by the operation of the new rules.

Regulatory Flexibility Statement

Some insurers and insureds affected by the proposed new rules are small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1980 c.169. To provide for uniform and consistent applicability of the new rules and to avoid the granting of a prescribed advantage to insurers who are small businesses, no differential treatment is afforded small business insurers by the new rules. The use of HPCPs and the regulatory and compliance requirements imposed by these rules apply equally to all insurers and policyholders who voluntarily elect to have an HPCP provision in their policy.

Since the circumstance by which an insurance policy has an HPCP provision is contractual and voluntary rather than government-imposed in nature, small businesses are not compelled to either provide HPCPs or, concomitantly, to abide by these rules. Thus, the new rules do not impose any requirements or obligations on small businesses other than those which they voluntarily choose to accept.

Those small businesses that elect to provide HPCPs as part of their health insurance programs will likely not need to hire professional staff

to implement and maintain the programs since these services have traditionally, and in large part, been provided by the insurer and its own expert staff.

The recordkeeping and compliance requirements proposed by these new rules are clearly noted at N.J.A.C. 11:4-30.4 and 30.10.

Full text of the proposal follows.

SUBCHAPTER 30. GUIDELINES FOR HOSPITAL PREADMISSION CERTIFICATION PROGRAMS (HPCPs)

11:4-30.1 Purpose

The purpose of this subchapter is to establish the requirements to be met and the guidelines to be followed by health insurers when they design a hospital preadmission certification program (HPCP) and require it to be used in their health insurance policies and contracts.

11:4-30.2 Scope

This subchapter shall apply to all health insurers in the State of New Jersey who require the use of HPCPs.

11:4-30.3 Definitions

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

"Admission certification" means a favorable review of the medical necessity and appropriateness of an insured's admission to a hospital.

"Certification" means the process used by a State certified URO or an HPCP's certifying agency to indicate that an admission or continued stay is favorably determined (approved).

"Certifying agency" means the person or entity who has been delegated by the insurer or contract holder the authority to determine preadmission certification or to determine whether admission or a continuing stay is approved.

"Continued stay review" means a review of the medical necessity and the appropriateness of continuing an insured's hospitalization.

"Contract holder" means the individual who holds the master group insurance agreement on behalf of the individual group members.

"Denial" means a formal determination by a State certified URO or an HPCP's certifying agency that a hospital admission or a hospital stay continuation is medically unnecessary and/or inappropriate.

"Department" means the New Jersey Department of Insurance.

"HPCP" means a hospital preadmission certification program, the utilization of which may be required by the provisions of a health insurance contract, and which requires that hospital admission, length of stay, and the continuation of stay be certified beforehand by the certifying agent of an insurer or contract holder.

"Insured" means the policyholder or certification holder and all covered dependents.

"Medical necessity" means compliance with professionally developed criteria and standards of care for determining that an insured warrants acute hospital care for a given diagnosis and/or problem.

"Non-delegation" means that a State certified URO retains responsibility to perform concurrent review in a hospital for all or specified hospital services.

"Preadmission certification" means health care review by an HPCP's certifying agency, which occurs prior to an insured's admission to a hospital and which consists of a determination of the medical necessity and appropriateness of the insured's elective admission.

"State certified URO" means any utilization review organization which has received State certification for statewide medical review activity under N.J.A.C. 8:31B-3.76 to 3.82.

11:4-30.4 General requirements

(a) Any health insurer that designs an HPCP and requires that it be used, shall set forth in its policy and certificate forms the following:

1. The certification requirements for hospital admission;
2. An appeal procedure for insureds to follow should they challenge a certification denial;

3. A description of the circumstances under which benefits payable to the insured would be reduced and the amount of reduction when the HPCP requirements are not met;

4. A description of the circumstances under which hospital emergency admissions are affected by the HPCP requirements; and

5. A statement that benefits may be reduced or denied which shall appear in conspicuous print in the caption of the policy and the certificate.

11:4-30.5 Certification of admission

(a) Any designated agency of an insurer or of a contract holder may certify a hospital admission. A denial of an admission can only be given by a licensed physician.

(b) Admission certification or denial shall be communicated to the person making a request within one working day after necessary and adequate clinical information for making a determination has been communicated to the HPCP's certifying agency.

(c) The HPCP's certifying agency shall maintain open telephone lines (for long distance, collect or toll free calls) during normal, Eastern Time working hours (8:00 A.M. to 5:00 P.M.). The telephone number(s) shall be communicated in writing to all insureds.

11:4-30.6 Appeals

(a) An HPCP shall permit at least one appeal to a denial of an admission.

(b) The initial appeal shall be denied only by a board certified physician who specializes in the appropriate field of treatment. A denial shall be issued within 10 working days of the date of receipt of the appeal.

11:4-30.7 Benefit denial or reduction for noncompliance

(a) An insured who does not comply with the HPCP requirements and who elects hospitalization may be subject to:

1. Benefit denial for hospitalization subsequently determined medically unnecessary by the HPCP's certifying agency, even though continuance of the hospitalization is found medically necessary by a State certified URO; or

2. Benefit reduction for hospitalization subsequently determined medically necessary by the HPCP's certifying agency.

(b) The maximum amount of reduction in benefits payable to an insured for noncompliance with HPCP requirements, together with any related co-payments, shall not exceed 50 percent of the first \$5,000 of covered eligible expenses. When a policy's co-payments on the first \$5,000 of covered eligible expenses exceed \$2,500, no benefit reduction for noncompliance shall be made. In no event shall benefit reductions for an insured for all cases of noncompliance in a calendar year exceed \$5,000.

(c) When an insurer's policy is superimposed on another policy or recognizes the benefits of another policy, the benefits of that policy, to the extent that they are recognized under the insurer's policy and would be subject to the HPCP, shall be included as co-payments in the determination of the maximum reduction permitted for noncompliance. When the benefits of the insurer's policy are coordinated with those of other policies, the reduction in benefits under the insurer's policy shall be reduced in proportion to the coordination.

(d) Benefit reduction formulas differing in form from that in (b) above are permissible so long as the insurer demonstrates to the Department's satisfaction that the reductions in benefits are not actuarially greater in value than the maximum reduction permitted.

(e) When an insured has not been informed of HPCP requirements or is unable to comply with the requirements, the insured must be permitted a review of any subsequent benefit reduction. Full benefit payments shall be restored if the insured was not informed of, or is unable to comply with, the program requirements and when hospitalization is covered under the insurance policy.

(f) Any insured who has received educational material and an identification card which have been reviewed by the Department shall be considered to be informed of the HPCP requirements.

(g) Benefit payment reductions for noncompliance with HPCP requirements cannot be imposed on emergency hospital admissions when the hospital services rendered are subject to non-delegated

review by a State certified URO. Pregnancy emergencies shall be treated the same as any other emergencies.

11:4-30.8 Educational materials for consumer information

(a) In order to adequately inform insureds about the nature of HPCP requirements and the penalties for noncompliance, the insurer shall develop educational materials which shall:

1. Outline the requirements for certification to obtain full benefits;

2. Outline the appeal procedure for an initial denial (see N.J.A.C. 11:4-30.6);

3. Describe the nature of any denial or reduction in benefits for noncompliance with HPCP requirements; and

4. Describe any limitations on or requirements for hospital emergency admissions.

(b) Identification cards shall contain a caution that hospitalization is subject to preadmission certification and that benefits may be denied or reduced for noncompliance with HPCP requirements.

(c) Educational materials and identification cards shall, at a minimum, be issued to principal insureds (as opposed to dependents). Issuance shall take place at the inception of an HPCP.

(d) Copies of the educational material and the identification card shall be submitted to the Department when the policy form is submitted for filing.

(e) Educational material shall be furnished to new entrants under group policies.

11:4-30.9 Limitations on HPCPs

(a) The HPCP shall not have the authority to impose a length of stay determination for hospitalization subject to non-delegated review by a State certified URO or to determine continuation of hospitalization subject to non-delegated review by a State certified URO.

(b) The certification of a hospital admission certified by an HPCP's certifying agency and found medically unnecessary under non-delegated review, shall be voided, and the insured may be personally liable for any continued stay after receipt of a notification from the State certified URO of denial of the medical necessity of the hospitalization or of its continuance.

11:4-30.10 Reporting requirements

(a) Insurers shall be required to maintain certain calendar year information which shall be submitted to the Division of Actuarial Services, Stautory Compliance Bureau, New Jersey Department of Insurance, CN325, Trenton, New Jersey 08625. The submission shall be made on an annual basis within 120 days of the end of each calendar year.

1. The required information shall reflect only New Jersey policies, certificates and certification reviews. The following information is required to be maintained and submitted to the Department:

i. The number of group policies and, separately, the number of individual policies in force with HPCPs at calendar year end;

ii. The number of group certificates in force with HPCPs at calendar year end;

iii. The number and average review cost of initial HPCP reviews;

iv. The number of denials of initial HPCP reviews by Major Diagnostic Category;

v. The number and average appeal cost of initial HPCP appeals by Major Diagnostic Category;

vi. The number of denials of initial HPCP appeals by Major Diagnostic Category;

vii. The number of medically unnecessary noncompliant hospital admissions by Major Diagnostic Category;

viii. The number of, and average benefit reduction for, medically necessary noncompliant hospital admissions by Major Diagnostic Category;

ix. The number of HPCP reviews by Major Diagnostic Category made retroactively because an insured alleged that he or she was uninformed of the HPCP requirements or unable to comply with the requirements;

x. The number of HPCP reviews by Major Diagnostic Category made retroactively for which full benefits were restored because an insured was uninformed of the HPCP requirements or unable to comply with the requirements;

xi. The number of emergency hospital admissions by Major Diagnostic Category; and
 xii. The number of HPCP hospital admissions by Major Diagnostic Category not validated under nondelegated admission review by a State certified URO.

2. Major diagnostic categories referred to in (a)1 above are identified in Appendix A of this subchapter.

(b) Any policy form submitted to the Department that contains provisions for an HPCP shall be accompanied by material necessary for demonstrating compliance with this subchapter. Additionally, filing of any such form shall be conditioned upon receipt by the Department of a certification from an officer of the insurer that the HPCP complies, or will comply, with this subchapter and will continue to operate in compliance with this subchapter.

(c) Insurers who have submitted policy forms prior to the effective date of this subchapter that include HPCP provisions which have not been filed by the Department, may expedite the Department's filing of the forms by reviewing the submissions for compliance with this subchapter and by submitting any necessary modifications and documents.

(d) Insurers with policy forms with HPCP provisions which have been filed previously by the Department shall bring those HPCPs into compliance with this subchapter by the date of the next policy renewal or by the date on which a union contract is next negotiated to completion. This shall be accomplished by resubmitting the forms to the Department on a timely basis.

(e) The insurers in (d) above shall also comply with this subchapter. The Department shall expedite its review of resubmissions of such previously filed forms when an officer of the insurer certifies that only provisions for the HPCP have been changed and when the changes are clearly indicated.

**APPENDIX A
 MAJOR DIAGNOSTIC CATEGORIES†**

1. Diseases and Disorders of the Nervous System
2. Diseases and Disorders of the Eye
3. Diseases and Disorders of the Ear, Nose and Throat
4. Diseases and Disorders of the Respiratory System
5. Diseases and Disorders of the Circulatory System
6. Diseases and Disorders of the Digestive System
7. Diseases and Disorders of the Hepatobiliary System and Pancreas
8. Diseases of Musculoskeletal System and Connective Tissue
9. Diseases of the Skin, Subcutaneous Tissue and Breast
10. Endocrine, Nutritional, and Metabolic Diseases
11. Diseases and Disorders of the Kidney and Urinary Tract
12. Diseases and Disorders of the Male Reproductive System
13. Diseases and Disorders of the Female Reproductive System
14. Pregnancy, Childbirth, and the Puerperium
15. Normal Newborns and Other Neonates with Certain Conditions Originating in the Perinatal Period
16. Diseases and Disorders of the Blood and Blood-Forming Organs and Immunity
17. Myeloproliferative Disorders and Poorly Differentiated Malignancy, and Other Neoplasms NEC
18. Infectious and Parasitic Diseases (Systemic)
19. Mental Disorder
20. Substance Use Disorders and Substance Induced Organic Disorders
21. Injury, Poisoning, and Toxic Effects of Drugs
22. Burns
23. Selected Factors Influencing Health Status and Contact with Health Services.

†DRG List Regulation, Hospital Reimbursement, New Jersey Department of Health, February 14, 1985.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Removal of Files Following Termination or Resignation

Proposed Amendment: N.J.A.C. 11:5-1.13

Authorized By: Daryl G. Bell, Executive Director, New Jersey Real Estate Commission.

Authority: N.J.S.A. 45:14-6.

Proposal Number: PRN 1988-196.

Submit comments by May 18, 1988, to:

Robert J. Melillo
 Special Assistant to the Director
 New Jersey Real Estate Commission
 20 West State Street
 CN 328
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission (Commission) has decided to amend its current rule N.J.A.C. 11:5-1.13 as a result of a recent legal dispute concerning the authority and obligation of brokers to maintain and control office files on pending and closed real estate transactions. The purpose of the proposed amendment is to affirm the right of real estate brokers to maintain control over their files. The Commission deems the control of files by brokers as essential to the efficient operations of the brokerage business and to the Commission's ability to effectively enforce the provisions of the licensing law, N.J.S.A. 45:15-1 et seq.

Specifically, the proposed amendment prohibits the removal of files maintained or stored at the offices of brokers by salespersons or broker-salespersons who have been terminated or who have resigned from the employ of a broker. The amendment indicates, however, that salespersons or broker-salespersons may, upon written authorization of the employing broker, obtain copies of the contents of files (not the originals). Thus, the removal of office files by terminated salespersons or broker-salespersons without the written consent of their employing brokers will violate the regulatory scheme as provided by the Commission.

The proposed amendment confirms the effect of various provisions in the licensing statute which individually and together provide that only brokers and not salespersons are authorized to contract with the public to provide brokerage services. Thus a broker's transaction files by law are the files of the sole proprietor, corporate or partnership broker licensee and not of the salesperson who works through such a broker as an employee or independent contractor.

Social Impact

This proposed amendment will have a favorable impact on the real estate brokerage business and the public at large. The amendment ensures that real estate brokers are equipped with an essential management tool to fulfill their fiduciary obligations to the public. Moreover, upon adoption, the amendment will minimize the risk that brokers, and, ultimately, the Commission could lose control over the activities of licensees through the unauthorized removal of documentation on transactions. The amendment will protect real estate brokerage businesses from potential disputes and invalid claims pressed on matters on files which had been removed without authorization, and is a reasonable response to management and regulatory concerns that have arisen as a result of instances of the unauthorized removal of files.

Economic Impact

The proposed amendment will have a beneficial economic effect on the real estate brokerage businesses in this State. Brokers may avoid substantial legal costs which may be incurred to resolve disputes concerning the removal of files under the current rule. In addition, the clients of the brokerage businesses will not be inconvenienced or sustain losses as a result of controversies between terminated salespersons and employing brokers.

Regulatory Flexibility Statement

The proposed amendment will not have any disproportionate or adverse impact on small businesses. Moreover, this amendment will en-

courage salespersons and brokers of both small and large businesses to clearly define the terms of their contractual relationship.

The proposed amendment also reinforces the legal premises that real estate brokers are responsible for supervising the activities of their salespersons and that the licensing law precludes salespersons from engaging in the brokerage business other than through a licensed broker.

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

11:5-1.13 Inspection of records

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

(c) All files on pending and closed transactions shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. Upon obtaining the written consent of the individual broker, or of the broker of record of the corporate or partnership broker with whom they were employed, the departing salesperson or broker-salesperson may obtain copies of the contents of such files.

LABOR

(a)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Refusal to Cooperate with Quality Control Reviews Proposed New Rule: N.J.A.C. 12:17-2.6

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 43:21-4, 43:21-6, 43:21-11(k), and 43:21-16.

Proposal Number: PRN 1988-204.

Submit comments by May 18, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
New Jersey Department of Labor
CN 381
Trenton, New Jersey 08625-0381

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 12:17-2.6, concerning the refusal to cooperate with Quality Control reviews, sets forth the penalties applicable to unemployment claimants and New Jersey employers who fail to comply with a Quality Control review.

Quality Control is a Federal program, created under the authority provided in sections 303(a)(1) and (6) of the Social Security Act, 42 U.S.C. 503(a)(1). All states are mandated to comply with this Federal program. The Quality Control program relies on statistically determined random selection to assemble a sample population used to monitor unemployment insurance claims to insure conformance with the State law, policy and procedure.

The Quality Control program is designed to assess the accuracy of State administration of unemployment insurance. The new rule will help to improve the performance of the State program, aid in revenue collection, and reduce errors associated with benefit payments and claim denials.

Social Impact

The proposed new rule requires unemployment insurance claimants and New Jersey employers to comply with the terms of the Quality Control program. By so doing, claimants will receive better service in the form of correct and timely payments. Employers will benefit in that the program will help to reduce abuse in the unemployment insurance system. Finally, the statistically valid data provided by these reviews will enable the Department to objectively evaluate existing practices and to develop more efficient procedures for processing unemployment insurance claims.

Economic Impact

The proposed new rule will ensure that the Department receives factual information concerning the rates and reasons for incorrect or improper unemployment insurance payments. This information will allow the Department to implement policies and procedures which will guarantee the accuracy of disbursements from the trust fund. Claimants will thus receive accurate payments and employers will be assured that only qualified claimants are receiving unemployment insurance benefits.

Regulatory Flexibility Statement

The proposed new rule will not impose any additional reporting, recordkeeping or compliance requirements upon small businesses covered by the unemployment compensation law, other than those currently required pursuant to N.J.S.A. 43:21-1 *et seq.*, therefore a regulatory flexibility analysis is not required.

Full text of the proposal follows.

12:17-2.6 Refusal to cooperate with quality control reviews

(a) An individual shall be determined to be ineligible for unemployment insurance benefits if the individual:

1. Fails to report as directed for a quality control review interview; or
2. Fails, without good cause, to cooperate in a quality control review of his or her claim.

(b) An individual shall be determined to be ineligible as of the week in which the failure to report for an interview or the refusal to cooperate occurs, and the department shall notify the individual, in writing, of the ineligibility. The individual shall remain ineligible until such time as he or she agrees to cooperate with the review.

(c) Any employer, employing unit or agent of any employer who refuses or fails, without good cause, to cooperate with and provide wage, separation information, dates of employment, work search verification or other information required by the quality control review program will be found to have refused to provide reports deemed necessary for the administration of the unemployment compensation law, and shall be subject to the penalties set forth at N.J.S.A. 43:21-16.

LAW AND PUBLIC SAFETY

BOARD OF ARCHITECTS LANDSCAPE ARCHITECT EXAMINATION AND EVALUATION COMMITTEE

For the proposals concerning N.J.A.C. 13:27, submit comments by May 18, 1988 to:

Barbara S. Hall, Executive Director
Board of Architects
Landscape Architect Examination and Evaluation Committee
1100 Raymond Boulevard, Room 511
Newark, New Jersey 07102

(b)

Registration of Applicants Registered in Other Jurisdictions

Proposed Amendment: N.J.A.C. 13:27-5.4

Authorized By: New Jersey Board of Architects, Harry Spies, President.

Authority: N.J.S.A. 45:3-3, 45:3-7 and N.J.S.A. 45:1-3.2.

Proposal Number: PRN 1988-209.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:27-5.4(c) clarifies the licensing requirements for registration of an individual who holds an architecture certificate from another jurisdiction where the education, experience and examination qualifications are not substantially equal to the qualifications required by the State of New Jersey. The proposed amendment expands the definition of "five years of responsible practice" to include a sole practitioner and allows evidence of equivalent and responsible practice to be accepted by the Board.

Social Impact

The proposed amendment, in clarifying licensing requirements for out-of-state applicants will enable more such persons to apply for licensure, thus providing the New Jersey consumer with an increased number and greater choice of practitioners. The amendment also eliminates a prior restriction against sole practitioners with experience equivalent to that of principal architects in firms.

Economic Impact

No appreciable economic impact is anticipated, although the potential increase in the number of out-of-state licensees practicing in New Jersey may increase competition among architectural professionals; such competition sometimes affects pricing of services.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986 c.169, it has been determined that this amendment will not impose reporting, recording or other compliance requirements on small businesses within New Jersey, since it relates to the licensing of out-of-state applicants.

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

13:27-5.4 Registration of a person holding an architecture certificate from another jurisdiction

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

(c) In those cases where the applicant shall have been granted registration in such other state, territory or possession on education, [and] experience **and examination** qualifications not substantially equal to the requirements of this State, the Board may grant registration upon presentation by the applicant of evidence satisfactory to the Board of at least five years of responsible practice of architecture while holding a valid license as an architect. This five years of responsible practice is defined as five years of practice [as a principal architect] **including the signing and sealing of plans for those years in the state of registration as a principal architect or as a sole practitioner. Evidence of equivalent, responsible practice may be accepted by the Board.**

(a)

Examination; Certification of Persons Holding Certificate from Another State or Authority; Fees Proposed Amendment: N.J.A.C. 13:27-5.8, 8.7, 8.8 Proposed New Rule: N.J.A.C. 13:27-8.15

Authorized By: Board of Architects and Landscape Architect Examination and Evaluation Committee, Roy J. Dunn, L.A., Chairman.

Authority: N.J.S.A. 45:3A-10.

Proposal Number: PRN 1988-194.

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 13:27-5.8 relates to fees charged by the Board of Architects for Landscape Architect Certification matters. Since N.J.A.C. 13:27-8 relates to Certified Landscape Architects, it is more appropriate that the fee schedule in N.J.A.C. 13:27-5.8(1) be placed therein and designated as new rule N.J.A.C. 13:27-8.15, Fees.

Proposed amendments at N.J.A.C. 13:27-8.7 and 8.8 require that, in addition to taking the Uniform National Examination, all individuals seeking certification in New Jersey take and pass a 50 question multiple choice examination covering plant material and municipal land use. The Committee believes that an individual seeking certification as a landscape architect in New Jersey must prove competence in plant material indigenous to New Jersey as well as be knowledgeable about municipal land use law in order to effectively safeguard life, health and property, and promote the public welfare.

Social Impact

The proposed amendment of N.J.A.C. 13:27-5.8(1) and proposed new rule N.J.A.C. 13:27-8.15 merely place the fee schedule for certified landscape architects in a more appropriate subchapter. No social impact is anticipated. Proposed amendments at N.J.A.C. 13:27-8.7 and 8.8 will

impact upon all applicants for certification inasmuch as there will be an additional section of the examination to study for and pass. The public will be benefited by the implementation of this proposal in that all certified landscape architects will be deemed to be competent in New Jersey plant material and municipal land use.

Economic Impact

There will be minimal economic impact on applicants by virtue of promulgation of these rules. The only change to the fee schedule will be a \$5.00 charge for each applicant taking this additional section of the examination.

Regulatory Flexibility Analysis

The proposed rules apply to all individual applicants seeking certification as landscape architects in New Jersey and will not have any effect on businesses, regardless of size. Thus, there is no need for these rules to be designed to minimize any adverse economic impact on small businesses. There are no new reporting or recordkeeping practices imposed by this proposal. It is also clear that there will not be any need for professional services to fulfill the requirements of this proposal, since it relates to applicants and not licensees.

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

13:27-5.8 Fees

(a)-(k) (No change.)

[(l)] The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are non-refundable.

1. Application for certification under the grandfather clause of L. 1983, c. 337 §17: \$50.00. If an applicant under the grandfather clause is found not qualified for certification under that provision, the \$50.00 fee may be applied toward the examination fee in (1)3, below.

2. Application to sit for examination: \$100.00.

3. Examination fee: Such fee as is charged by the Council of Landscape Architectural Review Boards (CLARB) for the Uniform National Examination. Such proportion of the examination fee as may be established by CLARB shall be subject to refund, upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

4. License fee for newly certified landscape architects (New Jersey residents), including seal and certificate: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

5. License fee for newly certified landscape architects (non-New Jersey residents), including seal and certificates: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

6. The fee for biennial renewal of certification shall be \$100.00.

7. The fee for reinstatement of certification shall be \$50.00 in addition to the fee for biennial renewal of certification.

8. A fee for late registration: \$10.00.

9. The fee for reissuing a certificate to any certified landscape architect who attests that the original certificate has been lost, mislaid or destroyed shall be \$15.00.

10. The fee for reissuing a seal to any certified landscape architect who attests that the original has been lost, mislaid or destroyed shall be \$25.00.

11. The fee for transmittal of an applicant or certificate holder's examination grades to another state shall be \$15.00.

12. The fee for a roster of certified landscape architects shall be \$8.00.]

13:27-8.7 Examination

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

(c) In addition to the Uniform National Examination, all applicants for certification as landscape architects in New Jersey shall take and pass a 50 question multiple-choice examination on New Jersey plant material and municipal land use law.

13:27-8.8 Certification of persons holding certification from another state or authority

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

(c) In addition to the Uniform National Examination, all applicants for certification as landscape architects in New Jersey shall take and pass a 50 question multiple-choice examination on New Jersey plant material and municipal land use law.

13:27-8.15 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are non-refundable.

1. Application for certification under the grandfather clause of L. 1983, c. 337, §17 (N.J.S.A. 45:3A-14): \$50.00. If an applicant under the grandfather clause is found not qualified for certification under that provision, the \$50.00 fee may be applied toward the examination fee in (1)3 below.

2. Application to sit for examination: \$100.00.

3. Examination fee shall be such fee as is charged by the Council of Landscape Architectural Review Boards (CLARB) for the Uniform National Examination. Such proportion of the examination fee as may be established by CLARB shall be subject to refund, upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

i. The fee for local portion of the examination, as established by the Board, shall be \$5.00.

4. License fee for newly certified landscape architects (New Jersey residents), including seal and certificate: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

5. License fee for newly certified landscape architects (non-New Jersey residents), including seal and certificates: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.

i. For those seeking reciprocity, the fee for the local portion of the examination, as established by the Board, shall be \$5.00.

6. The fee for biennial renewal of certification shall be \$100.00.

7. The fee for reinstatement of certification shall be \$50.00 in addition to the fee for biennial renewal of certification.

8. The fee for late registration shall be \$10.00.

9. The fee for reissuing a certificate to any certified landscape architect who attests that the original certificate has been lost, mislaid or destroyed shall be \$15.00.

10. The fee for reissuing a seal to any certified landscape architect who attests that the original has been lost, mislaid or destroyed shall be \$25.00.

11. The fee for transmittal of an applicant or certificate holder's examination grades to another state shall be \$15.00.

12. The fee for a roster of certified landscape architects shall be \$8.00.

(a)

BOARD OF COSMETOLOGY AND HAIRSTYLING

Fee Schedule

Proposed New Rule: N.J.A.C. 13:28-5.1

Authorized By: Board of Cosmetology and Hairstyling,

Frances Gray, Chairperson.

Authority: N.J.S.A. 45:5B-6.

Proposal Number: PRN 1988-210.

Submit comments by May 18, 1988 to:

Richard G. Griswold, Executive Director
Board of Cosmetology and Hairstyling, Room 311
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 13:28-5.1, sets out Board of Cosmetology and Hairstyling fees for licensing, applications, examinations, permits, endorsements and registration. As noted in the proposal of its initial set of comprehensive rules published in the February 16, 1988 New Jersey Register at 20 N.J.R. 370, the Board had anticipated the necessity of fee increases inasmuch as the current fees were set late in 1985 based on a projection of the operating expenses and income of the newly created Board. This proposed fee schedule supersedes the fee schedule proposed at 20 N.J.R. 375.

Social Impact

The proposed fee schedule will affect all individual and shop licensees. These increases are necessary for the Board to carry out its mandated duties, which ultimately benefit the public.

Economic Impact

The proposal will increase all fees charged by the Board except those charged for an endorsement, student registration card and student permit. The Board has attempted to minimize any adverse economic impact while carrying out its statutorily mandated duty in proposing this new rule. It is also important to note that the Board of Cosmetology and Hairstyling has the discretion to waive rule requirements where, in the Board's opinion, compliance by an individual would be too burdensome and the public health and safety would not be endangered by such a waiver.

Regulatory Flexibility Statement

The proposed new rule establishing a fee schedule applies to all licensees of, or applicants to, the State Board of Cosmetology and Hairstyling and thus affects both large and small businesses. There are approximately 60,700 licensed practitioners, 7,300 licensed shops and 38 licensed schools in the State. There are approximately 5,500 examination applicants per year.

The reporting, recordkeeping and compliance requirements in the proposed rule consist merely of completion of forms by applicants and payment of appropriate corresponding fees. The costs of compliance will be borne uniformly by all applicants, without variation for businesses of different types and of different sizes. However, these rules reflect a minimization of requirements for licensed practitioners and licensed shops, as well as the Board's concern to avoid any adverse economic impact on small businesses.

As a business expense, the proposed fees will have minimal effect on practicing licensees (who are composed largely, if not entirely, of small businesses), as well as on those cosmetology and hairstyling schools which fall within the definition of a small business. Since the necessary fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

Full text of the proposed new rule follows.

SUBCHAPTER 5. FEES

13:28-5.1 Fee Schedule

(a) The following fees will be charged by the Board:

- 1. Initial shop license (one year): \$ 50.00
- 2. Biennial shop license—renewal: \$ 70.00
- 3. Examination fee for practicing and teacher licenses: \$ 30.00
- 4. Biennial barber license—renewal: \$ 30.00
- 5. Biennial beautician license—renewal: \$ 30.00
- 6. Biennial cosmetologist hairstylist license—renewal: \$ 30.00
- 7. Biennial manicurist license—renewal: \$ 30.00
- 8. Biennial teacher license—renewal: \$ 30.00
- 9. Restoration fee for lapsed practicing and teaching licenses: \$ 40.00 plus license fee
- 10. Duplicate license: \$ 10.00
- 11. Initial school license (one year): \$150.00
- 12. Biennial school license—renewal: \$150.00
- 13. Endorsement: \$ 50.00 plus license fee
- 14. Student registration card: \$ 3.00
- 15. Student permit: \$ 3.00
- 16. Temporary permit: \$ 20.00

TRANSPORTATION

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by May 18, 1988 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

TRANSPORTATION OPERATIONS

(a)

Speed Limits for State Highways; Restricted Parking and Stopping; No Passing; Miscellaneous Traffic Rules; Turns

Proposed Readoptions: N.J.A.C. 16:28, 28A, 29, 30 and 31

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-21, 39:4-98, 39:4-138, 39:4-139, 39:4-199, 39:4-201.1, 39:4-85.1, 39:4-140, 39:4-183.6, 39:4-88, 39:4-208, 39:4-94.1 and 39:4-183.27.

Proposal Number: PRN 1988-184.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to re-adopt N.J.A.C. 16:28, 28A, 29, 30 and 31 concerning the regulation of traffic along the various highways in the State of New Jersey. These rules are due to expire November 7, 1988.

The Department's Bureau of Traffic Engineering and Safety Programs, in compliance with requests from local officials, has conducted and will continue to conduct engineering studies establishing the requirements for traffic regulation and control devices along the highway system. These rules and traffic control devices have contributed immeasurably to the enhancement of public safety along a heavily travelled system and have contributed to the reduction in the number of accidents created by the high traffic volume. The continuity of enforcement of the traffic rules must be maintained, because without a highly visible and active police effort, the violations of rules would create an unacceptable dangerous traffic environment. This is critical to preserve the integrity and continuity of efficient operation of traffic flow along the highways. Any interruption in this continuity of operation could imperil police enforcement and interfere with the public's perception of maintaining the safety of traffic rules.

These rules were reviewed by the Department's Bureau of Traffic Engineering and Safety Programs (as requested by local officials) in compliance with Executive Order No. 66(1978) and were found adequate, reasonable, understandable and necessary for the purpose for which they were originally promulgated.

The chapters proposed for re-adoption are summarized as follows:

N.J.A.C. 16:28-1 regulates limits on all State highways under the authority of N.J.S.A. 39:4-98.

N.J.A.C. 16:28-2 through 13, 15 and 16 are reserved.

N.J.A.C. 16:27-14 regulates speed limits for State highways under construction or repair.

N.J.A.C. 16:28A-1 establishes "no stopping or standing" zones along various highways and at bus stops within the highway system.

N.J.A.C. 16:28A-2 regulates emergency stopping only along Route 55 between West Oak Road and West Garden Road.

N.J.A.C. 16:29 prescribes zones along the highway system where passing is unauthorized under N.J.S.A. 39:4-201.1.

N.J.A.C. 16:30 contains miscellaneous traffic rules as follows:

Subchapter 1 prescribes routes designated for one-way traffic under N.J.S.A. 39:4-85.1.

Subchapter 2 depicts routes established as "through streets" where "Stop" or "Yield" signs are erected on the near right side of each intersecting roadway under N.J.S.A. 39:4-140.

Subchapter 3 outlines the restrictions of lanes for usage by certain categories of vehicles under N.J.S.A. 39:4-88 and 39:4-183.6.

Subchapter 4 prohibits bicycles from certain parts of State highways under N.J.S.A. 27:1-7.

Subchapter 5 outlines traffic restrictions and parking on New Jersey Department of Transportation property under N.J.S.A. 39:4-208.

Subchapter 6 provides weight limitations for vehicles along various routes under N.J.S.A. 27:7-21.

Subchapter 7 prescribes limited access, which prohibits certain classes of vehicles along State highways under N.J.S.A. 39:4-91.

Subchapter 8 prescribes "no trespassing" zones along various State highways under N.J.S.A. 27:1A-5.

N.J.A.C. 16:31 regulates "turning movements" along various State highways under N.J.S.A. 39:4-183.6.

Social Impact

The proposed readoptions will have no new or additional social impact on the motoring public since the public is required to observe and obey speed limits and traffic control devices along the highway system as prescribed by law. The rules contribute to the public's perception of the State's determination in the enhancement of safety and the well-being of the populace along the highways.

Economic Impact

The proposed readoptions are expected to have no increased economic impact on the motoring public other than the payment of fines as stipulated by law when the rules are violated. The Department and local governments will continue to incur direct and indirect costs for mileage, personnel and equipment required in traffic survey and the placement of control devices.

Regulatory Flexibility Statement

Since the proposed readoptions do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

Full text of the proposed readoptions can be found in the New Jersey Administrative Code at N.J.A.C. 16:28 through 16:31.

(b)

Restricted Parking and Stopping Routes U.S. 9 in Cape May County and U.S. 130 in Mercer County

Proposed Amendments: N.J.A.C. 16:28A-1.7 and 1.46

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

Proposal Number: PRN 1988-195.

The agency proposal follows:

Summary

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Middle Township, Cape May County, and U.S. 130 in Washington Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Routes U.S. 9 in Middle Township, Cape May County, and U.S. 130 in Washington Township, Mercer County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.7 and 1.46 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Middle Township, Cape May County, and U.S. 130 in Washington Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Depart-

ment will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as ["no parking"] "**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.]

1.-11. (No change.)

12. No stopping or standing in Middle Township, Cape May County:

i. (No change.)

ii. Along the easterly [side] (northbound) side:

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

(3) **From the northerly curb line of Atlantic Avenue to the prolongation of the southerly curb line of School House Lane.**

13.-19. (No change.)

(b) (No change.)

16:28A-1.46 Route U.S. 130

(a) The certain parts of State highway Route U.S. 130 described in this subsection are designated and established as ["no parking"] "**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].

1.-8. (No change.)

9. **No stopping or standing in Washington Township, Mercer County:**

i. **Along both sides:**

(1) **For the entire length throughout the Township of Washington including all ramps and connections under the jurisdiction of the Commissioner of the Department of Transportation except those areas specifically designated as bus stops.**

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

(a)

**Restricted Parking and Stopping
Route N.J. 49 in Cumberland County**

Proposed Amendment: N.J.A.C. 16:28A-1.34

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

Proposal Number: PRN 1988-186.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus stop" zones along Route N.J. 49 in the City of Salem and Fairfield Township, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zones along Route N.J. 49 in the City of Salem and Fairfield Township, Cumberland County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.34 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zones along Route N.J. 49 in the City of Salem and Fairfield Township, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. Local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.34 Route 49

(a) The certain parts of State highway Route 49 described in this subsection are designated and established as ["no parking"] "**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.]

1.-7. (No change.)

(b) (No change.)

(c) The certain parts of State highway Route 49 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. **Along West Broadway westbound on the northerly side in the City of Salem, Cumberland County:**

i. **Near side bus stop:**

(1) **Front Street: Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.**

3. **Along the eastbound (southerly) side in Fairfield Township, Cumberland County:**

i. **Near side bus stops:**

(1) **Copin Drive: Beginning at the prolongation of the westerly curb line of Copin Drive and extending 105 feet westerly therefrom.**

(2) **Woodruff Road: Beginning at the westerly curb line of Woodruff Road and extending 105 feet westerly therefrom.**

(3) **Walden Drive: Beginning at the prolongation of the westerly curb line of Walden Drive and extending 105 feet westerly therefrom.**

ii. **Mid-block bus stop:**

(1) **Sunset Avenue: Beginning 528 feet west of the westerly curb line of Sunset Avenue and extending 135 feet westerly therefrom.**

iii. **Far side bus stops:**

(1) **East Avenue: Beginning at the prolongation of the easterly curb line of East Avenue and extending 100 feet easterly therefrom.**

4. **Along the westbound (northerly) side in Fairfield Township, Cumberland County:**

i. **Near side bus stops:**

(1) **Fordville Road: Beginning at the easterly curb line of Fordville Road and extending 105 feet easterly therefrom.**

(2) **Copin Drive: Beginning at the easterly curb line of Copin Drive and extending 135 feet easterly therefrom.**

ii. **Mid-block bus stop:**

(1) **Sunset Avenue: Beginning 358 feet west of the prolongation of the westerly curb line of Sunset Avenue and extending 135 feet westerly therefrom.**

(b)

Prohibited Right Turns on Red

Proposed Redooption: N.J.A.C. 16:31A

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-21, 39:4-123 and 39:4-183.27.

Proposal Number: PRN 1988-185.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to re-

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Use and Administration of the Garden State Parkway

Proposed Readoption: N.J.A.C. 19:8

Proposed Amendments: N.J.A.C. 19:8-9.3 and 9.4.

Authorized By: New Jersey Highway Authority,

George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 27:12B-5(j) and (s) and 27:12B-20a.

Proposal Number: PRN 1988-197.

Submit comments by May 18, 1988 to:

George P. Zilocchi, Executive Director

New Jersey Highway Authority

Garden State Parkway

Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

In accordance with the sunset and other provisions of Executive Order No. 66(1978), the Highway Authority proposes to readopt N.J.A.C. 19:8 governing use and administration of the Garden State Parkway. These rules were originally filed and became effective prior to September 1, 1969 pursuant to the provisions of N.J.S.A. 27:12B-5(j) and (s). Pursuant to the sunset provisions of Executive Order No. 66(1978) an expiration date of June 1, 1988 was established for all Highway Authority rules.

The rules implement the provisions of N.J.S.A. 27:12B-1, et seq. concerning the establishment and authorization of the Highway Authority, whose principal obligation is construction and operation of the Garden State Parkway and the use and enjoyment thereof by the public. The Highway Authority Act provides for the construction of modern expressways that will facilitate vehicular traffic and reduce congestion on other highways in the State. These rules govern the use of the Garden State Parkway by the motoring public and establish procedures by which materials and supplies may be purchased and sold by the Authority.

N.J.A.C. 19:8 consists of nine subchapters. Subchapter 1 contains traffic rules, including definitions of terms used, maximum speed limits, prohibitions regarding parking and other limitations on the use of the Parkway. Subchapter 2 deals with Garden State Parkway property of a non-vehicular nature, for example, public use of the Garden State Arts Center, prohibition of hitchhiking and loitering and other prohibited uses of Garden State parkway property. Subchapter 3 sets out the tolls which must be paid for passage of vehicles on the Garden State Parkway. This subchapter includes a breakdown of the toll charges by type of vehicle and distance traveled. Subchapter 4 deals with penalties for violations of Chapter 8. Subchapter 5 provides information regarding the methods by which the Authority purchases goods and services. Subchapter 6 provides the method by which the Authority sells its surplus personal property. For example, motor vehicles owned by the Authority are sold to the highest bidder at public auction pursuant to the provisions of this subchapter. Subchapter 7 sets out the methods and ways by which members of the public may obtain certain Authority records and the fees charged for same. Subchapter 8 deals with the procedure for obtaining special permits for oversized vehicles traveling south of Interchange 105. A fee of \$10.00 is charged for each permit. Subchapter 9 governs the issuance of permits for outdoor advertising signs adjacent to the Garden State Parkway pursuant to N.J.S.A. 27:12B-20a, Public Laws of 1981, Chapter 463.

Since June 30, 1983, several sections of N.J.A.C. 19:8 have been amended. These include amendments extending toll-free passage to former Governors of the State of New Jersey and former Commissioners of the New Jersey Highway Authority; redefining the definition of "car" to include **registered** vehicles having a gross weight not exceeding 6,999 pounds (emphasis added); increasing allowable towing and emergency repair service charges; eliminating the requirement that buses had to obtain special permits to utilize service areas; providing reserved parking for vehicles owned and operated by the physically handicapped; amendment to rules governing central purchasing and sale of surplus property; increasing the cost for State Police and Authority records; increasing the fee for oversize vehicles using the Garden State Parkway; and increasing toll charges for buses and authorizing the use of tokens. This readoption also includes those amendments to N.J.A.C. 19:8-1.1 and 19:8-3.1 as

adopted by the Commissioners of the New Jersey Highway Authority on February 25, 1988 (see the Adoptions section of this Register). The toll schedule portion of the Authority rules is exempt from the provisions of Executive Order No. 66(1978) pursuant to Paragraph 3 thereof.

These rules have provided an efficient and effective mechanism for the regulation of the safe and efficient use of the Parkway by the motoring public. They also include the collection of tolls, central purchasing and the sale of surplus personal property as dictated by Authority needs. The enforcement standards which they provide have enabled the traveling and using public to enjoy the use of the Parkway consistent with the legislative intent providing for the construction of the Parkway. The tolls portion of the rules has enabled the Authority to maintain the Garden State Parkway and meet its obligations under bonds issued pursuant to N.J.S.A. 27:12B-9, 10, 11 and 12.

Upon review, it is the Commissioners' opinion that these rules should continue to be just as effective in the future in meeting the legislative goals established by the Highway Authority. As part of this proposal, N.J.A.C. 19:8-9.3 and 9.4 are being amended to clarify the hearing provisions when a permit issued for outdoor advertising is suspended or revoked.

Social Impact

Pursuant to legislative command, the Authority adopted N.J.A.C. 19:8, "Regulations Governing Use of the Garden State Parkway", which provided traffic rules governing use of the Parkway by the motoring public, including the collection of tolls and other non-vehicular use of the Parkway and other Authority projects, including the Garden State Arts Center. The rules also provided for penalties of violation of any Authority regulations (N.J.A.C. 19:8-4).

In addition to other programs, the Authority sponsors the Garden State Cultural Center Fund, which provides a full series of ethnic heritage festivals held at the Garden State Arts Center and also provides free entertainment for senior citizens, the handicapped, school children, the blind, veterans and other civic groups throughout the Arts Center season.

The extent to which these rules ensure the safe and efficient use of the highway by the motoring public, the collection of toll revenues and the provisions of the aforementioned social programs is a key element enabling the Authority to meet the goals mandated by the Legislature in enacting N.J.S.A. 27:12B-1 et seq. For these reasons, the failure to readopt these rules could seriously jeopardize the realization of the Legislative intent spelled out in N.J.S.A. 27:12B-1 et seq., for example, the safe use of the roadway by the public, the collection of necessary tolls to meet bonding indebtedness and the continuance of the Garden State Cultural Center Fund programs.

Economic Impact

The most significant responsibility of the Authority is the operation and maintenance of the Garden State Parkway. The safe and expeditious use of the Parkway by the motoring public increases such use and thereby maintains the Authority's ability to generate sufficient revenues to meet its bonding indebtedness. The safe and efficient use of the Parkway by the motoring public can be said to have added significantly to the development of those areas of the State served by the Parkway. The non-vehicular rules have contributed to the use of the Parkway and the Arts Center by the public by enhancing the ability of the Authority to maintain its projects at maximum efficiency and minimum costs.

The Authority's rules dealing with purchasing and the sale of surplus personal property permit the Authority to meet its public obligations with a minimum expenditure of Authority funds and serve to further the cost savings and allow enhancement of the public policy favoring competitive bidding.

Regulatory Flexibility Statement

N.J.A.C. 19:8 affects all members of the motoring public to the extent they use the Parkway and other Authority projects. Although the bidding procedures in subchapter 5 and 6 may affect some businesses meeting the definition of "small business", the Authority's contract set-aside program ensures that small businesses, as well as minority and women's businesses, will benefit from these procedures.

Full text of the rules proposed for readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:8.

AGENCY NOTE: Full text of the amendments to N.J.A.C. 19:8-1.1 and 3.1 may be found in the Adoption section of this Register.

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

adopt N.J.A.C. 16:31A concerning prohibition of right turns on red along various highways in the State of New Jersey. These rules will expire October 20, 1988.

The Department's Bureau of Traffic Engineering and Safety Programs, in compliance with requests from local officials, has conducted and will continue to conduct engineering studies establishing the requirements for traffic regulation and control devices along the highway system. These rules and traffic control devices have contributed immeasurably to the enhancement of public safety along a heavily travelled system and have contributed to the reduction in the number of accidents created by the high traffic volume. The continuity of enforcement of the traffic rules must be maintained, because without a highly visible and active police effort, the violations of rules would create an unacceptably dangerous traffic environment. This is critical to preserve the integrity and continuity of efficient operation of traffic flow along the highways. Any interruption in this continuity of operation could imperil police enforcement and interfere with the public's perception of maintaining the safety of traffic rules.

These rules were reviewed by the Department's Bureau of Traffic Engineering and Safety Programs (as requested by local officials) in compliance with Executive Order No. 66(1978) and were found adequate, reasonable, understandable and necessary for the purpose for which they were originally promulgated.

N.J.A.C. 16:31A outlines specific areas along various State highways where right turn on red is prohibited under N.J.S.A. 39:4-183.27

Social Impact

The proposed reoption will have no new or additional social impact on the motoring public since the public is required to observe and obey speed limits and traffic control devices along the highway systems as prescribed by law. The rules contribute to the public's perception of the State's determination in the enhancement of safety and the well-being of the populace along the highways.

Economic Impact

The proposed reoption is expected to have no increased economic impact on the motoring public other than the payment of fines as stipulated by law when the rules are violated. The Department and local governments will continue to incur direct and indirect costs for mileage, personnel and equipment required in traffic survey and the placement of control devices.

Regulatory Flexibility Statement

Since the proposed reoption does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

Full text of the proposed reoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:31A.

(a)

CONSTRUCTION AND MAINTENANCE

Contract Administration

Proposed Reoption: N.J.A.C. 16:44

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.

Proposal Number: PRN 1988-187.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to re-adopt N.J.A.C. 16:44 concerning contract administration including the requirements for contractors. These rules are scheduled to expire on October 3, 1988.

The rules provide criteria to be complied with by contractors/corporations in the contractual agreements with the Department regarding the bidding process in accordance with funding from State, local and Federal governments. Additionally, these rules provide necessary guidelines to be complied with pursuant to statutory requirements. These rules have provided an efficient and effective mechanism for the processing of contracts, the collection of fees and the preclusion of cor-

porate reorganizations by contractors/corporations without following proper procedures.

N.J.A.C. 16:44 is summarized as follows:

Subchapter 1, Classification of Contractors, outlines the standards and prerequisites for the classification of contractors and prospective bidders and compliance with N.J.S.A. 18:25-1 pertaining to standards designed to advance equal employment opportunity.

Subchapter 2, Distribution of Standard Specifications, provides the method for the distribution and accounting for standard specifications.

Subchapter 3, Distribution and Sale of Construction Plans and Supplementary Specifications, entails the distribution of and establishes fees to be charged for the sale of plans and supplementary specifications.

Subchapter 4, Advertising for Bids, outlines the specific method used in the advertising of Departmental bids.

Subchapter 5, Receipt of Bids, prescribes the process to be followed when bids are received after being advertised.

Subchapter 6, Contracts, establishes the award of the contracts, their preparation, execution and distribution to the contractor who has been selected to perform the project.

Subchapter 7, Deferred Payments to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects, outlines the method of payment to contractors as the work progresses until completion; bond requirements for contractors; action required in cases of default; and payment of service charges.

Subchapter 8, Debarment, Suspension and Disqualification of a Person(s), establishes causes for debarment; conditions affecting the debarment of a person(s); procedures, period of debarment and scope of debarment affecting the debarment of a person(s); causes, conditions and procedures suspending a person(s); and the effect of contracting with the State.

Subchapter 9, Corporate Reorganization of Contractors, establishes procedures and guidelines to be followed by contractors/corporations who effect any change in corporate structure vehicle under contract with the Department.

These rules were reviewed by the Department's Bureau of Contract Administration in compliance with Executive Order No. 66(1978) and were found adequate, reasonable, understandable and necessary for the purpose for which they were originally promulgated.

Social Impact

These rules impact on contractors/corporations performing contractual agreements with the Department, in that they stipulate procedures and guidelines to be followed in the efficient operation of the administration of contracts. Additionally, these rules establish public confidence in State government's ability to ensure that the public's interest in awarding public contracts is adequately protected.

Economic Impact

The Department will incur direct and indirect costs for its personnel and equipment requirements for the collection of fees required for plans and specifications in the bidding process. Additionally, these rules will impact on the Office of the Secretary of State for collection of fees to be paid by the contractor/corporation as stipulated in N.J.S.A. 14A:15-2.

Regulatory Flexibility Statement

The rules proposed for reoption primarily affect contractors/corporations, some of which are small businesses as that term is defined under the Regulatory Flexibility Act, P.L. 1986 c.169. The bookkeeping, recordkeeping and compliance requirements of these rules are directed towards maintaining the accountability of contractors/corporations in contract with the Department. The promulgation of less demanding contract administration standards for small businesses would erode the level of accountability necessary for the Department to protect the public interest in the awarding of public contracts. For this reason, no differing compliance standards based upon business size are provided for in these rules.

Full text of the proposed reoption appears in the New Jersey Administrative Code at N.J.A.C. 16:44.

19:8-9.3 Suspension or revocation of permit

(a) A permit issued pursuant to the provisions of N.J.A.C. 19:8-9, may be suspended or revoked for cause for any of the following reasons:

1. Whenever the sign for which the permit is issued impairs the safe and efficient operation of the Garden State Parkway;
2. Whenever any statement made in the application for a permit is knowingly false or misleading;
3. Whenever any provision of law or rules contained in this subchapter are violated; or
4. Whenever a stipulation made in granting of the permit is violated.

(b) When it shall appear to the Operations Manager of the Authority that any permittee has committed a violation or offense as stated in (a) above, the permittee will be given a written notice stating the violation or offense and within 30 days the permittee must:

1. Correct the violation if same is subject to correction or compliance; or
2. Remove all signs, spaces and advertisements; or
3. File a protest, in writing, under oath, signed by the permittee or its duly authorized agent stating the reason(s) for the protest. In addition, the permittee may request a **formal hearing**, which [may be formal or informal,] **shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or an informal conference** pursuant to N.J.A.C. 19:8-9.4.

(c) If the permittee has filed a protest but has not requested a hearing, the Operations Manager shall carefully consider all available, relevant information and then issue an order confirming, modifying or vacating the original find or determination.

(d) Whenever a permit has been revoked, the former holder shall be required to surrender same to the Operations Department, New Jersey Highway Authority, Garden State Parkway, Woodbridge, New Jersey 07095.

19:8-9.4 [Nature of hearing] **Informal conference**

[(a)] An informal hearing before the Executive Director of the Authority is in the nature of a conference, with or without representation on behalf of the permittee.

[(b)] At a formal hearing, all evidence is taken before a court reporter and all testimony having reasonable probative value is admitted.

[(c)] After all parties have been given the opportunity of presenting evidence in support of the issues, the Executive Director shall take the matter under advisement and reach a determination on the record and facts disclosed. Upon reaching a determination, the permittee shall be notified by mail of the determination.]

(a)

**PUBLIC EMPLOYMENT RELATIONS COMMISSION
Appeal Board**

Proposed Readoption: N.J.A.C. 19:17

Authority: N.J.S.A. 34:13A-5.9.

Proposal Number: PRN 1988-199.

Submit comments by May 18, 1988 to:

James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
495 W. State Street
Trenton, NJ 08625; and
William L. Noto, Chairman
Public Employment Relations Commission Appeal Board
CN 429
495 W. State Street
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Public Employment Relations Commission proposes to readopt N.J.A.C. 19:17. These rules concern N.J.S.A. 34:13A-5.5

through 5.9, which allows a majority representative organization to negotiate for the right to receive from employees it represents, but who are not members of that organization, a representation fee in lieu of dues. The entire chapter will expire on July 15, 1988.

On June 15, 1987, the bulk of this chapter, N.J.A.C. 19:17-3.1 through N.J.A.C. 19:17-4.5, was first adopted. An amendment to N.J.A.C. 19:17-2.1 also took effect on that date. The new rules were adopted in response to the decisions of the United States Supreme Court in *Chicago Teach. Union v. Hudson*, 475 U.S. 292, 106 S. Ct. 1388, 121 LRRM 2793 (1986), and the New Jersey Supreme Court in *Boonton Bd. of Ed. of the Town of Boonton v. Judith M. Kramer* 99 N.J. 523 (1985), cert. den. ____ U.S. ____, 89 L. Ed. 2d. 613 (1986). See 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

The Public Employment Relations Commission and the Public Employment Relations Commission Appeal Board have reviewed these rules and have determined them to be necessary and proper for the purposes for which they were originally adopted. The Commission proposes to readopt these rules without change. A summary of each section of N.J.A.C. 19:17 follows.

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

19:17-1.1, Description of the Appeal Board, identifies the Public Employment Relations Commission Appeal Board as the board established by N.J.S.A. 34:13A-5.6.

19:17-1.2, Staff of the Appeal Board, provides that the staff of the Appeal Board shall consist of the personnel of the Division of Public Employment Relations (N.J.S.A. 34:13A-5.1).

19:17-1.3, Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board, provides that the personnel of the Division of Public Employment Relations while performing Appeal Board functions shall be deemed to be Appeal Board officers and shall have been delegated all the powers necessary to discharge their assigned duties.

SUBCHAPTER 2. PROCEDURES

19:17-2.1, Rules to be read in conjunction with the rules of the Office of Administrative Law, refers to the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1 and the rules of special applicability for hearings in Appeal Board cases, N.J.A.C. 1:20.

SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES

19:17-3.1 Designation of fiscal year, requires each majority representative to adopt a fiscal year system of accounting.

19:17-3.2 Designation of dues year, requires each majority representative to adopt a dues year starting no earlier than the start of the fiscal year.

19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer, requires a majority representative to provide each nonmember paying a representation fee with a notice containing an explanation of the majority representative's expenditures for prior fiscal year, a copy of the majority representative's demand and return system and instructions for using it, information about escrow accounts to hold disputed portions of representation fees and an explanation as to how the fee is calculated. A copy of the demand and return system must be furnished to the public employer.

19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment, sets the maximum representation fee in lieu of dues as the lower of 85 percent of the regular membership dues, fees and assessments or regular membership dues, fees and assessments, reduced by the percentage amount spent during the most recently completed fiscal year on benefits available to or benefiting only its members and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The fee shall be re-adjusted annually.

SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

19:17-4.1, Period for filing of requests for review, allows nonmembers at least 30 days after the majority representative has provided the notice described in N.J.A.C. 19:17-3.3(a) to file a request for review of the fee. A timely filing will entitle the employee to a return of any non-chargeable amount.

19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute, requires, prior to collection of fees, the establishment of an escrow account in which any amount reasonably in dispute shall be placed.

19:17-4.3 Time for completion of demand and return system, provides 60 days for the majority representative and any of its affiliates to complete demand and return system proceedings and allows the filing of petitions with the Appeal Board after the 60 day period even if the demand and return proceedings are not complete. Any incomplete proceedings shall be continued unless all petitioners have withdrawn their appeals or have filed with the Appeal Board.

19:17-4.4 Results of demand and return system, payment of interest on amounts returned, requires a written decision at the conclusion of demand and return system proceedings. The decision accompanied by any amount due shall be served on each nonmember. Amounts refunded which are equal to or less than the amount held in escrow shall bear the interest earned. Any refund which exceeds the amount held in escrow shall bear interest at the judgment rate as set by N.J. Court Rule 4:42-11.

19:17-4.5 Time for filing petitions with Appeal Board, allows six months after payroll deductions begin to file an appeal with the Appeal Board.

Social Impact

Generally, the readoption of these rules will permit the continued prompt resolution of disputes involving representation fees. The majority of these disputes which reach the Appeal Board are settled amicably with the assistance of the staff of the Commission. The continued authorization for the Appeal Board to use the staff of the Commission will maintain the small number of cases which require hearings before Administrative Law Judges. Without the ability to use the Commission staff to seek settlements of petitions filed with the Appeal Board, all such cases would require formal hearings.

The readoption of the chapter will allow continued implementation of the mandates of the New Jersey and United States Supreme Courts that the majority representatives of collective negotiations units of public employees in New Jersey must adopt procedures to safeguard the constitutional rights of public employees who pay representation fees in lieu of dues to such majority representative organizations. The courts have held that the right of nonmembers not to contribute toward activities of the labor organizations which are of an ideological or political nature unrelated to collective negotiations requires that majority representatives provides such employees, prior to receiving their representation fees, with information concerning the expenditures of the majority representative and its affiliates sufficient to gauge the propriety of the majority representative's fee. The decisions also suggest that majority representatives estab-

lish escrow arrangements to avoid the temporary use of representation fees to finance such activities. The procedures adopted by the majority representatives to allow nonmembers to challenge the propriety of the representation fee in lieu of dues must also provide for a reasonably prompt determination before an impartial tribunal. The Public Employment Relations Commission Appeal Board is such a tribunal [See *Robinson v. N.J.*, 806 F.2d 442, 123 LRRM 3193 (3rd Cir. 1986), cert. den. 95 L.Ed. 2d 872 (1987)] and is required by law to be the last step in every demand and return system. These rules require majority representatives to implement these mandates and their readoption will promote statewide uniformity.

Economic Impact

The continued authorization for the Appeal Board to use the staff of the Commission will maintain the small number of cases which require formal hearings before Administrative Law Judges appointed by the Office of Administrative Law. The costs associated with such quasi-judicial hearings are saved when cases are resolved by the settlement efforts of the Commission's staff. Absent such efforts the number of hearings would increase as would costs for the Appeal Board, the Office of Administrative Law and the parties.

The rules require that a majority representative which receives requests for review of representation fees place any amounts reasonably in dispute into interest-bearing escrow accounts pending resolution of the disputes. The period of time such funds will remain in such accounts will vary with the amounts reasonably in dispute, the length of time needed for a determination by the majority representative, and whether there are appeals of that determination to the Appeal Board and the courts. Interest on such accounts will be payable to the majority representative and the nonmember employees who have requested review in the same percentage as the principal amounts to be refunded by the majority representative.

Regulatory Flexibility Statement

The proposed readoption of N.J.A.C. 19:17 does not impose reporting, recordkeeping or other compliance requirements on small businesses since the rules apply to public employers, public employees and public employee organizations only. A regulatory flexibility analysis is, therefore, not required.

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

RULE ADOPTIONS

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

Uniform Construction Code

Readoption: N.J.A.C. 5:23 (except for 5:23-6.1 through 6.3)

Proposed: February 1, 1988 at 20 N.J.R. 223(a).
Adopted: March 15, 1988 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.
Filed: March 22, 1988 as R.1988 d.168, 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. 52:27D-123.
Effective Date: March 22, 1988.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
The New Jersey Builders Association requested the Department make appropriate changes in the regulations to better control delays in inspections and in issuance of permits and certificates of occupancy, to prevent charging of excessive fees by municipalities, to "continue to streamline" the standard forms and to make it clear that requests for inspections do not have to be made in person. Other recommendations were made concerning matters not addressable by regulation, including increased DCA and local staffing, increased use by DCA of its power to supersede local code enforcement, better training and recruitment of code officials, better pay for code officials, encouragement of interlocal agreements, and improvement of communications in several areas.

The Department's response is that it has implemented some of the suggestions, is in the process of reviewing others (for example, dedication by rider of construction fees in local budgets) and has no intention of disregarding the very valid concerns that have been expressed. However, incorporation of any of the proposed changes into the chapter would necessitate a new proposal. The Department does not infer from the comment submitted that the NJBA would prefer to see N.J.A.C. 5:23 not readopted, thereby leaving the State without a Uniform Construction Code, so the Department has readopted the chapter (except for N.J.A.C. 5:23-6.1 through 6.3, which have been allowed to expire because of the failure of the Legislature to enact legislation extending the life of the statute authorizing tax exemption for solar improvements, which law expired on December 31, 1987).

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:23.

(b)

Uniform Construction Code Certificate of Occupancy Requirements Adopted Amendment: N.J.A.C. 5:23-2.23

Proposed: February 1, 1988 at 20 N.J.R. 223(b).
Adopted: March 15, 1988 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.
Filed: March 22, 1988 as R.1988 d.167, without change.
Authority: N.J.S.A. 52:27D-124.
Effective Date: April 18, 1988.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-2.23 Certificate of occupancy requirements
(a) (No change.)
(b) Building hereafter altered: A building or structure hereafter enlarged, extended or altered shall not be occupied or used until the certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the approved permit, except as is provided in regulations. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within 30 calendar days after the completion of the alteration unless the certificate of occupancy is secured from the enforcing agency.
(c)-(k) (No change.)

(c)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Affordability Controls Adopted New Rules: N.J.A.C. 5:80-26

Proposed: May 18, 1987 at 19 N.J.R. 802(a).
Adopted: March 18, 1988 by New Jersey Housing and Mortgage Finance Agency, James L. Logue III, Executive Director/Secretary.
Filed: March 21, 1988 as R.1988 d.166, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:3-4.3).

Authority: N.J.S.A. 52:27D-321 and 324; 55:14K-5g.
Effective Date: April 18, 1988.
Expiration Date: May 20, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes between Proposal and Adoption:
The title of the subchapter has been changed from Resale and Rental Affordability Controls to Housing Affordability Controls. Appropriate changes have been made throughout the rules to reflect the change in title.

At 5:80-26.22(b), a technical change has been made to correct an error in the citation referenced.

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

AGENCY NOTE: Proposed amendments to N.J.A.C. 5:80-26 appear in the proposal section in this issue of the New Jersey Register.

SUBCHAPTER 26. *[RESALE AND RENTAL]* *HOUSING* AFFORDABILITY CONTROLS

5:80-26.1 Purpose
The rules within this subchapter are promulgated to establish requirements and controls to ensure that housing assisted under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) remains affordable to low and moderate income households for time periods established herein by the Agency, in consultation with the Council on Affordable Housing. The rules also establish procedures for the administration of affordability controls by the Agency for housing which has not been assisted under the Act.

5:80-26.2 Definitions
The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.
"Act" shall mean the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.).
"Adjusted rent" shall mean the base rent for a rental unit adjusted by the index.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency (NJHMFA) or its designee.

"Applicant household" shall mean a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate pursuant to applicable guidelines and whose name has been placed on a waiting list for affordable housing.

"Base price" shall mean the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" shall mean the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Eligible household" shall mean any household that has submitted a preliminary application for an affordable housing unit, whose total gross annual income has been verified, whose financial references have been approved and which has received a determination by the Agency as a low or moderate income eligible household.

"Department" shall mean the Department of Community Affairs.

"First purchase money mortgagee" shall mean the holder and/or assigns of the first purchase money mortgage, which holder must be an institutional lender or investor, licensed or regulated by the State or the Federal government or an agency of the State or Federal government.

"Foreclosure" shall mean the termination through legal process of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a unit covered by a recorded mortgage.

"Gross annual income" shall mean the total amount of all sources of a household's income including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" shall mean the person or persons occupying a housing unit.

"Low income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Median income index" or "index" shall mean the percentage by which the median income figures, established by the U.S. Department of Housing and Urban Development, changes each year for every area in the State.

"Moderate income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to more than 50 percent, but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Program" shall mean any of the Affordable Housing Programs as permitted under the Act which may include but not be limited to programs which receive assistance as a result of an Agency sale of bonds ("bond financed rental housing").

"Resale price" shall mean the base price of a unit designated as owner-occupied affordable housing as adjusted by the median income index. The resale price may also be adjusted to accommodate an approved home improvement.

"State" shall mean the State of New Jersey.

5:80-26.3 Length of controls on affordability

(a) All housing to be assisted financially, administratively or otherwise, under the Act by the Agency will be required to remain affordable to, and occupied by, low and moderate income households for the following minimum periods:

1. Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for six years.

2. Rehabilitated renter occupied housing units that are improved to code standard shall be subject to affordability controls for 10 years.

3. Housing units created through conversion of a non-residential structure, or through new construction in municipalities receiving State aid pursuant to N.J.S.A. 52:27-178 et seq. which exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) at the time of substantive certification, shall be subject to affordability controls for 10 years.

4. All other housing units shall be subject to affordability controls for 20 years.

(b) The Agency may adjust the affordability control periods established in (a) above in particular instances, upon a determination that the economic feasibility of the Program is jeopardized by the requirement and the public purpose served by the Program outweighs the shorter period.

(c) All resale and rent restrictions shall expire at the end of the sixth, tenth, or 20th year from the date the initial restrictions encumbered the unit, as set forth in (a)1, 2, 3 and 4 above, unless a lesser or greater period of time has been approved by the Agency as set forth herein.

(d) Whenever the Agency find through administrative determination that the rent increases permitted under N.J.A.C. 5:80-26.16 are insufficient to maintain the financial needs of housing financed under the Agency's bond financed rental housing program and such insufficiency would jeopardize the economic feasibility of the Program, the Agency may terminate the control periods established in (a) above until such financial jeopardy is resolved.

(e) Whenever the Agency is not providing financial assistance, it may administer affordability controls other than those provided in these rules, provided the controls are adopted pursuant to court order or approved settlement or consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

5:80-26.4 Agreements regarding *[resale and rental]* *affordability* controls

All owners of affordable housing units shall enter into agreements with the Agency which subject the owner to the *[resale and rental]* *affordability* controls required by these rules in order to ensure that housing units remain affordable to households of low and moderate income. The agreement shall take the form of a deed restriction or other contractual agreement established by the Agency. Whenever the agreement is not in the form of a deed restriction, the agreement shall be recorded along with the deed.

5:80-26.5 Calculation of initial/purchase price: owner-occupied units

At initial sale, base prices for owner-occupied units shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. At initial sale, *[resale and rental]* *affordability* controls shall be incorporated into the deed or a separate agreement established by the Agency. The purchaser shall forward a copy of the recorded deed or, when applicable, the recorded agreement to the Agency.

5:80-26.6 Calculation of resale price: owner-occupied units

(a) When an owner wishes to sell an affordable housing unit, he or she shall forward written notice to the Agency. The Agency will calculate the resale price using the Index and will determine an estimated monthly mortgage payment. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(b) A home improvement that renders the unit suitable for a larger household may be approved by the Agency for a resale price adjustment. In no case, however, shall the adjusted resale price exceed the limits of affordability for the larger household as determined pursuant to N.J.A.C. 5:92-12.

5:80-26.7 Referral of household to units: owner-occupied units

Generally, a household's monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees, where applicable, will not be expected to exceed 28 percent of gross monthly income. A minimum downpayment of at least five percent of the selling price will be required. Mortgage application is the responsibility of the household. Eligible households whose gross annual income is compatible with the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice.

5:80-26.8 Hardship waiver: owner-occupied units

(a) If no eligible household has executed a contract to purchase within 90 days of the Agency's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Agency, and a copy to the municipal entity.

(b) The owner must demonstrate that his request is consistent with one or more of the following reasons for a hardship waiver.

1. The cost of economic factors not related to household income, including but not limited to interest rates, taxes, or insurance, inhibits the ability of an income-eligible household to obtain a mortgage commitment for the unit.

2. The owner has made a good faith effort to sell the unit to a eligible household for 90 days and no eligible household has signed a contract to purchase the unit.

3. The Agency has not referred an eligible household who qualifies for a mortgage commitment as required by the unit.

(c) Upon receipt of a request for a hardship waiver, the municipal entity shall have the first option to purchase the unit at the approved resale price and to hold, rent or convey it to an eligible household. The municipal entity shall have 30 days in which to exercise this option.

(d) The Agency shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A copy of the waiver shall be provided to the purchaser at the time of closing and filed with the deed. The waiver of income eligibility requirements is only valid for the designated resale transaction. Even if such a waiver is granted, the sale shall be in accordance with the approved index resale price and all future resales will be in accordance with the deed restrictions and sold to income-eligible households at the indexed resale price.

(e) If the Agency denies a hardship waiver, an owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

5:80-26.9 Exempt transactions: owner-occupied units

(a) The following title transactions shall be deemed "non-sales" and the Agency shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;

2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);

3. Transfer of ownership between family members as a result of inheritance;

4. Transfer of ownership through an executor's deed to any person.

(b) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the resale price index in compliance with the terms of the deed restriction or other agreement with the Agency.

The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(c) The owner shall notify the Agency in writing of any proposed transaction that he or she wishes to qualify as an exempt transaction. The owner shall supply the Agency with all necessary documentation to demonstrate that the transaction qualifies as an exemption as delineated. The Agency may request additional documentation as it deems necessary. The Agency shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

(d) If the Agency denies the exemption, the owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

(e) A copy of the certificate of exemption shall be filed with the deed at the time of closing.

5:80-26.10 Owner-occupied rehabilitated units

(a) Income-eligible owner-occupants who are the beneficiaries of a grant or loan agreement for rehabilitation of a substandard unit shall have the following options at resale.

1. The unit can be sold to an eligible household at an affordable price and in standard condition, in which case, the deed restriction or applicable agreement shall be assumed by the purchaser as a condition of sale.

(b) Owners or subsequent owners who personally continue to occupy their rehabilitated units for a total period of six years will no longer be subject to resale restrictions or required to repay the loan.

5:80-26.11 Lease or rental of owner-occupied units

Unless otherwise prohibited by the terms of contractual documents entered into by the owner or other applicable controls, the owner may lease or rent the unit provided that the unit remains affordable. The owner shall submit a written request to the Agency or municipality administering affordability controls for approval of the rent amount. The Agency or municipality may limit the amount of rent to be charged for the unit. Once the rent amount is approved, any increases in the rent must be approved by the Agency or municipality.

5:80-26.12 Initial rents: rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. Generally, a household's monthly rental charge including utilities will not be expected to exceed 30 percent of their gross monthly income.

(b) Notwithstanding (a) above, whenever the Agency is not providing financial assistance, the Agency will administer controls for projects or programs when requested, which contain initial rents determined in a manner different from that outlined in (a) above, provided such determination is pursuant to a court order or approved settlement or is consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

(c) At the time restrictions are initially placed on a rental unit, the *[resale and rental]* ***affordability*** controls shall be incorporated into a deed restriction or other agreement established by the Agency. The owner shall record the deed or, if applicable, the agreement and forward a copy of the recorded deed or the agreement to the Agency for its files.

5:80-26.13 Vacancies: rental units

The landlord shall notify the Agency of any impending vacancy in any restricted rental unit not more than 60 days or less than 30 days in advance of the unit's availability.

5:80-26.14 Tenant selection: rental units

The Agency will refer a list of eligible households to the landlord for final selection within 30 days of receipt of this notification. The

Agency will refer eligible households who meet income criteria for a vacant unit to landlords for lease negotiations. Landlords must select an eligible household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household will be denied a lease for any reason that violates any applicable law or any provision thereof.

5:80-26.15 Leases: rental units

A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions must comply with New Jersey Truth in Renting Act, N.J.S.A. 46:8-43 et seq., provisions.

5:80-26.16 Rent adjustments

(a) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable index. The landlord will submit a written request for rent adjustment approval to the Agency or municipal entity administering the ***affordability*** controls prior to any rent adjustment being made. The Agency or municipal entity shall approve all proposed rent adjustments provided they do not exceed the amount permitted when adjusting the base rent by the applicable index.

(b) Upon a demonstration of financial need, the landlord may apply for a rent increase in excess of the amount permitted in (a) above, provided that in no event may the increase exceed an amount by which the unit would no longer qualify as low or moderate income housing, whichever is applicable. All such increases are subject to the review and approval of the Agency in a manner consistent with the rent increase rules of N.J.A.C. 5:80-9 for market rate projects, after consultation with the Council on Affordable Housing.

5:80-26.17 Transfer of ownership: rental units

An owner of a restricted rental unit shall notify the Agency in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Agency. The property shall be retained as affordable housing at resale subject to the terms of the deed restriction or other agreement with the Agency.

5:80-26.18 Determination of applicant households

(a) In order to be considered for an affordable housing unit, households must submit a preliminary application to the Agency. As a completed preliminary application is received, the Agency will review it to determine, without verification, if the declared household income is low or moderate within this subchapter. All applications for affordable housing will be accepted in accordance with any applicable law or any provision thereof.

(b) When the review of the preliminary application indicates that a household may be eligible, the household will be deemed an applicant household and the name of the head of the household shall be placed on a waiting list. The Agency will send a confirmation letter to the applicant household.

(c) When the review of the preliminary application indicates that a household's income is not low or moderate, the household will be so advised in writing and the preliminary application will be denied. If a household receives such a determination, the household may submit a written request for a redetermination to the Agency within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The household will be required to produce documentation to support the claim at the time of redetermination. If the household's application is again denied, in writing, a written request to appeal may be filed with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the household's receipt of this notice, the determination will be final and the application considered denied.

(d) Applicant households must still be determined to be eligible in accordance with N.J.A.C. 5:80-26.19.

5:80-26.19 Determination and referral of eligible households

(a) As units become available, the Agency will notify applicant households who satisfy the income criteria for an available unit who will then be scheduled for an interview to determine if they qualify as an eligible household. At the interview, the household will be requested to document all income. This determination process shall also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide the required information, where applicable, identified at 1 below. All applicant households meeting the criteria shall be deemed an eligible household.

1. Each applicant household member as set forth in (a) above shall provide the following required information:

i. A copy of IRS Form 1040 (Tax Computation form) for each of the three years prior to the date of the interview;

ii. A letter from their employer(s) stating present annual income figure or four consecutive paystubs dated within 120 days of interview date;

iii. A letter or appropriate reporting form verifying benefits, including but not limited to, social security or pension;

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant household;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds; and

vi. Reports that verify assets that do not earn regular income such as real estate and savings with delayed earnings provisions.

(b) Applicant households who are not determined to be eligible households shall be so notified in writing of the denial. This notice shall state the specific reason for the denial. If the applicant household disagrees with this finding, a written request for redetermination may be submitted to the Agency within 15 days of receipt of the notice. Applicant households shall be required to produce further documentation to support their claim request for a redetermination.

(c) Applicant households who are again denied status as an eligible household may submit a written request to appeal with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days of the applicant household's receipt of this notice, the determination will be final and the application considered denied.

(d) Only eligible households shall have an opportunity to be considered for low and moderate income housing. The Agency shall have the authority to approve all eligible households.

(e) To the greatest extent possible, eligible household shall be referred to available units using the following accepted standards for occupancy, provided that in no case shall a household be referred to a unit that provides for more than one extra bedroom per family occupancy requirement:

1. A maximum of two persons per bedroom.

2. Children of same sex in same bedroom.

3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms.

4. Children not in same bedroom with parents.

5:80-26.20 Assignment or sublease of rental units

Provided that assignment or sublease is permitted under the terms of the lease or rental agreement, the tenant may assign or lease the unit, provided the assignee or sub-lessee qualifies as an eligible household. Tenants shall submit a written request to the Agency or municipality administering affordability controls for approval to assign or sublease the unit. Any units which are assigned or sublet will remain subject to rent adjustment controls of 5:80-26.16.

5:80-26.21 Foreclosure: owner-occupied and rental units

(a) A judgment of foreclosure on any restricted unit will result in a termination of resale controls, unless otherwise ordered by the court.

(b) Upon notification of impending foreclosure, the municipality, in lieu of default on resale/rent restrictions, may exercise an option to purchase the unit at an approved price and hold, rent or convey the unit to an eligible household, if such right is exercised prior to a judgment of foreclosure.

(c) In the event of a foreclosure sale by the first purchase money mortgagee, after the first purchase money mortgage, including costs of foreclosure and any second mortgages have been satisfied, any surplus funds exceeding the maximum allowable resale price as calculated by the approved index, shall be paid to the Agency. Any remaining funds in excess of outstanding grants or loans will be returned to the municipality.

5:80-26.22 Agency grants or loans

(a) In order to receive approval for a grant or loan including, but not limited to, mortgage financing or set-asides of mortgage financing from the Agency a municipality must provide a plan for assuring that the assisted housing will remain affordable to and occupied by low and moderate income households for the time periods prescribed in these rules or pursuant to court order or court approved settlement. The municipality may adopt and administer its own plan for establishing affordability controls, provided the plan is approved by the Agency, or may request that the Agency administer affordability controls on behalf of the municipality as provided by N.J.A.C. 5:80-26.23. The rules in this subchapter will be used as a standard for the review and approval of any affordability control plan adopted and to be administered by a municipality.

(b) Loans or grants made by the Agency may be subject to recapture if any unit(s) financed by such grant or loan is lost to the low or moderate income housing stock during the affordability control period established in N.J.A.C. *[5:80-26.23]* ***5:80-26.3***.

5:80-26.23 Contractual agreements with municipalities or developers

(a) The Agency shall enter into contracts for the administration of *[resale and rent]* ***affordability*** controls upon request by a municipality provided that the municipality has no appropriate administrative agency to administer the controls for a given project. The municipality shall adopt a resolution containing the following provisions:

1. A statement declaring that no appropriate administrative agency exists for a given project within the municipality to administer *[resale and rent]* ***affordability*** controls;
2. A statement authorizing the municipality to enter into contractual agreements with the Agency whereby the Agency will administer *[resale and rent]* ***affordability*** controls for the municipality;
3. A statement which identifies the municipal officer(s) who have authority to enter into contractual agreements on behalf of the municipality; and
4. A current inventory of the units to be subject to *[resale and rent]* ***affordability*** controls.

(b) The Agency shall enter into contracts for the administration of *[resale and rent]* ***affordability*** controls upon request by a developer of an inclusionary development in municipalities where no appropriate administrative agency exists to administer such controls. The developer shall submit a declaration of intent from the appropriate person or body (for example, corporate resolution, letter from its president) indicating its willingness to enter into contractual agreements with the Agency whereby the Agency will administer resale and rent controls on behalf of the developer.

(c) Whenever the Agency administers *[resale and rent]* ***affordability*** controls on behalf of a municipality or developer of an inclusionary development, it will do so in accordance with the rules in this subchapter. In the event that a municipality is not receiving a grant or loan from the Agency and has an affordability control plan approved by the Agency under subchapter 12 of the rules of the Council on Affordable Housing (N.J.A.C. 5:92-12), the Agency may administer the plan approved under subchapter 12. In the event the municipality is implementing a program pursuant to court order, or court approved settlement, the Agency may administer the affordability control plan provided under such order or settlement.

(d) Municipalities and developers of inclusionary developments who enter into contractual agreements with the Agency for the administration of *[resale and rent]* ***affordability*** controls shall pay a servicing fee to the Agency, said fee to be established by the Agency according to methods or schedules approved by the State Treasurer.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules: Credits

Adopted Amendment: N.J.A.C. 5:92-6.1

Proposed: October 19, 1987 at 19 N.J.R. 1863(a).

Adopted: December 7, 1987 by New Jersey Council on

Affordable Housing, William A. Angus, Jr., Acting Chairman.

Filed: March 18, 1988 as R.1988 d.165, **without change to**

N.J.A.C. 5:92-6.1, and 5:92-1.3 **not adopted and withdrawn.**

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: April 18, 1988.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The proposed amendment to N.J.A.C. 5:92-6.1 establishing a \$4,500 standard for crediting prior rehabilitation is unwarranted. Credit should be given for all deficient units which were rehabilitated and brought up to code subsequent to April 1, 1980.

RESPONSE: The Council believes, given the nature of the indicators that define housing need, that a housing unit should have required a significant amount of rehabilitation to earn a credit. At the same time, the Council wanted to recognize good faith efforts at rehabilitating low and moderate income housing when the rehabilitation effort corrected code violations. The Council believes that the \$4,500 standard achieves an equitable balance that recognizes good faith efforts at rehabilitating lower income deficient housing.

COMMENT: The proposed \$4,500 standard for rehabilitation credit should not be imposed retroactively on communities that have already petitioned for certification.

RESPONSE: The Council believes that the \$4,500 standard is reasonable and it would be impractical to have a separate standard for those communities that petitioned before the adoption of the rule.

COMMENT: The figure of \$4,500 does not consider the difference in the value of money from 1980-1987. The Council should consider a sliding scale approach that considers the value of money over time.

RESPONSE: The Council pursued a standard that was more sensitive to the value of money over time as one of several options. The Council found the crediting data to be more reliable in its aggregate form than when analyzed in separate years. Also, the Council found the aggregate approach much less confusing and much easier to administer.

Full text of the adoption follows.

5:92-6.1 Credits

(a) Municipal present and prospective fair share shall be determined after crediting, on a one to one basis, those housing units created or rehabilitated after April 1, 1980. Credits for rehabilitation shall not exceed indigenous need and shall only be credited against indigenous need. The Council established \$4,500 as the minimum actual capital costs expended for a rehabilitated unit to be eligible for crediting. Credits are applicable when a unit's occupancy is restricted to low or moderate income households and when the municipality has implemented adequate assurances for continued affordability consistent with Subchapter 12, Controls on Affordability, subject to the following exceptions:

1. A housing unit created and occupied after April 1, 1980 is also eligible for crediting when it has been developed under the auspices of a government-funded, financed or otherwise-assisted housing program designed specifically for households whose incomes do not exceed 80 percent of median income where the unit is governed by controls on affordability that are substantially the same as those set forth in Subchapter 12, Controls on Affordability.

2. For rehabilitation, a unit shall be eligible for crediting if:
 - i. It was below applicable code standard and was rehabilitated up to applicable code standard between April 1, 1980 and January 1, 1987, provided it was occupied at the time of rehabilitation by an eligible low or moderate income household as defined in N.J.A.C. 5:92-1.2; and
 - ii. It is currently occupied by the occupants who resided within the unit at the time of rehabilitation, or by another eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3; and
 - iii. At least \$4,500 in actual capital costs was expended for rehabilitation costs.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Boat Regulations

Boating and Water Skiing

Adopted Amendment: N.J.A.C. 7:6-3.10

Proposed: January 19, 1988 at 20 N.J.R. 138(a).
 Adopted: March 25, 1988 by Kenneth L. Husted, Chairman, New Jersey Boat Regulation Commission, and Richard T. Dewling, Commissioner, Department of Environmental Protection.
 Filed: March 25, 1988 as R.1988 d.185, **without change**.
 Authority: N.J.S.A. 13:1D-1 et seq., 12:6-1(e), 12:7-34.1 et seq., specifically 12:7-34.49 and 12:7-44.
 Effective Date: April 18, 1988.
 Expiration Date: December 19, 1988.
 DEP Docket Number: 069-87-12.

Summary of Public Comments and Agency Responses:
 During the public comment period which expired on February 18, 1988, one comment was received. This comment was in full support of the proposed amendment and recommended that it be adopted.

Full text of the adoption follows.

- 7:6-3.10 Lake Hopatcong, Sussex and Morris County
 (a)-(f) (No change.)
 (g) All ski boats shall display a signal pennant which shall be orange in color and triangular in shape and not less than 12 inches on any dimension.
1. Said pennant shall be displayed at least four feet above the highest structure on the boat during each of the following activities:
 - i. While pulling or retrieving a skier;
 - ii. While a skier is in the water; or
 - iii. While a tow line is in the water.
 2. A person shall not display the pennant at any time other than while conducting any of the activities described in this subsection.
- (h)-(i) (No change.)

(b)

DIVISION OF WATER RESOURCES

Redelineation of Jumping Brook

Adopted Amendment: N.J.A.C. 7:13-7.1(b)

Proposed: December 7, 1987 at 19 N.J.R. 2233(a).
 Adopted: March 22, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
 Filed: March 25, 1988 as R.1988 d.181, **without change**.
 Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.
 DEP Docket Number: 055-87-11.
 Effective Date: April 18, 1988.
 Expiration Date: May 4, 1989.

Notice of the proposed amendment was published on December 7, 1987 in the New Jersey Register at 19 N.J.R. 2233(a). The notice also advised that a public hearing had been scheduled for December 23, 1987 at 10:30 A.M. at the DEP Building, 401 E. State Street, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on December 7, 1987 in the Daily Register. Both notices invited written comments to be submitted on or before January 6, 1988 and announced the holding of the public hearing. No one attended the hearing.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

AGENCY NOTE: No change in rule text is required by this adoption. Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, N.J. In addition, maps of the delineations have been sent to the Neptune Township Clerk and to the Monmouth County Planning Board.

HEALTH

DRUG UTILIZATION REVIEW COUNCIL

(c)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: April 20, 1987 at 19 N.J.R. 615(a).
 Adopted: March 11, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.
 Filed: March 17, 1988 as R.1988 d.161, with portions of the proposal not adopted and portions not adopted but still pending.
 Authority: N.J.S.A. 24:6E-6(b).
 Effective Date: April 18, 1988.
 Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

- Ortho Pharmaceuticals raised a number of issues in opposition to the proposed substitutes for their birth control pills, including the following:
1. the formulations are not the same
 2. dissolution rates differ
 3. the generic has no bioequivalency study
 4. generic contraceptives only hold two percent of the market
 5. a consumer survey shows that consumers will be confused by changes in packaging and that consumers prefer not to receive a substitute for their usual birth control pills
 6. substitution by pharmacists will be mandatory
 7. the unique package offered by Ortho differs in significant ways from the generic, which will lead to patient mistakes, confusion about which pills are active and which are placebos, and possible unplanned pregnancies
 8. the costs of a single unwanted pregnancy offsets by far any savings through the use of generics
 9. switching from Ortho's products to one generic, then possibly some others in the future, makes matters even more confusing for patients
 10. one-third of all patients using birth control pills are under age 17, making any changes even riskier
- Rugby, the distributors of the proposed substitutes made by Syntex, supported the proposed generic birth control pills, using the following points:
1. the proposed generics are legally available in 48 states, only NJ and Pennsylvania not allowing them to be substituted
 2. the generic is identical to Norinyl, a branded product sold and found effective over the past 20 years

3. the proposed generic has now been used in 800,000 cycles by over 60,000 women, thus documenting its effectiveness

4. a survey commissioned by Rugby found that 75-80% of those taking the generic stay on the generic, that 85% of users were switched from Ortho's products, and that 50-60% of patients had been shown the new package by pharmacists before receiving it

5. three unplanned pregnancies had been reported during clinical use of the generic product, which Syntex felt was not unusual in their 20 years of experience, considering that birth control pills are not 100% effective

6. patient instructions included with the generic are virtually identical to, and possibly even simpler to understand than, Ortho's instructions

The Council's response:

Efficacy is not at issue, since the proposed generic has the same ingredients as the brand for which it is to be substituted and possesses 20 years of clinical experience demonstrating the formulation's efficacy. Ortho's arguments about formulation differences and lack of bioequivalency data are not convincing in that the proposed product was approved by the FDA based on the very same data used to initially approve the Ortho products.

The pertinent and critical issue (and the one underlying most of Ortho's opposing arguments) is the real possibility that patients will be confused by any new packaging, make a mistake, and become pregnant. After examining samples of the generic's packaging as compared to that of the Ortho product, the Council concluded that differences were slight, and that the generic package was easily understood just by looking at it. The Council also notes that the patient information leaflet in the generic's package is confusing, but that is also identically true for the branded product.

In summary, the Council felt a few of Ortho's arguments were not germane (numbers 4, 6, 9, and 10 under the Ortho comments, above); others were contradicted by additional data (numbers 5 and 7), and yet others were mitigated by additional factors, such as the contention that unwanted pregnancies would offset costs is ameliorated if one takes into account any decrease in births in those women who might be able to buy the lower cost generics, thus avoiding pregnancies. The Council thus acted to add the proposed generic oral contraceptives to the Formulary.

The following products and their manufacturers were adopted:

Doxepin caps 75 mg, 150 mg	Chelsea
Ortho-Novum formula 1/35, 1/50	Syntex
Perphenazine tabs 8 mg	Chelsea

The following products were not adopted but are still pending:

Amitriptyline tabs 10, 25, 50, 75, 100, 150 mg	Mutual
Amitriptyline, perphenazine 2, 10, 25, 4, 25	Cord
Butalbital, APAP, caffeine tabs	Graham
Cephalexin caps 250, 500 mg	Nuovo
Flurazepam caps 15, 30 mg	Duramed
Glutethimide tabs 250, 500 mg	Halsey
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Haloperidol tabs 10, 20 mg	Cord
Ibuprofen tabs 800 mg	Chelsea
Isosorbide dinitrate oral tabs 20, 30 mg	Par
Lithium carbonate caps & tabs 300 mg	Roxane
Lithium carbonate tabs 300 mg	Bolar
Lithium citrate syrup 8 mEq, 5ml	My-K
Lorazepam tabs 0.5, 1 mg	Bolar
Lorazepam tabs 0.5, 1, 2 mg	Cord
Lorazepam tabs 2 mg	Bolar
Medroxyprogesterone tabs 2.5, 5, 10 mg	Duramed
Methyldopa/HCTZ tabs 250, 15, 250, 25	Chelsea
Nitrofurantoin macrocrs. caps 50, 100 mg	Bolar
Nitroglycerin E.R. caps 2.5, 6.5, 9 mg	Vitarine
Nitroglycerin transdermal patch 10 mg	Hercon
Nitroglycerin transdermal patch 15 mg	Hercon
Nitroglycerin transdermal patch 5 mg	Hercon
Norethindrone 0.5 mg/ethinyl estr. 35 mcg	Corona
Norethindrone 1 mg/ethinyl estr. 35 mcg	Corona
Pramoxine 1%/HC 1% rectal foam	Copley
Prazosin caps 1, 2, 5 mg	Zenith
Prednisone tabs 5, 10, 20 mg	Amer. Ther.
Procainamide E.R. tabs 1000 mg	Bolar
Propranolol/HCTZ tabs 40/25, 80/25	Cord
Pyrilamine/Chlorpheniramine/PE tannates susp	Copley
Pyrilamine/Chlorpheniramine/PE tannates tabs	Copley
SMZ/TMP Susp. 200 mg + 40 mg, 5 ml	Naska

Salsalate tabs 500, 750 mg	Copley
Spironolactone tabs 25 mg	Superpharm
Temazepam caps 15, 30 mg	Bolar
Temazepam caps 15, 30 mg	Cord
Temazepam caps 15, 30 mg	Duramed
Trifluoperazine tabs 5 mg	Bolar
Verapamil tabs 80, 120 mg	Bolar
Verapamil tabs 80, 120 mg	Cord

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption can be found at 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a) and 20 N.J.R. 191(a), 654(a).

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: October 19, 1987 at 19 N.J.R. 1878(a).

Adopted: March 11, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: March 17, 1988 as R.1988 d.162, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: April 18, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were adopted:

Doxepin caps 25, 50 mg	Barr
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The following products were not adopted but are still pending:

Chlorthalidone tabs 25, 50 mg	Sidmak
Flurazepam caps 15, 30 mg	Cord
Lactulose syrup 10 g, 15 ml	My-K
Leucovorin calcium tabs 15 mg	Par
Methyldopa susp 250 mg, 5 ml	My-K
Prednisone oral solution 5 mg, 5 ml	My-K
Propranolol HCTZ tabs 40, 25, 80, 25	Schering
SMZ TMP tabs 400, 80, 800, 160	PFI
SMZ TMP tabs 400, 80, 800, 160 mg	PharmBasics
Theophylline E.R. tabs 200	Inwood
Thiothixene oral solution 5 mg, ml	My-K
Triamterene HCTZ tabs 75, 50	Barr

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 20 N.J.R. 191(b) and 654(b).

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: August 17, 1987 at 19 N.J.R. 1488(a).

Adopted: March 11, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: March 17, 1988 as R.1988 d.163, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: April 18, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were adopted:

Erythromycin estolate susp 125/5, 250/5	Barr
Ibuprofen tabs 400, 800 mg	Interpharm
Propranolol tabs 10, 20, 40, 80 mg	Interpharm

The following products were **not adopted but are still pending**:

Allopurinol tabs 100 mg	Interpharm
Amantadine HCl caps 100 mg	Pharmacaps
Amitriptyline/perphenazine 4/10, 4/25, 4/50	Mylan
Amitriptyline/perphenazine 2/10, 2/25	Mylan
Carbamazepine tabs 200 mg	Barr
Carbamazepine tabs 200 mg	Interpharm
Cephalexin caps 250, 500 mg	Purepac
Chlorzoxazone/APAP tabs 250, 300	Interpharm
Clorazepate dipot. tabs 3.75, 7.5, 15 mg	Mylan
Cyproheptadine tabs 4 mg	Interpharm
Diazepam tabs 2, 5, 10 mg	Ferndale
Dyphylline/guaifenesin syrup	Barre-National
Erythromycin ethylsuccinate 200, 5 susp	Barre-National
Furosemide oral solution 10 mg, ml	Barre-National
Haloperidol tabs 2 mg	Lemmon
Indomethacin caps 25, 50 mg	Interpharm
Iodinated glycerol drops 50 mg, ml	Barre-National
Isosorbide dinitrate oral tabs 20 mg	Cord
Lactulose syrup 10 g/15 ml	Barre-National
Metoclopramide syrup 5 mg/5 ml	My-K
Minoxidil tabs 2.5, 10 mg	Par
Nystatin oral susp 100,000 U ml	Lemmon
Oxtriphylline/guaifenesin syrup	Barre-National
Phenylephrine ophth. soln 10%	Steris
Prednisone tabs 5, 10, 20 mg	Amer. Ther.
Prednisone tabs 5, 20 mg	Cord
Procainamide E.R. tabs 750 mg	Copley
Propranolol tabs 10, 20, 40, 60, 80, 90	Halsey
Thiothixene caps 20 mg	Cord
Tolazamide tabs 100 mg	Cord
Trazodone tabs 50, 100 mg	Mylan
Trazodone tabs 50, 100 mg	Purepac
Verapamil tabs 80, 120 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 19 N.J.R. 2279(b) and 2401(a); 20 N.J.R. 190(a) and 655(a).

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: January 19, 1988 at 20 N.J.R. 146(a).

Adopted: March 11, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: March 17, 1988 as R.1988 d.164, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: April 18, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

VERBAL COMMENTS AT THE HEARING:

1. Concerning generic Schedule II substances

(a) Mr. C. Gardner, representing DuPont, voiced support for the use of generics in general, but was opposed to the use of generic substitutes for Schedule II substances in general, and specifically opposed to substitution for oxycodone with aspirin and oxycodone with acetaminophen products. He stated that DuPont will file written comments, and noted that the Drug Utilization Review Council has adopted an informal policy against substitution for Schedule IIs. Mr. Gardner also listed these objections: (1) pharmacists would have problems stocking such generics, (2) a recent article in American Druggist voiced opposition to such substitution due to increased chances of pharmacies being robbed, as evidenced by Drug Enforcement Administration data showing armed robberies and "break-ins" of pharmacies having increased from 1985 to 1986.

(b) Dr. F. Shainfeld, representing Halsey, supported the inclusion of generic substitutes for Schedule II products. He pointed out that the Council has previously approved at least one such substitute, that generics per se don't cause break-ins, and that consumers (especially those in hospices) should be able to obtain generic Schedule II substances.

2. Concerning oxazepam

Ms. D. Cestone, representing Barr, commented that Barr's oxazepam capsules have an FDA rating of "BP" (vis-a-vis Wyeth's capsules) because they were tested against Barr's oxazepam tablets, which themselves were found to be equivalent to Wyeth's tablets. No testing was done against Wyeth's capsules.

3. Concerning a Stuartnatal 1+1 substitute

Mr. J. Carey, representing ICI Pharmaceuticals Group, opposed the addition to the Formulary of the proposed substitute by "Quantum," because Quantum is incorrectly proposed; the actual manufacturer should be listed as being "Copley."

WRITTEN COMMENTS RECEIVED

1. Concerning Schedule II substances

(a) The New Jersey Pharmaceutical Association, representing 3500 pharmacists, reiterated their earlier objections to the proposed Schedule IIs because increased inventories of such substances will become known to drug abusers and occasion an increased threat to community pharmacists.

(b) DuPont voiced opposition to Schedule IIs, making these allegations:

1. The impetus to substitute on Schedule IIs comes from the federal MAC program, but categories of drugs can be exempted by New Jersey authorities.

2. The January, 1988 issue of American Druggist decries the new HCFA rules.

3. Such substitution may increase drug diversion.

4. DEA data shows increases in armed robberies and employee thefts of controlled substances.

5. The additional paperwork associated with Schedule IIs will offset any savings.

6. Diversions of oxycodone in Maryland increased from 7,741 dosage units in 1985 to 25,520 dosage units in 1986, following addition of oxycodone to the state formulary.

7. Little savings accrue to patients from substitution of Schedule IIs; prescription size is small and they are not renewable. Further, Schedule IIs represent a small percentage of total prescription volume.

(c) A number of pharmacy and physician practitioners wrote in a timely manner in opposition to substitution for Schedule IIs, as follows:

Six physicians objected, all based on lack of efficacy or poor quality of the Schedule II generics.

Five pharmacists objected, primarily emphasizing potential inventory problems and threats to security.

(d) One East Brunswick Township Council member also objected, relating increased inventories to more robberies.

(e) Halsey Drug Company provided dissolution data on their Demerol substitutes, in support of adding them to the Formulary.

2. Concerning triamterene/hydrochlorothiazide tablets

Lederle objected to the proposed substitutes for the branded product, Maxzide, and asks that the Council not consider any such generic product, on the following bases:

Maxzide's labeling allows use before or after a meal; the generic's labeling does not.

An FDA comment indicates that generics should obtain food challenge studies when the brand has labeling allowing taking with food.

3. Concerning danazol

American Therapeutics submitted two testimonials from prescribers who have successfully used their product and also submitted a review of the biostudy by Dr. C. Rhodes, who concludes that the data constitute "firm support" for a conclusion of bioequivalency between the generic and the Winthrop (Danocrine) product.

RESPONSES:

CONCERNING SCHEDULE II SUBSTANCES

The Drug Utilization Review Council acknowledges all the concerns voiced, and thus has deferred action on these products pending an analysis of the Drug Enforcement Administration's statistics presented by DuPont in support of their position. The Council does not, however, agree with those practitioners who voiced opposition based on their contention that generics are less efficacious or generally inferior in quality to their branded counterparts.

CONCERNING TRIAMTERENE/HYDROCHLOROTHIAZIDE:

The Council deferred action pending a discussion with the FDA as to whether they anticipate any additional studies being needed by the gener-

ics in order to evaluate the potential effects of food on the generic products.

CONCERNING OXAZEPAM BY BARR:

Barr withdrew their application.

CONCERNING DANAZOL:

The Council concurs that the additional data supplied by American Therapeutics at the Council meeting satisfactorily answer questions about their original data and therefore the Council acted to add this product to the Formulary, no opposing concerns having been raised.

CONCERNING THE STUARTNATAL 1+1 SUBSTITUTE:

Stuart (ICIPharma) is correct that the proposal was made in error; the actual manufacturer is Copley, not Quantum. The Council will consider the Copley product at a future public hearing.

The following products and their manufacturers were **adopted**:

Acetohexamide tabs 250, 500 mg	Danbury
Amitriptyline/perphenazine tabs 4/10, 4/50	Cord
Betamethasone valerate cream 0.1%	Taro
Cephalexin caps 250, 500 mg	Teva
Clofibrate caps 500 mg	Chelsea
Danazol caps 200 mg	Amer. Ther.
Diazepam tabs 2, 5, 10 mg	Roxane
Doxepin caps 10, 25, 50, 75 mg	Quantum
Doxepin oral solution 10 mg/ml	Copley
Erythromycin ethylsucc susp 400/5 ml	Naska
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Royce
Ibuprofen tabs 800 mg	Cord
Iodinated glycerol syrup	LuChem
Iodinated glycerol/codeine syrup	LuChem
Iodinated glycerol/dextromethorphan syr	LuChem
Isosorbide dinitrate tabs 5, 10, 20 mg	Superpharm
Lithium carbonate caps 300 mg	Bolar
Lorazepam tabs 0.5, 1, 2 mg	Watson
Medroxyprogesterone acetate tabs 10 mg	Ayerst
Metoclopramide tabs 10 mg	Watson
Minoxidil tabs 2.5, 10 mg	Royce
Multivitamin drop/fluoride 0.25 mg	My-K
Nystatin/Triamcinolone cream	Taro
Perphenazine tabs 2, 4, 8, 16 mg	Zenith
Pot. gluconate 15 mEq/Pot. citr. 5 mEq	LuChem
Potassium CL sugar-free 20 mEq/15 ml	LuChem
Potassium Chloride E.R. tabs 8 mEq	Copley
Potassium Cl efferv. tabs 25 mEq	Copley
Potassium chloride liquid 20 mEq/15 ml	LuChem
Potassium cl liquid 40 mEq/15 ml	LuChem
Potassium gluconate liquid 20 mEq/15 ml	LuChem
Propoxyphene/ASA/Caff. caps 65/389/32	Cord
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Roxane
Quinine sulfate tabs 260 mg	LuChem
SMZ/TMP susp 200/40 per 5 ml	Teva
Sulfasalazine tabs 0.5 g.	Superpharm
Thiordiazine conc. 30 mg/ml & 100 mg/ml	Copley
Thiothixene caps 1, 2, 5, 10 mg	Amer. Ther.
Thiothixene oral solution 5 mg/ml	Copley
Trimipramine maleate tabs 25, 50, 100 mg	Vitarine
Triple vitamins/F 0.25 mg solution	Barre-Nat'l

The following products were **not adopted**:

Chlorpheniramine, PPA ER caps 12 75	Cord
Disopyramide caps 100, 150 mg	Chelsea
Indomethacin susp 25 mg/5 ml	Roxane
Phenylephrine/PPA/Guaifenesin caps	LuChem
Ru-Tuss [®] E.R. tabs Formula substitute	LuChem
Ru-Tuss [®] Expect substitute	LuChem
Ru-Tuss [®] Liquid substitute	LuChem
Ru-Tuss HC [®] Formula substitute	LuChem

SPECIAL NOTE ON TWO PRODUCTS:

The following product was previously approved by the Council, but erroneously proposed a second time:

Meclofenamate caps 50, 100 mg	Chelsea
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The following product was erroneously proposed, but will be correctly re-proposed in the near future:

Stuartnatal 1+1 sub. (Newest formula)	Quantum
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The following products were **not adopted but are still pending**:

Cefadroxil caps 500 mg	Biocraft
Cefadroxil for susp 125, 5, 250, 5, 500 5	Biocraft
Cephalexin for susp 125, 5, 250 5 ml	Teva
Chlorzoxazone tabs 500 mg	Lemmon
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Desipramine tabs 25, 50, 75, 100 mg	PharmBasics
Diphenhydramine liquid 12.5 mg 5 ml	LuChem
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Flurazepam caps 15, 30 mg	Chelsea
Guaifenesin, PPA tabs 400 75	LuChem
Hydromorphone HCl tabs 2, 4 mg	Roxane
Ibuprofen tabs 400, 600, 800 mg	LuChem
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Levorphanol tartrate tabs 2 mg	Roxane
Lorazepam tabs 0.5, 1, 2 mg	Chelsea
Megestrol acetate tabs 20, 40 mg	PharmBasics
Meperidine HCl syrup 50 mg, 5 ml	Roxane
Meperidine tabs 50, 100 mg	Halsey
Methadone HCl tabs 5, 10 mg	Roxane
Oxazepam caps 10, 15, 30 mg	Amer. Ther.
Oxazepam caps 10, 15, 30 mg	Barr
Oxazepam caps 10, 15, 30 mg	Mylan
Oxazepam caps 10, 15, 30 mg	Purepac
Oxtriphylline elixir 100 mg, 5 ml	Barre
Oxycodone 5 mg/APAP 325 mg tabs	Roxane
Oxycodone, APAP tabs 5 325	Halsey
Oxycodones 4.88 mg/Aspirin 325 mg	Roxane
Oxycodones, ASA tabs 4.88 325	Halsey
Propranolol tabs 10 mg	Lemmon
Sulfasalazine tabs 500 mg	Mutual
Triamterene, HCTZ tabs 75, 50	Cord
Triamterene, HCTZ tabs 75 50	Quantum
Trifluoperazine tabs 1, 2, 5, 10 mg	Cord
Trimipramine caps 25, 50, 100 mg	PharmBasics
Valproic acid caps 250 mg	Chelsea

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Dependent/Independent Student Defined

Adopted Amendment: N.J.A.C. 9:5-1.1.

Proposed: December 21, 1987 at 19 N.J.R. 2372(a).
 Adopted: March 22, 1988 by the Board of Higher Education,
 T. Edward Hollander, Chancellor and Secretary.
 Filed: March 22, 1988 as R.1988 d.176, **without change**.
 Authority: N.J.S.A. 18A:71-26.8 and 18A:62-4.
 Effective Date: April 18, 1988.
 Expiration Date: January 21, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 9:5-1.1 Dependent/independent student defined
 (a) (No change.)
 (b) Except as provided in (c) below, an individual meets the requirements of this subsection if such individual:
 1.-3. (No change.)
 4. Is a married individual who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year; or
 5. (No change.)
 6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award

year in which the initial award will be granted by demonstrating annual total resources (including all sources of resources other than parents) of at least \$4,000; or

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving state student assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. (No change.)

ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his or her own name and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

iii. The student is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of (b)6 above except for the resource requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States.

iv. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5, or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education, is living with a relative who is providing support to the student, and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

v. The student was considered as an independent student for the purposes of New Jersey state student assistance programs during the 1986-87 academic year, and complies with the provisions of (b)6 above except for the resource requirement set forth therein. This provision will be effective for the 1987-88 academic year only.

vi. (No change.)

(c)-(e) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmacy Manual, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual PAAD Income Levels

Adopted Amendments: N.J.A.C. 10:51-5.6; 10:69A-1.2, 6.2, 6.6, 6.10

Proposed: December 21, 1987 at 19 N.J.R. 2375(a).

Adopted: March 22, 1988, by Drew Altman, Commissioner, Department of Human Services.

Filed: March 22, 1988, as R.1988 d.174, **without change**.

Authority: N.J.S.A. 30:4D-20, 21, 24 and P.L. 1987 c.221.

Effective Date: April 18, 1988.

Expiration Date: N.J.A.C. 10:51, October 28, 1990; N.J.A.C. 10:69A, April 26, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:51-5.6 Eligible PAAD beneficiary

(a) An eligible patient is a legal resident of the State of New Jersey, 65 years of age or older or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits with an annual income less than \$13,650 for a single person and less than \$16,750 in combined income for a married couple, who possesses a current, valid eligibility identification card (see N.J.A.C. 10:51-5.22).

1. (No change.)

(b) (No change.)

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1.-5. (No change.)

6. Chapter 209, Laws of 1985, effective August 1, 1985; and

7. Chapter 221, Laws of 1987, effective July 29, 1987 and retroactive to December 31, 1986.

(b) (No change.)

10:69A-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than \$13,650 to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse annual income of less than \$16,750 to be eligible for PAAD.

1.-2. (No change.)

(c)-(i) (No change.)

10:69A-6.6 PAAD eligibility application and renewal application forms

(a) (No change.)

(b) The only acceptable form to be utilized in determining the beneficiary's continuation of eligibility will be the PAAD Eligibility Renewal Application form (AP-12). This form is automatically mailed to the beneficiary approximately four months prior to the expiration date.

10:69A-6.10 Eligibility period

(a) (No change.)

(b) Approximately four months prior to his or her expiration date, PAAD will notify the beneficiary if he or she is eligible for biennial eligibility or if he or she must complete a renewal form. Renewal applications must be returned to the PAAD Bureau by the beneficiary at least 45 days prior to the expiration date to ensure continuous coverage.

DIVISION OF PUBLIC WELFARE

(b)

General Assistance Manual Deadline for Medical Bills

Adopted Amendment: N.J.A.C. 10:85-5.3

Proposed: January 19, 1988 at 20 N.J.R. 162(a).

Adopted: March 22, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: March 22, 1988 as R.1988 d.169, **without change**.

Authority: N.J.S.A. 44:8-111(d).

Effective Date: April 18, 1988.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:85-5.3 Other medical payments

(a) The director of welfare shall authorize payment for medical care and professional practitioner services if such care and services are deemed necessary and appropriate and, for services rendered after July 1, 1988, if the bill for each such service reaches the municipal welfare office within one year after the date of the service.

1. (No change.)

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

(a)

**General Assistance Manual
Public Assistance Trust Fund Account
Adopted Amendment: N.J.A.C. 10:85-6.3**

Proposed: December 21, 1987 at 19 N.J.R. 2377(a).
Adopted: March 22, 1988 by Drew Altman, Commissioner,
Department of Human Services.
Filed: March 22, 1988, as R.1988 d.172 **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-111(d).
Effective Date: April 18, 1988.
Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Subsequent to Proposal:

The proposed amendment has been revised for purposes of clarification to describe more accurately the routing of Form GA-12. The proposed language has also been amended to indicate that municipal welfare departments which submit Form GA-12 prior to the annual deadline, will need to retain the original only and submit a copy to BBS/DPW.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

10:85-6.3 Public Assistance Trust Fund Account

(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account.

1.-2. (No change.)

3. Deposit of refunds and receipts: All payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" and duly accounted for on a monthly basis.

i. Preparation of statement of refunds and receipts: Each municipal welfare department is required to prepare Form GA-12, General Assistance Program—Statement of Refunds. Refunds are separated according to items eligible and ineligible for State participation. Form GA-12 shall be prepared ***[in quadruplicate]*** as follows:

(1) The original is to be submitted to the municipality's registered municipal accountant at the time of annual audit.

(2) ***[The second copy (duplicate)]* *A copy*** forwarded to the Bureau of Business Services/Division of Public Welfare (BBS/DPW) as follows:

(A) With the exception of (B) below, ***[the second]* *a*** copy is due every December and is to be submitted with Form GA-6, observing the December deadline for receipt of Form GA-6 by BBS/DPW.

(B) If at any time prior to the December submittal the MWD's reimbursement amount reaches \$500.00, Form GA-12 is to be ***[submitted]* *completed*** at such time. ***A copy of the completed Form GA-12 is to be forwarded to BBS/DPW and the original retained by the municipal welfare department.*** Such submittal does not replace the December deadline for submittal of the final form GA-12 for the ***entire*** calendar year.

(3) ***[The third]* *A*** copy is to be retained by the municipal welfare department.

(4) ***[The fourth]* *A*** copy is to be sent to the chief financial officer of the municipality.

ii. (No change.)

(b) (No change.)

(b)

**DIVISION OF PUBLIC WELFARE
AFDC Work Incentive Program
Adopted Repeal: N.J.A.C. 10:86**

Proposed: January 19, 1988 at 20 N.J.R. 162(b).
Adopted: March 22, 1988 by Drew Altman, Commissioner,
Department of Human Services.
Filed: March 22, 1988, as R.1988 d.170, **without change**.
Authority: N.J.S.A. 44:10-3.
Effective Date: April 18, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:86.

(c)

**Food Stamp Program
Liability for Overissuances
Adopted Amendment: N.J.A.C. 10:87-11.21 and
11.28**

Proposed: January 19, 1988 at 20 N.J.R. 162(c).
Adopted: March 22, 1988 by Drew Altman, Commissioner,
Department of Human Services.
Filed: March 22, 1988 as R.1988 d.173, **without change**.
Authority: N.J.S.A. 30:4B-2, Section 1533 of the Food Security
Act of 1985 (P.L. 99-198) and 7 CFR 273.18(a).
Effective Date: April 18, 1988.
Expiration Date: March 1, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:87-11.21 Claims against households

All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The CWA shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive, or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

10:87-11.28 Changes in household composition

(a) If a change in household membership occurs, the CWA shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. If a change in household composition occurs, CWAs may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The CWA may also offset the amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances shall the CWA collect more than the amount of the claim.

(a)

Special Payments Handbook; Aged, Blind and Disabled Chargeable County Welfare Agency for Funerals/Burials

Adopted Amendment: N.J.A.C. 10:100-3.7

Proposed: January 19, 1988 at 20 N.J.R. 163(a).
 Adopted: March 22, 1988 by Drew Altman, Commissioner, Department of Human Services.
 Filed: March 22, 1988 as R.1988 d.171, **without change**.
 Authority: N.J.S.A. 44:7-13, 44:7-85 through 93.
 Effective Date: April 18, 1988.
 Expiration Date: February 6, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:100-3.7 Authorization of payments

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

(d) Chargeable CWA—definition: The chargeable CWA for any burial and/or funeral claim is the CWA of that county in which the decedent was last a resident. For this purpose, residence is established in a county at the time that a person moves to the county with intent to remain. Residence is not changed by entering a hospital but is changed by entering a residential health care facility or long term care facility. Chargeability is not determined or influenced by the possession, custody, holding or assignment of resources by any CWA or by the holding of eligibility files or other records by a CWA or by action taken or not taken under case transfer procedures.

INSURANCE

(b)

DIVISION OF LICENSING AND ENFORCEMENT Insurance Producer Licensing

Adopted Repeals: N.J.A.C. 11:1-8.1, 11:1-9, 11:1-12.1, 11:1-12.3, 11:1-12.4, 11:1-12.6, 11:1-14, 11:1-18, 11:1-19 and 11:12-1.3.

Adopted New Rules: N.J.A.C. 11:17-1, 2 and 5.

Proposed: February 1, 1988 at 20 N.J.R. 225(c).
 Adopted: March 28, 1988 by Kenneth D. Merin, Commissioner, Department of Insurance.
 Filed: March 25, 1988 as R.1988 d.186, **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. 17:1C-6, 17:1-8.1, P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.).
 Effective Date: April 18, 1988.
 Operative Date: April 26, 1988.
 Expiration Date: April 18, 1993.

Summary

Summary of Public Comments and Agency Responses:

The New Jersey Department of Insurance (Department) is repealing N.J.A.C. 11:1-8.1, 11:1-9, 11:1-12.1, 11:1-12.3, 11:1-12.4, 11:1-12.6, 11:1-14, 11:1-18, 11:1-19 and 11:12-1.3 and is adopting proposed new rules N.J.A.C. 11:17-1, 2 and 5 to implement the "New Jersey Insurance Producer Licensing Act," (Act), N.J.S.A. 17:22A-1 et seq., enacted October 29, 1987, and effective April 26, 1988. These new rules were proposed on February 1, 1988 at 20 N.J.R. 225(c). The Department received written comments from 23 persons. In response to these comments, the Department made the following substantive and technical changes to the proposal which are changes not requiring additional public notice and comment pursuant to N.J.A.C. 1:30-4.3.

COMMENT: Two commenters requested that the language of proposed N.J.A.C. 11:17-1.2(b) defining "credit property/casualty insurance" be revised. One of these commenters requested expansion of the definition of "credit property/casualty insurance" to include insurance for involuntary unemployment.

The other commenter stated that the proposed definition of "credit property/casualty insurance" is so broad as to permit virtually any line of property/casualty insurance to be sold without the requirement of State licensure, including complex lines of insurance requiring particular professional competence not contemplated by limited insurance representatives. The commenter requested that the proposed language either be deleted to remove credit property/casualty insurance as a kind of insurance marketed through limited insurance representatives because this type of insurance is unnecessary or be amended to reflect a limited usage where this coverage is permissible.

RESPONSE: The Department believes that the proposed language is broad enough to include insurance for involuntary unemployment and, therefore, the request of the first commenter is already addressed. The Department agrees with the second commenter that clarification is appropriate, and the provision has been changed to reflect this comment. This revision is solely a clarification of the intent of the proposed language.

COMMENT: Various commenters questioned whether certain insurance managing general agents (MGA's), insurance representatives, employees of fraternal benefit societies, and others that were not required to become licensed under prior law are required to become licensed by the Act and proposed N.J.A.C. 11:17-1.2 and 5. One commenter requested amendment of the Act and amendment of proposed N.J.A.C. 11:17-1.2 to include a definition of "Manager" as contained in the comment.

RESPONSE: The Department believes that the language in N.J.S.A. 17:22A-3, "negotiate, solicit, or effect", describing those who must be licensed, does not indicate any legislative intent to expand those activities requiring a license. The only exceptions to this are the changes expressed at N.J.S.A. 17:22A-2i and 2j which require producer licenses for insurance consultants, and agents or representatives of risk retention groups or purchasing groups. The Department has not changed the proposed language because the Department believes no amendment to the proposed rules is necessary in order to effectuate this legislative intent. The statutory amendment recommended by one commenter is outside the scope of the rulemaking process.

COMMENT: Numerous commenters opposed the change in the producer license from a two year term to a sixteen licensing quarters (four year) term as set forth in proposed N.J.A.C. 11:17-2.1(a) and the \$300.00 four year license fee set forth in proposed N.J.A.C. 11:17-2.12(a). Some commenters specified that a current \$50.00 annual fee would increase to the proposed \$300.00 fee for a four year license, and cited as reasons for their opposition that the proposed four year fee is a substantial initial cash outlay for a new entrant into the insurance business; that all fees paid to the Commissioner of Insurance (the Commissioner) are nonrefundable; and that many new licensees leave the business within two to four years and those leaving would lose a significant amount of money just for the privilege of attempting a career in insurance. The commenters added that, if the Department can improve efficiency in agent licensing, the license fee should decrease, not become prohibitive, and if the Department needs more revenue, an increase in the current annual license fee would be more tolerable and reasonable.

RESPONSE: The Department has decided to adopt the proposed four year license term and \$300.00 fee because the Department has determined that it is a reasonable, necessary and appropriate method to achieve the specific requirements of the New Jersey Insurance Producer Licensing Act (the Act), N.J.S.A. 17:22A-1 et seq. and that the advantages over the current biennial license and fee system far outweigh any disadvantages.

N.J.S.A. 17:22A-21a requires that the Commissioner shall, by rule or regulation, set reasonable, necessary and appropriate fees to be charged for licensing insurance producers, filing agency appointments, filing limited insurance representative registrations, filing fictitious, trade or firm names, issuing certification of license status and processing any document required to be submitted, and that the total annual revenue generated from these fees shall not be less than the total annual revenue generated from equivalent fees for the preceding fiscal year. N.J.S.A. 17:22A-21c requires that all fees payable to the Commissioner pursuant to this section are nonrefundable. N.J.S.A. 17:22A-21d provides that the Commissioner may, by rule or regulation, provide for the waiving of fees for disabled war veterans of the United States military service. N.J.S.A. 17:22A-11

specifies that the Commissioner shall prescribe by rule or regulation the term of all insurance producer licenses, and that no license shall be renewed unless the insurance producer has satisfied the continuing education requirements that the Commissioner may provide by rule or regulation.

Implementation of the new four year license term and fee will result in numerous efficiencies by the Department in achieving the legislative intent of the Act, including qualifying and issuing licenses to new license applicants, and spreading out over a four year period the effort and cost of Department monitoring of licensee compliance with continuing education and other prerequisites to license renewal. The cost of these additional regulatory functions will be included in the new fee.

Prior to enactment of the Act, a person could apply for up to 17 different licenses and pay 17 different license fees, in order to sell each of the different kinds of insurance. One of the Act's purposes was to establish a "single license concept" in order to eliminate many of the manual regulatory tasks and related small costs involved with a multiplicity of licenses issued to the same person.

In implementing the single license concept, the Commissioner developed a single license and fee that covers four years.

In developing the \$300.00 proposed new license fee, the Department determined the amount of fee dollars necessary to meet its statutory requirement to generate not less than the total annual revenue generated from fees during the preceding fiscal year.

The Department analyzed the most common combinations of licenses currently held by licensees in order to determine the impact that a single license fee would have upon the total fees generated by the preceding multiple license and biennial license fee system. The Department found that a typical licensee held a property/casualty broker license, a property/casualty agent license and a life/health agent license. The current prorated cost for this license combination would be \$90.00 per year or \$360.00 over four years. Many holders of more than one license also held a surplus lines license with a current prorated cost of \$200.00 per year or \$800.00 over four years. On the other end of the scale are current life/health licensees, paying a prorated cost of \$20.00 per year or \$80.00 over four years. The proposed \$300.00 single license fee is a compromise amount that increases the fee for some current licensees and decreases the fee for other licensees over a four year period.

Although the proposed new fee is an increase for some licensees, it provides in return to all licensees many additional services and benefits not provided by the current license fee system. The single fee includes the Department's costs related to implementing and monitoring the new continuing education requirements, letters of certification/clearance, duplicate licenses, temporary certificates of authority, and other services. In addition, all licensees are free to leave the insurance business and return within the new four year license period without having to requalify for a license or pay another license fee.

The \$300.00 single fee is not unreasonable for new entrants into the insurance business because some initial commitment is a prerequisite to entrance into the insurance field and because new licensees receive numerous services and advantages at a lower cost than an annual license and fee could provide over four years.

The Department's analysis and projections indicate that the \$300.00 fee will provide at least the same annual revenue, as the Act requires. The fee will also fund more Department services for licensees over the four year license period because many Department activities will need to be performed only once rather than up to four times; others are staggered over four years, thereby requiring less full time staff and other resources and resulting in efficiencies and economies of scale.

The Department will consider adjustment of the dollar amount of the four year license fee as appropriate based upon the actual experience under its usage.

The four year license and fee period allows the Department to provide the most services in return for a stable fee during the full implementation of the numerous changes required by the Act. The four year period also coincides with the four-year continuing education requirements schedule that the Department proposed for new rules N.J.A.C. 11:17-3.1 through 3.5 and 5.7 in the February 1, 1988 New Jersey Register at 20 N.J.R. 237(a), thereby resulting in easier monitoring at a lower cost to the Department and therefore to licensees.

COMMENT: One commenter opposed the proposed \$300.00 license fee for a nonresident producer license set forth in N.J.A.C. 11:17-2.12 due to a concern that the \$300.00 fee will result in New Jersey residents being charged substantially increased retaliatory fees by other states for nonresident licenses in those states.

RESPONSE: The Department will adopt the proposed \$300.00 fee because, as discussed in more detail in the response above, there is a rational basis for the \$300.00 fee, which is an increase for some licensees and a decrease for others over a four year period, and covers the cost of providing additional regulatory services to all licensees. In response to the commenter, the Department considered the possibility of increased retaliatory license fees by other states. The Department recognizes that there is a trend in other states toward unitary producer license fees and the Department anticipates that any differences between states in retaliatory fees will be ameliorated as other states adopt this unitary system.

COMMENT: Numerous commenters requested that proposed N.J.A.C. 11:17-2.2(a)3 et seq. and proposed N.J.A.C. 11:17-2.6(a)3 et seq. be amended to prohibit nonresidents from obtaining Surplus Lines Authority in New Jersey.

RESPONSE: The Department has not made the change requested by the commenters because the Department believes that the requested change is not necessary. The Department believes that the statutory provision at N.J.S.A. 17:22A-14 concerning surplus lines authority is clear. However, in response to comments, the Department has added a sentence to proposed N.J.A.C. 11:17-2.2(a)4 to cross reference this statute. This amendment is for clarification purposes only.

COMMENT: One commenter stated that the language of proposed N.J.A.C. 11:17-2.7(c)5 dealing with inclusion of a franchise designation in a business name is ambiguous. The commenter requested that the proposed paragraph either be deleted from the proposed new rule or be changed to a different wording such as the language included in the comment.

RESPONSE: The proposed language clarifies the existing standard under the current rule, N.J.A.C. 11:1-18.4(b), which was adopted in January, 1986, and does not change the law in effect since that date. The proposed language implements N.J.S.A. 17:22A-12 and does not disturb any existing Department records. Standards for using a franchise name or designation in producer business names or advertising, and conducting the business of an insurance producer as a franchisee, raise a great number of regulatory issues and potential problems. These include the interplay of Federal trademark laws with State laws; national and local advertising; commission sharing; terms of franchise agreements that may be inconsistent with State rules; and rights and responsibilities of the franchisor, franchisee or Department upon termination of franchising relationships. These issues more properly would be addressed in a comprehensive rule specifically addressing producers having franchise relationships, after a thorough review of all of the issues involved and the impact on producer regulatory policy. The Department notes, for example, that there is a separate rule resolving some of these issues for franchised real estate brokers. The Department believes that it is inappropriate to attempt an examination and resolution of producer franchise issues in the adopted new rules which have only a minor section dealing solely with business names. Therefore, the Department has decided not to change the proposed language, subject to Department adoption of other rules or other procedures concerning franchised producers.

COMMENT: One commenter requested that an exception be granted for the written contract requirement in proposed N.J.A.C. 11:17-2.9 for salaried employees of an insurer who are also producer agents. The commenter states that it would be unduly burdensome to some insurers and discriminatory among their employees if the insurer is required to enter into written employment agreements with a select group of employees while all other employees are engaged under "at-will" employment.

RESPONSE: The Department has decided not to make the change requested. If an agency relationship exists between an insurance company and its employee, that agency relationship creates for each party to the relationship certain duties, responsibilities and rights which may be reduced to writing in a written agreement. The Department disagrees with the commenter that requiring a written agreement between a company and its employee-agent would in any way require a change in the relationship between an employee and the company because the agreement need only state the actual agency relationship. The Department notes that both proposed N.J.A.C. 11:17-2.9 and N.J.S.A. 17:22A-15, which address written contracts between an agent and an insurance company, apply to agents and do not specifically apply to brokers.

Summary of changes being made between proposal and adoption.

Upon further staff analysis of the proposed new rules, the Department made the following substantive and technical changes to the proposal which are changes of a type not requiring additional public notice and comment pursuant to N.J.A.C. 1:30-4.3.

The Department amended proposed N.J.A.C. 11:17-1.2 by deleting the words "except automobiles" from the definition of "credit property/casualty insurance". This change is made solely to correct the definition to be consistent with the concept of limited insurance representative in proposed N.J.A.C. 11:17-2.10. This correction is necessary because editing of drafts of the rule prior to the proposed rule should have but did not remove this language. This change is made solely for purposes of clarification and internal consistency of the proposed rule.

The Department amended proposed N.J.A.C. 11:17-5.2 by adding a subsection (j) in order to ensure that the Department may issue temporary authorities of sufficient terms to enable a smooth transition in implementing the Act. The Department amended proposed N.J.A.C. 11:17-2.4 to incorporate the Department's amendment adding a subsection (j) to proposed N.J.A.C. 11:17-5.2. These changes merely authorize the Department to extend the term for which it may issue temporary certificates during the period of transition from an issuing license under prior law to the new Act.

The Department deleted a sentence from proposed N.J.A.C. 11:17-2.6(a)1. because the sentence is not necessary in order to comply with the Department procedure or forms. An applicant for additional authority must submit the applicant's current license, indicate on that current license the authorities being applied for and certify that the information contained in the request for additional authority and any attachments is true and complete. This change simplifies compliance because it removes an unnecessary certification requirement.

The Department amended proposed N.J.A.C. 11:17-2.8(e) by adding a sentence to clarify the intent of the section. This change is for clarification purposes only.

The Department amended proposed N.J.A.C. 11:17-2.9(a)2 by deleting the requirement of notice to the Department of the company's address and the producer's business address. The deleted information is not necessary in identification of the company or producer because identification can be made through the name and reference number. This change merely deletes an unnecessary requirement and simplifies compliance.

The Department amended proposed N.J.A.C. 11:17-2.9(a)5 and 6, N.J.A.C. 11:17-2.10(f) and (g) and N.J.A.C. 11:17-5.2(g), by replacing the word "cancellation" with the word "termination". These changes merely clarify the intent of these paragraphs by making the language consistent with current practice.

The Department amended proposed N.J.A.C. 11:17-2.9(a)6 to clarify to insurance companies that the true termination reason be specified and that their current practice of attaching supporting documentation in certain situations concerning producer conduct that may constitute cause for disciplinary action need only be completed and mailed to the Department's Enforcement Division and not to its Licensing Division. This change is solely for clarification and simplification purposes.

The Department amended proposed N.J.A.C. 11:17-2.9(c)1 to clarify the intent of the Act that the maximum period is six months. This change is solely a clarification.

The Department amended proposed N.J.A.C. 11:17-2.10(e) by deleting the word "address" because such requirement serves no purpose and its deletion simplifies compliance and conforms the rule to the form. This change is solely a simplification.

The Department amended proposed N.J.A.C. 11:17-2.10(f) to clarify the intent that the true reason for termination of the limited insurance representative contract be filed with the Department and to require less paperwork by clarifying that the current practice of attaching documentation in certain situations should be done only with the copy mailed to the Department's Enforcement Division. These changes are for clarification and simplification purposes only.

The Department amended proposed N.J.A.C. 11:17-2.12(a) by deleting paragraph 7 which created a \$20.00 fee for reissuance of a lost, stolen or destroyed license. The reference to this fee in N.J.A.C. 11:17-2.14(d) was also deleted. This change is made in order to simplify license administration and compliance. The fee is not necessary for revenue purposes and the fee may not generate enough dollars to merit Department administration of the fee in the relatively few instances involved. This change simplifies compliance for licensees, improves Department administrative efficiency and encourages licensees to report lost, stolen or destroyed licenses on a more timely basis than if a fee were required as a prerequisite to reissuing lost, stolen or destroyed licenses. The change does not require additional public notice and comment.

The Department amended proposed N.J.A.C. 11:17-2.13(b) to clarify that the Department must make its determination within a 30 day period, which is consistent with the Uniform Administrative Procedure Rules,

N.J.A.C. 1:1, and to clarify the language in the second sentence of the subsection. These changes are for clarification purposes only.

Full text of the repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 11:1-8.1, 11:1-9, 11:1-12.1, 11:1-12.3, 11:1-12.4, 11:1-12.6, 11:1-14, 11:1-18, 11:1-19 and 11:12-1.3.

Full text of the adopted new rule follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

CHAPTER 17 PRODUCER LICENSING

SUBCHAPTER 1. GENERAL PROVISIONS

11:17-1.1 Purpose and scope

(a) This chapter implements provisions of P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.), the New Jersey Insurance Producer Licensing Act (the Act). This chapter concerns the licensing and conduct of insurance producers and shall be considered part of the insurance law of the State of New Jersey, and violation of any provision shall be sufficient cause for action against any person as permitted by statute. Specification of the standards of conduct shall not, however, prohibit the application of other insurance statutes or rules to licensed producers.

(b) Provisions of the New Jersey Insurance Producer Licensing Act and of this chapter shall be applied to all licensees, limited insurance representatives and other persons, including nonresident licensees in connection with the licensing and standards of conduct on business for which a New Jersey insurance producer license is required.

11:17-1.2 Definitions

(a) 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.

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

"Act" means the New Jersey Insurance Producer Licensing Act, P.L. 1987, c.293 (N.J.S.A. 17:22A-1 et seq.).

"Administrative Procedure Act" means the Act concerning practices and proceedings of New Jersey public agencies pursuant to N.J.S.A. 52:14B-1 et seq.

"Branch office" means an office in New Jersey other than a principal office where a resident licensee conducts insurance business.

"Business name" means the legal name of a corporation or partnership, and any trade or fictitious name under which a licensee or license applicant conducts or intends to conduct insurance business.

"Credit life insurance" and "credit health insurance" mean the insurance coverages as defined in N.J.S.A. 17B:29-2.

"Credit property/casualty insurance" means ***property* insurance coverage solely for the lender's interest*** against loss of or damage to ***personal*** property serving as security on a specific loan or credit transaction ***[except automobiles]***.

"Home state" means the state other than this State in which a nonresident licensee or license applicant holds a resident insurance license.

"Insurance related conduct" includes soliciting, negotiating or binding policies of insurance; all communication with insureds concerning any term or condition of a policy of insurance; office management policies affecting insureds; processing claims; and transmitting funds between insureds, producers, premium finance companies and insurance companies.

"Nonresident" (of New Jersey) means a person who neither resides in New Jersey nor maintains an office in New Jersey where insurance business is transacted.

"Resident" (of New Jersey) means a person who either resides in New Jersey or maintains an office in New Jersey where insurance business is transacted.

"Ticket life insurance", "ticket accident insurance" and "ticket property/casualty insurance" mean the insurance coverages sold cov-

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ering only the risk of travel in connection with a ticket sold by a travel agent or an agent of any railroad company, steamship company, airline company, car rental company or bus company.

SUBCHAPTER 2. LICENSING RULES

11:17-2.1 Term of license

(a) The standard term of an insurance producer license shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August and November of each year. Licenses shall expire in the fourth year on the last day of the quarter in which the license was effective.

(b) Each license issued shall contain an expiration date. An initial license shall be deemed effective as of the date of issuance of any temporary certificate issued pursuant to N.J.A.C. 11:17-2.4.

11:17-2.2 License authorities

(a) Producers licensed in accordance with the Act and this chapter shall be authorized to write the kinds of insurance designated if qualified by each authority set forth below.

1. Life Authority: All coverages defined as "life insurance" in N.J.S.A. 17B:17-3; all coverages defined as an "annuity" in N.J.S.A. 17B:17-5; and all coverages defined as a "contract on a variable basis" in N.J.S.A. 17B:28-1.

2. Health Authority: All coverages defined as "health insurance" in N.J.S.A. 17B:17-4.

3. Property Casualty Authority: All coverages written by authorized insurers for fire and allied lines, earthquake, growing crops, ocean marine, inland marine, workers' compensation and employers' liability, automobile liability bodily injury, automobile liability property damage, other liability, boiler and machinery, fidelity and surety, credit property/casualty, burglary and theft, glass, sprinkler leakage and water damage, livestock, smoke or smudge, physical loss to buildings, radioactive contamination, mechanical breakdown or power failure, other property or casualty loss, municipal bond insurance and mortgage guaranty insurance.

4. Surplus Lines Authority: All coverages written by unauthorized insurers and defined as "surplus lines" in N.J.S.A. 17:22-6.42. ***No license shall be issued, renewed or maintained with surplus lines authority unless the applicant or licensee meets the requirements specified in N.J.S.A. 17:22A-14.***

5. Title Insurance Authority: All policies of insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to said property, guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any real business in substance equivalent to any of the foregoing.

(b) The Department is authorized to issue nonresident licenses conferring the above authorities regardless of whether the authority conferred by the nonresident applicant's home state license precisely matches the kinds or lines of insurance described above, so long as they are generally comparable. No nonresident licensee shall be authorized to transact business for any kind or line of insurance for which the licensee is not authorized in its home state.

(c) No person shall be authorized to transact business regarding contracts on a variable basis unless that person also holds a securities license as required by any other state or Federal law.

11:17-2.3 Application filing requirements for initial licenses

(a) A first time applicant for an individual license shall submit the following:

1. A properly completed application requesting issuance of an insurance producer license with one or more authorities, which shall contain the applicant's legal name, home address, date of birth, business mailing and location address, business trade name, if any, and response to questions concerning applicant's character and fitness for licensing. The application must be signed, dated and certified to be correct by the applicant;

2. If a resident, a certificate evidencing completion of an approved course of prelicensing education or a certificate evidencing waiver of that requirement; and a certificate evidencing that the applicant has

passed the State licensing examination for the authority or authorities requested, or a certificate evidencing waiver of the examination requirement;

3. If a nonresident, a recent certification from the insurance licensing agency of the applicant's home state that he or she holds a currently valid license authorizing transaction of insurance business for the kinds of insurance for which application is made;

4. Any documents or statements required to explain responses to questions concerning the applicant's character, fitness or financial responsibility;

5. A properly completed criminal history verification form;

6. If the application requests surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11; and

7. A valid check or money order for the fees required in accordance with N.J.A.C. 11:17-2.12.

(b) A first time applicant for an organization license shall submit the following:

1. A properly completed application requesting issuance of an insurance producer license for one or more authorities, which shall contain the organization's legal name; business mailing and location address; other business names, if any; names, license reference numbers, if any, and license authorities of each licensed officer or partner; names, addresses and license reference numbers, if any, of all persons owning five percent or more of the organization; and responses to questions concerning the applicant's character, fitness and financial responsibility. The application must be dated, signed and certified to be correct by all officers or partners of the organization that hold, or have applied for, New Jersey insurance producer licenses;

2. If the applicant is a New Jersey corporation or partnership, a copy of the Certificate of Incorporation or of the partnership document, stamped "filed" by the Office of the Secretary of State, County Clerk or other authority as applicable. If the application includes a business name other than the organization's legal name, the applicant shall also submit a certificate stamped "filed" by the Office of the Secretary of State, County Clerk or other authority, as applicable, confirming that the business name has been properly recorded;

3. If the applicant is a foreign corporation or partnership applying for a resident license to open an office in New Jersey, a certificate filed by the Office of the New Jersey Secretary of State authorizing the applicant to transact business in New Jersey;

4. If the applicant is a foreign corporation or partnership applying for a nonresident license, a recently issued certification by the licensing authority in the applicant's home state evidencing that the applicant is authorized there to transact insurance business with comparable authorities;

5. Properly completed criminal history verification forms for each officer, director, partner or owner of five percent or more of the applicant organization;

6. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11(d);

7. Any documentation required to explain responses to questions concerning the applicant's character, fitness and financial responsibility; and

8. A valid check or money order for the fees required by N.J.A.C. 11:17-2.12.

11:17-2.4 Temporary certificate

The Commissioner or his or her designee is authorized to issue a temporary certificate evidencing that an applicant may begin work when the applicant has submitted in proper form the items required by N.J.A.C. 11:17-2.3 if the submission does not disclose any matter that may disqualify the applicant from being licensed. Any certificate issued in accordance with this section ***shall contain an expiration date and*** shall expire no more than 60 days after issuance*, **except for certificates specified in N.J.A.C. 11:17-5, Transition rules*.**

11:17-2.5 License renewal

(a) A current licensee shall renew a license in the following manner:

1. At least 10 days before the license expiration date, each licensee shall submit a properly completed renewal application together with

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a valid check or money order for fees in accordance with N.J.A.C. 11:17-2.12. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer or partner of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the insurance laws of New Jersey.

(b) Failure to submit the renewal application for receipt by the date of expiration shall be deemed to establish that the license expired on the date shown, and that the licensee was not thereafter authorized to engage in any activities for which the license is required.

(c) Any licensee who does not desire license renewal shall notify the Department by submitting the renewal application marked on the face, "Do Not Renew".

11:17-2.6 Additional authorities

(a) A currently licensed individual producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. His or her current license, marked to request the additional authority or authorities, dated, signed and certified to be correct by the applicant. *[The applicant shall certify that he or she continues to be qualified in accordance with the insurance laws of New Jersey]*;

2. If a resident, a certificate evidencing completion of an approved course of preclicensing education, if required, or a certificate evidencing waiver of this requirement, and a certificate evidencing that the applicant has passed the State licensing examination for the authority or authorities requested or a certificate evidencing waiver of this requirement;

3. If a nonresident, a recent certification issued by the licensing authority in the applicant's home state, evidencing that the applicant holds a current license with comparable authority;

4. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11(d); and

5. A valid check or money order for the processing fee as required by N.J.A.C. 11:17-2.12.

(b) A currently licensed organizational producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. Its current license, marked to request the additional authority or authorities, dated, signed and certified to be correct by a licensed officer or partner who holds or has applied for that authority;

2. If a nonresident applicant, a recent certification issued by the licensing authority in the applicant's home state, evidencing that the applicant holds a currently valid license with comparable authority in that state;

3. If applying for surplus lines authority, a performance bond as required in accordance with N.J.A.C. 11:17-2.11(d); and

4. A valid check or money order for the processing fee described in N.J.A.C. 11:17-2.12.

11:17-2.7 Legal and business names; addresses

(a) No resident licensed producer shall conduct insurance business under a name other than its legal name unless the name has been filed with and approved by the Department. Nothing in this section shall prohibit the transaction of business under the licensee's legal name and the words "agency", "insurance agency", "brokerage" or words of similar import. Issuance of a license containing the name shall serve as notice of approval.

(b) No nonresident licensed producer shall conduct business under a name other than its legal or business name in the state where it maintains a resident license.

(c) Standards for approval of business names are as follows:

1. No business name shall have the capacity or tendency to be misleading or deceptive;

2. No business name shall be identical or confusingly similar to the business name of another currently licensed resident producer;

3. If the word "insurance" or its equivalent is contained in the name, it must be joined with wording such as "agency" or "brokerage" to distinguish the entity from an insurance underwriting company;

4. No business name shall express or imply any identification or affiliation with a Federal, State or other government entity, including any department, division, bureau or any subdivision of such entities;

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5. No business name shall consist of or include any franchise designation except in accordance with procedures approved by the Commissioner; and

6. No business name shall contain the name of, or imply any affiliation with, a producer whose license has been revoked.

(d) An applicant may obtain prior Departmental approval of a proposed business name before the filing of the name with the Secretary of State, County Clerk or other authority by submitting the proposed name or names for consideration. Prior approvals of names shall expire 90 days after the date of prior approval if no license application is received by the Department.

(e) The requirements for business addresses and notification of change of business mailing or location address and residence address are as follows:

1. All licensees shall provide the Department with a complete and current business mailing address, which shall include a street or location address. Individual licensees shall also provide the Department with a complete and current residence address.

2. All licensees shall provide the Department with written notification of any change of business mailing or location address and residence address within 20 days of the change.

3. Any legal process issued pursuant to the statutory authority of the Commissioner including, but not limited to, subpoenas, orders and orders to show cause may be served by sending the documents to the business mailing or residence address of the licensee then on file with the Department.

(f) A licensee shall advise the Department of a change of any legal name, business name or a change of business mailing and location address by noting the change on its current license and returning it to the Department for cancellation and reissuance of a new license containing the updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the Secretary of State, County Clerk or other authority evidencing that the change has been properly recorded.

11:17-2.8 Branch offices

(a) Licensees shall file with the Department a branch office registration form within 30 days before business is first conducted there. A branch office registration form shall be accompanied by the processing fee specified in N.J.A.C. 11:17-2.12. The appropriate registration form will be prescribed by the Department.

(b) Upon receipt of a properly completed branch office registration form and fee, the Department shall issue a branch office certificate. Branch office certificates shall expire contemporaneously with the producer's own license. The branch office certificate shall not authorize the transaction of business at any location other than that named.

(c) The licensee shall advise the Department in writing of the closing of any branch office within 20 calendar days of the closing by returning the branch office certificate for cancellation.

(d) A branch office shall be open to the public during such hours and days of the week as to provide the public reasonable access to the branch office. The branch office shall post the hours and days of operation in a manner reasonably calculated to inform the public.

(e) No branch office may be opened or operated unless at least one licensed individual insurance producer is permanently and exclusively assigned to that office and present or accessible during normal business hours except when engaged in the activities of the branch office elsewhere. ***The requirements of this section shall not preclude a branch office from remaining open to service accounts while the assigned producer is temporarily absent, and shall not permit unlicensed individuals to engage in any activities for which a license is required.***

11:17-2.9 Business relationships

(a) The agency relationship between company and producer is subject to the following requirements:

1. An agency relationship between an insurance company and licensed producer is established by written contract executed by both parties. Both parties shall maintain copies of agency contracts and make them available for inspection by the Department upon request.

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2. An insurance company contracting with a licensed insurance producer shall be responsible to advise the Department of that relationship by filing a notice within 15 days after execution of the contract, on a form prescribed by the Department containing the company's name*[,]* ***and*** reference number *[and address]*; the producer's name*[,]* ***and*** reference number *[and business address]*; and the effective date of the contract. The form shall contain the name and title of the company official who signed and certified the notice. The notice shall be submitted with the fee set forth in N.J.A.C. 11:17-2.12.

3. Prior to executing any agency contract, the insurance company shall determine that the producer is properly licensed with authority for the kinds of insurance described in the contract. The company officer executing the notice shall certify that he or she examined the credentials of the producer and is satisfied that the producer is currently licensed with the authorities for one or more of the kinds of insurance for which the company is authorized.

4. Unless otherwise specified in the notice, filing a notice of agency contract shall be deemed to mean that the producer is that company's agent for all kinds or lines of insurance for which the company and producer are jointly authorized.

5. The agency contract shall be deemed to continue in effect until a notice of *[cancellation]* ***termination*** of that contract is filed by the insurance company with the Department on a form prescribed by the Commissioner.

6. The notice of *[cancellation]* ***termination*** filed shall specify the ***true*** reason for *[cancellation]* ***termination***. If the reason is conduct by the producer that may constitute cause for disciplinary action against the producer, an additional copy of the notice of cancellation shall be mailed to the Department's Enforcement Division ***together with an outline of available documentation***.

7. Notwithstanding the lack of any contract establishing an agency relationship, any insurer that delivers in this State to any insurance producer a contract of insurance pursuant to the application or request of such producer, acting for an insured other than himself, shall be deemed to have authorized such producer to receive on its behalf payment of any premium which is due on such contract at the time of its issuance or delivery or the payment of any installment of such premium or any additional premium which becomes due or payable thereafter on such contract, provided such payment is received by the producer within 90 days after the due date of the premium or installment or after the date of delivery of a statement by the insurer of such additional premium.

(b) The employment of another producer by a producer is subject to the following requirements:

1. Licensed producers may enter into employment contracts by which the employed producer (employee) conducts business under the supervision of and in the name of an employing producer (employer). The employment contract may specify that it does not include all license authorities of the parties. The contract shall be in writing. Both parties shall retain copies and shall make them available to the Department upon request.

2. An employer who has entered into such an employment contract shall notify the Department of the agreement by submitting a document signed by the employer, or licensed officer or partner if an organization, containing the employee's name, license reference number and the date of employment. The employer shall examine the credentials of the employee to determine that he or she is licensed to conduct the kinds of business described in the contract.

3. An employee may, if authorized by the employer and any insurance company for which the employer is an agent, execute the employer's name to contracts of insurance in accordance with a written agency contract.

4. An employer shall oversee the insurance related conduct of an employee. In any disciplinary proceeding, the existence of the employment contract shall be prima facie evidence that the employer knew of the activities of the employee.

5. Upon termination of any employment contract, the employer shall notify the Department in writing of the termination of the relationship.

6. Existence of a business relationship between two licensed producers by which each acts as an independent contractor shall not

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require the filing of any notice in accordance with this provision, nor create any responsibility for the acts of the other in the absence of knowledge or concerted action.

(c) A licensed producer continuing the business of a deceased or disabled producer is subject to the following requirements:

1. Pursuant to the provisions of the Act, a surviving spouse, next of kin, or administrator or executor of a deceased producer, or the legal guardian of a producer who has become mentally or physically disabled, may enter into a contract with a licensed producer for the purpose of continuing the business of the deceased or disabled producer. The contract may provide that the deceased or disabled producer's representative receive ***for a period not to exceed six months*** a portion of the fees or commissions generated by the business, notwithstanding that the representative does not hold a producer's license.

2. The licensed producer who contracts with the surviving spouse, next of kin, or administrator or executor of a deceased producer, or the legal guardian of a producer who has become mentally or physically disabled, to continue the business of the deceased or disabled producer shall immediately notify the Department in writing.

3. The notice shall contain the name and license reference number of the licensed producer; name and license reference number of the deceased or disabled producer; address where the business will be conducted; date of death or disablement; term of contract; and the name and address of the deceased or disabled producer's representative.

4. The notice shall be signed by the licensed producer and filed with the Department.

5. The notice shall be accompanied by the deceased or disabled producer's current license returned for cancellation and such other documents as may be necessary to show the legal capacity of the deceased or disabled producer's representative.

6. The licensed producer shall notify the Department when the contract has terminated.

11:17-2.10 Limited insurance representatives

(a) The following kinds of insurance may be marketed through limited insurance representatives:

1. Bail bonds;
2. Credit life;
3. Credit health;
4. Credit property/casualty;
5. Ticket life;
6. Ticket accident;
7. Ticket property/casualty;
8. Group mortgage cancellation;
9. Mortgage guaranty;
10. Legal insurance.

(b) An insurance company authorized to write the lines of insurance described in (a) above shall register its limited insurance representatives with the Department in accordance with this section.

(c) Prior to registering any limited insurance representative, the insurance company and the representative shall execute a written contract describing the duties and responsibilities of each. Both parties shall retain a copy of the contract and shall make it available to the Department upon request.

(d) The insurance company shall satisfy itself that the proposed limited insurance representative is competent, honest, financially responsible and capable of acting as its representative.

(e) The insurance company shall register its limited insurance representatives on a form prescribed by the Commissioner containing its company name*[, address]* and reference number; the representative's name, and date of birth if an individual; business mailing and location address; kind of insurance business to be conducted; and the effective date of the contract. The fee described in N.J.A.C. 11:17-2.12 shall be paid at the time of initial registration.

(f) The contract will be deemed to continue in effect until the insurance company files a notice of *[cancellation]* ***termination*** of the registration with the Department on a form prescribed by the Commissioner. The notice shall specify the reason for *[cancellation]* ***termination***. If the reason is conduct of the representative that may constitute cause for disciplinary action against the represen-

tative, the company shall mail an additional copy of the notice to the Department's Enforcement Division ***together with an outline of available documentation***.

(g) During the existence of the contract and until notice of ***[cancellation]* *termination*** has been filed, the limited insurance representative shall be deemed to be acting under the supervision of the insurer and as an agent for it, with respect to any insurance related conduct and pursuant to the contract between the parties.

(h) Nothing in this section shall prevent licensed insurance producers from marketing the kinds of insurance described in (a) above so long as they are licensed with the appropriate authority according to N.J.A.C. 11:17-2.2. Nothing in this section shall prevent companies authorized to write such insurance from entering into an agency contract with a licensed producer and filing a notice of agency contract in accordance with N.J.A.C. 11:17-2.9(a).

11:17-2.11 Licensing information requirements

(a) The following requirements relate to the provision of criminal history information by licensed producers and license applicants.

1. An applicant for an individual license shall submit with his or her initial application a New Jersey State Police Request for Criminal History Record Information and the fee required to pay for its processing.

2. An applicant for an organization license shall submit with its application New Jersey State Police Requests for Criminal History Record Information and the fee required to pay for their processing, for each officer, director, partner and owner of five percent or more of the organization. Applicants who contemporaneously submit organization and individual applications need not submit duplicates.

3. Upon request by the Department, any licensed producer or license applicant, or any officer, director, partner or owner of five percent or more of any applicant organization, shall have fingerprint impressions taken and submit them to the Department on a New Jersey State Police fingerprint card, with the fee required to pay for their processing.

4. Upon request by the Department, a licensed producer or license applicant shall supply copies of any complaint, indictment, judgment of conviction or other related documents.

5. Failure to respond to any specific request or to submit documentation requested shall constitute grounds for denial of the license, or suspension or revocation of any current license.

(b) Upon request by the Department, a licensed producer or license applicant shall supply copies of any petition or complaint in bankruptcy, discharge in bankruptcy, or copies of any pleadings in a proceeding for assignment to creditors. Failure to respond to any specific request or to submit documentation requested shall constitute grounds for denial of the license, or suspension or revocation of any current license.

(c) The following provisions apply to the bond requirement for surplus lines authority.

1. The bond required to be filed in connection with the application of any person for a producer license with surplus lines authority shall be on a form approved by the Commissioner pursuant to N.J.S.A. 17:22A-14.

2. Failure to maintain a bond in full force and effect and in the full amount required will serve to void the authority to act as a surplus lines producer as of the date of expiration or cancellation of the bond. Voiding or cancelling surplus lines authority shall be subject to the right of any producer to a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1*[-1 et seq.]* on the issue of whether the filed bond remained valid or a replacement bond was obtained and filed.

3. Upon request by the Department, licensees shall provide information concerning the volume of surplus lines business transacted.

(d) Licensed organizations shall notify the Department within 30 days of the addition or deletion of any unlicensed officer, director, partner or owner of five percent or more of the licensed organization.

11:17-2.12 Fees

(a) The following fees shall be payable as set forth in this chapter:

1. License fee: \$300.00;

2. Filing or processing initial application: \$20.00;
3. Additional authority filing: \$20.00;
4. Reinstating terminated license before its stated expiration date: \$20.00;

5. Any branch office registration: \$20.00;
 6. Filing or processing any Notice of Agency Contract: \$20.00;
- *and***

- *[7. Reissuing lost, stolen or destroyed license: \$20.00; and]***
***[8.]*7.* Any limited insurance representative registration: \$20.00.**

(b) All fees shall be paid by check or money order made payable to: State of New Jersey—General Treasury.

(c) Disabled veterans may be exempted from payment of the fees described in (a) above upon submission to the Department of a completed form DD-214 or recent certificate of the United States Veterans Administration confirming a current service connected disability.

11:17-2.13 Denial of license

(a) Whenever it appears from an application, attached documents and Department records that an applicant has not demonstrated the qualifications prescribed in the Act and this chapter, the Department shall advise the applicant in writing that the license requested is denied; shall specify the reason for denial; and shall further advise the applicant of the right to request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. and the procedure for doing so.

(b) ***[Upon]* *Within 30 days from*** receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, its records and any additional information submitted ***[to]* *and*** determine whether the license may be issued. If after this review the Department ***[finds]* *determines that*** the applicant is not qualified, ***[it]* *the Department*** shall find that the matter is a contested case and transmit it to the Office of Administrative Law for hearing.

(c) Nothing in this section shall prevent the return of an application to the applicant for correction of ministerial errors.

11:17-2.14 Termination and cancellation of license: reinstatement after termination

(a) A licensee may terminate a current producer license by returning the license document to the Department for cancellation at any time before expiration. The Department may refuse to accept a request for cancellation of an organization license unless all current licensed officers or partners consent to the request.

(b) A producer license may be reinstated after termination during the same license period by completing an application in accordance with the provisions of N.J.A.C. 11:17-2.3. No additional license fee for that period shall be required but the processing fee provided in N.J.A.C. 11:17-2.12 shall be paid.

(c) Submitting a license for cancellation shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs.

(d) In the event a license is lost or destroyed, the licensee may request a duplicate by submitting a certified statement attesting to the loss ***[with the fee required for processing]***.

11:17-2.15 Licensee records

(a) The following licensee records shall be public records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Individual licensee: Name, license reference number, business name, business mailing and location address, date of birth, license authorities, date first licensed, professional qualification, date last licensed or current license expiration date; names of companies for which notice of agency contracts have been filed, date of agency contract and date of termination of agency contract if any, and limits on authority if any; names and reference numbers of licensed organizations for which the producer serves as a licensed officer or partner, date became a licensed officer or partner and date terminated if any; names and reference numbers of employed or employing producers, date relationship began and terminated.

2. Licensed organization: Legal name of producer, license reference number, other business name if any, business mailing and location address; license authorities, date first licensed, date last licensed or current expiration date, names and reference numbers of licensed officers and partners; names and reference numbers of insurance companies for which notice of agency contracts have been filed, agency contract date and termination date if any, limits of authority if any; names and reference numbers of employed producers, date relationship began and terminated.

(b) The following licensee records are specifically determined to be nonpublic records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime;

2. Criminal history records obtained as the result of any criminal history check;

3. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

5. Records concerning the medical disability of any licensee; and

6. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken.

(c) Upon request by any person, the Department shall issue a certification of the license status of any currently licensed producer or producer licensed within the preceding four years. Such certification shall contain the licensee's name, date of birth, license reference number, whether currently licensed or expired, kinds of insurance for which authorized whether qualified by examination or the equivalent, and whether any formal disciplinary action was taken during the last four years.

(d) Nothing in this section shall compel the Department to maintain licensee records beyond normal retirement or destruction schedules as approved by the Division of State Library, or to retrieve and provide a copy of any written record required to be filed with the Department when the information requested is available as a certified abstract of information contained in the Department's electronic data processing system.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. TRANSITION RULES

11:17-5.1 Effective dates

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

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

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

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

11:17-5.2 Relicensing current licensees as producers

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

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

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

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

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

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

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

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

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

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

11:17-5.3 Limited insurance representatives

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

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

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

11:17-5.4 Insurance consultants

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

11:17-5.5 Prelicensing education and examination

(a) Beginning on the effective date of the Act, no license shall be issued to any individual who has last passed the State licensing examination more than one year before the date of application. For purposes of this subsection, the date of application shall be deemed to be the date the application was received by the Department.

(b) Beginning on the effective date of the Act, no license shall be issued to any individual who has last completed the course of prelicensing education more than two years before the date of application.

(c) For purposes of this section, the date of application shall be deemed the date the application was received by the Department.

11:17-5.6 Effect of license revocation or suspension

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

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF MORTUARY
SCIENCE**

Fees and charges

Adopted Amendment: N.J.A.C. 13:36-1.6

Proposed: January 19, 1988, at 20 N.J.R. 177(a).
Adopted: March 8, 1988, by New Jersey State Board of Mortuary Science, Donald R. Codey, President.
Filed: March 15, 1988 as R.1988 d.158, **without change**.
Authority: N.J.S.A. 45:1-3.2.
Effective Date: April 18, 1988.
Expiration Date: November 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:36-1.6 Fees and charges

(a) There shall be paid to the State Board of Mortuary Science the following fees:

- 1. Certification fee: \$25.00;
- 2. Licensure examination fee \$100.00;
- 3. Licensure reexamination fee \$100.00;
- 4. Practical examination fee \$50.00;
- 5. Intern registration fee \$50.00;
- 6. Intern reregistration fee \$25.00;
- 7. New installation inspection fee \$100.00;
- 8. New licenses (biennial) \$100.00;
- 9. New licenses in second half of biennial period \$50.00;
- 10. Rules and regulations \$1.00;
- 11. Biennial license renewal fees:
 - i. Practitioner \$100.00;
 - ii. Embalmer \$100.00;
 - iii. Funeral director \$100.00;
- iv. License revival fee \$75.00;
plus \$25.00 for each year said license was not renewed.
- v. Certificate of registration \$220.00;
- 12. Change of manager registration fee \$25.00;
- 13. Funeral home name change fee \$25.00;
- 14. Duplicate license card fee \$10.00;
- 15. Replacement, embossed registration certificate fee \$10.00.

(b)

**DIVISION OF CONSUMER AFFAIRS
LEGALIZED GAMES OF CHANCE CONTROL
COMMISSION**

**Legalized Games of Chance; Unaffiliated
Organizations; Unlicensed Games**

Adopted Amendments: N.J.A.C. 13:47-6.20 and 7.17

Proposed: February 1, 1988 at 20 N.J.R. 249(a).
Adopted: March 9, 1988 by Legalized Games of Chance Control Commission, William Yorke, Executive Director.
Filed: March 25, 1988 as R.1988 d.184, **without change**.
Authority: N.J.S.A. 5:8-1 et seq.
Effective Date: April 18, 1988.
Expiration Date: February 2, 1992.

Summary of Public Comments and Agency Responses:

A full record of the opportunity to be heard can be inspected by contacting the Legalized Games of Chance Control Commission, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Eighteen written comments relating to the proposed amendments were received during the comment period. Seventeen of these comments urged the Commission to pass the amendments, since they will benefit the fundraising abilities of all non-profit organizations.

The only letter urging the Commission to reject the two proposed amendments stated that the proposed amendments would benefit commercial bingo operators to the detriment of parish bingo games. The Commission believes that, contrary to the opinion presented, the amendments will benefit the fundraising abilities of all non-profit organizations, including parish bingo games, since there are no commercial bingo operators.

Full text of the adoption follows.

13:47-6.20 Conduct by unaffiliated organizations

(a) Two or more unaffiliated organizations may not conduct bingo at the same place on the same day except as provided in N.J.A.C. 13:47-14.3(c).

(b) Two or more unaffiliated organizations may conduct raffles at the same place at the same time.

13:47-7.17 Exclusion of unlicensed games

No unlicensed game of chance of any kind, whether lawful or not, and whether any separate or additional charge or wager is required or not, shall be conducted or allowed on any occasion when bingo is played.

(c)

**NEW JERSEY RACING COMMISSION
Harness Rule
Administering Medication to Respiratory Bleeders
Adopted Amendment: N.J.A.C. 13:71-23.8**

Proposed: February 1, 1988 at 20 N.J.R. 250(a).
Adopted: March 21, 1988 by New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Filed: March 25, 1988 as R.1988 d.183, **without change**.
Authority: N.J.S.A. 5:5-30.
Effective Date: April 18, 1988.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-23.8 Administering medication to respiratory bleeders

(a)-(c) (No change.)
(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 14 calendar days, a second time bleeder must remain on the respiratory list for 30 days, and a third time bleeder

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must remain on the respiratory list for three months. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.

(a)

DIVISION OF CRIMINAL JUSTICE

Arson Investigators: Training Requirements

Adopted Amendments: N.J.A.C. 13:76-1.3, 3.1, 3.2 and 5.1.

Proposed: October 5, 1987 at 19 N.J.R. 1788(b).

Adopted: March 7, 1988 by Donald R. Belsole, Director, Division of Criminal Justice.

Filed: March 15, 1988 as R.1988 d.159, with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 40:14-7.1 and 52:17B-97 et seq.; Executive Directive No. 83-1.

Effective Date: April 18, 1988.

Expiration Date: September 6, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

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

13:76-1.3 Definitions

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

"Arson Investigator" means any full-time paid member of a paid or part-paid municipal fire department or force, assigned full-time or part-time to an arson investigation unit who has received a certification in accordance with these provisions.

"Basic Arson Investigation Course" means the curriculum prescribed and sponsored by the *[Training Section,]* Division of Criminal Justice, Department of Law and Public Safety, as an appropriate arson investigation course.

"Basic Course for Investigators" means the curriculum prescribed by the Police Training Commission, and sponsored by the *[Police Services Section,]* Division of Criminal Justice, Department of Law and Public Safety, as an appropriate course of training for arson investigators.

"Certification" means a course of instruction recognized by the Director of the Division of Criminal Justice acknowledging that an individual has complied with the prerequisite training provisions for Arson Investigators.

"Equivalent Course" means a course of instruction recognized by the Police Training Commission as being acceptable in lieu of the Basic Course for Investigators, or a course of instruction recognized by the *[Training Section,]* Division of Criminal Justice, as being acceptable in lieu of the Basic Arson Investigation Course or In-Service Training.

"In-Service Training" means the curricula prescribed and sponsored by the *[Training Section,]* Division of Criminal Justice, Department of Law and Public Safety, to provide selected advanced arson investigation training as may be deemed necessary.

13:76-3.1 Prerequisite requirements

(a) Prior to assignment to an arson investigation unit, an individual must first have successfully completed:

1. The Basic Course for Investigators, or an Equivalent Course; and
2. The Basic Arson Investigation Course, or an Equivalent Course.

13:76-3.2 Certification procedures

(a) (No change.)

(b) The governing body of any municipality shall apply in writing, through the County Prosecutor of the county in which the muni-

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pality is located, for the certification of a proposed member of a paid or part-paid fire department or force as an Arson Investigator, by affirming the date, location and evidence of successful completion of:

1. The Basic Course for Investigators, or an Equivalent Course; and
 2. The Basic Arson Investigation Course, or an Equivalent Course.
- (c)-(f) (No change.)

13:76-5.1 Municipal costs and expenses

The municipality having created and established an arson investigation unit shall be responsible for all costs and expenses for the enrollment and attendance of their personnel in the Basic Course for Investigators, and the Basic Arson Investigation Course and any In-Service Training.

TRANSPORTATION

(b)

CONSTRUCTION AND MAINTENANCE

Contract Administration

Classification of Prospective Bidders

Adopted Amendment: N.J.A.C. 16:44-1.2

Proposed: February 16, 1988 at 20 N.J.R. 380(b).

Adopted: March 21, 1988 by Kenneth C. Afferton, Acting Commissioner for Engineering & Operations (State Highway Engineer).

Filed: March 22, 1988 as R.1988 d.175, without change.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.

Effective Date: April 18, 1988.

Expiration Date: October 3, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:44-1.2 Classification of prospective bidders

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

(c) Prospective bidders will be classified according to the type of work and the amount of work on which they are entitled to bid. The types of work for which prospective bidders may seek classification are on file at the Department of Transportation, Bureau of Contract Administration, 1035 Parkway Avenue, Trenton, New Jersey 08625.

(d)-(q) (No change.)

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(c)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Tolls

Adopted Amendments: N.J.A.C. 19:8-1.1 and 19:8-3.1

Proposed: January 4, 1988 at 20 N.J.R. 49(a).

Adopted: March 16, 1988 by George P. Zilocchi, Executive Director, New Jersey Highway Authority.

Filed: March 17, 1988 as R.1988 d.160, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted.

Authority: N.J.S.A. 27:12B-5(j) and (t), 27:12B-14, 27:12B-14.1, 27:12B-14.2, 27:12B-18, and 27:12B-24.

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Effective Date: April 18, 1988.

Operative Date: May 1, 1988.

Expiration Date: Toll rules exempt pursuant to N.J.S.A. 27:12B-9.

Summary of Public Comments and Agency Responses:

OFFICE OF ADMINISTRATIVE LAW NOTE: All attachments referenced in this Summary were filed with OAL by the Highway Authority, and are available for inspection at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

Public comments were obtained at four hearings held at Saddle Brook, New Jersey on January 5, 1988; Toms River, New Jersey, on January 7, 1988; Woodbridge, New Jersey on January 11, 1988; and Ocean City, New Jersey, on January 13, 1988.

The hearings were attended by approximately 1400 people and produced 17 hours and 40 minutes of hearing transcripts (Attachment A). One hundred forty-eight (148) persons representing State, county and municipal governments, senior citizens, commuters, recreational users of the Garden State Parkway, automobile and bus associations and business and labor organizations presented their comments. Four hundred twenty (420) comments regarding the toll increase were presented by the 148 speakers. Those comments were grouped in 88 general categories and will be addressed in the agency response portion of this summary.

In addition to the public hearings, the New Jersey Highway Authority (Authority) established a telephone "hotline" which began operation on Thursday, November 19, 1987, and was continued through the public comment period terminating on February 3, 1988, resulting in 849 telephone calls, 563 of which were objections to various aspects of the proposed toll increase. The remaining 314 calls were questions and/or comments which were responded to immediately, utilizing a Briefing Book prepared for that purpose or, where necessary, in return telephone calls by appropriate New Jersey Highway Authority staff members. The toll information "hotline" summary is more precisely detailed in Attachment B.

The third method of public comment was in the form of letters and Resolutions received by mail at the Authority. This comment area produced 97 letters and 29 Resolutions from counties, municipalities, quasi-government agencies and bodies and private corporations (Attachment C).

The comments received via the telephone "hotline" and by mail were grouped within the 88 comment areas which will be subsequently described and responded to.

In addition to the comments elicited from speakers at the public hearings, written statements and Resolutions were received and accepted as a matter of record and are appropriately responded to in this Summary. These hearings exhibits consisted of 19 statements opposing the toll increase, eight Resolutions from various government and private bodies opposing the toll increase, two statements supporting the toll increase, one statement supporting the construction of the proposed toll ramp at Interchange 114, Middletown, one statement objecting to construction of proposed toll ramp at I16, Arts Center, two statements objecting to toll increases and proposed toll barriers in Atlantic and Cape May Counties, one statement objecting to an increase in truck tolls, and one statement objecting to the construction of new toll barriers in Atlantic and Cape May Counties.

Public hearings were also conducted by two Legislative Committees. The Senate Independent Authorities Committee met on December 9, 1987 and December 28, 1987 and took testimony from various Authority representatives. That testimony is contained in the transcript included with the submission as Attachment D (two volumes).

The Assembly Independent and Regional Authorities Committee met on December 7, 1987 and December 21, 1987 and also took testimony from various Authority representatives. That testimony is contained in the transcript included with the submission (Attachment E) (three volumes).

Governor Thomas H. Kean directed the Commissioner of the Department of Transportation to review the New Jersey Highway Authority's Capital Improvement Program and submit recommendations. Commissioner Hazel Frank Gluck complied with that direction and has submitted a review dated February 1, 1988. (See Attachment F).

The Treasury Department was similarly directed by Governor Kean to conduct a budget and financial review of the New Jersey Highway Authority. That report has been included and submitted to the Governor by date of February 5, 1988 (Attachment G).

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The transcripts of the Legislative hearings and the reports of the Department of Transportation and the Department of the Treasury have been reviewed by Authority Commissioners, staff and consultants in developing the modified toll proposal.

Toll increases proposed by the New Jersey Highway Authority are subject to prior approval in writing of the Governor of the State and either the State Treasurer or the Comptroller of the Treasury (N.J.S.A. 27:12B-4). Governor Thomas H. Kean and State Treasurer Feather O'Connor have conditionally given the required prior written approval (See copy of letter, Attachment H). The conditional approval is limited to an increase in ramp tolls as follows: All basic car tolls to be established at \$.25, with truck tolls to be established as follows:

1. 2-axle, 4-tire truck, 3½ tons or more—tolls be established at a uniform \$.35 for all barriers and ramps where truck passage is allowed.
2. 2-axle, 6-tire truck—tolls be established at a uniform \$.50 for all barriers and ramps where truck passage is allowed.
3. 3-axle truck—tolls be established at a uniform \$.75 for all barriers and ramps where truck passage is allowed.
4. 4-, 5-, and 6-axle truck—tolls be established at a uniform \$1.00 for all barriers and ramps where truck passage is allowed.

Consistent with the Governor's direction, the definition of "car token" is deleted upon adoption, with the remaining definitional changes, "car" and "heavy truck" remaining as proposed.

In response to the Governor's recommendations and comments received at the public hearings and through the other means established for receiving comment, the Authority has altered its proposed amendments as more precisely set forth in the foregoing.

The Authority's General Attorney has reviewed the proposed amendments as modified and the provisions of N.J.A.C. 1:30-4.3 and is of the opinion that the changes do not require additional public notice and opportunity for further comment since they do not:

1. Enlarge or curtail who and what will be affected by the proposed rule.
2. Change what is being prescribed, proscribed or otherwise mandated by the rule.
3. Enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

The changes delete the proposed increase in basic car tolls at barriers, delete the provisions for establishing two additional barrier collection points and three ramp collection points, delete the proposed increases in bus tolls, reduce the proposed increase in truck toll charges, and establish a uniform \$.25 ramp toll for cars.

The Office of the Public Advocate, Division of Public Interest Advocacy, reviewed the question as to whether or not meetings at which the New Jersey Highway Authority's toll increase was discussed were in violation of the Open Public Meetings Act. That review was memorialized in a report dated January 27, 1988, Attachment I. In sum, the Office of the Public Advocate maintains that the closed meetings referenced in its report at which the toll increase was addressed were in violation of the Open Public Meetings Act.

The report also addresses the Highway Authority's Special Meeting of November 30, 1987 which, in the Authority's view, was a de novo proceeding conducted pursuant to N.J.S.A. 10:4-15. The action taken by the Authority at the November 19, 1987 meeting has been challenged as to its conference with the Open Public Meetings Act. Although it is the Authority's position that the November 19, 1987 meeting was not in violation of the Act, nevertheless, to remove all doubts, the Authority decided to proceed with the corrective remedial action proscribed by the statute. The Office of the Public Advocate in its report does not refute this contention but appears to suggest that a better policy would have been to repeat the entire process again.

COMMENT: An observation that the Authority should have advised the Legislature before it took on additional responsibilities, in particular, the payment of \$10 million to the State and the takeover of State sections.

RESPONSE: In 1984, the Authority made known to the State its feelings with regard to its \$10,000,000 annual contribution to the Transportation Trust Fund. It was felt that, although not at that exact point but in the future, the contribution would impair the Authority's fiscal position. At the time, a committee appointed by the State felt it was in the best interest of the citizens of New Jersey if the Authority, along with the Turnpike and Expressway, donated to the State Transportation Trust Fund. These contributions would allow the State to bond for vital transportation projects throughout the entire State. As a result, the Authority defeased its outstanding debt issues to eliminate restrictive covenants which prevented the Authority from assisting the Trust Fund. The 1984

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Series Bonds were issued to repay these issues as well as to provide additional funding for its own capital improvements.

The takeover of the State sections of the Parkway by the Authority was done to provide a better level of service to the motoring public. Of the almost 173 miles of roadway, only 19 miles were not the responsibility of the New Jersey Highway Authority; yet, the Authority, over the years, had received numerous complaints regarding these sections. It was felt that if the entire operation were under one jurisdiction, the public would experience a smoother, more efficient operation. The operational cost associated with the takeover is \$3 million a year and is not the cause of the toll rate increase.

COMMENT: Support for toll increase as necessary and desirable to meet financing obligations for maintenance, renovation, expansion and safety improvements.

RESPONSE: There were only a few speakers in support of the toll increase at the four public hearings. Those who did speak for a toll increase in a positive vein recognized the need to continue the capital improvement program, to be able to maintain the excellent reputation of the Parkway in terms of safety, appearance, and movement of traffic, with monies for this purpose being generated principally from net operating revenues and bonding.

COMMENT: The Parkway should establish priorities for high-occupancy mass-transportation vehicles (buses) and eliminate toll charges for buses.

RESPONSE: The Authority is actively working with New Jersey Transit on a number of alternatives to improve flow of bus traffic, including possible construction of new access ramps and automatic vehicle identifications to allow buses to use a designated toll lane without stopping to pay the toll.

As the Authority informed the Senate Independent Authorities Committee, the Authority can consider high-occupancy vehicle (HOV) lanes and also can consider making the entire Parkway an HOV roadway during peak hours in the peak direction. However, the Authority cannot act independently of other transportation agencies. If restricting all or part of the Parkway to high-occupancy vehicles during peak hours would induce people to carpool or use mass transit, the idea might be worthwhile. If, however, people are forced off the Parkway because of HOV lane restrictions with which they cannot comply, they will overcrowd the local road systems and the State Highways such as Route 9, Route 35, Route 34 and Route 1. This is a condition the Authority does not believe it should encourage.

The Authority must also keep in mind that the State experimented unsuccessfully with an HOV lane in the Union-Middlesex State Section several years ago. The experiment was terminated due to extreme adverse reaction from the public demanding the right to use all portions of the roadway paid for with their dollars. Unless the Authority gets cooperation from counties and the Department of Transportation (NJDOT), and changes the opinion of most Parkway commuters, HOV lane restrictions will not be accepted by the traveling public on the Parkway.

When considering recommendations and requests to favor mass transit, the Authority must consider other positions taken by the public. A speaker at one of the public hearings demanded that the Authority charge buses the full \$.25 fare for each passenger on the bus at each toll barrier, so the range of opinion is from a zero fare to a \$10.00 per bus fare at each barrier.

The Authority remains committed to all reasonable efforts to encourage use of mass-transportation facilities.

COMMENT: A perception that bridges displayed in photographs at the hearings were in deteriorated condition for a substantial time period.

RESPONSE: Of course the bridges displayed in the photographs at the hearings did not get into the deteriorated condition depicted overnight. The pictures were merely intended to show the repair work which must be funded by the toll increase. The bridges did not get into their present condition in a matter of days, nor has the Authority ignored the condition of the bridges.

The Authority maintains 488 bridges, approximately 40 of which it inherited from the New Jersey Department of Transportation last July. In the last five years, the Authority has awarded 26 construction contracts to rehabilitate 121 bridges at a cost of \$56.5 million, more than \$460,000 per bridge.

Considering that approximately 400 of the 488 bridges on the Parkway were built in a three-year span in the mid-1950's, it is not surprising that many of the bridges are in need of significant repairs at about the same

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time. The Authority must continue to spend \$10 to 12 million per year on bridge repair, in order to keep the bridges in safe condition.

COMMENT: An observation that the hearings should have been held in public buildings and schools rather than hired halls.

RESPONSE: The Authority attempted to obtain public buildings for the hearings. An earlier hearing originally scheduled for December, 1987 at the Dover Township Town Hall had to be canceled. When the hearings were rescheduled for January, 1988, the Authority was advised by Dover Township that it could not accommodate the new date. The hearing in Ocean City was held at the Music Pier, which is a municipally-owned building.

Owing to the constraints of public notice regarding the hearings, the Authority was obliged to select and advertise a building where it was certain it would not be preempted by a local government need. Consequently, the need to rent a private facility.

COMMENT: A question as to why time was devoted at the beginning of the hearings for presentations by the Executive Director, Commissioners and other Authority personnel.

RESPONSE: The proposed amendments are to rules of the New Jersey Highway Authority and consequently, must adhere to the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-4(g), which requires that, "At the beginning of each hearing or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, . . ."

In short, the Authority was required by the law to make the presentations objected to.

COMMENT: An objection to free passage provisions of the Authority's rules.

RESPONSE: The Authority's toll-free passage rule is set forth in N.J.A.C. 19:8-3.2. That rule provides free passage for persons or vehicles in the following categories:

1. The Governor of the State of New Jersey, former Governors of the State of New Jersey, Commissioners and executive staff members of the Authority and former Commissioners of the Authority;
2. Consultants, employees of the Authority and members of the State Police assigned to the Authority in the actual course of performance of such duties, or while traveling to or from the place of performance of such duties;
3. Vehicles carrying persons to or from destinations on the Parkway where such persons are required by law to perform specified functions on the Parkway;
4. Members of the fire department of any local municipality or political subdivision in the course of performance of duties on the Parkway;
5. The emergency passage of ambulances or rescue vehicles when driven by authorized members of any public or non-profit ambulance or rescue squad services; and
6. Authorized vehicles when engaged in the performance of construction, service or maintenance contracts when such vehicles are operated by personnel authorized by the Authority to perform duties under the terms of contracts with the Authority.

The rationale for providing toll-free passage for the indicated categories is that it has been and is the view of the Authority that the indicated persons, owing to their relationship and familiarity with the operation of the Garden State Parkway, will be in a position to make observations of conditions requiring modification and/or repair and report to the appropriate Authority Department for attention, resulting in a more efficient operation and better service for the patrons of the Garden State Parkway (Categories 1 and 2).

Categories 3, 4 and 5 relate to cooperation with other governmental agencies, including police and fire departments and ambulance or rescue vehicles. The presumption is that those persons will be providing or have provided assistance and/or service to the general public and in many cases, specific service to patrons of the roadway.

Category 6 provides for free passage for vehicles owned and operated by outside contractors performing construction service or maintenance activities for the Authority. It is the Authority's view that those costs would be included in the contracts if not provided, in any event, and serves the further advantage of expediting the indicated work.

COMMENT: The open system of collecting tolls and institution of a closed or ticket system as utilized by the Turnpike should be eliminated.

RESPONSE: The open system of collecting tolls was necessary on the Parkway because of the existence of three toll-free sections scattered the length of the Parkway. Because of these three toll-free sections, the Authority-owned portions of the Parkway were essentially four sections separated by the three separate State sections. In order to use a closed

ticket system, it would have been necessary for the Authority to establish four locations at which patrons would pick up a ticket and three locations at which a patron wishing to leave an Authority section and enter the free section would pay a toll; thus, the Authority would operate four separate toll roads.

It was always intended from the original concept of the Parkway to have many entrances and exits since the roadway was conceived at principally serving cars and residential traffic. Frequent entrances and exits are not possible on a closed system because of the extreme cost of collecting the toll. The mainline toll barriers allow the Authority to operate many toll-free interchanges. By comparison, the New Jersey Turnpike has approximately 25 interchanges. The Garden State Parkway has 89 interchanges, 19 of which are tolled and 70 are free. In order to collect tolls only at ramps, the Authority would be forced to spend more than \$100 million to revamp the toll collection system, just to continue to collect tolls on the 19 existing toll ramps. It would also have to close the 70 free interchanges, or place a toll on these. It just is not practical to change from the open system to the closed system.

The commenters also fail to recognize that the barrier toll collection system is the most efficient in cost of collection. Because the Authority collects as much as 70 percent of its toll in automatic toll collection machines, the cost to collect a dollar is about half of what it costs other toll roads to collect tolls.

COMMENT: The Authority should carry out the intent of the original referendum authorizing the construction of the Garden State Parkway by removing tolls, since the original construction costs have been satisfied.

RESPONSE: A review of the original referendum does not indicate a direction or intent that tolls would be removed after original construction costs have been satisfied. In addition, increased traffic volume along the route of the Garden State Parkway over the years since initial construction has required substantial expansion and widening. Costs for this expansion and widening must necessarily be met from toll revenues.

COMMENT: A recommendation that the Commissioner of the Department of Transportation be designated as an ex officio member of the Garden State Parkway.

RESPONSE: There is legislation pending which would effect this recommendation by making the Commissioner of the Department of Transportation an ex officio member of the New Jersey Highway Authority (Garden State Parkway), the New Jersey Turnpike Authority (the Turnpike), and the New Jersey Expressway Authority (Atlantic City Expressway).

COMMENT: A suggestion that the Authority review the proposed toll increase and consider change.

RESPONSE: The Authority had done so and has substantially modified the initial proposal. The modification generally rescinds the barrier increase and provides for a \$.25 uniform ramp toll, with reductions in the toll rate proposed for buses and various truck categories.

COMMENT: A proposal that bus passage on the Garden State Parkway be toll-free with cost to be picked up by car patrons.

RESPONSE: The only reason demands for toll-free passage for buses met with applause at the public hearings was because the car patrons in the audience were in favor of eliminating the toll increase or eliminating tolls altogether. Since the Parkway carries twice as many people per day and per year as New Jersey Transit does on its entire system, this is not likely to be a popular proposal with the Authority's car patrons.

COMMENT: A stated position that the reduction or elimination of tolls for buses will increase ridership, thereby reducing congestion on the Parkway.

RESPONSE: This concept is good in theory but since the present tolls at the Ratitan Toll Plaza, for example, cost a fully-loaded bus less than \$.02 per passenger, it seems unlikely that any reduction in the fare would be sufficient to attract more ridership even if the bus companies were willing to reduce the fare, which appears unlikely. Increased ridership on buses using the Parkway certainly would reduce congestion on the Parkway—the trick is how to improve ridership.

COMMENT: The Parkway should provide a system of bus access on the road for mass transit.

RESPONSE: These comments were made by a Vice President of the New Jersey Association of Railroad Passengers and the Shore Commuter Coalition, and past Chairman of the Ocean County Board of Public Transportation. He asked a series of questions more specific than the way the question is posed here.

He advocates moving people, not vehicles, which is something the Authority believes is within its limited ability to control the use of the roadway.

The commenter objects to any discount for passenger vehicles because, in his view, that is a disincentive to use mass transportation. He wants the Authority to encourage use of mass transit by any means possible. He recommends a flat toll rate so that everybody pays his or her fair share and those who use the road most often are not given a discount to encourage further use.

The commenter requests better links to public transit, not just expansion of the roadway. He cites Metro Park Rail Station as an excellent transit connection and suggests that similar improvements could be made in Atlantic City and Matawan. He requests better access to the Matawan Station.

The commenter claims that when the Shore Commuter Coalition recommended better connections at Matawan, the Highway Authority four years ago refused to cooperate because there would not be enough toll revenue to pay for the improvements. This is only part of the story. The location where the commuter group tried to get the Authority to make a connection was geometrically impossible, an environmental disaster, and would have required destroying homes and buildings through wetlands. The Authority is working with New Jersey Transit at the present time to develop connections directly from the Parkway to a new station in the Matawan area.

Many of the Authority's commuter parking lots were developed in cooperation with New Jersey Transit. The commuter lot at Allwood Road, Clifton, New Jersey, for example, does not solely serve people who use the Parkway—it serves people coming from the west trying to get to New York City who do not use the Parkway to get to the parking lot. Nonetheless, the Authority has expanded that lot and now, at the request of New Jersey Transit, intends to expand it a second time, to allow a 400 percent increase in capacity.

The Authority works closely with New Jersey Transit and presently is entertaining a series of requests from New Jersey Transit as a result of the NJDOT review of the Capital Improvement Program. The Authority remains committed to mass transportation.

COMMENT: A question as to why it took five years to build the additional lanes for a distance of one mile north and south of the Asbury Park toll booths.

RESPONSE: The commenter asks why it took three to five years to build the lanes from the Asbury Park toll booths one mile. This contract was done by Hess Brothers, Inc. at a cost of \$8.2 million. The work began in August, 1983 and was completed in November, 1985. This is not an unusually long period of time for work of this size and nature. The contract included widening the toll plaza, widening the mainline roadway and constructing a new five-lane bridge carrying the Parkway.

COMMENT: A statement questioning the wisdom of using small contractors and a suggestion that large contractors should be used.

RESPONSE: The commenter asks why the contracts are given out for small sections and not for large sections and who made this policy. The policy is to award construction contracts for a size that makes sense. If the Authority awards only very large contracts, it greatly reduces competition, which is never in the public interest. On the other hand, if the work is given out in small pieces, it may not be as efficient and may cost more in the long run. These decisions are primarily made by the Authority's Engineering Department, but, of course, are subject to approval by the Commissioners each time a contract is awarded. The Authority does use large contractors but the Authority cannot pick and choose its contractors—they are chosen for it by the public bidding process.

When a contractor goes bankrupt, the Authority is protected by a bond which ensures that the work will be done for the price bid. If the work is of extremely poor quality, the contractor can be prohibited from bidding on future Highway Authority and State contracts.

The Authority does not confiscate contractors' assets and sell them at public auction. In the event of bankruptcy, what the Authority can and cannot do is governed entirely by the law. Since the Authority is protected by a performance bond, it is unlikely that the Authority would have to take any action in the event of bankruptcy other than to invoke the bond.

All of the Authority's construction work is supervised by consulting engineers engaged by the Authority. The Authority sees no evidence that it is not getting its money's worth in construction.

COMMENT: A question as to the reason for placing guiderail on the Parkway between Bricktown and Toms River, with a further question as to why the variation in heights and lengths.

RESPONSE: The commenter inquires as to why guiderails were put up between Bricktown and Toms River, and a number of other questions concerning guiderail. Guiderail is installed in accordance with New Jersey Department of Transportation guidelines which are based on the Ameri-

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can Association of State Highway and Transportation Official (AASHTO) Guidelines. The lengths of each guiderail run are different on the right and left side because of the different hazards which the guiderail is designed to protect the motorist from—trees, steep slopes, culvert and headwall structures, etc. The guiderail was placed wherever the standards require. The guiderail is all placed at the same height, but the older guiderail tends to settle and this differs in height by a few inches. The contract was awarded by the Authority's Engineering Department after public bidding. The Authority cannot determine the cost because of the vague definition given by the commenter for the area in which he is interested.

COMMENT: An objection to the report that \$5.3 million was spent on landscaping in the last 18 months while only \$4.1 million had been spent in the previous 15 years.

RESPONSE: This commenter also objected to spending \$200,000 a mile for landscaping between Holmdel and Old Bridge.

For the 15 years prior to the adjustment of the Parkway Construction Fund in March, 1986, the Authority spent \$4.1 million on landscaping. This was the amount charged to the Construction Fund, and probably included some landscape contracts as well as planting material purchased by the Authority's Maintenance Department. It does not include the cost of landscape labor in the Maintenance Department. The Authority spent \$4.3 million under the landscape project number in the Construction Fund between March, 1986 and November, 1987. However, landscaping also includes erosion control. About 50 percent of the money spent in that 17 months was to repair seriously eroded slopes—particularly in the Keyport-Matawan-Telegraph Hill areas where acid black clay soil kills the highway grass and causes very severe soil erosion to the point of endangering the stability of the roadway if left unrepaired.

Furthermore, as discussed elsewhere in this Summary on the question of mowing, major portions of the money spent for landscaping were used to construct wildflower beds, special grass areas and mulch to planting beds, in order to reduce the amount of mowing.

The commenter is correct that the Authority spent \$200,000 a mile on slope erosion control between Holmdel and Old Bridge, that is, between Mileposts 116.8 and 126.0. This was a very severely eroded area, both on the exterior slopes and on the interior slopes, between the northbound and southbound roadways. This is a part of the acid soil area where the Authority has not been very successful in maintaining a good stand of grass. Based on recommendations of the Authority's landscape architects, as well as Rutgers University, the Authority has placed a thick blanket of sand on the slopes to isolate the grass roots from the acid soil, then placed topsoil on top of the sand blanket and seeded in the usual manner. The Authority has tried this on several contracts in the last five years with significant success. It is not inexpensive but it is essential that the Authority control soil erosion both for stability of the Authority's embankment and to prevent loss of topsoil into the streams. In this same area in the last few years, the Authority had to spend significant funds to clean out the stream that drains this entire area because topsoil washed off the Authority's slopes was causing interference with drainage, both on the Authority's land and further downstream.

The severe erosion has, to some extent, resulted from the fact that the Authority did not spend sufficient money to maintain the roadway prior to 1983—particularly, in the 1970's. This is evidenced by the fact that the Authority spent less than \$10 million per year on construction in 1975, 1976, 1977, 1980, and even in 1978 and 1979, expenditures were only \$17 and \$13 million, respectively. If more money had been spent on erosion control in the late 1970's, the slopes could have been repaired while erosion was still small. Deferred maintenance in the 1970's has made it necessary not only to make major repairs at 1980 prices, but to make repairs that are much more extensive than they would have been if smaller repairs had been made at the proper time.

COMMENT: What alternatives have been developed to meet financing needs for capital construction and maintenance other than toll increase?

RESPONSE: The only option to this Authority to raise revenue after reducing expenses to the minimum is to increase tolls. The Authority already is getting a larger return for the services provided at its Service Areas. The Authority has no taxing power and has no way to compel the State to provide funds to operate the Authority. In fact, the State has compelled the Authority to provide funds to construct other highways.

COMMENT: A suggestion for the removal of all tolls from the Garden State Parkway and the take-over of all toll roads by the State Department of Transportation.

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RESPONSE: The basic premise of a toll road system is that it is user oriented. The user of the road pays for the services provided and not the general Treasury of the State. If the Department of Transportation were to assume maintenance and capital responsibilities for all toll roads, then every citizen, through his tax dollars, would pay. This would be true whether or not the citizens use the toll road. The State would assume all outstanding debt as well, thus reducing its ability to respond to other projects vital to the citizens of the State.

Currently, the three toll authorities of the State control more lane miles of super highway than the Department of Transportation. There must be grave reservations as to the ability of the NJDOT to assume responsibility for these roads and provide the same level of service to the motoring public. One must question whether bigger is better or as efficient as the present system.

COMMENT: An objection to use of Authority credit cards for personal expenditures by Authority personnel.

RESPONSE: There have been some instances but in every case it was a temporary use subsequently repaid by the persons involved. The account has since been closed and Authority personnel no longer have credit cards.

COMMENT: An observation that expenditures should be reduced, thereby eliminating the need for a toll increase, for example, employees' expenses on business trips, unnecessary improvements at the Garden State Arts Center and massive overtime.

RESPONSE: It is likely that business trip expenses will be substantially reduced in the future. To the best of the Authority's knowledge, there have been no unnecessary improvements at the Garden State Arts Center, all improvements being necessary. As to the comment that there is massive overtime, it is simply in error. The *Asbury Park Press* conducted a survey of overtime expenditures for toll collectors on the Garden State Parkway, the New Jersey Turnpike, the Pennsylvania Turnpike and the New York Thruway. The newspaper concluded, on the basis of this analysis, that Parkway expenditures for toll collectors were in line with and in most cases substantially lower than the other agencies.

COMMENT: An observation that the State has sufficient money to handle roads but favoritism in the awarding of contracts diminishes the money available.

RESPONSE: The New Jersey Highway Authority adheres to the Public Bidding Laws which require, except in certain specified instances, awarding of any and all contracts to the lowest responsible bidder. To the best of the Authority's knowledge, other State agencies also adhere to the appropriate bidding laws.

COMMENT: An objection to the fact that a toll collector made \$50,000 a year, half of which was overtime.

RESPONSE: There was one instance in which a single toll collector received wages of approximately \$50,000. That came about because that particular toll collector took advantage of all opportunities to work overtime and consequently put in and was paid for a substantial number of overtime hours. The Authority's collective bargaining agreement with the Union requires that the Authority offer overtime opportunity equally. This was done. Other toll collectors at that toll plaza where the toll collector made \$50,000 apparently refused the overtime—consequently, the seemingly inordinate amount of wages.

There are a substantial number of toll collectors whose wages are at the \$13,000 per year level. As indicated above, the salary of \$50,000 is extremely unusual. Before any Tolls personnel are assigned to work overtime, a determination is made as to whether there is a need. Secondly, the schedules of adjoining toll plazas are examined to determine whether a regular scheduled collector can be reassigned into a vacated slot.

COMMENT: An observation that buses carrying large numbers of persons should pay a substantial increased toll.

RESPONSE: The toll increase proposal as originally developed would have increased the charge to buses. That portion of the proposed increase has been deleted for the present but will be reviewed again in the future.

COMMENT: Opposition to imposition of a toll at Milepost 120.

RESPONSE: The Authority establishes tolls on ramps for two reasons: first, to generate revenue and, second, in order to prevent patrons from bypassing a mainline barrier shortly beyond the exit ramp. One of the biggest burdens the Authority imposes on the local highway network is when it establishes a mainline toll barrier and then allows an escape route just before the barrier. This leads patrons to exit from the Parkway miles from their destination in order to avoid paying a toll and, thus, they overload the local road system unnecessarily.

Interchange 120 is a prime example. People who wish to go further south exit at 120 to avoid paying the toll at the Matawan-Keyport

Interchange. The Authority believes that if it places a ramp toll plaza on Interchange 120, many of these people who exit at this location will instead exit at the Keyport-Matawan Interchange which is actually the best exit to reach their destination.

The major reason, however, for proposing a ramp toll plaza at Interchange 120 is to fund a part of the cost of revising the Interchange to accommodate massive future development already approved by Woodbridge Township and Middlesex County. A developer has received approval to build two million square feet of office, commercial and residential space. He was planning a 2,000-car parking lot for a proposed new railroad station on the New Jersey Transit Jersey Shore Branch. The Authority estimates that if this construction is permitted to go forward there will be an urgent need for the construction of at least four additional lanes across the Parkway in the Laurence Harbor Road area. Traffic to this development, which is equivalent to one-half of one of the World Trade Towers in downtown Manhattan, will overwhelm the area and will cause massive congestion on the Parkway.

The proposal to toll Interchange 120 was not intended for revenue raising but to protect our traffic and pay for only a small part of the cost of construction made necessary by development being permitted by the town and county.

COMMENT: An objection to placement of toll booths at Laurence Harbor.

RESPONSE: This speaker objects to putting toll booths at Interchange 120 because the Interchange is already badly congested at 4:30 in the afternoon. He feels the toll booths will make it worse. This objection was answered in the previous response.

COMMENT: Support for Interchange 116; opposition to construction at 114.

Support for imposition of tolls at Interchange 116.

Objection to imposition of tolls at Exit 114.

RESPONSE: The Authority has reviewed the toll increase which would have included the installation of ramp tolls at Interchanges 116 and 114 and has decided at this time not to proceed with same.

COMMENT: A complaint that all information pertinent to the justification for the toll increase has not been made available to the public.

RESPONSE: The Authority believes it made sufficient information available to the public for purposes of the public hearings in the Briefing Book and in the literature distributed at the public hearings. The Authority has provided copies of the Official Statement for the 1984 and 1986 Bond Issues, the Annual Reports, and the Comprehensive Traffic Study to those requesting same. It has provided more than 50 pounds of documents to the Department of Transportation. The Authority makes this information available to anyone who wishes to come in and review it.

In addition, four public hearings were held at locations along the Parkway's 173-mile length, in order to provide maximum accessibility to its patrons. Furthermore, these hearings were held in the evening to afford commuters the chance to attend.

That the media—obviously the most viable source of getting information to the public—did not widely publish the Parkway's capital improvement needs and often did not cite the \$.35 discounted token as an option, thus leading many readers to conclude that paying double was their only option, was a disappointing aspect of the media's otherwise intense coverage of the issue.

The Authority's 1984 and 1986 public bond statements refer to the need for a future toll increase. In addition, a 30-page Briefing Book was prepared for the media, public, local, county and State officials explaining in detail the justification for the proposed toll increase. That this information does not justify the toll increase proposed in some people's judgment is expressly why public hearings were held; to give the public the opportunity to express their opposing views, if this be the case.

COMMENT: An observation that insufficient information has been presented to the public on the Authority's Capital Improvement Program and/or insufficient time allowed for review and analysis of same.

RESPONSE: The Authority prepared a 30-page Briefing Book which it believed covered all aspects of the increase proposal and the reasons underlying the proposed toll increase, handouts containing information regarding the proposed toll increase and reasons therefor were distributed from toll booths along the Garden State Parkway, handouts were prepared and distributed at the four hearings and a substantial mailing to many persons and agencies of the Briefing Book was effected. A press conference was conducted in hopes of providing information regarding the proposal. The Authority established a telephone "hotline" to provide information and respond to comments and questions raised.

The hearings were held in January of 1988. The Briefing Book, the press conference, the handouts and the "hotline" were established, distributed and mailed for a seven-week period preceding the hearings. A press conference was held on November 19, 1987.

COMMENT: Opposition to the toll increase as presently proposed.

RESPONSE: Most of the speakers at the four public hearings were against any type of toll increase. A limited number accepted the idea of the need for an increase but less than the 50-35-25 plan which was proposed. The incorrect idea of "doubling" of tolls seemed to be stressed by most who spoke. There were suggestions made to reduce expenses rather than to increase income to make ends meet. Some felt that the Authority salaries were too high. There were several who noted that when the Authority was created as a toll road that tolls would be lifted when the original bonds were paid off.

All of the above conveyed objections to a toll increase. The Authority does not believe that the public understood the need to generate revenue via a toll rate increase to meet its operating requirements, needed safety construction and to continue the Authority's Capital Improvement Program. This first general toll rate increase after 33 years in operation did not find favor with the people present at the hearings. To cut back on costs, while possible, and probably only for a short period of time, would adversely affect Parkway safety, appearance and movement of traffic. Toll rates less than those proposed will adversely affect the Authority's Capital Improvement Program and, again, Parkway safety, appearance and movement of traffic.

Forty-one persons at the public hearings specifically objected to any toll increase whatsoever. Four of the speakers objected to the doubling of tolls but indicated acceptance of a lesser toll, if justified. Three persons lodged objection to the proposed new ramp collection points.

There were other objections to the toll increase in general without specific comments or questions that can be responded to.

The Authority has substantially modified the original proposal.

COMMENT: A stated position that patrons using the northernmost portion of the Parkway pay more than their share of cost, thereby subsidizing southern or other portions of the roadway.

RESPONSE: Vollmer Associates, the Authority's traffic consultant, proposed three basic rules to be followed whenever the Authority makes an adjustment to the toll collection system. These rules are: (1) that each trip on a portion of the Parkway constructed by the Authority should pay at least a portion of the cost of the trip or, in other words, there should be no toll-free trips on the Authority portion of the Parkway; (2) that the distance between barriers should be consistent on similar sections of the Parkway; and (3) that toll ramps that are in close proximity to a barrier and which serve traffic that does not quite reach the barrier should charge the same toll as the adjacent barrier. The Authority has followed these rules in recent years in the interest of fairness to all drivers. And, it is on the basis of these rules that Vollmer has recommended the construction of two new toll barriers.

South of the Cape May State Section is an eight-mile section which provides one of the few remaining free trips on the Authority-constructed portions of the Parkway. Thus, the recommendation for a new toll barrier between Mileposts 4 and 6. This recommendation is also consistent with the recommendation that the distance between barriers should be uniform.

The greatest distance between mainline barriers is 25 miles between Great Egg and New Gretna Toll Plazas. There are a significant number of free trips possible on this section of the Parkway. To make the distance between toll plazas in this section of the Parkway more consistent with the 16-mile average south of the Raritan River, Vollmer associates recommend that a second new mainline barrier be located midway between Great Egg and New Gretna, or at about Mile 40.

The relatively close spacing of the mainline toll barriers north of the Raritan River, as compared with the spacing south of the Raritan River, was established by the original Commissioners and presumably it was established on the basis that construction costs were greater north of the Raritan River than they were south of the River. This is true even today. Among the factors which make the cost of construction and repair higher on the northern portions of the Parkway are the following:

There are four times as many bridges per mile north of Raritan than there are in Cape May and Atlantic Counties, and bridges cost far more to construct per square foot than roadway does; right-of-way costs are much higher north of the Raritan River; in order to avoid high cost of right-of-way and avoid damaging structures, the Authority makes much greater use of expensive retaining walls in the Essex County area than it does south of the Raritan River; labor costs are higher in the northern metropolitan area than they are in the southern part of the State; and

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material costs are higher for earth and gravel and stone and concrete and blacktop in the northern part of the State than they are in the southern.

For further information, see the letter dated February 2, 1988, Vollmer Associates to George P. Zilocchi, the Authority's Executive Director, a copy of which was filed with and is available for inspection at the Office of Administrative Law.

COMMENT: A statement that it was inequitable to propose to fund Parkway improvements in the southern area of the roadway while more numerous North Jersey projects were accomplished with no increase.

RESPONSE: Many users of the northern portion of the Garden State Parkway objected to a toll increase which they viewed as principally necessary to finance construction in the southern portion of the roadway.

Senator Hurley and others speaking at the Ocean City hearing urged that the improvements be made in the southern part of the State, but without increasing tolls, or at the very least, without adding an additional toll barrier in Cape May County.

It is difficult to satisfy the contradictory positions on this matter. The Authority merely points out that many public officials commented that proposed Parkway construction in their respective areas was necessary whereas construction in other areas, in their view, was unnecessary.

COMMENT: The State should be required to return the \$10 million annual contribution that has been made over the last three years, the agreement with the State to make any further payments should be rescinded and money paid should be returned out of State surplus.

RESPONSE: In 1984, the Authority entered into an agreement with the State of New Jersey to pay \$10,000,000 annually for 20 years. This resulted in the defeasing of the 1978 Bonds to allow the Authority to enter into the said agreement thus permitted under the 1984 Bond Resolution.

It is true that the Authority has paid over \$34,000,000 to the State Transportation Trust Fund and that the refund, if possible, by the State would eliminate the current deficit. A toll increase would be required within a few years, in any event, irrespective of the State payment owing to increases in operating costs, capital improvement needs which require bonding, and debt service.

COMMENT: Why did the Authority borrow \$80 million in short-term loans to continue paying for a construction program three months before they announced the toll increase proposal?

RESPONSE: The short-term financing of June, 1987 was in response to long-standing capital improvement needs, not an attempt to lock in a toll increase.

The Authority actually entered into a credit agreement for up to \$80 million but only \$50 million has been borrowed to date. It was determined that the Authority would require, on the basis of projections of capital spending, at least \$50 million for capital purposes over the six-month period commencing with entering into the credit agreement in September, 1987. By borrowing the \$50 million, the Authority is able to earn interest on the remaining amount of monies still in the Parkway Construction Fund and also not be subject to severe arbitrage restrictions under the Tax Reform Act of 1986. In addition, the Authority would not be faced with a long-term borrowing at the same time that the toll increase was being proposed, which could cause problems with potential investors. In addition, because the short-term debt is not subject to the same covenants as long-term bonds, the Authority did not have to show that it could meet all of the debt service coverage factors required in its bond contract with investors. In order for the Authority to meet its bond covenants, a toll increase would have to be in effect before selling senior, long-term bonds. For all of these reasons, the Authority determined that it would be best to continue to fund its capital program, but do it in such a way so as to avoid having to go through the process of selling long-term bonds.

Senator Hurley, at the Ocean City Public Hearing, asked the question, "Why did the Authority borrow \$80 million in short-term loans to continue paying for a construction program three months before they announced the toll increase proposal?"

There were a number of reasons given by Government Finance Associates, Inc. (GFA), the Authority's financial advisors, in support of the short-term financing program which was entered into at the time chosen to do so. As noted in a June 11, 1987 memorandum, the principal reasons given by GFA for this short-term plan, which was needed to continue to maintain the Authority's Capital Improvement Program, were as follows:

1. The Authority believed that prudence dictated that it maintain flexibility in terms of drawing down funds needed for the construction fund. With a line of credit from which the Authority can draw, it will not incur any interest expense until the funds are actually drawn down by the

Authority. This is particularly important in light of the changes in the Federal Tax Law affecting arbitrage. Prior to the passage of the Tax Reform Act of 1986, the Authority would have been able to invest the proceeds from a debt issue and keep excess earnings on those funds during the time that the Authority had not yet expended the funds (subject to certain limitations on the total length of time those funds could be unexpended). Under the new law, the Authority must rebate any excess arbitrage earnings to the United States Treasury, making the incurrence of a large amount of debt prior to time when the funds are actually needed less desirable.

2. Another consideration in the decision to sell short-term debt at this time is the current volatility in the bond market. Over the last two months, the municipal bond market has experienced very sudden and sharp swings in interest rates. Because of this volatility and because the Authority will only be committing itself for a short time period with the notes, rather than for 25 or 30 years with bonds, the Authority should not be as negatively affected if similar swings occur when the Authority is borrowing its short-term debt.

3. For long-term debt, tax-exempt rates are at present at approximately taxable rates, and until those tax-exempt rates are brought more in line, on a relative and historical basis, with taxable debt, it would be to the Authority's advantage to sell short-term.

COMMENT: Return responsibility for maintenance and construction of the recently acquired State sections of the Garden State Parkway to the State, thereby reducing costs.

RESPONSE: Previous Legislatures and Commissioners of the New Jersey Highway Authority have attempted over the years to place responsibility for the entire Garden State Parkway in one entity—the New Jersey Highway Authority—believing that this approach would provide for a better operation in the interests of the motoring public.

Recently, legislation was introduced requiring the Highway Authority to operate and maintain the State portions of the Garden State Parkway. The takeover was negotiated and an agreement was entered into which the Authority can no longer unilaterally rescind.

COMMENT: Find other sources to finance the necessary construction, for instance, utilize money from the State Lottery, casinos, and the State income and gasoline tax for required construction.

RESPONSE: The Authority does not have the power to utilize the suggested financing sources. That recommendation must be addressed to the Legislature.

COMMENT: An observation that the Authority should utilize funds from the State budget surplus rather than increase tolls.

RESPONSE: The application of New Jersey State surplus funds is determined by the Governor and the Legislature.

COMMENT: Develop a method to require Atlantic City casinos and developers along the route of the Garden State Parkway to contribute to construction costs and required expansion.

RESPONSE: The Authority's powers are clearly limited in its Enabling Act, N.J.S.A. 27:12B-1 et seq. The Authority cannot exercise powers not expressly provided for, such as this recommendation. Implementation of the suggested contribution must be addressed to the Legislature.

COMMENT: Gasoline tax money should be utilized for construction and repair of parkways and highways.

RESPONSE: The gasoline tax is presently utilized for construction and repair of State and local roads excepting the three toll roads: the New Jersey Turnpike, the Garden State Parkway, and the Atlantic City Expressway. Including the toll roads in that distribution would require legislative action beyond the power of the New Jersey Highway Authority.

COMMENTS: A proposal that fines imposed on persons violating traffic laws on the Garden State Parkway should be turned over to the Authority general revenue fund.

RESPONSE: The treatment of such fines is set forth in legislation and court rules which provide for the distribution of the monies. Any change in this procedure would require legislation.

COMMENT: A proposal that the Authority initiate a lottery to finance maintenance and construction costs.

RESPONSE: Lotteries for any purpose, except where specifically allowed, are prohibited by State law. The New Jersey Highway Authority does not believe that its power under its Enabling Act, N.J.S.A. 27:12B-1 et seq., would permit the introduction of the indicated lottery.

COMMENT: Seek Federal funds to maintain the roadway.

RESPONSE: Toll roads in the past have not been eligible for Federal funds. In the 1986 Federal Highway Act, for the first time, Federal funds are available to some seven states for demonstration projects. It will be three years or more before the Federal government decides if this is a

worthwhile experiment. Even if the State should decide to take over the Garden State Parkway from the Highway Authority and make it toll-free, which can only be done if the outstanding bonds are redeemed, there is no assurance that sufficient Federal funds would be made available to maintain the roadway.

The Authority cannot simply tell the Federal government that the operating cost is so much and, therefore, the Federal government must pay that amount to the State. The Federal money made available to the State is based upon a complicated formula involving the area of the State, miles of State highway, population and other factors, most of which favor rural areas. The application of this formula determines what percentage of the annual Federal aid for highways will be made available to New Jersey. The total amount of money allotted to the states is determined by the President and the Office of Management and Budget and the Congress, based on many factors over which any individual state has very little control.

Even if the State eliminated the tolls on the Parkway in order to obtain Federal funds, there is no reason to believe that the amount of funds available would cover even the full amount of annual maintenance costs, nor is the State required to use the funds it obtains solely on the Parkway.

Obviously, if the Parkway were made free, the cost of toll collection and the cost of maintaining the toll system would be eliminated. The maintenance cost and some of the operating cost, of course, would continue and might be subsidized to some unknown extent by the Federal government. The Federal Government would not pay the cost of the State Police, as the Highway Authority does and, therefore, that cost would immediately shift to the State.

COMMENT: An observation that the information disseminated to the public that the toll increase with the use of the token will only be a dime is inaccurate since it is an increase at each toll collection station.

RESPONSE: The statement which was distributed at each meeting began, "In December, 1987, the Commissioners of the New Jersey Highway Authority proposed a 10-cent increase in the basic 25-cent car toll with the use of a discounted token and a 25-cent increase for those not using the token on the Garden State Parkway". It is correct that the basic \$.25 car toll will increase by 10 cents. Obviously, anyone who goes through 10 of the mainline toll barriers and presently pays \$2.50 will pay \$3.50.

COMMENT: The proposed increase is greater than 100 percent or double and a comment on additional toll ramps and plazas since the Parkway was constructed.

RESPONSE: There have never been any claims by the Authority that the proposed increase would be "greater than 100 percent or double." The Authority consistently stated that the proposed increase was in its basic \$.25 toll structure, from 25 to 50 cents, or from 25 to 35 cents with the use of a discounted token; and that ramp tolls presently costing 10, 15 and 20 cents would rise to a uniform 25 cents. Rather, it has been careful to state in any written or oral material that the increase in its *basic toll structure* is a first-time occurrence.

The following are examples of the language used: Press Release 11/19/87: "An increase in the basic 25 cent toll structure and the use of a discounted car token on the Garden State Parkway, both first-time events in the roadway's 33-year history, were proposed at today's public meeting . . ." Briefing Book, p. 11: (Q) When was the last time that tolls were increased on the Garden State Parkway? (A) The original passenger vehicle tolls of 25 cents at the barriers have never been increased . . . They have been 25 cents since the first tolls were collected on January 15, 1954. Toll for passenger vehicles at ramp areas have always ranged from 10 to 25 cents, and have occasionally been increased slightly in certain cases." Toll booth handout: "Under the toll increase proposed by the New Jersey Highway Authority, tolls at toll barriers would increase from 25 to 35 cents with a discounted token. For anyone who doesn't purchase tokens, the tolls would be 50 cents. This is the first proposed increase in the Parkway's 33-year history."

As Vollmer Associates, the Authority's traffic consultant, has analyzed the toll system, there is no typical or average Parkway trip. The average distance traveled on the Parkway on each trip is 15 miles. Because the spacing of the barrier and ramp toll plazas is not uniform, and the Authority-constructed portions of the Parkway are divided into four sections separated by three formerly State-owned sections which provide toll-free passage, the effect of the proposed toll increase would have varied from location to location (the barrier portion of the increase has been deleted). Under the original proposed amendments, the most accurate statement that has been made was that a person who drove the full length of the Parkway from Mileposts 0 to 172 presently pays a total fare of \$2.75 at 11 barrier tolls, or an average of 1.6 cents per mile. If the increase

had been approved as proposed, that driver would have paid \$4.55 if he or she had taken advantage of the discount tokens, at 13 barriers, or 2.6 cents per mile, an increase of 65 percent. The driver who did not use tokens would have paid \$6.50 at the 13 barriers, or an average of 3.8 cents per mile, an increase of 136 percent.

It is equally true, however, that those who do not travel south of Interchange 114 would not have been affected by the additional barriers.

It is true that there has been a fairly large increase in the number of ramp-toll plazas since the Parkway was originally constructed. By 1957, when the original Parkway construction was complete, there were a total of 19 toll barriers, including eight ramp toll plazas. By the end of the 1960's, it increased to 25 toll barriers with 14 being on ramps. Today, there are 30 toll plazas including 19 ramp toll plazas. The number of mainline toll barriers (11) has remained unchanged since 1957. The number of ramp toll plazas has increased from eight to 19.

Since the Parkway was opened and increasingly in recent years, there has been an effort to make the toll system fair to all patrons. Undoubtedly, some of these ramp toll plazas were constructed to raise additional revenue on ramps but many were constructed to prevent patrons from exiting the Parkway a very short distance before one of the barrier toll plazas to avoid a toll and thereby resulting in a more equitable toll system.

Vollmer Associates proposed that three basic rules be followed whenever the Authority makes an adjustment to the toll collection system. These rules are: (1) that each trip on a portion of the Parkway constructed by the Authority should pay at least a portion of the cost of the trip or, in other words, there should be no toll-free trips on the Authority portion of the Parkway; (2) that the distance between barriers should be consistent on similar sections of the Parkway; and (3) that toll ramps that are in close proximity to a barrier and which serve traffic that does not quite reach the barrier should charge the same toll as the adjacent barrier.

The Authority has followed these rules in recent years in the interest of fairness to all drivers. And it is on the basis of these rules that Vollmer Associates has recommended the construction of two new toll barriers.

South of the Cape May State section is an eight-mile section which provides one of the few remaining free trips on the Authority-constructed portions of the Parkway. This, the recommendation for a new toll barrier between Mileposts 4 and 6. This recommendation was also consistent with the recommendation that the distance between barriers should be uniform.

The greatest distance between mainline barriers is 25 miles between Great Egg and New Gretna Toll Plazas. There are a significant number of free trips possible on this section of the Parkway. To make the distance between toll plazas in this section of the Parkway more consistent with the 16-mile average south of the Raritan River, Vollmer Associates recommended that a second new mainline barrier be located midway between Great Egg and New Gretna, or at about Milepost 40.

COMMENT: A statement that tolls are necessary to operate the Garden State Parkway, but an objection to the toll increase.

RESPONSE: Since tolls are the major source of revenue for the Parkway, they must be adequate to cover necessary expenses. Once the outflows (operating expense, debt service, etc.) exceed the inflows (toll revenue), the Authority, like any other business, must raise its prices. Even after cost-cutting measures are taken, there comes a point where basic services would be affected. At that point, safety and maintenance would be a critical issue; therefore, in order to insure the motoring public of a continuing smooth and well-maintained roadway, tolls must be increased.

COMMENT: An observation challenging the legitimacy of snow removal contracts in the Toms River area, particularly, a Cities Service contractor.

RESPONSE: The question was asked as to why snow removal, sand and salt trucks are parked adjacent to the Toms River Toll Plaza on the northbound side between 6:30 and 6:40 A.M. when there is three inches of snow on the Parkway.

They may be there for a number of reasons, not the least of which may be that they may have been plowing snow for the prior six or eight hours or simply taking a break to which they are entitled.

The Authority Maintenance people plow the snow whenever the storm is light. All sanding and salting is done by Authority vehicles. When a snowstorm is expected to be heavy, the Authority calls on the services of private snowplowing contractors. These contractors come from various locations and assemble on the side of the road in places like the Toms River Toll Plaza—usually the first place that they come onto the roadway. They wait until three to six trucks are assembled and one of the Authority's foremen is available to lead them up the Parkway. This is

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necessary in order to insure that the Authority is getting the services it pays for and in order to organize the operation so the snow is removed as efficiently and as cleanly as possible with a minimum of disruption to traffic.

A further question was asked as to who gave out the contract for the snow removal or non-removal in the Toms River area. In the Toms River State section, if there was a contract, it was awarded by the New Jersey Department of Transportation and the Authority has no information concerning it. On the Authority sections of the Parkway, all snow removal contracts are awarded after public solicitation of bids in accordance with the bidding rules. A few years ago, the work was awarded on the recommendation of the Authority's Engineering Department and the last three years, these contracts have been awarded by the Director of Central Purchasing upon recommendation of the Maintenance Department.

COMMENT: It was stated that a City Service, or Cities Service, was the contractor who paved the Parkway from Bricktown to Routes 34 and 38. The question was asked as to who gave out this contract, who watched the work being done, and what was the cost of it.

RESPONSE: According to Authority records, no company called City or Cities Service ever performed any construction work on the Parkway as a general contractor. It is possible that there was a firm with this name that was a subcontractor to one of the Authority's general contractors, but no one in the Authority's Engineering Department remembers this name. The only Cities Service that the Authority recalls was an oil company which never did any construction work on the Parkway.

COMMENT: Charges of inefficiency were made, with the offered solution being to trim operating expenses.

RESPONSE: Most of these comments simply say that the Authority should reduce its operating expenses by whatever way possible, without giving any specifics. Some of the commenters asked that credit cards be taken away from staff members.

Reference was made to the Briefing Book and the projects for constructing the Wildwood and Atlantic County Toll Plazas for a total of \$80 million just to install two toll plazas. This is not correct. The estimated cost of constructing the toll plazas includes other work which must be done to adjacent interchanges as a part of the package. If the toll plazas are not built, the work in the adjoining interchanges will also not be built.

Reference was made to the \$49 million estimated cost at Interchange 120. This is not simply to construct a toll plaza; it is to provide a minimum of four new lanes across the Parkway, additional ramps to make Interchange 120 function after two million square feet of new office, commercial and residential construction is in place, as approved by the Old Bridge Township and Middlesex County officials. The cost of the toll plaza itself is probably in the neighborhood of \$5 million.

It was requested that the Authority cut the cost of designing the service roads from Interchange 88 to 91 from \$19 million, because it will cost only \$3 million to design the same thing between Interchanges 83 and 88. This is not correct. The engineering contract for the designing of the widening between Interchanges 83 and 88 has already been authorized by the Commissioners and hence does not appear in the Briefing Book which shows only new money to be spent. The \$3 million is the additional money that will be needed to complete the design in that area. The correct amount to design widening between 88 and 91 is \$19 million.

It was also requested that the Authority spend its money on improving the capacity of the Parkway between Mileposts 80 and 83. That is precisely what the Authority proposes to do. It was also stated that the Authority should expand the capacity of the most heavily traveled parts of the Parkway—for example, between mile markers 130 and 133. This is exactly what the Authority proposes to do.

COMMENT: An objection was made to the narrowing of lanes as part of the widening project in East Orange which resulted in removal of shoulder, adversely impacting safety, and a request to not eliminate shoulders in construction.

RESPONSE: Several years ago, the Authority narrowed lanes in the East Orange area to 11 feet and eliminated shoulders. It was the judgment of the Authority engineers at that time that it would not adversely impact the Authority's safety record to reduce the lane width from 12 feet to 11 feet as allowed by the NJDOT and AASHTO standards because there are no large trucks allowed on that portion of the Parkway. On the Driscoll Bridge, the Authority had narrowed lanes to 10 feet and has operated the bridge for several years in this condition without any significant increase in accident rate.

The Authority eliminates shoulders in some areas because it believes that providing an additional travel lane in heavily congested areas will result in fewer accidents than will result from operating less lanes with shoulders and continuing congestion. In the East Orange area, the lack

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of shoulders is a permanent condition caused by severe right-of-way restrictions. Obtaining right-of-way necessary to add lanes and provide shoulders not only would cost a tremendous amount of money but would do severe damage to adjoining neighborhoods.

In the Toms River area, the conversion of shoulders to travel lanes is a temporary condition done to provide immediate relief from traffic congestion with the intention of providing permanent additional lanes and shoulders in the near future. The Authority has not seen a significant increase in accidents as a result of the construction recently overtaken in the Toms River area. Buying right-of-way in urban areas is becoming politically impossible, prohibitively expensive and extremely time-consuming. Besides questions of depriving towns of ratables and decreasing the local tax base, there are frequent objections raised on environmental grounds to say nothing of the human impact. Purchasing rights-of-way in urban areas has a negative impact on neighborhoods and towns.

COMMENT: Statements regarding poor quality work and overpayment to outside contractors.

RESPONSE: One commentator stated that the bridge repairs were necessary because of faulty original construction. He also commented that the Authority should sue the contractors for faulty work. Bridges cannot be expected to last forever without repairs and, after 30 years, significant repairs. The fact is that the bridges on the Parkway are at least as well maintained as the bridges on other roads in New Jersey. They were built as well as engineers and contractors knew how to build them in the 1950's.

Bridge decks on portions of Interstate 287 in Somerset County had to be replaced years ago and those bridges were not built until a number of years after the Parkway bridges. The Authority has found it necessary to replace the bridge decks on a few Parkway bridges, but most bridge decks on the Parkway continue in use after being repaired and resurfaced. The Authority simply does not know why some decks fail before others. The same is true of substructure.

Suing the original contractor for bad construction simply is not practical. Bridge construction work is guaranteed for one year after the acceptance of the work. Only if fraudulent construction can be proven can a contractor be held responsible after expiration of the normal maintenance bond.

The same commenter at the Saddle Brook public hearing stated that his friends have told him that the construction contractors are allowed to subcontract most of the work and they do not care when the work is finished.

In the Authority's normal highway work, the general contractor may subcontract up to 49 percent of the work and only to subcontractors who are approved by the Authority.

Every construction contract on the Parkway is awarded after receipt of public bids and is awarded to the lowest responsible bidder. Each contract awarded calls for a specific date by which the work must be finished. If the contractor fails to complete the work on time through their own negligence, the Authority collects liquidated damages or a monetary penalty.

COMMENT: One commenter stated that the fieldstone on the bridges has been covered over with concrete.

RESPONSE: The only fieldstone bridges on the Parkway are in the Union-Middlesex former State-owned section, built by the New Jersey Department of Transportation. If any of the fieldstone facing has been covered with concrete, it has been done by the New Jersey Department of Transportation and not by this Authority.

COMMENT: There is a reference by a commenter to the bumper walls being built and rails being removed.

RESPONSE: Much of the steel bridge railing does not meet current AASHTO standards. The Authority has, for a number of years, been gradually replacing the substandard bridge rail with Jersey-type concrete parapets which do comply with current standards. A recent accident involving a bus striking the bridge railing on a bridge carrying the Parkway over a local road and a railroad at Milepost 111 illustrates the wisdom of replacing the steel rail with Jersey concrete parapet. The bus bounced off a guiderail and struck the edge of the guiderail and tore out 75' or more of the railing. Fortunately, the bus struck the railing at an extremely flat angle and turned over remaining on the bridge deck. Had the bus struck the railing at a steeper angle, it is quite likely that it would have penetrated through the rail and crashed to the roadway below.

COMMENT: One person complained that during a resurfacing contract there was a seven to eight inch deep drop between lanes. When she was cut off by another car, she was involved in an accident which she did not fully describe. She contends that no sign indicating the difference in elevation was present at the time of the accident.

RESPONSE: Whenever the Authority opens the roadway to traffic with a difference in elevation between lanes, the Authority always requires the contractor to place signs indicating that vehicles are not permitted to change lanes and that a difference in elevation exists. The commenter admitted seeing signs on the roadway after the accident. The Authority limits the drop-off to two inches. It is unlikely that the drop-off described by the speaker was, in fact, much greater than two inches.

COMMENT: A commenter asked if the Authority contracts for repair work and appears to have asked if Authority contracts for snowplowing and other maintenance work.

RESPONSE: Virtually all construction work on the Parkway is done by construction contractors after solicitation of public bids in accordance with Authority rules which are nearly identical to the State bidding statutes and rules under which NJDOT and other State agencies operate. The Authority also contracts for snowplowing services—again, after public solicitation and receipt of bids.

COMMENT: There was one accusation at the Cape May hearing of cheating on quality of construction by a particular contractor at a particular construction site.

RESPONSE: The Authority is aware of this accusation and is investigating it.

COMMENTS: A suggestion that a vehicle identification system be developed for unlimited use of the Garden State Parkway at an annual fee.

RESPONSE: The Authority has no objection to the use of an automatic vehicle identification (AVI) system. The AVI systems presently available and that have proven satisfactory all use transponders. These are relatively expensive computer-based radio devices. As these systems undergo further development, the price is expected to come down to practical levels.

The Authority is presently working with the Port Authority of New York and New Jersey, New Jersey Transit and various manufacturers to develop and test such a system. The Authority believes it is essential that all agencies in this area use a compatible system so that a driver may purchase one transponder which can be used on the Parkway, Turnpike, and Port Authority facilities. Otherwise, the driver will need to carry three transponders in his or her car, which does not seem practical.

COMMENT: A suggestion that public input should be solicited at the earliest possible step of capital improvement project planning, including decisions regarding costs for same.

RESPONSE: Holding a public meeting when plans for a particular project are 10 to 20 percent complete appears to the Authority to be the best point at which public meetings should be held. "At the earliest possible moment in the planning process is much too vague a statement. Planning first starts when the municipality, county or a member of the staff suggests an improvement. After some study and development, the idea is presented to the Commissioners at a Future Planning Committee meeting, subsequently accepted or rejected as an item on the Capital Improvement Program at a meeting of the full body of Commissioners. Even at that point, no money has been appropriated and there is not an irrevocable decision to go forward.

The Authority conducts a public meeting as required by the Governor's Executive Order, when the plans are 10 to 20 percent complete, because that is a point at which the Authority can show the public a plan which is sufficiently developed so there is something to talk about. Even before that point, the Authority usually has had meetings with local officials to get their input into the proposal.

COMMENT: Construction and construction repairs should be done by the Authority internally, without outside contractors.

RESPONSE: New construction and construction repair work such as repairing bridges and resurfacing the roadway are done by construction contractors. Such work is awarded to the lowest responsible bidder after solicitation of public bids in accordance with bidding rules. The Authority does not believe it is economical or in the best interest of the Authority or its patrons that it employ a large enough staff of Maintenance employees to perform its own construction work. It is much more economical to perform construction work with qualified construction contractors than with in-house forces. This is primarily true because of the great fluctuation in the quantity of construction work done each year. The expenditures for construction peaked in 1973 during the construction of the dual-dual roadway between Raritan and Toms River Toll Plazas at \$50 million per year, decreased to less than \$4 million in 1976, gradually rose to an average of \$20 million a year between 1977 and 1983, then increased to \$50 million per year in 1984 and 1985 and to over \$100 million in 1986 and 1987. The only reasonable way to handle such

fluctuations in construction is by the use of private contractors. No highway agency in New Jersey does any significant amount of construction work with its own employees.

COMMENT: Hold off the toll increase and submit the question by referendum to the public at the next general election.

RESPONSE: There is no provision for a referendum in the statute. To hold a referendum might interfere with the bondholders' right to have the Commissioners and the Governor set a toll rate schedule and an operating budget that protects the rights of the bondholders.

COMMENT: An objection was made to trucks using the southern portions of the Garden State Parkway.

RESPONSE: It was the intent of the Legislature that trucks be permitted on the Parkway south of State Route 18. This statute does not specifically permit trucks south of this point but rather, states that trucks may not use the road north of that point.

The truck traffic on the southern portion of the Parkway is insignificant, being less than three percent of the daily traffic volume south of Interchange 105. Truck volume on a typical Interstate highway is 10 to 15 percent. The Authority sees no evidence that trucks are involved in a disproportionate number of accidents or cause any other problem.

COMMENT: A perception that existing and projected toll revenues are greater than as stated by Authority.

RESPONSE: Toll revenue projections are made by the professional traffic engineering firm, Vollmer Associates. This firm has been in existence for many years and its reputation in its particular field of endeavor is of the highest degree and particularly reliable. The primary factors that influence future trends of traffic and revenue considered by Vollmer Associates in preparing revenue estimates include:

1. Growth of existing Parkway traffic: Increase in travel is a function of the future population in the region, the relative affluence of that population, the future distribution of housing, employment resulting from commercial development and recreational opportunities, the necessity, cost and availability of automobiles, and the availability and cost of motor fuel;
2. Service provided by the Parkway to its patrons in terms of convenience, safety, and cost of travel;
3. Availability of competitive roadways and related travel considerations;
4. Special development such as casino gambling in Atlantic City, which can be identified apart from the normal trends identified above;
5. The effective toll schedule for all vehicle classes; and
6. Availability of Parkway roadway capacity to handle future traffic growth.

The perception that projected toll revenues should be greater than as stated by the Authority (compiled by Vollmer Associates) is unfounded. The method used by this firm to project toll revenues is based upon the sound factors noted above and the expertise inherent within the firm based upon many years of proven experience.

The speaker noted that toll revenues have increased at an average of 7.3 percent in the last five years and that the projected growth from 1987 through 1992 is only 4.9 percent per Vollmer Associates. Actually, the toll revenue growth in the last 10 years has averaged 5.8 percent. The actual growth in 1987 was 5.3 percent. The 4.9 percent anticipated growth is not out of line. Vollmer Associates' projections are based upon reliable and professionally determined traffic trends including comparisons of previous estimates with actual results, obtainment of the latest available population projections for the 10 counties through which the Parkway passes, obtainment from the New Jersey Department of Transportation of their schedule of highway improvements which will have an effect on the Parkway and reviewing of the Authority's improvement program schedule.

The speaker noted that the Garden State Arts Center revenues are projected to increase \$100,000 per year for the next five years and that over the past three years revenues have increased almost a million dollars on average. The nature of this business is such that there is no way to predict the number and types of shows which can be booked, the ticket prices which can or may be charged, or the number of tickets which will be sold. There is no way that the Authority can project \$1,000,000 increases in revenues per year; rather, it is prudent to project revenues on a conservative basis, and \$100,000 per year is just that.

With regard to expenses, the majority of costs (better than 95 percent) are related to salaries (dictated by Authority-approved wage scales, union agreements and complement of jobs), agreement with the State for police services, snow and ice removal, employer-related expenses for payroll, pension contributions and health benefits, insurance premiums (liability, workers' compensation, etc.), special and professional services and con-

tributions to the Maintenance and Operating Reserve Fund for the replacement of equipment, uniforms and bridge repairs with offsetting credits, particularly PCF General and Administrative credits. The speaker noted that before raising the price of goods or services, he would have done "everything possible to reduce expenses". In the Authority's opinion, expenses are not overestimated. If costs were cut, they would have to occur in areas which would adversely affect safety, efficiency and movement of traffic on the Parkway and this is not recommended.

Projecting toll revenue is not as simple as simply looking at the annual overall increase. The increase in toll revenue each year (and the occasional decrease) is made up of changes at 30 distinct toll plazas located in 10 different counties and a score of municipalities. Some of these toll plazas are in the northern area of the Parkway where there is little room for additional expansion and where the surrounding municipalities are not growing at a rapid rate. Other barriers are located in Middlesex, Monmouth and Ocean Counties where there is very rapid development in the surrounding area and the road still has some capacity for increasing volume. A third group of toll plazas is located in southern New Jersey where there has been a relatively large percentage increase of traffic but rising from an extremely low base volume so that the changes do not have an appreciable effect on the overall increase in revenues.

The increase each year is also influenced by construction on the Parkway. When a new lane is added in an area, traffic increases until the roadway in that area again reaches full capacity. In 1985 and 1986, lanes were added in Bergen, Union, Middlesex and Monmouth Counties. Also, shoulders were converted to driving lanes in Monmouth and Ocean Counties as a temporary way of increasing capacity in these counties. Because temporary work was done as well as permanent widening and the permanent widening was opened to traffic even before the construction work was completed, the Parkway was able to handle increases in traffic which was unable to be absorbed in the area from East Orange to Bergen Toll Plaza.

Things done by the State or by the Turnpike also influence traffic on the Parkway. When the State opens Route 18 to Wykoff Road in 1988, a diversion of traffic is expected from the Parkway to Route 18. Later, when it completes Route 18, it is expected that an even greater diversion will occur. During construction of the widening on the Turnpike, if there is traffic congestion resulting from the construction, there may be a small increase in traffic. Later, however, when the widening is completed, a diversion of traffic to the Turnpike can be expected.

All of this is to say that estimating future increases in toll revenue is not a simple straightforward matter. 1987 saw a reduction from the six to eight percent increase experienced in the last four or five years to an increase of only 5.3 percent. The Authority believes this is a foretaste of what is to come. In many areas of the Parkway, there is no room for increased volume. The Authority has seen the peak hour spread out over a longer period of time and increases in traffic to the casinos during off-peak hours when there is room for additional volume but the Authority does not believe that it can continue to experience the high rate of growth which the Parkway has experienced since the last negative growth year of 1979.

COMMENT: Fund required construction and maintenance out of existing toll revenues.

RESPONSE: The Authority has always funded maintenance work from toll revenues and will continue to do so. Construction work is funded both from bond issue money and from the money remaining from annual toll revenues after payment of operating expenses, debt service and the State payment.

Bonding allows the Authority to construct now and pay the cost of construction by future level payments similar to home mortgage payments. Since highway projects are basically long-term capital improvements—that is, the public gets to use them for many years—it seems appropriate that the cost of those facilities should be spread out over many years rather than penalize the person who uses the facility today with the full cost of any construction. Bridges will last for 40 years and, therefore, the cost of constructing a bridge ought to be paid by those who use the facility over a 40-year period and not charged only to those who use it the first year.

The Authority also uses interest on the bond money until such time as the money raised is actually needed for construction.

COMMENT: An objection to the increase in the original \$570 million Capital Improvement Program to \$844 million.

RESPONSE: The increase in the estimated cost of the Capital Improvement Program since March of 1986 is not only a result of cost increases in future projects. Many projects on the list were originally placed there in 1983 or 1984 based on cost estimates made at that time. When the

latest adjustment was made in the program in March of 1986, adjustments were not made in the cost of projects not yet started. New cost estimates were used only for those projects being added to the list for the first time. The increase is the result of cost overruns in completed projects and in projects still underway as well as better estimates of cost of projects not yet started.

When the cost estimates were made for purposes of the proposed toll increase, much more accurate estimates were prepared than was possible in the past.

Increased costs of new and future projects result from a number of factors including escalation of construction costs since the project list was adopted and the increasing cost of property out of proportion to the general cost inflation. Very rapid development along the Parkway corridor in Monmouth and Ocean Counties both increases the value of the undeveloped land and also frequently means that land has been developed before we have had an opportunity to purchase it. Costs have also increased because the magnitude of projects has increased beyond the scope estimated several years ago. For example, where the Authority originally thought two additional toll booths might be necessary in the toll plaza expansion, it finds that the continuing six and seven percent annual increase in traffic is now forcing the Authority to build four and five additional toll booths. Also, as a result of this increasing traffic, the Authority has made a prudent decision to provide for possible additional widening during the construction of current widening programs. As an example, where the Authority is adding a third lane, it has made the roadway area wide enough for a fourth lane in the future and where necessary to build new bridges to carry local roads over the Parkway to accommodate the third lane the Authority has made the bridge spans long enough to permit a fourth lane so that the bridge will not become obsolete before it has served its useful life. In some cases—particularly in Ocean County—the Authority's original estimates for widening did not take into consideration county plans for widening highways crossing the Parkway because those plans were unknown to the Authority at the time its original estimates were made. For example, on the mainline widening scheduled between Interchanges 88 and 91, the Authority now finds that it must provide for the expansion of the State Route 88 from two lanes to four lanes and for the widening of two county roads from two lanes to four lanes. This has made it necessary for the Authority to provide for construction of new bridges rather than simply widening the existing bridges.

The Authority is installing a new computer-based toll collection and auditing system in all toll plazas. While this permits a much more accurate and rapid accounting for tolls collected, the collection system is more expensive than the old electromechanical system which has served for the last 30 years. Even though the new computer-based system will save the Authority money in the long run, the initial construction cost is higher and affects every new toll lane.

Most of the Authority's toll plazas have already been expanded at least once and, in some places, several times. Almost every toll plaza has been expanded to the point where no further expansion will take place without the demolition of the existing toll administration building and the construction of a new building further off-site.

The takeover of the State-owned sections of the Parkway in Cape May, Toms River and the Union-Middlesex area was not contemplated at the time the construction fund was last adjusted in March, 1986. Work necessary to make the improvements in the former State-owned sections is a major factor in the increase in the estimated cost of the Capital Improvement Program.

COMMENT: Charge for the use of commuter parking lots, and an objection to commuter lots.

RESPONSE: These two questions are essentially the same. The determination of the Commissioners to establish commuter parking lots and to allow free use of the lots is a high-level policy matter intended to encourage the use of carpooling and use of mass transportation such as buses. The Commissioners believe that this policy is in the best interest of the traveling public in general.

This same commenter also asks how does the construction and free operation of commuter parking lots benefit those who do not use those lots. As a matter of fact, the person who does not use the commuter parking lots benefits from the fact that many do because there is less traffic on the Parkway than there otherwise would be. There is less congestion, there is less air pollution and there are less accidents.

If all of the cars parked in the Authority's commuter parking lots south of the Raritan River were to enter the Parkway during a north-bound rush hour on a weekday morning, an additional lane would be needed

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to handle this peak-hour volume. The processing of this additional traffic through the Raritan Toll Plaza would back the plaza up for miles.

The first commuter parking lot opened at Interchange 109 in 1962. The use of commuter lots has been consistently expanded since 1972 to promote carpooling in the interest of energy conservation. In addition to energy savings, use of commuter lots for carpooling has an effect on traffic volume, congestion and a reduction in air pollution.

Presently there are 17 commuter lots serving the Garden State Parkway. Three of these commuter lots offer park and ride services in conjunction with New Jersey Transit.

At present, the Authority's commuter lots operate at approximately 72 percent of capacity. The available spaces total 2,616. These commuter lots are provided as a service to the Authority's patrons without cost. Charging a fee for this type service would prove impractical and not cost-effective.

COMMENT: An objection to the Arts Center construction expense and the diversion of money from road repair to Arts Center construction.

RESPONSE: The individual who spoke at the Saddle Brook hearing noted that money was diverted from the widening of the road at Asbury Park to Garden State Arts Center construction. There was no actual cash transferred between projects as believed by this person. The Authority does not assign money to a specific project when a contract is awarded. It does record the commitment at the time of a contract award against a particular project's total authorization but no money is actually set aside. Project costs are reflected as such only when invoices are paid. Payments are reflected in the expended column of Project Status Reports and commitments are reduced accordingly. On occasion, project authorizations are transferred from one project to another with approval of the Commissioners when there is not an immediate need to make a commitment (award a contract) chargeable to one particular project but there is a contract award made in another project with no authorization available. An example as to how this situation may arise is recorded as follows:

Project	Project Authorizations	(Contracts Awarded) Open Commitments	Balance Authorizations
A. Parkway Widening—Asbury Park	\$5,000,000	\$1,000,000	\$4,000,000
Arts Center Improvements	1,000,000	1,000,000	-0-
B. Arts Center Improvement contract award—say \$2,000,000 with authorization transfer required, and entries made to reflect changes in above figures:			

Project	Project Authorizations	(Contracts Awarded) Open Commitments	Balance Authorizations
Parkway Widening—Asbury Park	\$5,000,000	\$1,000,000	\$4,000,000
decrease in Authorization revised totals	(2,000,000)	—	(2,000,000) (a)
	<u>\$3,000,000</u>	<u>\$1,000,000</u>	<u>\$2,000,000</u>
Arts Center Improvements increase in Authorization revised totals	\$1,000,000	\$1,000,000	-0-
	2,000,000 (a)	2,000,000	-0-
	<u>\$3,000,000</u>	<u>\$3,000,000</u>	<u>-0-</u>

(a) Based upon a determination that there is no immediate need for the full amount of the Authorization in the Parkway Widening Asbury Park Project, \$2,000,000 has been transferred to the Arts Center Improvements Project.

In the last five years, net Arts Center income has totaled approximately \$5,700,000. Should net revenue continue at the same pace in the future, Arts Center Capital Costs will surely be recovered within a reasonable number of years. The Parkway operation does not subsidize the Arts Center operation. In the Authority's view, the Arts Center operation contributes to revenue.

COMMENT: A question as to what the Authority did with excess money it had received in previous years.

RESPONSE: When the original Parkway construction was completed in 1957, the Parkway consisted of a four-lane roadway everywhere except between Union and Paterson, where six lanes were provided. The original roadway contained 700 lane miles.

Ever since the original construction, the Authority has spent all available revenue after meeting operating expenses, debt service, paying \$10 million to the State of New Jersey and setting aside certain reserve funds required by the bond indentures, on construction to increase the capacity of the Parkway.

The Parkway has now grown to 1,180 lane miles, an increase of 68 percent. It consists of four lanes for 82 miles south of Toms River and five miles south of the New York State line; six lanes for 16 miles north of Toms River and 21 miles from East Orange to Washington Avenue in Washington Township, Bergen County; eight lanes for four miles from Bricktown to the Asbury Park Toll Plaza and 17 miles from Woodbridge to East Orange; 10 lanes for 20 miles from Asbury Park Toll Plaza to Sayreville and for two miles in Woodbridge; and 12 lanes for three miles in Sayreville and Woodbridge.

In summary, the original Parkway as constructed by the Authority consisted of a two-lane roadway for two miles, a four-lane roadway for 127 miles and a six-lane roadway for 25 miles. It now consists of 87 miles of four-lane roadway, 37 miles of six-lane roadway, 22 miles of eight-

lane roadway, 23 miles of 10-lane roadway and three miles of 12-lane roadway.

In terms of major and costly improvements, the Authority constructed a second mile long two-lane bridge over Great Egg Harbor Bay in 1973. It constructed a second bridge nearly a mile in length across the Raritan River in 1972 and later reconstructed the median barrier to allow the bridge to be operated with 12 lanes.

The Authority added new interchanges to connect with State and Interstate Highways as they were constructed at the Route 18 Freeway, Interstate 78, Interstate 80, Interstate 280 and Route 440 (extension of I-287). It also constructed connections to the Atlantic City Expressway when that toll road was constructed.

The Authority has resurfaced over 1,200 lane miles of the Parkway, converted the original gravel shoulders on the entire length of the roadway to blacktop pavement and has expanded each Service Area several times.

The cost to construct the original portions of the Parkway was \$330 million. Since 1957, the Authority has invested another \$700 million in improvements.

COMMENT: A December 4, 1987 statement by Assemblyman John P. Doyle regarding the proposed Highway Authority toll increase. The Assemblyman states that the "so-called deficit is a direct result of the heavy borrowing in 1986 (\$340 million in bonds) and again in 1987 (\$80 million in short-term notes)."

RESPONSE: The 1986 bond issue was used principally to defease 1984 bonds and only \$74,419,612 represented new money for the Capital Improvement Program. The purpose of the defeasance was to reduce the Authority's debt service requirements on the 10 percent interest bonds sold in 1984 and replaced with seven percent bonds in 1986. This will result in a net reduction of \$17,607,000 between the old and new debt service requirements. The Authority has only borrowed \$50,000,000

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against the \$80,000,000 amount it contracted to borrow from Morgan Guaranty under a September 21, 1987 short-term loan agreement. The money was borrowed for capital construction purposes. It is noted that the Authority would be in a deficit operating situation in 1988 despite these borrowings and as noted, in fact, its debt service will be less over the life of all the borrowings. Actually, the 1984 and 1986 Official Statements both pointed to a possible net revenue shortfall commencing in 1987, which did not happen in 1987 but will in 1988 without a toll rate increase.

Toll revenue increases of 4.9 percent are as projected by Vollmer Associates, a professional traffic consultant. There is no reason to assume that tolls will rise 7.3 percent as noted by Assemblyman Doyle for the last five years. Actually, the increases over the last 10 years average 5.8 percent and tolls for 1987 showed an increase over 1986 of only 5.3 percent.

Garden State Arts Center revenues are unpredictable because of types of shows available for booking, weather (walk-up sales on date of show) and number of shows booked. There is no basis on which the Authority can assume that the increases in Arts Center revenues will continue at the 18 percent growth figure realized from 1983 to 1987 or as Assemblyman Doyle projects at 10 percent per year. The average for the 10 years, 1978 through 1987, is 14 percent. It should be noted that as

	1981	1982	1983	1984	1985	Total
(A) Surplus (Net Revenue After Debt Service)	\$17.0	\$19.4	\$26.8	\$25.4	\$23.3	\$111.9
To Senior Bond Redemption Fund	3.9	3.6	2.6	-	-	10.1
	<u>13.1</u>	<u>15.8</u>	<u>24.2</u>	<u>25.4</u>	<u>23.3</u>	<u>101.8</u>
To Cultural Center Fund	.2	.3	.3	.2	.3	1.3
	<u>12.9</u>	<u>15.5</u>	<u>23.9</u>	<u>25.2</u>	<u>23.0</u>	<u>100.5</u>
To Transportation Trust Fund						
To Capital Improvements (PCF)	<u>\$12.9</u>	<u>\$15.5</u>	<u>\$23.9</u>	<u>\$20.4</u>	<u>\$13.0</u>	<u>\$85.7</u>

(A) Refer to Chart 7 of Assemblyman Doyle's Report, which was delivered by him at the January 7, 1988 public hearing on the proposed toll increase, held in Toms River.

The Authority did not order 10,000,000 new car tokens as Mr. Doyle notes. It ordered 8,000,000. There were 2,000,000 bus tokens ordered making up the 10,000,000 tokens shown on one Purchase Order.

COMMENT: An observation that the information disseminated to the public that the toll increase with the use of a token will only be a dime is inaccurate since it is an increase at each toll collection station.

RESPONSE: The Authority distributed no information that would lead the public to believe that the proposed increase with the use of a \$.35 discounted token constituted only a dime increase *in toto*. The discounted token was consistently represented as the single coin one could use, saving money and time, at automatic lanes *at each barrier*.

COMMENT: A suggestion that the Authority establish a Citizens Advisory Board.

RESPONSE: This is an idea worthy of consideration and may be studied by the Commissioners and staff.

COMMENT: An objection to the absence at some of the hearings of four Commissioners of the seven-member Board.

RESPONSE: There is no legal requirement that all Commissioners be present at the Authority's four public hearings. At all hearings, at least three Commissioners were present. In the particular case of Chairman Stanley, it was believed that her presence would shift the proper focus of the hearings—the need for a toll increase to fund the Parkway's Capital Improvement Program—to a personal level.

COMMENT: An objection to the use of a public relations firm.

RESPONSE: It was believed that in the best interests of the Authority, a public relations firm be hired to conduct a transportation survey, provide marketing expertise in connection with Parkway tokens, and provide general public relations assistance as needed.

The Authority's in-house Public Relations Division handles an especially heavy workload on a day-to-day basis and has neither the time nor expertise to handle a survey or marketing.

Ailes Communications was hired in September, 1987 to address the above-cited areas. Its work ended on December 29, 1987 and Public Strategies' work began on January 1, 1988 so that there was no overlap in fees or costs in this regard. The latter firm was hired to replace Ailes when it became apparent that the Authority would need the services of this well known New Jersey public and government relations consulting firm with extensive experience representing public authorities and with specialization in legislative affairs.

revenues go up, expenses also increase in large measure because the Authority's costs relate to payouts to the performers.

Regarding expenses, the majority of costs are related to union agreements, agreements with the State for police services, snow and ice removal, employer-related expenses for payroll, pension system, health benefits, insurance premiums (liability, workers' compensation, etc.). If costs were cut, they would be in areas which would affect safety, efficiency and movement of traffic on the Parkway.

Sharp increases in expenses in 1988 through 1991 (a 14.6 percent average; the average per Assemblyman Doyle before these years, 1981-1986 at 9.9 percent is accurate) are due principally to the takeover of the State-owned sections, an increase in State Police complement, a sharp rise in health benefits costs and new positions created.

The "surpluses" of \$111.9 million for 1981-1985 pointed to by Assemblyman Doyle in the 1986 Official Statement are not "surpluses" at all nor are the figures he points to actually \$111.9 million. The Official Statement relates Revenue Available for Debt Service to Debt Service and the Toll Covenant which was set at 1.20 times net revenue during the period 1981-1985. What Assemblyman Doyle did not know and the Official Statement does not show is that there were other obligations. The figures are actually as follows:

COMMENT: An observation that lawsuits brought by newspapers to obtain information concerning the Parkway is evidence of the Authority's intention to hide something.

RESPONSE: Two suits were brought by newspapers seeking information, ostensibly connected with the toll increase proposal.

The first of these, initiated by the *Asbury Park Press* and joined in by *The Record* of Hackensack, was for personnel information. It was the Authority's concern that Executive Order No. 11 presented certain ambiguities in connection with the Authority's power to release the personnel information which required clarification by a court. The Authority advised the plaintiff newspapers and the court that the Authority's position was not truly adversarial but was motivated primarily by desire to protect itself from suits by Authority employees if the Authority were to release personal information not authorized by Executive Order No. 11.

The court in this matter is very clear to plaintiffs that the court completely understood and supported the Authority's concern in seeking the clarification and protective order which resulted from the litigation.

The court summarily dismissed plaintiff presses' requests for attorney's fees.

The Record of Hackensack was the plaintiff in the second action which developed owing to the Authority's inability to understand precisely what records were sought. Attorneys for the respective parties discussed the matter, clarified the request which was satisfied, after which, the suit was dismissed without the necessity to proceed to judgment.

COMMENT: An observation that the Authority has engaged in misleading and deceptive practices to hide the toll increase from legislators and the public, which has damaged its credibility.

RESPONSE: In hindsight, it is easy to see that a practice that the Authority has engaged in for several years, that of studying projected revenues against the possible need to raise tolls, could be looked on as "deceptive", once the toll increase was finally publicly proposed in November, 1987. A long and complicated process of study preceded the November announcement; indeed, until the final plan was in place late in the Fall of 1987 there was no plan to present to the public.

The Authority understands, however, the perception that its actions have been "misleading" and "deceptive" in regard to the toll increase; with no prior experience in raising its basic toll structure to draw on, the Authority believed that once the plan was formulated, it could be

presented to the public for scrutiny and comment. Rather, in hindsight, it would have been more advantageous to have informed the public from the outset of the study.

The Authority has opened its records to the media, its finances have been reviewed by the State Treasury, its Capital Improvement Program by the State Department of Transportation and it has been and will be reviewed by several Legislative Committees. While the Authority understands much of the criticism voiced by the above regarding its fiscal and operational practices, the criticism has, for the most part, not challenged the need for a capital construction program to keep the Parkway a safe and convenient roadway.

COMMENT: An objection to the use of the \$.35 discount token (and tokens in general).

RESPONSE: Most of the references cited are merely objections to tolls in general. One commenter objects to the cost of manufacturing tokens and alleges each time the fare is changed the authority would have to buy new tokens. The Authority buys the tokens for about nine cents each. They are recycled and constantly sold back to the public so that the cost ends up being less than one-tenth of one cent per token.

The Authority could change the token every time the fare changed but that is not its intention. As we have already announced, the Authority will sell the token for \$.25 until the new rate goes into effect, at which point, we will raise the cost of the token. Whatever hoarding is being done by the public will soon disappear as the tokens are used.

There is one objection that having a token makes it much too easy for the Authority to change the rate any time it wants to. That might seem like a reasonable criticism until one looks at the difficulty the Authority has had in raising the basic \$.25 car toll for the first time in over 30 years. It appears rather obvious that the Authority is not going to be able to change the price of the token every year or two even if it wanted to.

The only reason the Authority proposes to use the token is to speed traffic through the automatic toll collection lanes.

COMMENT: An objection to paying for State Police out of toll revenues.

RESPONSE: This commenter stated, "We're being taxed double because our tolls are paying the State for extra police which we are already paying for with our normal taxes." This statement is incorrect in two respects. First of all, this gentleman's taxes are not paying for the State Police that work on the Garden State Parkway. The salaries and all expenses of Troop "E" of the New Jersey State Police are paid for by the Authority out of toll revenue. Secondly, he refers to extra police. Troop "E" is not extra police; it is the only police force on the Parkway.

COMMENT: Comments on the increase in bus tolls pertaining to Atlantic City buses.

RESPONSE: The first commenter recommended that the Authority charge buses on a per passenger count basis at the same rate that a passenger car pays—that is, \$.25 for each passenger—a recommendation that the Authority cannot practically implement.

The other three commenters seem to be saying that because the buses damage the pavement more than automobiles and because the casinos are making plenty of money, the Authority should charge higher rates. The Authority's original proposal, since vetoed, was an attempt to implement this recommendation.

COMMENT: An objection to the statement that there has been no toll increase since the opening of the Parkway.

RESPONSE: From the very first statements made concerning the toll increase, the Authority has repeatedly said that there has never been an increase in the basic \$.25 toll charged automobiles at the mainline barriers. The Authority has not hidden the fact that additional ramps have been added, increased traffic volume has increased toll revenue, and the toll for buses and trucks has increased.

COMMENT: A charge of inefficiency calling on the Authority to trim operating expenses.

RESPONSE: The Operating Budget of the New Jersey Highway Authority is comprised of various line items which allocate budgets to and subsequently record expenses against various cost centers. Traditionally, approximately 75 percent of any year's Operating Budget is allocated to three main categories of expenses which directly relate to the level of service maintained on behalf of the motoring public. These categories are as follows:

1. Salaries and Wages, the major portion of which is dedicated to the toll collection process and the maintenance of the facility.

2. Payroll Expenses which include F.I.C.A., pension, withholding, State unemployment taxes, as well as employees' health benefits.

3. State Police Services which covers every expense associated with the troop to the Garden State Parkway.

In these areas, the position of the Authority has always been to operate in the most efficient manner possible. Union agreements are carefully negotiated and costed prior to reaching the agreements. The monitoring and self-funding of health benefits cost in an extremely competitive market has saved the Authority millions of dollars in administrative costs and claims fees over the past years. The patrol of the road by Troop "E" of the Division of State Police is the most efficient, cost-effective manner of doing so.

All other cost centers (which amount to 25 percent of the budget) are carefully monitored and controlled to every extent possible. Contributions for replacement of fixed assets are calculated in an item-by-item basis, supplies are purchased through competitive bidding procedures and all costs are reviewed periodically for possible savings. In all cases, a very small percentage of operating expenses is attributable to general and administrative costs. The majority of the Parkway's expenses go to the three main categories mentioned, followed by equipment maintenance (which benefits patrol of the road, toll collection and snow emergency efforts), insurance (which the Authority largely self-insures to obtain the best quotes), supply purchases (such as salt for icing and snow conditions, raised pavement markers, traffic line paint, etc.), and utility expenses (for proper road lighting and building maintenance). These major expense categories relate strictly to road operations and are therefore necessary to maintain a safe, efficient road system. Any and all items that are controllable are and will continue to be closely scrutinized.

COMMENT: Wastes of money were referred to, citing as examples idleness of employees, tree plantings and increased mowing costs.

RESPONSE: It was claimed that the Authority wasted money trying to attach a board to the top of the concrete median barrier north of the Union Toll Plaza to make it look like the barrier south of the plaza.

The Authority never attempted to attach boards to the top of the concrete median barrier except north of the Bergen Toll Plaza where it was done during the original construction of the barrier eight or 10 years ago.

There was also a complaint that the Authority used to mow the grass with a gang mower and now, because of the trees that were planted on the slopes, the gang mower cannot be used and the work must be done by a hand mower. This is not true.

In an effort to reduce the area of grass which the Authority now mows—an effort which has been underway for 20 years—the Authority has recently planted three types of areas that it will not be mowing. This is a result of recommendations by two of the Authority's landscape architects and the advice of a consulting landscape architect. The Authority has planted wildflower beds as is being done by highway departments all across the country. Once these wildflower areas are established, they will only need to be mowed once a year rather than the five or six times that the Authority must mow grass. In the first few years after planting, these beds will need weeding but it is the opinion of the Authority's landscape manager that once the beds are well-established the introduced ornamental trees, shrubs and ground covers will continue to grow, establish themselves and out-compete unwanted weed growth. The Authority will use a selective pre- and post-emergent herbicide to further eliminate unwanted growth from becoming established. This herbicide kills weeds and other annual pests without affecting desirable permanent perennials and woody plant material.

The Authority has also established mulch planting beds, which will not need to be mowed, and non-mow grass seed areas. These non-mow seed areas are planted with specific types of grass which present a respectable appearance when they are allowed to grow the full height and will not be mowed.

Under three landscaping contracts—two completed and one just getting underway—the Authority will remove from mowing a total of 87 acres or a strip 30 feet wide and 24 miles long. Assuming the Authority's mowers cut a swath 10 feet wide and that is the widest of the Authority's mowers, then the Authority has removed from mowing under these three contracts a single mower pass over 70 miles long. The Authority cuts the grass a minimum of five times a year; thus, these 87 acres of non-mow areas have removed from mowing a strip 10 feet wide and 350 miles long.

COMMENT: Senior citizens should get discounts and senior citizens should be permitted to use the roadway on a pass basis. An annual user fee was suggested.

RESPONSE: These statements are being taken into consideration; however, before any method can be implemented, all effects on the various toll audit controls must be reviewed. The basis of the Authority's

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system cannot be allowed to be compromised. A pass or plate system would not allow for a true accounting of all passages as is now the case. This potential default in the system would not allow for the reconciliation of cash, token or scrip to indicate axle counts which is now the case. Also, there is a preconceived notion that the term "senior citizen" is synonymous with "poverty level". To grant a discount to all without regard to need or level of income may cause greater problems with the general commuter who may also be in difficult financial straits.

COMMENT: Fund required construction and maintenance out of existing toll revenues.

RESPONSE: The Bond Resolution sets forth the procedure that must be met with regard to the use of revenues. In essence, it states that after providing for operating expenses, debt service and state payment, those funds remaining may be used for any corporate purpose. The Authority decided that it be used in the Capital Improvement Fund; however, on an annual basis, these funds in themselves would not be sufficient to fund major capital improvements.

The more prudent financial plan is to float bonds for the major capital improvement. This would be similar to an individual taking a mortgage. The annual net revenue would then be used to make debt payments over time. This allows the cost of the improvement to be borne by the motoring public over a longer period of time. It permits those receiving the benefit to pay for its cost.

COMMENT: A statement questioning the wisdom of including \$2.5 million for maintenance reserve with no evidence that previous existing reserves of \$23.5 million have been utilized (Authority surplus).

RESPONSE: The \$23.5 million Maintenance Reserve reference contained in the Saddle Brook testimony should read \$2.5 million, the actual amount of the Maintenance Reserve Fund that may be applied to the cost of major resurfacing, repairs, replacements, renewals or reconstruction of the Parkway System and extraordinary repairs, renewals or replacements of the Parkway system. There is no minimum or maximum Maintenance Reserve Fund payment required. The intention of including the \$2.5 million in the 1988 Operating Budget was to increase the amount in the Reserve to \$5,000,000 and to use this amount in the ongoing bridge rehabilitation program.

The Toms River testimony includes reference to a chart prepared by Assemblyman John Paul Doyle in which the Authority is purported to have generated a five-year \$112 million operating surplus (1981-85). There was in fact \$85.7 million transferred from net operating revenue to the Parkway Construction Fund and used for capital improvement purposes in this five year period. The reconciliation between Assemblyman Doyle's figures and the actual figures are as follows:

	Millions
Surplus 1981-1985 (per Assemblyman Doyle but actually net operating revenue available after Debt Service)	\$111.9
Not taken into account by Assemblyman Doyle in this 5 year period:	
Senior Bond Redemption Fund	10.1
Transfer to Cultural Center Fund	1.3
State Transportation Trust Fund	14.8
	<u>26.2</u>
Transferred to Parkway Construction Fund for capital improvement purposes	<u>\$ 85.7</u>

COMMENT: "You've had operating surplus for 20 years for crying out loud. Why can't you save the money for a rainy day?"

RESPONSE: Funds remaining from net operating revenue after the payment of debt service, required transfers to reserves, application of net operating revenue to the Cultural Center Fund and amounts paid to the State Transportation Trust Fund have been transferred to the Parkway Construction Fund for use in the ongoing capital improvement program. These amounts totaling \$279,497,916 from 1956 through 1987 are part of the \$711,805,166 spent for capital improvements to December 31, 1987. It is noted that if the Authority ever reaches the point where there are no longer capital improvements required (highly unlikely) then any available operating revenues after meeting all other requirements would have to be used to advance the retirement of outstanding bonds.

COMMENT: What percentage of the operating expense for the Parkway are employee salaries?

RESPONSE: The question posed was not answered correctly at the public hearing. The \$.13 on the dollar (23 percent) cost incorrectly given as an answer relates to the costs to collect tolls (manual and automatic lanes) and covers the cost for toll collector salaries at the manual lanes

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and cost to rent toll collection equipment at the automatic lanes. The current answer to the question is 51.0 percent. The 1987 operating expenses totaled \$80,757,125. The 1987 salaries were \$41,206,838 (\$41,206,838 + \$80,757,125 = 51.0). (The 1986 percentage of salaries to operating expenses was 50.9 percent).

COMMENT: The public registered objections to the process leading to the adoption of the resolution proposing the toll increase and in particular commented that the Authority violated the Open Public Meetings Act ("Sunshine Law") in discussing the proposal in closed session.

RESPONSE: It is the Authority's position that its discussions of the proposed toll increase in closed session prior to November 19, 1987 did not violate the provisions of the Sunshine Law. On November 19, 1987, the Authority adopted, at its public meeting, a resolution proposing the toll increase. Questions were thereafter raised as to the Authority's compliance with the Sunshine Law. As a result, to remedy any potential deficiencies relating to the discussion of the proposed increase at previous closed sessions, the Authority held a corrective de novo meeting on November 30, 1987 pursuant to the provisions of the Sunshine Law. It is the Authority's position that the November 30, 1987 meeting corrected any such deficiencies.

After November 30, 1987, the Authority held four public hearings to receive comments and objections from the public as required by N.J.S.A. 27:12B-1 et seq.

COMMENT: Substantially reduce current capital improvement projects and restudy same.

RESPONSE: Significant portions of the Capital Improvement Program—in fact, almost all of the program exclusive of safety and rehabilitation—are being developed with the cooperation of the counties and municipalities and, in many cases, at the request of the counties and municipalities.

An editorial in *The News Tribune* of Thursday, February 4, 1988, congratulates the Authority for working with NJDOT on planning for a new crossing of the Raritan River. The Authority either has agreements with or is presently working with counties to develop agreements for future expansion and new interchanges, etc. in Cape May, Atlantic Ocean, Monmouth, Middlesex and Bergen Counties.

The New Jersey Department of Transportation and the State Treasurer are studying the Authority's Capital Improvement Program in great detail.

COMMENT: A charge that spending is lavish, out of control.

RESPONSE: The charge of "lavish, out of control spending" would seem to indicate a belief that no measures are taken to monitor, question and fully understand the need for all operating expenses. No expenditure is made which has not been reviewed and deemed to be warranted and properly chargeable to the Operating Budget. The Authority also takes measures to assure that the best price for all items is obtained through the use of a strict competitive bidding program and the Authority maintains a warehouse of stock items that can be more inexpensively procured by buying them in bulk. In all cases, inventories and requests are closely monitored to assure that only items that are needed to complete a particular task are withdrawn or purchased.

The greater part of the Authority's landscaping program is attributable to erosion control or restoration of construction areas to their original state. While some formal plantings are undertaken, these expenditures account for a very small percentage of the Operating Budget.

The charge of "too many cars" can be addressed by stating that vehicles are, for the most part, only assigned to individuals if it has been proven to be more cost-effective, based upon the type of position, for the individual to conduct his or her business and carry out his or her duties on the road. Detailed records of these assignments are also kept and reviewed periodically to verify that the vehicles are being used for their intended purpose.

In reference to the salary issue, it would be appropriate to restate that approximately 65 percent of the salary budget is to meet the requirements of the bargaining units who are paid according to the terms of the union contracts. Overtime is strictly monitored but is often a necessity, especially in the tolls area (in order to meet traffic demands) and in the maintenance area where a major winter storm makes overtime a requirement for keeping the roadway safe and passable.

COMMENT: An objection to the 26 percent increase in operating costs for the year 1988.

RESPONSE: The 26 percent increase in operating costs which is reflected in the original proposed budget is due largely to a number of unusual items which the Authority was required to budget for 1988. An explanation of those unusual items and the amount of related increase follows:

1. A significant increase in the number of State Police assigned to patrol the road. Due to increased traffic volume, construction work and an overall effort to increase the level of safety to the motoring public, an additional 44 troopers are to be assigned to the Parkway. In December, 1987, 10 of the troopers were added. An additional 19 are scheduled to be added in May of 1988 and 15 in May of 1989. The cost of salary, pension, maintenance allowance, health benefits, training costs and all other costs associated with these troopers (10 for full year and 19 for partial year) is estimated to be \$2,000,000 in 1988.

2. The takeover of the previously State-owned sections of the Garden State Parkway. On July 1, 1987, these sections were taken over: 1988 will be the first full year of operation and the Authority estimates the incremental cost for 1988 to be \$1,000,000.

3. The increased cost of medical insurance for all eligible employees. While there was no change in basic benefits, the number of covered employees, as well as the increased cost of hospital and medical care caused an initial projected increase of approximately \$3.7 million.

4. To properly staff and equip the branch and expanded plaza lanes, additional toll collector positions are required. Approximately \$1.8 million was included in the original proposed budget to meet current staffing deficiencies as well as future needs.

5. A decrease in credits anticipated as a result of payouts in Parkway Construction Fund of approximately \$2.1 million.

These unusual types of increases account for approximately \$10.6 million of the total increase, or 13 percent of the increase percentage. The balance of \$10.8 million, or the remaining 13 percent increase is due to adjustments that have been present on a recurring basis through the years such as contractual wage commitments, obligations to the existing State Police troop and increases passed on to the Authority by its suppliers and service contractors. Subsequent to 1988, the recurring items become part of the basis for budget preparation and the subsequent years' increases then become more in line with the Authority's average historical increase of approximately 9.5 percent.

COMMENT: An objection to travel expenses and meal payments.

RESPONSE: The main thrust of the objections is the preconceived idea that the Authority has unlimited expense accounts, pays for normal meals for employees and does not have any procedures of control over travel expenses.

The Authority records all expenditures for travel and related expenses in an account called Travel and Subsistence. Although the title may seem general in nature, the account covers all expenses reimbursable to an employee or chargeable to the Authority under the provisions of "The Regulations Governing Employee Expense Reimbursement", or under provisions in the various bargaining unit contracts. The account covers not only travel expenses but also mileage for using one's own car while on Authority business, overtime meal allowances, registration fees and costs to attend meetings, seminars or conventions.

In 1987, the Authority expended \$390,619 in the Travel and Subsistence Account. Of this amount approximately 70 percent or \$273,000 was expended in accordance with bargaining unit contracts for travel from assigned plaza to other location and overtime meal allowance in the Tolls Department as well as overtime meal allowance for Maintenance. A meal allowance of \$7.50 is paid when an employee works at least three hours beyond a normal scheduled work day.

The remaining 30 percent of \$117,000 was expended for preapproved travel for seminars, meetings or conventions and related subsistence expenses, overtime meal allowances for non-bargaining employees, mileage for use of one's own car on Authority business. All expenses are subject to audit and review and must have the proper approval and documentation in accordance with established procedures before payment is made.

COMMENT: A complaint that the Authority is not an equal opportunity employer and that it fails to employ the homeless and unemployed.

RESPONSE: The Authority has formally adopted a Policy Statement on Equal Employment Opportunity. This policy ensures that all qualified employees and applicants for employment are treated without regard to their race, sex, age, creed, color, national origin, ancestry, marital status, handicap or typical hereditary, cellular or blood trait, or because of liability for service in the armed forces or status as a disabled or Vietnam era veteran.

As to the Authority's Affirmative Action Program which was adopted in 1986, of the 22 goals established, to date the Authority has satisfied nine of those objectives. Although the Personnel Division does not keep statistics on hiring the homeless and unemployed, the Authority can attest from personal experience that the unemployed are frequently among those who are hired. As to the homeless, the Authority does not know

of any homeless applicant. Every application received has an address where the authority can contact the applicant. The Authority frequently offers summer jobs to the unemployed while they seek regular employment with it.

Not all summer jobs are filled; therefore, the opportunity for employment is extended to anyone willing to work.

The Authority often advertises in various newspapers for qualified candidates. These ads identify the Authority as an equal opportunity employer. Jobs are open to all applicants who are qualified.

COMMENT: An observation that cronyism and nepotism are present in staffing decisions.

RESPONSE: The Authority conducts an active job posting program where managers are frequently required to defend their recommendations. Applicants are subjected to several tests before being considered eligible for employment. Passing scores are a condition of employment. As to the charge of nepotism, a candidate should not be excluded from consideration due to the fact he or she has a relative working at the Parkway. The Authority does discourage relatives working together in the same Department. In practice, this policy has had a negative effect. In several instances, the best qualified candidate did not receive the promotion or job because of a working relative.

The Authority receives numerous recommendations for employment from public officials.

This group of applicants has been viewed by the public as "cronyism", when, in fact, a recommendation from a public official does not guarantee an interview or a job. Those who obtain interviews must then compete with other candidates. The Authority's practice is to hire only the best qualified candidate for each job and Authority managers are expected and required to justify their hiring recommendations.

COMMENT: An objection to the hiring of an Affirmative Action Manager at a salary of \$60,000 a year.

RESPONSE: The position of Affirmative Action Manager has not been filled as yet. The salary of this position has been established in a range of \$31,764 to \$47,543. This position was considered important if the Authority is sincere in its commitment of meeting its Affirmative Action goals. Qualified minorities are not seeking out the Authority for job opportunities. From experience, the Authority has learned that it must actively seek out and recruit minority candidates.

COMMENT: An objection to salary schedule for Authority employees and a recommendation that salaries be frozen.

RESPONSE: Bargaining unit employees negotiate salary increases. Therefore, by law, they are entitled to those increases. Non-bargaining employees are also eligible for increments. Although these increases are not negotiated, the across-the-board increase granted non-bargaining unit employees is at the pleasure of the Commissioners.

Salary levels are constantly being sampled in the private and public sectors as well as the percentage increases being negotiated by major employers. Adjustments are periodically made to remain competitive in the labor market. The Authority's studies indicate that its employees are not overpaid. In fact, these studies support recommendations for recent salary increases.

Recent published reports have shown that the Authority's overtime payments are in line with the rest of the industry. Many objections were raised on the high salaries of a few toll collectors. Yet no one was concerned about the many toll collectors who earn \$13,500.

COMMENT: An objection to paying for State Police out of toll revenues.

RESPONSE: The basis for charging tolls on the Garden State Parkway is that only the users of the road, as opposed to all of the State's taxpayers, pay for the maintenance, upkeep, repair, and all other related services necessary to insure a safe highway. The patrol of the road by State Police personnel is one of these related services. It is necessary to maintain the troop for traffic control, speed enforcement, assisting disabled motorists, accident investigation, and all other aspects of police work. It would be an unfair burden to assess all of the taxpayers in the State of New Jersey for patrol of the Parkway which operates independently of the State highway system. While the Parkway receives no revenue from any of the summonses which are issued, it is the Authority's responsibility to its patrons to maintain an enforcement bureau, and this is accomplished most cost effectively by utilizing and reimbursing the Division of State Police.

Full text of the adoption follows.

ADOPTIONS

OTHER AGENCIES

19:8-1.1 Definitions

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

“Bus token” means the Authority’s authorized discount token for use by buses.

“Car” means a passenger motor vehicle, including station wagons, hearses, funeral flower and funeral service vehicles for which issuance of passenger car plates is authorized, taxicabs, motorcycles, two axle four tire campers, school buses and panel vans, pickup trucks and similar vehicles having a gross weight not exceeding 6,999 pounds and having no more than two axles and four tires.

“Car token” means the Authority’s authorized car discount token for use by cars only at exact change \$0.50 toll lanes.

“Heavy truck” means a truck with two axles and four tires weighing more than 6,999 pounds, a truck with two axles and six or more tires, or a truck with three or more axles.

19:8-3.1 Tolls

(a) (No change.)

(b) Tolls shall be paid by currency, coin, or authorized Authority token or scrip for the passage of all vehicles on the Parkway in amounts and at the locations designated in the following schedule.

AGENCY NOTE: The following table of toll locations and rates is to replace that table which presently appears at N.J.A.C. 19:8-3.1(b). This adopted table differs from that proposed in the January 4, 1988 New Jersey Register at 20 N.J.R. 49(a) in those respects as set forth in the beginning of the Summary of Public Comments and Agency Responses.

Toll Location	Type	Passenger Car, Recreational Vehicle, Light Truck ^(A) , and School Bus				Omnibus*	Heavy Truck ^(B)					
		Car	Car with 1-axle Trailer: 2-axle, 6-Tire Camper or 3-axle Camper	Car with 2-axle Trailer or 4-axle Camper	Car with 3-axle Trailer		2-axle, 4-tire Truck, 3½ tons or more	2-axle, 6-tire Truck	3-axle Truck	4-axle Truck	5-axle Truck	6-axle Truck
Hillsdale	B	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Paramus	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Bergen	B	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Saddle Brook	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Clifton	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Passaic	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Watchung	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Essex	B	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Bloomfield	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
East Orange	R	.25	.35	.50	.50	1.00	—	—	HEAVY TRUCKS PROHIBITED NORTH OF INTERCHANGE 105			
Irvington	R	.25	.35	.50	.50	1.00	—	—				
Union	R	.25	.50	.50	.50	1.00	—	—				
Union	B	.25	.35	.50	.50	1.00	—	—	HEAVY TRUCKS PROHIBITED NORTH OF INTERCHANGE 105			
Raritan N & S	B	.25	.35	.50	.50	1.00	—	—				
Matawan	R	.25	.35	.50	.50	1.00	—	—				
Keyport-Hazlet	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Holmdel	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Red Bank	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Eatontown	R	.25	.35	.50	.50	1.00	—	—	—	—	—	—
Asbury Park	B	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Belmar-Wall	R	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Lakewood-Brick	R	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Lakehurst	R	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Toms River	B	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Barneget	B	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
New Gretna	B	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Somers Point	R	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Great Egg	B	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Cape May	B	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00
Wildwood	R	.25	.35	.50	.50	1.00	.35	.50	.75	1.00	1.00	1.00

* 50 percent discount for regularly scheduled buses.

(A) Light truck, 2-axle, 4-tire less than 3½ tons.

(B) Heavy trucks (3½ tons or more, 6 tires, or 3-or-more-axles) prohibited north of Interchange 105 in Monmouth County.

(c)-(f) (No change.)

CASINO CONTROL COMMISSION**(a)****Accounting and Internal Controls****Readoption: N.J.A.C. 19:45**

Proposed: February 16, 1988 at 20 N.J.R. 382(a).

Adopted: March 23, 1988 by Casino Control Commission,
Walter N. Read, Chairman.Filed: March 24, 1988 as R.1988 d.178, **without change.**Authority: N.J.S.A. 5:12-63(c) and (f), 5:12-69, 5:12-70(g), (j), (l),
(m) and (n), 5:12-99 and 5:12-101.

Effective Date: March 24, 1988.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:45.**(b)****Junkets****Readoption: N.J.A.C. 19:49**

Proposed: January 19, 1988 at 20 N.J.R. 181(a).

Adopted: March 23, 1988 by Casino Control Commission,
Walter N. Read, Chairman.Filed: March 24, 1988 as R.1988 d.177, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69 and 102.

Effective Date: March 24, 1988.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:49.**(c)****Gross Revenue Tax
Investment Obligation Alternative Tax
Investment Tax Credits****Readoption: N.J.A.C. 19:54**

Proposed: February 16, 1988 at 20 N.J.R. 383(a).

Adopted: March 23, 1988 by Casino Control Commission,
Walter N. Read, Chairman.Filed: March 24, 1988 as R.1988 d.179, **without change.**Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(e), 5:12-144(a)
and (f) and 5:12-144.1(c).

Effective Date: March 24, 1988.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:54.**COMMERCE AND ECONOMIC
DEVELOPMENT****DIVISION OF DEVELOPMENT FOR SMALL
BUSINESSES AND WOMEN AND MINORITY
BUSINESSES****(d)****Local Development and Financial Assistance
Local Development Financing Fund****Adopted New Rules: N.J.A.C. 12A:12-2**

Proposed: December 21, 1987 at 19 N.J.R. 2381(a).

Adopted: January 25, 1988 by Borden R. Putnam, Commissioner,
Department of Commerce and Economic Development.Filed: March 24, 1988 as R.1988 d.180, **without change.**Authority: N.J.S.A. 52:27H-6F, P.L. 1987, c.55, specifically
section 9.

Effective Date: April 18, 1988.

Expiration Date: September 21, 1992.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.**SUBCHAPTER 2. LOCAL DEVELOPMENT FINANCING
FUND****12A:12-2.1 Applicability and scope**

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement P.L. 1983, Ch. 190, an Act establishing the Local Development Financing Fund.

(b) The Act provides for the establishment of a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

(c) Applications and questions regarding participation in the program should be addressed to:

Office of Urban Programs
N.J. Department of Commerce and Economic
Development
1 West State Street
CN 829
Trenton, New Jersey 08625

(d) The Act applies to specified municipalities who sponsor certain commercial and industrial projects in those municipalities.

12A:12-2.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development or his designee.

"DCEd" means the Department of Commerce and Economic Development.

"Director" means the Director of the Office of Urban Programs in the Department of Commerce and Economic Development.

"Eligible project" means a project which has been approved by the Commissioner to receive financial assistance from the Local Development Financing Fund.

"Eligible project cost" means the cost of planning, developing, executing and making operative and industrial or commercial re-development projects. Eligible project cost includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;

2. Incurred for, or in connection with or incidental to acquiring and managing the land, property or interest;

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3. Incurred for, or in connection with the relocating and moving of persons displaced by acquisition;
4. Of development or redevelopment, including:
 - i. The comprehensive renovation or rehabilitation of the land, property or interest;
 - ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;
 - iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and
 - iv. The disposition of land or other property for these purposes;
5. Of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and

7. Incurred or incidental cost including but not limited to:
 - i. Administrative, appraisal and economic analysis;
 - ii. Engineering service;
 - iii. Planning service;
 - iv. Design service;
 - v. Architectural service;
 - vi. Surveying service; and
 - vii. Other professional service.

"Financial assistance" means but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

"Fund" means the Local Development Financing Fund.

"Municipality" means a municipality qualifying for aid pursuant to the state formula for state aid to municipalities for services and to offset property taxes (see N.J.S.A. 52:27D-178)

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority, or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Commissioner as a sponsor. (See N.J.S.A. 40:68A-29)

12A:12-2.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of \$250.00. The amount of the fee shall be established by the Commissioner annually.

(b) Each application for financial assistance from the Fund shall be accompanied with evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c) Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the municipality in which the project is located. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;
2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;
3. The increase in the valuation of real property in the municipality as a result of the completion of the project;
4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;
5. Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;
6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;

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7. The extent to which the project will advance State and/or regional planning and development strategies; and
8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d) Each application for financial assistance from the Fund shall be accompanied with evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied with evidence of all requisite Federal and/or State environmental permits where necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a minority business set-aside plan. (See N.J.A.C. 12A:12-2.7)

12A:12-2.4 Time for application for financial assistance from the Fund

(a) An application for financial assistance from the Fund shall be submitted no later than:

1. February 28, for first quarter round financial assistance awards;
2. May 31, for second quarter round financial assistance awards;
3. August 31, for third quarter round financial assistance awards; and
4. November 30, for fourth quarter round financial assistance awards.

(b) All applications must be received by the Office of Urban Programs by the designated quarterly deadlines for consideration in that quarterly award round.

(c) The Commissioner may change any or all of the quarterly application deadlines as he deems necessary.

1. When the Commissioner changes any or all of the dates for receipt of the financial assistance applications to the Fund he must forward by registered mail a timely notice of such action to municipalities which are eligible to be a sponsor under these rules.

12A:12-2.5 Financial assistance

(a) No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b) The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c) No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include but is not limited to:

1. Conventional private sector mortgages;
2. Purchase money mortgages;
3. Industrial Revenue Bonds;
4. Leases;
5. Loans guaranteed by the federal Small Business Administration or similar loan guarantees of other government and/or quasi governmental entities; and
6. Equity investments in the project.

(d) The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Commissioner.

(e) The applicant shall secure interim financing on all projects involving construction, unless the DCED agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Department.

(f) The minimum loan amount from the Fund shall be \$50,000.

(g) The applicant shall have such equity in the project as the DCED may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(h) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

(i) Assistance other than loans from the Fund may be approved where the DCED deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

12A:12-2.6 Evaluation of grant applications

(a) The Office of Urban Programs shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons to be employed in the municipality in which the project is located;
 2. The number of permanent full-time jobs to be located and/or maintained directly by the project, excluding the period of construction or development;
 3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State but for the LDFE;
 4. The increase in the valuation of real property in the municipality as a result of the completion of the project;
 5. The percentage of the total eligible project costs to be financed from private and/or other public resources;
 6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;
 7. Whether the project will be located in an area targeted for economic development and/or is receiving federal, state and/or local development incentives under other programs;
 8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;
 9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;
 10. The extent to which the locations of the project is accessible to and/or promotes the use of public transportation;
 11. The degree of support for, participation in, and/or consultation with the community in which the project will be located in the planning of the project;
 12. The likelihood that the project will create and/or preserve private sector jobs, which jobs will last for a period of over two years; and
 13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.
- (b) After the evaluation and ranking is completed, the Office of Urban Programs shall forward to the Commissioner for his review and approval those projects evaluated by the Office of Urban Programs.
- (c) All awards of financial assistance from the Fund for eligible projects shall be made on a quarterly basis. All awards shall be announced by the application deadlines for the new quarters. (See N.J.A.C. 12A:12-2.4(a))

12A:12-2.7 Minority business set aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set aside not less than 10 percent of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses.

(b) The developer and/or general contractor of the project shall identify the minority business that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) In determining compliance with these goals, a developer and/or general contractor may only utilize those minority businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 (See N.J.A.C. 12A:10-1)

12A:12-2.8 Rescission of financial assistance from the Fund

(a) The Commissioner may at his discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;
2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;
3. The project is judged incapable of achieving its set aside requirement, pursuant to N.J.A.C. 12A:12-2.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 12A:12-2.7; or
4. The participants in the project are found not to be of a good moral character. Good moral character shall include but not be limited to convictions of felony offenses and/or conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

(b) Upon determination of the Commissioner that financial assistance from the Fund shall be rescinded, the DCED shall send a certified letter to the project and the sponsor informing them of the rescission and the right of the project to appeal the decision.

12A:12-2.9 Appeals of rescission of financial resources from the Fund

(a) An appeal of rescission of financial assistance from the Fund shall be made in writing to the Department of Commerce and Economic Development.

(b) An appeal of rescission of financial assistance shall only address those reasons as stated in the notification to the project for the rescission.

(c) The project shall have 14 calendar days from the receipt of the notification of rescission for financial assistance from the Fund to file an appeal with the DCED.

(d) The DCED shall schedule within 21 calendar days, if deemed necessary, an administrative review for an appeal which is received within the specified time period.

(e) The DCED shall notify all interested parties of the time and place of the administrative review and the right to attend and be represented at the administrative review.

(f) The administrative review will be conducted by the designee of the Commissioner. This designee shall issue a written report to the Commissioner within seven calendar days of the close of the administrative review.

(g) Thereafter, the Commissioner shall issue a final decision on the appeal and notify the parties by certified letter.

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook

Emergency Assistance

Adopted Emergency Amendment: N.J.A.C.

10:82-5.10

Emergency Amendment Adopted by Drew Altman,

Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 31, 1988.

Emergency Amendment Filed: March 31, 1988, as R.1988 d.194.

Authority: N.J.S.A. 44:7-6 and 44:10-3, and 45 CFR 233.120.

Emergency Amendment Effective Date: March 31, 1988.

Emergency Amendment Operative Date: April 1, 1988.

Emergency Amendment Expiration Date: April 30, 1988.

Submit comments by May 18, 1988 to:

Marion E. Reitz, Director

Division of Public Welfare

CN 716

Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent agency proposal is known as PRN 1988-231.

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Human Services recently announced, as one of a series of steps to address the problems of homeless families receiving Emergency Assistance (EA) benefits, that there will be a one-time, one month, extension of Aid to Families with Dependent Children (AFDC) EA benefits for those families whose benefits expire on March 31, 1988.

On March 10, 1988, the Department of Human Services submitted a report to the Legislature documenting the effects experienced by families as a result of the November 16, 1987 revised regulations governing emergency assistance to homeless persons. Those regulations followed a period of time during which the Department's previous regulations were suspended by *Maticka v. City of Atlantic City*, a New Jersey Appellate Court decision that required a reassessment of the Department's emergency assistance policy. The Department's new regulations, adopted on November 16, 1987 (at 19 N.J.R. 2190(a)), while dramatically broadening coverage under emergency assistance, also permitted county welfare agencies to extend emergency assistance for up to two additional months in situations where all reasonable efforts to secure permanent shelter by both the county welfare agency and the client proved unsuccessful.

The proposed amendment expands the provisions of EA to allow those families which had been receiving AFDC-EA since before December 1987 to receive an additional one month extension of benefits. This extension of benefits for a sixth month for those families exhausting their maximum entitlement (five months) to EA on March 31, 1988 is a unique situation.

Approximately 940 families were housed in hotels, motels, or congregate shelters and were faced with a March 31, 1988 expiration of their emergency assistance benefits. The addition of this one month extension to those families in receipt of EA benefits prior to December 1987 is to provide an added opportunity to place such families in permanent housing.

Social Impact

The proposed amendment will have a positive social impact in that it will provide an additional month of EA benefits to a targeted group, approximately 940 families. While providing needed short term assistance to those families, this proposal, because of its temporary nature, will not lead to the creation of an additional public assistance program, nor will it foster residence in hotels and motels as a way of life. It will, however, provide an added opportunity to enhance the partnership efforts of counties, localities and community based organizations in assisting homeless families to secure permanent shelter.

In the absence of sufficient affordable housing, this is the most feasible immediate means of mitigating the crisis of homelessness for the least fortunate members of our society. Emergency assistance, however, by its nature, is a time limited program and cannot serve as a permanent answer to homelessness.

Economic Impact

The emergency rule will result in an estimated expenditure of one million dollars in State funds for emergency assistance.

Approximately 940 families will be granted this additional month of EA. The CWA will have the latitude to utilize any remaining funds in the areas of social and support services for those families who will not receive the benefit of the sixth and final month of EA.

Regulatory Flexibility Statement

This emergency adoption and concurrent proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This action imposes no compliance requirements on small businesses.

Full text of the emergency adoption and concurrent proposal follows (additions indicated by boldface **thus**).

10:82-5.10 Emergency assistance

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

(d) Needs of the eligible family may be recognized in accordance with the regulations and limitations in the following paragraphs:

1. Emergency shelter: The county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period (see N.J.A.C. 10:81-7.1(k)6vii concerning notice requirements) not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible family currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence. In situations where the county welfare agency determines that despite efforts of both the client and the agency (see 6 below), permanent living arrangements are unavailable, an extension of emergency assistance may be authorized in accordance with the provisions of (d)1vii below.

i.-vii. (No change.)

viii. **Time Limited Extension for a Sixth Month Benefit: A one month extension shall be granted for a sixth month to eligible families who have been in receipt of EA since immediately prior to December 1987. Such one-time, one month, extension of benefits is time limited and shall commence on April 1, 1988 and end April 30, 1988. This one time benefit granted under this provision is unconditional and not subject to the requirements set forth in vii above.**

2.-6. (No change.)

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

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Marine Fisheries

Artificial Reef Plan

Public Notice

Take notice that the Commissioner of the Department of Environmental Protection, pursuant to the provisions of N.J.S.A. 23:2B-1 et seq., adopted without change from proposal, a New Jersey Artificial Reef Plan which will establish a network of artificial reefs off the New Jersey Coast. This plan will establish the framework by which reef structures will be designed and evaluated to determine the most suitable artificial reef configuration.

Notice of the proposed plan was published in the New Jersey Register on August 17, 1987 at 19 N.J.R. 1574(a). During the public comment period, which extended from August 17, 1987 to September 17, 1987, the Department received numerous telephone comments indicating support from individuals representing sport diving, recreational fishing and commercial fishing. No written comments were received.

The Artificial Reef Plan can be reviewed at the Bureau of Marine Fisheries, 501 East State Street, Trenton, N.J. 08625. A copy has also been filed with and may be reviewed at the Office of Administrative Law, Quakerbridge Road, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

This Artificial Reef Plan may be modified from time to time to accommodate specific needs as they arise. When such modifications are proposed, notice will be given and public comment invited.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Medford Township Wastewater Management Plan (WMP). The Medford Township WMP calls for the Township of Medford to be served by the existing 1.75 million gallons per day Medford Township Sewage Treatment Plant. Medford Township will be the Wastewater Management Agency for the Township of Medford. In addition, this amendment would de-designate Evesham Municipal Utilities Authority (EMUA) as the Facilities Planning Agency for the 201 Facilities Planning area consisting of Evesham Township, Medford Township, and Medford Lakes Borough. EMUA will remain as the Facilities Planning Agency and the Wastewater Management Agency for Evesham Township. The Wastewater Management Agency for Medford Lakes Borough may be designated in the future.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within thirty days of the date of this public notice to Mr.

Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on December 7, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" 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 will expand the sewer service area of the Gloucester County Utilities Authority to include the proposed "Holiday City at Monroe" residential development. The amendment will also allow the filling of 1.79 acres of wetlands for 3 road crossings and 5 drainage easements. Approval of this amendment is conditioned on the completion of compensatory mitigation as approved in the wetlands mitigation report, including the creation and restoration of 1.6 acres of wetlands and the preservation of 2.75 acres of uplands. All remaining wetlands on the project site have been identified as a wetlands conservation easement.

(d)

Amendment to the Upper Raritan and Mercer County Water Quality Management Plans

Public Notice

Take notice that on December 10, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan and Mercer County Water Quality Management Plan was adopted by the Department. This amendment is to adopt a Wastewater Management Plan (WMP) for Princeton Township and Princeton Borough. Among the actions addressed by the Wastewater Management Plan are a change in the sewer service area, the delineation of wastewater conveyance facilities, and the abandonment of the existing Balcort Drive Pumping station.

(e)

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that on October 28, 1987 and December 28, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Rules (N.J.A.C. 7:15-3.4), amendments to the Ocean County Water Quality Management Plan were adopted by the Department. These amendments will revise the Ocean County Utilities Authority's existing regional service boundaries between the Central, Southern, and Northern service regions. As a result of these revisions, regional sewer service will be affected within the municipalities of Manchester, Jackson, and Barnegat. Because of the change in regional service, the Ocean County Planning Board has prepared Wastewater Management Plans (WMPs) for each of the affected municipalities which delineate both existing and future sewer service areas.

(a)

**Amendment to the Upper Delaware Water Quality Management Plan
Public Notice**

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the construction of four additional leach pits and an increase in flow to the leach field to 14,240 gallons per day at the Mobil Chemical Company in Washington Township, Warren County. The increase in flow is due to expansion and increased production at the plant. A pretreatment system will be installed for the septic field.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

**Amendment to the Tri-County Water Quality Management Plan
Public Notice**

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Township of Franklin, Gloucester County Wastewater Management Plan (WMP). This WMP would allow the construction of four new on-site wastewater treatment facilities to serve the proposed Delsea Middle School, the Mary F. Janvier Elementary School, the Royale National Line Inn, and the Franklin Place Retail Shopping Center. The WMP also identifies the Township of Franklin as the Wastewater Management Agency for Franklin Township.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

**DIVISION OF ENVIRONMENTAL QUALITY
Reporting Requirements for SARA, Title III, Section 313
Public Notice**

Take notice that, pursuant to Section 313 of the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law on October 17, 1986, manufacturing facilities (SIC Codes 20-39) with 10 or more full-time employees must complete Toxic Release Inventory (TRI) forms. Reporting is based on a list of 329 chemicals and chemical groups. Covered facilities must report releases (emissions, discharges, etc.) of any of these substances that they process, manufacture or otherwise use in excess of thresholds established by the Federal law. The thresholds are as follows: 1988—75,000 pounds manufactured or processed and 10,000 pounds otherwise used; 1989—50,000 pounds manufactured or processed and 10,000 pounds otherwise used; and 1990 and thereafter—25,000 pounds manufactured or processed and 10,000 pounds otherwise used. The reporting due date is July 1, 1988, and annually on that date thereafter.

The United States Environmental Protection Agency (USEPA) is charged with developing and administering the Toxic Release Inventory reporting requirements. The USEPA has developed a survey form which is available in the Federal Register of February 16, 1988. If you have questions about the form or requirements for completing it, you may call the USEPA at 1-800/535-0202 or the regional office in Edison, N.J. at 201/321-6637.

Under the New Jersey Worker and Community Right to Know Act, the New Jersey Department of Environmental Protection (NJDEP) requires additional information above and beyond that called for in the Federal program.

Shortly, the NJDEP will be publishing a form in the New Jersey Register to be completed, along with the Toxic Release Inventory form, by all covered manufacturers. It will include the additional information required under the State Right to Know Program. Basically, that information is throughput; N.J. Employer Identification Number; NJPDES and APEDS permit numbers; and, if known, the date(s) that the substance(s) was(were) first used in operations at the facility. Also, the NJDEP is requiring the waste minimization information asked for in Part III, Section 8 of the Federal Toxic Release Inventory. Along with the supplemental form, the NJDEP will publish instructions for completion and the list of toxic substances subject to reporting in New Jersey.

The completed Toxic Release Inventory should be returned to the USEPA and the NJDEP. The completed supplemental form should be returned only to the NJDEP. Both forms designate return addresses. If you have questions regarding the New Jersey program, call the Bureau of Hazardous Substances Information at 609/292-6714.

(d)

**NJPDES Annual Fee Schedule Report and Proposed Fee Schedule
Public Hearing**

Take notice that the Department of Environmental Protection will hold a public hearing to present the New Jersey Pollutant Discharge Elimination System (NJPDES) 1988-1989 Annual Fee Schedule Report and the proposed Fee Schedule for fiscal year 1989. The hearing will be held on:

May 24, 1988 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Ryderson Lane
Rutgers University
New Brunswick, N.J.

The Annual Fee Schedule Report and Assessment of Fees will be mailed April 25, 1988 to all NJPDES permittees and will be available for inspection at the Division of Water Resources, 401 East State Street, Floor #4, Trenton, New Jersey, during normal working hours and at all State Depository Libraries beginning April 30, 1988. Contact Deborah Hammond, Bureau of Permits Administration at (609) 984-4428 for further information.

(a)

PINELANDS COMMISSION**Petition for Rulemaking
Pinelands Land Capability Map
N.J.A.C. 7:50-5.3(a)24****Petitioners: Leisure Technology, Inc.**

Authority: N.J.S.A. 13:18A-65.

Take notice that on March 8, 1988, Leisure Technology, Inc. filed a rulemaking petition with the Pinelands Commission requesting an amendment to the Pinelands Comprehensive Management Plan. This amendment would result in a revision to the Pinelands Land Capability Map, adopted at N.J.A.C. 7:50-5.3(a)24, to redesignate approximately 828 acres of land in Berkeley Township, Ocean County, from a Forest Area to a Rural Development Area. Although not part of this petition, the petitioner acknowledges that, if a Rural Development Area designation is granted, the Township of Berkeley could, by virtue of its adoption of a master plan and zoning ordinance, request that a portion of the Rural Development Area be further designated as a Municipal Reserve.

The Pinelands Land Capability Map graphically depicts Pinelands management areas which form the basis upon which municipalities zone land for permitted uses and densities. The land use standards governing municipal zoning are presented in N.J.A.C. 7:50-5, specifically N.J.A.C. 7:50-5.23 for Forest Areas, N.J.A.C. 7:50-5.26 for Rural Development Areas, N.J.A.C. 7:50-5.28 for Regional Growth Areas, and N.J.A.C. 7:50-5.51 et seq. for Municipal Reserve Areas.

The petitioners own approximately 828 acres of land and request the redesignation to permit additional residential development which would not otherwise be permitted if the land remained classified as a Forest Area. Under the current Forest Area designation, approximately 45 homes could be constructed on the property; however, a Rural Development Area designation would permit approximately 222 homes to be built. If at some future date the Township of Berkeley were to request and the Commission approve, a Municipal Reserve designation, within the Rural Development Area, the total amount of residential development permitted on the property would further increase.

The petitioners argue that the amendment is needed to accommodate regional growth influences, that these lands do not exhibit characteristics sufficient for continued designation as a Forest Area, and that the amendment is otherwise consistent with the goals set forth in the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.

The lands subject to the petition are generally located in the northwesterly portion of Berkeley Township. The property is generally bounded by the Davenport Branch (a tributary of the Toms River) to the northwest; the abandoned Pennsylvania Railroad and Jersey Central Power and Light Company right-of-way to the north; property owned by the Township of Berkeley and Homeland Corporation to the east; the ridge line between the Davenport and Jakes Branch subwatersheds to the south; and Pinewald-Keswick Road (Route 530), the Berkeley Township industrial park, and the Robert J. Miller Airpark to the southwest.

Take further notice that, pursuant to N.J.A.C. 7:50-7, this petition is being reviewed by the Executive Director and the staff of the Pinelands Commission for the purpose of formulating a recommendation to the Pinelands Commission as to how it should respond.

Interested persons who wish to comment on the petition before the Executive Director completes his review may do so by submitting written comments on or before May 18, 1988. Comments should be addressed to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

A copy of the petition and supporting documents are on file at the offices of the Pinelands Commission, Springfield Road, Pemberton Township, New Jersey and available for inspection between 9:00 A.M. and 5:00 P.M. on regular business days.

The Pinelands Commission will not consider or propose an amendment to the Comprehensive Management Plan until it reviews the Executive Director's recommendation. After consideration, the Commission shall determine whether or not to proceed with a rulemaking proposal pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 7:50-7.

HEALTH

(b)

**Maternal and Child Health
Availability of Grants
Fetal Alcohol Syndrome Prevention**

Take notice that, in compliance with P.L. 1987, ch. 7, the Department of Health hereby publishes notice of the availability of the following grant.

NAME OF GRANT PROGRAM:

MCH—Fetal Alcohol Syndrome Prevention, Grant Program No. 89-54-MCH.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED:

Development of regional projects which will address alcohol use pre-pregnancy, during pregnancy and while breast-feeding. This will be done through risk assessment in prenatal clinics, individual counseling of pregnant women, training of perinatal professionals and general public education.

AMOUNT OF MONEY IN THE GRANT PROGRAM:

The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified below to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM:

Level II, IIA and III Perinatal Centers.

QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT:

Must demonstrate ability to provide education and training to professionals and general public throughout perinatal region. Must be able to provide direct services at all prenatal clinics and must show coordination with Healthy Mothers, Healthy Babies Coalitions and Robert Wood Johnson grant programs, where applicable. Must be able to comply with RFP specifications.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS:

1. Contact Office of Director for Program referral.
2. Contact Program.
3. Submit Letter of Intent to Program.
4. Prepare Health Service Grant Application.

FOR INFORMATION CONTACT:

Maternal and Child Health Services
Office of Director
120 South Stockton Street, CN 364
Trenton, NJ 08625
609-292-5656

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED:

Letter of Intent due to funding program by May 15, 1988 for July 1 grants.

DATE BY WHICH APPLICANT SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS:

Applicant will be notified 30 days prior to start date of grant.

REORGANIZATION PLAN

OFFICE OF THE GOVERNOR

Governor Thomas H. Kean

Notice of a Plan for the Reorganization of the Department of Transportation

Take notice that on February 18, 1988 Governor Thomas H. Kean issued the following Reorganization Plan (No. 001-1988) to provide for the increased efficiency, coordination and functioning of the Department of Transportation.

General Statement of Purpose

Pursuant to its present statutory authority, it is the duty of the Department of Transportation, among other responsibilities, to solve or assist in the solution of the problems of all modes of transportation; to construct needed transportation systems; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and implement comprehensive plans and programs for all modes of transportation development in the State; and to coordinate the transportation activities of State agencies, State-created public authorities, and other public agencies with transportation responsibilities within the State.

The Department of Transportation recently contracted with a nationally respected and recognized consultant to conduct an organizational review of the Department, and to suggest ways to more efficiently carry out the Department's role. The conclusions of this analysis are the basis for the reorganization of the Department provided for herein.

Currently, the Commissioner is assisted by a Deputy Commissioner (who also serves as Executive Director), and three Assistant Commissioners; one for Transportation Services and Planning, one for Engineering and Operations (who also serves as State Highway Engineer), and one for Finance and Administration. This Reorganization Plan renames the Assistant Commissioner for Transportation Services and Planning as the Assistant Commissioner for Policy and Planning; abolishes the position of Assistant Commissioner for Engineering and Operations (State Highway Engineer), and creates in its place two Assistant Commissioner positions to more accurately reflect the functions of those positions: one for Design and Right of Way; and one for Construction and Maintenance. The existing position of Assistant Commissioner for Finance and Administration is retained without change under this Plan. Additionally, although not a part of this Reorganization Plan it is the Commissioner's intention to implement changes simultaneously with the adoption of this Plan which further provides for the consolidation and coordination of certain functions which currently exist in the Department utilizing the Commissioner's existing statutory authority to organize the Department pursuant to N.J.S.A. 27:1A-6.

In accordance with the provisions of the "Executive Reorganization Act of 1969, c. 203 (C. 52:14C-1 *et seq.*), I find with respect to each proposed reorganization included in this Plan, that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. Promote the better and more efficient execution of the law by coordinating and consolidating functions of the Department in a more consistent and practical way according to major purposes;
2. Promote the expeditious administration of the public business by coordinating and consolidating functions of the Department in accordance with a strategic plan designed to increase departmental efficiency;
3. Eliminate some overlapping and duplication within the Department by consolidating and reallocating certain functions and responsibilities and thereby better utilizing the resources of the Department.

The provisions of the Reorganization Plan are as follows:

1. I.a. An Office of the Commissioner is hereby created, consisting of the Commissioner of Transportation, a Chief of Staff, an Inspector General, a Director of Communications, a Legislative Liaison, and such other staff members as the Commissioner may deem necessary.

1.b. The position of Chief of Staff is hereby formally established. The Chief of Staff shall assist the Commissioner in coordinating the day to day functions of the various areas of the Department under the supervision of the Deputy and Assistant Commissioners, and shall have such other responsibility as may from time to time be delegated by the Commissioner. The Chief of Staff shall be appointed by and shall serve at the pleasure of the Commissioner.

1.c. The position of Inspector General is hereby formally established.

The Inspector General shall be responsible for internal auditing, investigation and security matters, and for such other responsibilities as may from time to time be delegated by the Commissioner. The Inspector General shall be appointed by and shall serve at the pleasure of the Commissioner.

1.d. The position of Director of Communications is hereby formally established. The Director of Communications shall be responsible for internal and public communications, and for such other responsibilities as may from time to time be delegated by the Commissioner. The Director of Communications shall be appointed by and shall serve at the pleasure of the Commissioner.

1.e. The position of Legislative Liaison is hereby formally established. The Legislative Liaison shall be responsible for interacting with the Legislature as prescribed by the Commissioner, and for such other responsibilities as may from time to time be delegated by the Commissioner. The Legislative Liaison shall be appointed by and shall serve at the pleasure of the Commissioner.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this reorganization will assist the Department in enhancing and improving cost controls which will foster the more economical operation of the Department, and will also assist the Commissioner in more efficiently managing the Department and its various divisions, promote the better execution of the laws, and further the expeditious administration of the public business. The Chief of Staff will assist the Commissioner in the more efficient operation of the Department through coordinating the day-to-day management functions between and among the Deputy and Assistant Commissioners. The Inspector General will assist the Commissioner in the more economical and efficient operation of the Department through functioning as an internal auditor of all divisions and offices of the Department. The Director of Communications will assist in the expeditious administration of the public business by coordinating, for the Commissioner, all internal and public communications. The Legislative Liaison will promote the better and more efficient operation of the Department, and execution of the laws, through coordinating the necessary interrelationships between the Department and the Legislature.

II. 1.a. The position of Deputy Commissioner created pursuant to N.J.S.A. 27:1A-12, together with all its functions, powers and duties, is continued. The Commissioner may appoint such additional Deputy Commissioners if the workload of the Department so requires, in order to more efficiently conduct the public business. The Deputy Commissioner(s) shall be appointed by and shall serve at the pleasure of the Commissioner. The responsibilities of executive director conferred upon the Deputy Commissioner by N.J.S.A. 27:1A-12 are hereby abolished.

1.b. The position of deputy executive director created pursuant to N.J.S.A. 27:1A-13(b), and all of its functions, powers, and duties, is hereby abolished.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will promote the expeditious administration of the public business and provide for increased agency efficiency by clarifying that a Deputy Commissioner shall serve as a deputy to the Commissioner, without any ambiguity as to the nature of any additional responsibilities which might concurrently be vested in the title of an executive director. The elimination of the deputy executive director is desirable in conformance with elimination of the responsibility of executive director, and will serve to promote more streamlined administration and departmental efficiency through clarification of responsibilities and the elimination of unnecessary titles.

III. 1.a. The position of Assistant Commissioner for Transportation Services and Planning created pursuant to N.J.S.A. 27:1A-8(a) and (b) is hereby renamed as Assistant Commissioner for Policy and Planning. All of the qualifications for the Assistant Commissioner for Transportation Services and Planning established by N.J.S.A. 27:1A-8(b) continue as qualifications for the Assistant Commissioner for Policy and Planning.

1.b. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Assistant Commissioner for Transportation Services and Planning, the same should mean and refer to the Assistant Commissioner for Policy and Planning.

I find that this reorganization is necessary to accomplish the purposes set forth in Sections 2 and 5 of L. 1969, c. 203. Specifically, this reorganization will more accurately reflect the functions and responsibilities

of this particular Assistant Commissioner, will enhance public understanding of those functions and responsibilities, and hence will aid in the administration of the Department.

IV. 1.a The position of and the qualifications for Assistant Commissioner for Engineering and Operations created pursuant to N.J.S.A. 27:1A-8(a) and (c), respectively, are hereby abolished. In its place, two Assistant Commissioner positions shall be established: one for Design and Right of Way; and one for Construction and Maintenance.

1.b. There is hereby created an Assistant Commissioner for Design and Right of Way, which person shall be appointed by and shall serve at the pleasure of the Commissioner. The Assistant Commissioner for Design and Right of Way shall be a professional engineer qualified by training and experience in the design of highways, bridges and other transportation facilities, and in the processes of right of way acquisition and disposition.

1.c. There is hereby created an Assistant Commissioner for Construction and Maintenance, which person shall be appointed by and shall serve at the pleasure of the Commissioner. The Assistant Commissioner for Construction and Maintenance shall be a professional engineer qualified by training and experience in the construction and maintenance of highways, bridges and other transportation facilities.

1.d. The position of State Highway Engineer created pursuant to N.J.S.A. 27:1A-8(c) is hereby abolished, and reconstituted as State Transportation Engineer.

1.e. The Commissioner, pursuant to the authority granted by N.J.S.A. 27:1A-6, shall designate an existing department position which shall be held by a professional engineer, and which, in addition to its existing responsibilities, shall serve as the State Transportation Engineer.

1.f. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made either to the Assistant Commissioner for Engineering and Operations, or to the State Highway Engineer (in which title the Assistant Commissioner for Engineering and Operations also served pursuant to N.J.S.A. 27:1A-8(c)), the same shall mean and refer to the State Transportation Engineer.

1.g. The position of Deputy State Highway Engineer, created pursuant to N.J.S.A. 27:1A-10, is hereby abolished.

1.h. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Deputy State Highway Engineer, the same shall mean and refer to the State Transportation Engineer, created by Section IV. 1.d. of this Reorganization Plan.

1.i. The Commissioner, pursuant to the authority granted by N.J.S.A. 27:1A-6, shall designate such existing department positions as may be deemed necessary and expedient, which positions, in addition to their respective responsibilities, shall serve as Deputy State Transportation Engineers, to assist the State Transportation Engineer in the exercise of the duties of that position.

1.j. The positions of Chief Engineer for Design, and Chief Engineer for Construction and Maintenance, created pursuant to N.J.S.A. 27:1A-10, are hereby abolished, and the duties formerly vested in those positions shall be subsumed, respectively, in the responsibilities of the Assistant Commissioner for Design and Right of Way, and the Assistant Commissioner for Construction and Maintenance.

I find that this reorganization is necessary to accomplish the purposes set forth in Sections 2 and 5 of L. 1969, c. 203. Specifically, this reorganization will create a more balanced level of responsibility between and among the Assistant Commissioners by abolishing the position of Assistant Commissioner for Engineering and Operations, and allocating the responsibilities of that position according to function between two Assistant Commissioner positions: one for Design and Right of Way, and one for Construction and Maintenance.

Additionally, since the former position of Assistant Commissioner for Engineering and Operations also served as State Highway Engineer, it was necessary to reallocate those responsibilities. The name of State Highway Engineer has been changed to State Transportation Engineer to more accurately reflect current responsibilities of that position and of the Department, which is charged with, among other things, the duty to solve or assist in the solution of the problems of all modes of transportation, not only highways. The Commissioner's designation of an existing title which shall also serve as State Transportation Engineer is necessitated by the abolition of the position of Assistant Commissioner for Engineering and Operations, which position was previously designated by law as State Highway Engineer.

The abolition of the position of Deputy State Highway Engineer is desirable, as the functions formerly vested in that position will be dis-

tributed according to function, by the Commissioner, to whichever position or positions the Commissioner deems necessary. Additionally, the Commissioner is empowered by virtue of existing statutory authority, and by paragraph IV. 1.i. of this Reorganization Plan, to designate such existing Department positions to serve as Deputy State Transportation Engineers as are deemed necessary to assist the State Transportation Engineer. The above changes are necessary and desirable in order to permit the Commissioner to redesignate and reassign duties and responsibilities of the State Highway Engineer and the Deputy State Highway Engineer in accordance with the objectives of this Reorganization Plan.

The abolition of the titles of Chief Engineer for Design, and Chief Engineer for Construction and Maintenance, is desirable as the functions formerly vested in those two positions will be assumed respectively, by the Assistant Commissioner for Design and Right of Way, and the Assistant Commissioner for Construction and Maintenance.

V. 1.a. The position of Assistant Commissioner for Finance and Administration and the qualifications for that position, created pursuant to N.J.S.A. 27:1A-8, are continued. The Commissioner may appoint such additional Assistant Commissioners as may be deemed necessary and expedient in order to more efficiently conduct the public business. All Assistant Commissioners shall be appointed by and shall serve at the pleasure of the Commissioner.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will serve to contribute to a more balanced level of responsibility between and among the assistant commissioners, which will result in the more expeditious administration of the Department, provide for increased departmental efficiency, and promote the better and more efficient execution of the law.

VI. 1.a. Any divisions created by the Commissioner, pursuant to N.J.S.A. 27:1A-6, shall be headed by a division director, who shall administer the work of the division, and perform such other functions as may be assigned by the Commissioner. All division directors shall be supervised by an Assistant Commissioner, and shall be appointed by and serve at the pleasure of the Commissioner.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will serve to increase departmental efficiency and promote the more expeditious administration of the public business through standardizing and clarifying the names of the major departmental sections as divisions, which shall be under the direct supervision of a division director, who in turn, shall be under the supervision of an Assistant Commissioner.

VII. 1.a. The position of Director of Planning and Research, created by N.J.S.A. 27:1A-13(a), is hereby abolished.

1.b. The position of Director of Modal Transportation Services, created by N.J.S.A. 27:1A-13(c), is hereby abolished.

1.c. The position of Director of Aeronautics, created by N.J.S.A. 27:1A-13(d), is hereby abolished.

1.d. The position of Director of Waterborne Transportation, created by N.J.S.A. 27:1A-13(g), is hereby abolished.

1.e. The position of Director of Regulatory Affairs, created by N.J.S.A. 27:1A-13(e), is hereby abolished.

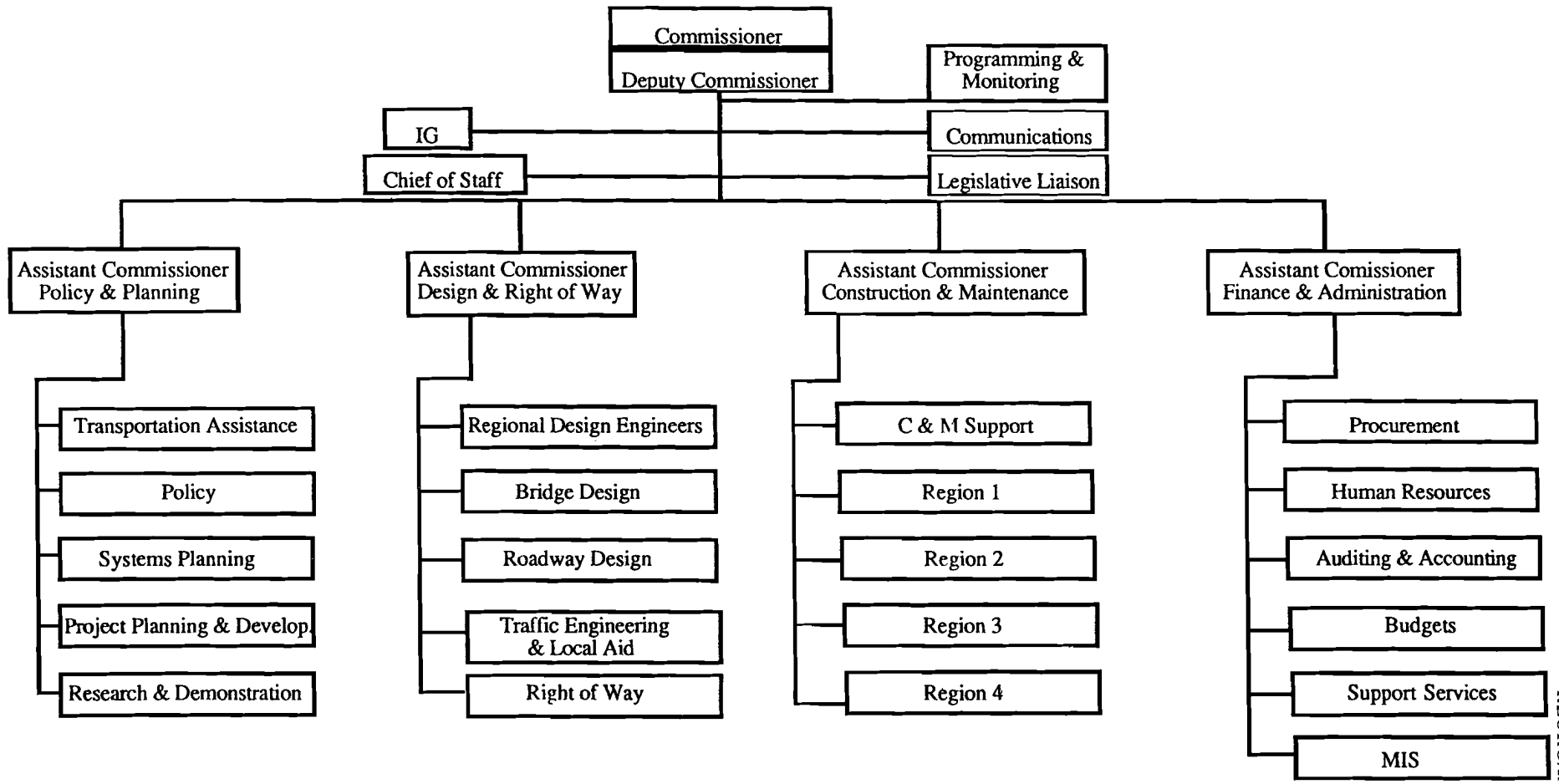
1.f. The position of Director of Policy Analysis and Governmental Affairs, created by N.J.S.A. 27:1A-13(f), is hereby abolished.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will remove from codification, six positions, which are provided for by statute. (The Department currently employs over 5700 employees, and the vast majority of those positions are not established pursuant to legislation). This reorganization will not abolish any of the responsibilities of the noted positions, but will permit the Commissioner to redistribute certain functions in an organized, strategic and comprehensive manner, which will serve to enhance the efficiency of operation of the Department.

All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on February 18, 1988 with the Secretary of State and the Office of Administrative Law. This Plan shall become effective in 60 days, on April 18, 1988, unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or on a date later than April 18, 1988 should the Governor establish a later date by Executive Order.

Take notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual addition of the public laws under a heading of "Reorganization Plans."

New Jersey Department of Transportation



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 March 7, 1988 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

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 FEBRUARY 16, 1988

NEXT UPDATE: SUPPLEMENT MARCH 21, 1988

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
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987	19 N.J.R. 2087 and 2224	November 16, 1987
19 N.J.R. 795 and 898	May 18, 1987	19 N.J.R. 2225 and 2324	December 7, 1987
19 N.J.R. 899 and 1006	June 1, 1987	19 N.J.R. 2325 and 2510	December 21, 1987
19 N.J.R. 1007 and 1120	June 15, 1987	20 N.J.R. 1 and 124	January 4, 1988
19 N.J.R. 1121 and 1258	July 6, 1987	20 N.J.R. 125 and 220	January 19, 1988
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987	20 N.J.R. 321 and 434	February 16, 1988
19 N.J.R. 1475 and 1588	August 17, 1987	20 N.J.R. 435 and 570	March 7, 1988
19 N.J.R. 1589 and 1676	September 8, 1987	20 N.J.R. 571 and 692	March 21, 1988
19 N.J.R. 1677 and 1758	September 21, 1987	20 N.J.R. 693 and 842	April 4, 1988
19 N.J.R. 1759 and 1858	October 5, 1987	20 N.J.R. 843 and 950	April 18, 1988
19 N.J.R. 1859 and 1926	October 19, 1987		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:1-1.1	Media coverage of public hearings	20 N.J.R. 127(a)	R.1988 d.115
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)	20 N.J.R. 642(a)
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)	

Most recent update to Title 1: TRANSMITTAL 1988-1 (supplement February 16, 1988)

AGRICULTURE—TITLE 2			
2:5-2	Equine infectious anemia control	20 N.J.R. 695(a)	
2:32-2.1, 2.3, 2.5, 2.8, 2.10, 2.12, 2.13, 2.14, 2.19, 2.20, 2.22, 2.25, 2.27, 2.33	Sire Stakes Program	20 N.J.R. 323(a)	
2:69-1.11	Commercial values of primary plant nutrients	20 N.J.R. 696(a)	
2:71-2.4, 2.5, 2.6	Jersey Fresh Logo program	19 N.J.R. 2327(b)	R.1988 d.97
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 324(a)	20 N.J.R. 525(a)

Most recent update to Title 2: TRANSMITTAL 1987-8 (supplement November 16, 1987)

BANKING—TITLE 3			
3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units	19 N.J.R. 2089(a)	
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)	
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)	
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)	
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)	
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)	
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)	
3:13-2.2, 4.3, 4.4	Bank holding companies: financial filings	20 N.J.R. 127(b)	R.1988 d.149
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)	20 N.J.R. 777(a)
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)	
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)	
3:42	Pinelands Development Credit Bank: procedural rules	20 N.J.R. 128(a)	R.1988 d.157

Most recent update to Title 3: TRANSMITTAL 1988-1 (supplement January 19, 1988)

CIVIL SERVICE—TITLE 4			
4:1-8, 9, 10.2-10.5, 11, 12, 13, 14, 15, 16.13	Repeal (see 4A:4)	20 N.J.R. 327(a)	
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	
4:2-6.3, 11, 13, 14.1, 15.1	Repeal (see 4A:4)	20 N.J.R. 327(a)	
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	
4:3-6.4, 11.1, 13.2, 14	Repeal (see 4A:4)	20 N.J.R. 327(a)	
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	

Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-1.3	Definitions	20 N.J.R. 326(a)		
4A:4	Selection and appointment	20 N.J.R. 327(a)		
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		
4A:8	Layoffs	19 N.J.R. 1363(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-1 (supplement January 19, 1988)

COMMUNITY AFFAIRS—TITLE 5				
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:19-6.3, 8	Continuing care retirement communities: application fees; nonbinding reservation agreements	20 N.J.R. 347(a)		
5:23	Uniform Construction Code	20 N.J.R. 223(a)	R.1988 d.168	20 N.J.R. 893(a)
5:23-2.23	UCC: use and occupancy of buildings undergoing alteration	20 N.J.R. 223(b)	R.1988 d.167	20 N.J.R. 893(b)
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)	R.1988 d.144	20 N.J.R. 783(a)
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.6	Uniform Construction Code: manufacturer's recommendations	20 N.J.R. 699(a)		
5:23-3.11A	Incorporation of education enhancements at N.J.A.C. 6:22-2.3	_____	_____	20 N.J.R. 824(d)
5:23-3.14, 3.20	Uniform Construction Code: 1988 building and mechanical subcodes	20 N.J.R. 575(a)		
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)		
5:23-9.1, 9.2	UCC interpretations: Plumbing Subcode and manufactured housing	20 N.J.R. 224(a)		
5:24-2.3	Senior citizens and disabled protected tenancy: taxable income	20 N.J.R. 349(a)		
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)		
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)	R.1988 d.166	20 N.J.R. 893(c)
5:92-6.1	Council on Affordable Housing: rehabilitation credits	19 N.J.R. 1863(a)	R.1988 d.165	20 N.J.R. 897(a)
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)	R.1988 d.101	20 N.J.R. 526(a)
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly: extension of comment period	19 N.J.R. 2090(a)		

Most recent update to Title 5: TRANSMITTAL 1988-2 (supplement February 16, 1988)

DEFENSE—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6				
6:3-1.23	Principal certification	20 N.J.R. 437(b)		
6:3-2	Transfer of pupil records	20 N.J.R. 133(b)		
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 437(b)		
6:20-3.1	Reproposed: Determining tuition rates for sending and receiving districts	19 N.J.R. 2329(a)	R.1988 d.147	20 N.J.R. 787(a)
6:22-1.1, 1.3-1.7, 2.1-2.5, 3.1, 4.1	School facility planning services	20 N.J.R. 3(a)	R.1988 d.155	20 N.J.R. 788(a)
6:27-1.14	Repeal (see 6:30)	20 N.J.R. 700(a)		
6:28-11	Special education pilot project	20 N.J.R. 14(a)	R.1988 d.148	20 N.J.R. 796(a)
6:30	Adult education programs	20 N.J.R. 700(a)		
6:44-2, 3, 4	Repeal (see 6:30)	20 N.J.R. 700(a)		

Most recent update to Title 6: TRANSMITTAL 1988-1 (supplement February 16, 1988)

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7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:11	Sanitary Landfill Facility Contingency Fund	20 N.J.R. 443(a)		
7:2	State Park Service	20 N.J.R. 714(a)		
7:3-2	Management of privately-owned woodlands: approved foresters list	20 N.J.R. 137(a)	R.1988 d.139	20 N.J.R. 642(b)
7:6-3.10	Water-skiing on Lake Hopatcong	20 N.J.R. 138(a)	R.1988 d.185	20 N.J.R. 898(a)
7:7-2.1	Coastal Permit Program: CAFRA exemptions	19 N.J.R. 807(a)	R.1988 d.136	20 N.J.R. 643(a)
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-15, 16	Freshwater Wetlands Protection Act rules: fees, penalties and hearings	20 N.J.R. 576(a)		
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:8	Storm water management	19 N.J.R. 2227(a)	R.1988 d.99	20 N.J.R. 526(b)
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	20 N.J.R. 448(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)	R.1988 d.100	20 N.J.R. 528(a)
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(a)		
7:12	Shellfish growing waters	20 N.J.R. 450(a)		
7:13-7.1	Redelineation of Hackensack River in Oradell	19 N.J.R. 1935(a)	R.1988 d.138	20 N.J.R. 644(a)
7:13-7.1(b)	Redelineation of Jumping Brook in Neptune	19 N.J.R. 2233(a)	R.1988 d.181	20 N.J.R. 898(b)
7:13-7.1(d)	Redelineation of Big Bear Brook, Mercer County	19 N.J.R. 1933(a)	R.1988 d.135	20 N.J.R. 644(b)
7:13-7.1(d)	Redelineation of Carter's Brook, Middlesex County	19 N.J.R. 1933(b)	R.1988 d.137	20 N.J.R. 645(b)
7:13-7.1(d)	Redelineation of Lawrence, Ireland, Mae, Harry's and Oakeys brooks in Mercer and Middlesex counties	19 N.J.R. 1934(a)	R.1988 d.134	20 N.J.R. 645(a)
7:14-8	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:19-6.14	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	20 N.J.R. 460(a)		
7:25-18.5	Drifting and anchored gill net seasons: netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:25-18.5	Gill net seasons: staked gill net fishery: extension of comment period	20 N.J.R. 715(a)		
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)	R.188 d.140	20 N.J.R. 645(c)
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26-12.12	Hazardous waste facilities and public participation in permit process	20 N.J.R. 715(b)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26B-1.13	Certification and signatories: correction	_____	_____	20 N.J.R. 816(a)
7:30	Pesticide Control Code	20 N.J.R. 579(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22-5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)		

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8:24	Chapter XII, State Sanitary Code: retail food establishments	20 N.J.R. 365(a)		
8:25	Youth Camp Safety Act standards	20 N.J.R. 463(a)		
8:26-1.2, 1.3, 2.10, 3.15, 3.17, 4.3, 4.4, 5.1, 5.2, 5.3, 5.7, 5.10, 5.11, 6.4, 7.9, 8.9, 8.10	Public recreational bathing	20 N.J.R. 464(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical residents	20 N.J.R. 594(a)		
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)		
8:31B-4.62	Hospital reimbursement: outpatient HealthStart maternal and pediatric care	19 N.J.R. 2365(a)		
8:33E-1.1, 1.2	Cardiac diagnostic facilities: complex electrophysiology studies	20 N.J.R. 467a)		
8:33E-2.2, 2.3, 2.4	Cardiac surgery centers: complex electrophysiology studies	20 N.J.R. 468(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:42B	Drug treatment facilities: standards for licensure	20 N.J.R. 598(a)		
8:39	Long-term care licensing standards	20 N.J.R. 469(a)		
8:43E-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)	R.1988 d.114	20 N.J.R. 645(d)
8:43E-2.4, 2.5, 2.19, 2.20	Adult open acute psychiatric beds: need review	20 N.J.R. 617(a)		
8:43E-3.19, 3.20	Inpatient screening psychiatric beds: need review	20 N.J.R. 618(a)		
8:43E-5.20	Intermediate adult and special psychiatric beds: need review	20 N.J.R. 619(a)		
8:43G-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)	R.1988 d.114	20 N.J.R. 645(d)
8:43I-1	Hospital Policy Manual	19 N.J.R. 2365(b)	R.1988 d.114	20 N.J.R. 645(d)
8:60-5 (12:120-5)	Asbestos worker and supervisor permits	20 N.J.R. 728(a)		
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a); 20 N.J.R. 191(a), 654(a))	19 N.J.R. 615(a)	R.1988 d.161	20 N.J.R. 898(c)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a))	19 N.J.R. 1488(a)	R.1988 d.163	20 N.J.R. 899(b)
8:71	Interchangeable drug products (20 N.J.R. 191(b), 654(b))	19 N.J.R. 1878(a)	R.1988 d.162	20 N.J.R. 899(a)
8:71	Interchangeable drug products	20 N.J.R. 146(a)	R.1988 d.164	20 N.J.R. 900(a)

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9:5-1.1	Independent student status	19 N.J.R. 2372(a)	R.1988 d.176	20 N.J.R. 901(a)
9:7	Student Assistance Board: scholarship and tuition aid programs	20 N.J.R. 33(a)	R.1988 d.128	20 N.J.R. 656(a)
9:7-2.3	Student assistance and foreign nationals	19 N.J.R. 2101(a)	R.1988 d.129	20 N.J.R. 661(a)
9:7-2.6	Independent student status	19 N.J.R. 2101(b)	R.1988 d.130	20 N.J.R. 661(b)
9:7-3.2	1988-89 Tuition Aid Grant Award Table	20 N.J.R. 147(a)	R.1988 d.127	20 N.J.R. 661(c)
9:7-4	Garden State Scholarship Program	20 N.J.R. 720(a)		
9:7-9.9, 9.11, 9.12	Congressional Teacher Scholarship Program	19 N.J.R. 2102(a)	R.1988 d.131	20 N.J.R. 663(a)
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)	R.1988 d.116	20 N.J.R. 663(b)
9:11-1.1, 1.7, 1.8, 1.22, 1.23	EOF grant awards for approved part-time enrollment	19 N.J.R. 2373(a)	R.1988 d.151	20 N.J.R. 805(a)

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9:11-1.3, 1.4	Educational Opportunity Fund: eligible non-citizens; independent student status	19 N.J.R. 2234(c)	R.1988 d.150	20 N.J.R. 806(a)
9:11-1.5	Educational Opportunity Fund: maximum income levels for undergraduate eligibility	20 N.J.R. 722(a)		
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)	R.1988 d.152	20 N.J.R. 807(a)
9:11-2	Martin Luther King Physician-Dentist Scholarship Program	19 N.J.R. 2374(a)	R.1988 d.153	20 N.J.R. 807(b)

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10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.1	Presumptive Medical eligibility for pregnant women	20 N.J.R. 367(a)		
10:49-1.1, 1.2	Medical assistance for aged, blind and disabled	Emergency (expires 4-2-88)	R.1988 d.96	20 N.J.R. 548(a)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)		
10:50-1.1-1.5, 2.3-2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)		
10:51-5.6	Pharmaceutical Assistance to Aged and Disabled: income limits	19 N.J.R. 2375(a)	R.1988 d.174	20 N.J.R. 902(a)
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)	R.1988 d.145	20 N.J.R. 807(c)
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)	R.1988 d.145	20 N.J.R. 807(c)
10:66-3	Family planning services provided by independent clinics	19 N.J.R. 2376(a)	R.1988 d.156	20 N.J.R. 809(a)
10:69	Hearing Aid Assistance for Aged and Disabled (HAAAD)	20 N.J.R. 519(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled	20 N.J.R. 369(a)		
10:69A-1.2, 6.2, 6.6, 6.10	PAAD income limits	19 N.J.R. 2375(a)	R.1988 d.174	20 N.J.R. 902(a)
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only computation amounts and income eligibility standards	Emergency (expires 3-4-88)	R.1988 d.55	20 N.J.R. 207(a)
10:72-1.1, 1.2, 2.1, 2.3, 2.7, 3.4, 3.5, 4.3, 4.4, 4.5	Medical assistance for aged, blind and disabled	Emergency (expires 4-2-88)	R.1988 d.96	20 N.J.R. 548(a)
10:72-6	Presumptive Medicaid eligibility for pregnant women	20 N.J.R. 367(a)		
10:81-4.5	AFDC program: transportation costs incident to education or training	20 N.J.R. 620(a)		
10:81-7.40	AFDC program: fraudulent receipt of assistance	20 N.J.R. 722(a)		
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:82-5.10	Emergency Assistance in AFDC	Emergency (expires 4-30-88)	R.1988 d.194	20 N.J.R. 933(a)
10:85-1.5	General Assistance Program audits	19 N.J.R. 2376(b)	R.1988 d.146	20 N.J.R. 809(b)
10:85-3.5	GAM: monthly case reviews	19 N.J.R. 2111(a)	R.1988 d.117	20 N.J.R. 663(c)
10:85-5.2	General Assistance: payment of inpatient hospital bills	20 N.J.R. 521(a)		
10:85-5.3	General Assistance Manual: deadline for medical bills	20 N.J.R. 162(a)	R.1988 d.169	20 N.J.R. 902(b)
10:85-6.3	General Assistance Program statement of refunds: preparation of Form GA-12	19 N.J.R. 2377(a)	R.1988 d.172	20 N.J.R. 903(a)
10:85-8.4	GAM: Pharmaceutical Assistance (PAAD) program information	20 N.J.R. 522(a)		
10:86	AFDC Work Incentive Program	20 N.J.R. 162(b)	R.1988 d.170	20 N.J.R. 903(b)
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-11.21, 11.28	Liability for overissuance of food stamp benefits	20 N.J.R. 162(c)	R.1988 d.173	20 N.J.R. 903(c)
10:100-3.7	Chargeable CWA for funerals and burials	20 N.J.R. 163(a)	R.1988 d.171	20 N.J.R. 904(a)
10:100, App. A	Supplemental Security Income payment levels	20 N.J.R. 208(a)	R.1988 d.143	20 N.J.R. 809(c)
10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance of residents	20 N.J.R. 225(b)		

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10A:1-2	Rulemaking and rule exemption authority of Commissioner	20 N.J.R. 493(a)		
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10A:3-4.1	Off-duty carrying of firearms: peace officer titles	20 N.J.R. 42(a)	R.1988 d.107	20 N.J.R. 532(a)
10A:4-1.2, 13	Inmate discipline: Boy's Unit at Skillman	20 N.J.R. 496(a)		
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:9-4.5	Reduction of inmate custody status	19 N.J.R. 2235(a)	R.1988 d.106	20 N.J.R. 533(a)
10A:16-11	Special medical unit	20 N.J.R. 163(b)	R.1988 d.142	20 N.J.R. 810(a)
10A:17-2, 5, 6	Social services: Volunteer Service Program; religion: institutional chaplaincy	20 N.J.R. 167(a)		
10A:18-8.7	Use of telephone by inmates	20 N.J.R. 496(c)		
10A:22-2	Inmate and parolee records	20 N.J.R. 723(a)		
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

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11:2-1.1-1.6, 19.1-19.5	Repeal (see 11:17-3.1-3.5, 5.7)	20 N.J.R. 237(a)		
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.15	Real estate advertising practices	20 N.J.R. 497(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.23	Real estate services to handicapped	20 N.J.R. 725(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:5-1.27	Educational requirements for real estate licensure	20 N.J.R. 725(b)		
11:5-1.28	Certification as real estate instructor: classroom procedure	20 N.J.R. 498(a)		
11:12-1.3	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)	R.1988 d.186	20 N.J.R. 904(b)
11:17-1, 2, 5	Insurance producer licensing	20 N.J.R. 225(c)	R.1988 d.186	20 N.J.R. 904(b)
11:17-3.1-3.5, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 237(a)		
11:17-3.2	Insurance producer prelicensing education: correction to proposal at 20 N.J.R. 237(a)	20 N.J.R. 370(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		

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12:60	Prevailing wages for public works	19 N.J.R. 345(b)	R.1988 d.113	20 N.J.R. 664(a)
12:100-4.2, 5.2, 6.2	Public employee safety and health	20 N.J.R. 726(a)		
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12A:12-2	Local Development Financing Fund	19 N.J.R. 2381(a)	R.1988 d.180	20 N.J.R. 930(d)
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13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
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13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
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13:27A	Repeal (see 13:28)	20 N.J.R. 370(b)		
13:28	Board of Cosmetology and Hairstyling	20 N.J.R. 370(b)		
13:29-5	Board of Accountancy: Quality Enhancement Program	19 N.J.R. 2240(a)		
13:34-3.6	Marriage counseling: temporary permit holders	20 N.J.R. 501(a)		
13:35-1.5	Participation in medical residency programs	19 N.J.R. 2243(a)		
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
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13:36-1.6	Board of Mortuary Science fees	20 N.J.R. 177(a)	R.1988 d.158	20 N.J.R. 912(a)
13:36-2.1	Qualification as mortuary science intern	19 N.J.R. 2245(a)	R.1988 d.111	20 N.J.R. 542(a)
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13:40-3.1	Professional engineers and land surveyors: conflict of interest; approval of work	20 N.J.R. 736(a)		
13:44C	Practice of audiology and speech-language pathology	20 N.J.R. 244(b)		
13:45A-12.1, 12.2, 12.3	Sale of animals	20 N.J.R. 501(b)		
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)		
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13:47C-2.5	Weights and measures: ready-to-eat foods	19 N.J.R. 2124(a)	R.1988 d.92	20 N.J.R. 543(a)
13:70-6.55	Thoroughbred racing: respiratory bleeders	20 N.J.R. 506(a)		
13:70-14A.9	Thoroughbred racing: competition by bleeders	20 N.J.R. 506(b)		
13:70-29.53	Thoroughbred racing: trifecta wagering	19 N.J.R. 2385(a)	R.1988 d.132	20 N.J.R. 670(a)
13:71-11.9	Harness racing: respiratory bleeders	20 N.J.R. 507(a)		
13:71-23.8	Harness racing: competition by respiratory bleeders	20 N.J.R. 250(a)	R.1988 d.183	20 N.J.R. 912(c)
13:71-27.50	Harness racing: trifecta wagering	19 N.J.R. 2385(b)	R.1988 d.133	20 N.J.R. 670(b)
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13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:76-1.3, 3.1, 3.2, 5.1	Arson investigation training	19 N.J.R. 1788(b)	R.1988 d.159	20 N.J.R. 913(a)
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		

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14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
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16:28-1.25	Speed rates on Route 23 in Wayne	20 N.J.R. 45(a)	R.1988 d.125	20 N.J.R. 670(c)
16:28-1.26, 1.41	Speed limit zones along U.S. 9 and Route 185	20 N.J.R. 632(a)		
16:28-1.79	Speed limits on Route 94 in Sussex County	20 N.J.R. 177(b)	R.1988 d.123	20 N.J.R. 671(a)
16:28-1.112	Speed limit zones along Route 156 in Hamilton	20 N.J.R. 632(b)		
16:28A-1.7, 1.18, 1.57	Restricted parking along U.S. 9, Route 27, and U.S. 206	20 N.J.R. 633(a)		
16:28A-1.9, 1.33, 1.51, 1.93	Restricted parking along Routes 17 in Lyndhurst, 47 in Millville, 168 in Bellmawr, and U.S. 322 in Glassboro	20 N.J.R. 45(b)	R.1988 d.105	20 N.J.R. 543(c)

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16:28A-1.25, 1.36, 1.38	Restricted parking along Routes 35 and 71 in Monmouth County, and Route 57 in Warren County	20 N.J.R. 178(a)	R.1988 d.126	20 N.J.R. 671(b)
16:28A-1.28, 1.41	Restricted parking along U.S. 40 and Route 77 in Upper Pittsgrove Township	20 N.J.R. 508(a)		
16:28A-1.46	No parking bus stop along U.S. 130 in Edgewater Park	20 N.J.R. 634(a)		
16:28A-1.57	Restricted parking along U.S. 206 in Somerset County	20 N.J.R. 179(a)	R.1988 d.124	20 N.J.R. 672(a)
16:28A-1.61	No parking bus stop along U.S. 9W in Alpine	20 N.J.R. 634(b)		
16:28A-1.70	No parking bus stop along Route 439 in Elizabeth	20 N.J.R. 635(a)		
16:30	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
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16:30-4.2	Bicycle restrictions along Route 88 in Point Pleasant	19 N.J.R. 2254(a)		
16:30-10.6, 10.7	Midblock crosswalks along Routes 35 and 37 in Seaside Heights	20 N.J.R. 509(a)		
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16:75	NJ TRANSIT: bus allocation guidelines	20 N.J.R. 635(b)		

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17:3-7.1	Teachers' Pension and Annuity Fund: transfer of service credit	20 N.J.R. 47(a)	R.1988 d.122	20 N.J.R. 672(b)
17:4-7.1	Police and Firemen's Retirement System: transfer of service credit	19 N.J.R. 2255(a)	R.1988 d.102	20 N.J.R. 544(c)
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17:20-6.3	State Lottery: confidentiality of individual agent's operation	20 N.J.R. 48(a)		
17:20-7	Payment of State Lottery prizes	19 N.J.R. 1889(b)	R.1988 d.93	20 N.J.R. 546(a)
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Proposals	April 18	Adoptions	May 27
Adoptions	April 25	July 5 issue:	
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Adoptions	May 13		



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