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

NEXT UPDATE: SUPPLEMENT MAY 16, 1994

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDER

RULE PROPOSALS

(Continued on next page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **August 4, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

August 1 issue:
Adoptions ..... July 11
August 15 issue:
Proposals ..... July 18
Adoptions ..... July 25
September 6 issue:
Proposals ..... August 8
Adoptions ..... August 15
September 19 issue:
Proposals ..... August 19
Adoptions ..... August 26

NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 20(1994)
New Jersey Commission on National Service

Issued: June 13, 1994.
Effective: June 13, 1994.
Expiration: Indefinite.

WHEREAS, the National and Community Service Trust Act of 1993 (the Act) has been enacted to help States meet the human, educational, environmental and public safety needs of communities; and

WHEREAS, the Corporation on National and Community Service (Corporation) was established pursuant to the Act to engage Americans of diverse backgrounds, age groups and educational levels in service to the community and provide educational awards and/or living stipends to individuals who make a substantial sacrifice to community service; and

WHEREAS, there are thousands of New Jerseyans who donate thousands of hours as volunteers and perform community service, which promotes good citizenship and responsibility to the community; and

WHEREAS, these New Jersey volunteers may, through the structures and funding provided under the Act, better serve the needs of their community; and

WHEREAS, the State of New Jersey has received approval from the Corporation to establish a State commission as the entity which will be responsible for selecting AmeriCorps National Service Programs and to apply to receive funds for community-based Learn and Serve America programs; and

WHEREAS, the State Commission, together with the Corporation, will assist programs in recruiting participants, disseminating information about service opportunities, and providing technical assistance to communities organizing service programs; and

WHEREAS, the government of the State of New Jersey is in a position to promote volunteerism and community service by bringing together the State's leading volunteers and community service activists to provide leadership, guidance, and oversight of the State Commission; and

WHEREAS, it is the role of the State under the Act, to provide funding through the resources appropriated thereunder for the most innovative, constructive, and effective service programs in the State in order to build on existing infrastructures and carry out the statutory mandates necessary to receive funding from the Corporation; and

WHEREAS, selection, coordination, and oversight of Statewide efforts to enhance volunteerism and service to the community, as called for by the Act, can best be achieved by the creation of a New Jersey State commission;

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

1. There is hereby established the New Jersey Commission on National Service (Commission) to be located within the Department of Education. The Commission shall:

a. Develop a three-year comprehensive State Plan which can be updated annually, and is developed through an open and inclusive process that ensures outreach to diverse community-based agencies.

b. Develop a strategy for private sector development to aid the State in implementing national service throughout the State.

c. Assist and coordinate with the State Department of Education in completing Learn and Serve America and AmeriCorps applications for grant funding.

d. Provide funding, through the resources appropriated under the Act for programs that are within the guidelines established by the New Jersey State Plan.

e. Monitor grant programs through on-site visits, and review of quarterly and annual programmatic reports so that the goals of the program and the Trust Act are fulfilled.

f. Directly oversee grant programs that are funded by the Corporation and help them develop projects, training methods, and curriculum materials.

g. Establish a process for recruitment and placement for National Service participants and disseminate information about service programs.

h. Advise the Corporation, based upon State priorities, on which programs should receive funding under the Domestic Volunteer Service Act of 1973.

i. Make recommendations to the Corporation regarding funding for VISTA and Older American Volunteer programs within the State.

j. Coordinate and assist volunteer programs by working with other State governmental agencies.

k. Coordinate with State agencies such as the Governor's Office of Volunteerism, the Governor's Advisory Council on Community Service, the Academy for Community Service and Service Learning, and other agencies that have not been previously represented.

l. Provide technical assistance to enable applicants to plan and implement service programs.

m. Assist in the provision of health care and child care benefits as required in the AmeriCorps program.

n. Perform any other duties as required by federal law.

2. The New Jersey Commission on National Service shall be comprised of not fewer than fifteen nor more than twenty-five voting members, appointed by the Governor, and shall reflect the diversity of the State of New Jersey.

a. The members shall include:

1. An individual with expertise in educational, training and developmental needs of youth, particularly disadvantaged youth;
2. An individual with expertise in promoting the involvement of older adults in service and volunteerism as defined by the Domestic Volunteer Service Act of 1973;
3. A representative of community-based agencies or organizations within the State;
4. The Commissioner of Education or his designee;
5. A representative of local governments in the State;
6. A representative of local labor organizations in the State;
7. A representative of business;
8. Youth Service Program participants, including in-school, college-based, and out-of-school participants; and
9. A National Service participant.

b. The balance of the twenty-five voting members shall be representative of the following:

1. Local education agencies;
2. Out of school and "at risk" youth;
3. Local higher education community;
4. Native American tribes;
5. Programs receiving assistance under the Domestic Volunteer Service Act;
6. A local expert in the delivery of human service programs;
7. A local expert in the delivery of public safety services;
8. A local expert in the delivery of environmental services and/or programs;
9. The chairperson of the Governor's Advisory Council on Community Service and Volunteerism;
10. A member of the Governor's Youth Advisory Council; and
11. Two members of the Legislature, no more than one of whom shall be of the same political party.

c. The voting members shall include youth representing the wide array of service programs throughout New Jersey and other private citizens and organizational representatives.

d. In addition to the twenty-five voting members, representatives engaged in or planning to implement service or service learning programs from the Governor's Office of Volunteerism, Department of Agriculture, Department of Commerce, Department of Community Affairs, Department of Corrections, Department of Environmental Protection and Energy, Department of Health, Department of Human Services, Department of Labor, Department of Law and Public Safety, Department of Transportation, Education Service Office of the New Jersey Army National Guard shall serve as ex-officio, non-voting members of the Commission.

e. Representatives shall be sought from the State Employment and Training Commission and the State Human Services Advisory Committee, and the Center for Non-Profits, in order to serve as ex-officio members.

f. A representative of the Corporation will sit on the State Commission as an ex-officio member and act as liaison between the Commission and the Corporation.

3. The selection process shall adhere to the following guidelines:

a. The process through which applicants to the State Commission are reviewed shall ensure diversity with respect to race, ethnicity, age, gender, disability characteristics, and political affiliation to the maximum extent practicable.

b. The Governor's Appointments Office will assist in ensuring bipartisan representation, as no more than fifty percent of the voting members, plus one additional member, shall be from the same political party.

4. Members of the Commission shall:

a. Serve three-year terms, except for the terms of the members first appointed, who shall serve as follows: one-third shall serve for a term of one year, one-third shall serve for a term of two years and one-third for a term of three years.

b. Elect their own chair.

c. Not participate in grant decisions if they are, or were at any time in the previous year, an officer, director, trustee, full-time employee, or volunteer with a National service program.

d. Serve without compensation, except that members may receive per diem and travel expenses.

5. This Order shall take effect immediately.

RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Insurance Premium Finance Companies

Proposed New Rule: N.J.A.C. 3:22

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

Authority: N.J.S.A. 17:16D-8.

Proposal Number: PRN 1994-387.

Submit comments by August 4, 1994 to:
Rule Comments
Attn: Stephen Szabatin
Deputy Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 3:22 concerning insurance premium finance companies expired on May 12, 1994. The Department of Banking has reviewed the rule and determined it to be necessary, reasonable and proper for the purpose for which it was originally promulgated as required by the Executive Order. The Department, therefore, is proposing to adopt N.J.A.C. 3:22 without changes from the recently expired rule.

N.J.A.C. 3:22 is comprised of one rule. It requires that there be disclosure in the premium financing agreement of the key elements prior to the signature of the insured, prohibits continuing agreements, and requires separately signed premium finance agreements for each policy or renewal.

Social Impact

The proposed rule applies to all licensed insurance premium finance companies. It imposes reasonable requirements on these licensees to ensure that consumers are informed of all key elements in an agreement and of any changes in the agreement.

Economic Impact

It is not expected that the proposed rule will have a significant economic impact. However, the rules may provide a measure of protection to the consumer, thereby averting potential negative economic consequences.

Regulatory Flexibility Analysis

Most insurance premium finance companies are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rule imposes disclosure requirements incident to insurance premium finance agreements. The requirements are not so burdensome as to require differing standards based on business size and it is essential that all consumers receive these disclosures. Accordingly, no differentiation based on business size is made.

Full text of the proposed new rule follows:

CHAPTER 22
INSURANCE PREMIUM FINANCE COMPANY ACT

SUBCHAPTER 1. PREMIUM FINANCE AGREEMENT

3:22-1.1 Premium finance agreement

(a) There must be disclosure in the premium financing agreement of the key elements prior to the signature of the insured in accordance with the requirements set forth in N.J.S.A. 17:16D-9.

(b) A continuous payment agreement which authorizes renewable or continuing arrangements is prohibited.

(c) Separately signed premium finance agreements are required for each policy, renewal, addition or change, in order to disclose current conditions and provisions applicable to each loan.

(d) This rule shall apply to insurance premium finance companies doing business or authorized to do business in the State of New Jersey.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Selection and Appointment

Disposition of a Certification

Proposed Amendment: N.J.A.C. 4A:4-4.8

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 and 11A:4-8.

Proposal Number: PRN 1994-388.

A **public hearing** concerning the proposed amendment will be held on:
Thursday, July 28, 1994 at 3:00 P.M.
Merit System Board Room
Department of Personnel
44 South Clinton Avenue
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by August 4, 1994 to:
Janet Share Zatz, Director
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current rule on disposition of a certification, N.J.A.C. 4A:4-4.8, requires the appointing authority to provide the Department of Personnel with a statement of the reasons why a higher ranked eligible was not selected. However, the rule does not address the situation where, due to tied scores, an eligible in the same rank was not selected. When scores are tied, the tie is not broken (see N.J.A.C. 4A:4-2.15(h)) and all eligibles with the same score have the same rank. If more than three eligibles have the same score, the "rule of three" becomes a "rule of four" or more.

To address these situations, the Board proposes to amend the rule to also require a statement of reasons when an eligible in the same rank is not appointed. However, the amendment is phrased in a positive format, so that the appointing authority will be required to provide reasons why the appointee was selected instead of a higher ranked eligible for an eligible in the same rank. In addition, technical changes are proposed to simplify the codification of the rule.

Social Impact

The rule on providing a statement of reasons for non-selection of a higher ranked eligible is applicable to State and local appointing authorities. This longstanding rule has helped to make sure that appropriate reasons are followed by an appointing authority in exercising its discretion under the "Rule of Three." The proposed amendment will ensure that the rule is applicable to all situations where an appointing authority makes a selection from among candidates who are "reachable" for appointment. Under the proposal, the appointing authority will be required to provide one statement of reasons for selecting the appointee, rather than a separate statement of reasons for declining to select each of the eligibles in the same or higher rank.

Economic Impact

The proposed amendment makes a minor change in the procedure currently followed for disposition of a certification. Therefore, no economic impact is anticipated.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:4-4.8 Disposition of a certification

(a) (No change.)

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department. [1.] The report of disposition of the certification shall include:

[i.]**1.** Name of the eligibles to be permanently appointed;

[ii.]**2.** The effective date of the requested permanent appointments;

[iii.]**3.** In local service, the appointee's salary;

[iv.]**4.** A statement of the reasons why **the appointee was selected instead of** a higher ranked eligible **or an eligible in the same rank due to a tied score** [was not selected];

[v.]**5.** In situations where an appropriate list is used, the title and functions of the appointee's employment; and

[iv.]**6.** Any other requested information.

(c)-(e) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Barrier Free Subcode

Proposed Amendment: N.J.A.C. 5:23-3.14
Proposed New Rule: N.J.A.C. 5:23-7.1
Proposed Repeals: N.J.A.C. 5:23-7.1 through 7.99
Proposed Recodification with Amendments: N.J.A.C. 5:23-7.100 through 7.116 as N.J.A.C. 5:23-7.2 through 7.18

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

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1994-381.

A **public hearing** on this proposal will be held on:
Friday, September 6, 1994 at 10:00 A.M.
Offices of the Construction Code Element
3131 Princeton Pike
Lawrenceville, New Jersey.

To make arrangements to testify, PLEASE CONTACT Emily Templeton at (609) 530-8789 (Voice) or (609) 530-8799 (TDD). All who attend and would like to testify will be given an opportunity to be heard. However, preference in the order of testimony will be given to those who contact the Department in advance of the hearing. Should anyone need a reasonable accommodation, please contact Ms. Templeton at the above number.

Submit written comments by September 23, 1994 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

The Department proposes to repeal N.J.A.C. 5:23-7.1 and 7.99 from the existing Barrier Free Subcode (BFSC), while recodifying the existing rules at N.J.A.C. 5:23-7.100 through 7.116 as N.J.A.C. 5:23-7.2 through 7.18, concerning recreational facilities, and proposing a new rule at N.J.A.C. 5:23-7.1 concerning Chapter 11 of the 1993 BOCA National Building Code with its referenced technical standard for accessible design and construction, CABO/ANSI A117.1, in order to bring the accessibility provisions of the State Uniform Construction Code (UCC) into conformity with the requirements of the Federal Americans with Disabilities Act (ADA), the technical building design requirements of the Americans With Disabilities Act Accessibility Guidelines (ADAAG), the Federal Fair Housing Amendments Act of 1988 (FFHAA), and the technical requirements of the Federal Fair Housing Amendments Act Guidelines (FFHAA Guidelines).

Once these changes have been adopted, the Department intends to seek certification from the U.S. Department of Justice (USDOJ) that this code is equivalent to both the Federal regulations promulgated by the USDOJ and the technical standards contained in ADAAG promulgated by the Architectural and Transportation Barriers Compliance Board (ATBCB). To this end, the Department intends to submit the transcript of the public hearing to be held on September 16, 1994, to receive public comment on this proposed code change to the USDOJ as an integral part of its certification application package.

Because enforcement of the ADA is through civil law suits alleging discrimination against people with disabilities, it is prudent to adopt regulations as a part of the Uniform Construction Code (UCC) that match the ADA and the ADAAG in technical requirements. The UCC provides a more effective mechanism for ensuring compliance in connection with construction and alteration work than does the Federal law. Therefore, these changes will assist persons seeking to comply with the Federal requirements, because meeting State requirements will, by extension, result in meeting Federal requirements.

These proposed changes achieve the objective of compatibility with Federal regulations by adopting Chapter 11 of the 1993 BOCA National Building Code, which was amended to include the requirements of the ADA, and CABO/ANSI A117.1, the technical standard for accessible design. CABO/ANSI A117.1 is published by the Council of American Building Officials (CABO) through an affiliation with the American National Standards Institute.

Several amendments to Chapter 11 of the BOCA Building Code are included that are necessary to achieve full consistency with the ADA and ADAAG. Because of BOCA National Building Code/1993 has not been amended to reflect the requirements of the FFHAA, amendments to BOCA are included herein to achieve consistency with the requirements of that law, as well as with the State's Barrier Free enabling legislation (N.J.S.A. 52:32-4 et seq.). In addition, there are amendments to retain the specific New Jersey enforcement requirements of the Handicapped Parking Act (P.L. 1989, c.201) regarding signs for accessible parking spaces.

The proposed new rule, amendments and repeals will result in a major change in code format. In the past, all accessibility requirements have been contained in a separate subchapter of the UCC rules. These changes incorporate accessibility requirements into the building subcode and adopts the ANSI standard for accessible design, CABO/ANSI A117.1, as the technical design standard in New Jersey. Despite the change in format, there will be no major change in technical requirements because both the BFSC and the ADAAG were based on the ANSI A117.1 design standard.

The one significant technical area to which there are changes that merit further discussion is that of vertical access (elevators). Because there are varying Federal and State laws governing the provision of vertical access, a brief description of the requirements for vertical access follows.

Vertical Access in Public Buildings (Nonresidential)

There is a change from the division of buildings into large buildings (those 10,000 square feet and larger) and small buildings (those under 10,000 square feet). The BFSC required that large buildings provide full access, including an elevator, and that small buildings provide an accessible ground floor.

The ADA has two provisions for determining interior building access. The first, which applies to publicly-owned buildings, shopping centers, shopping malls, and offices of health care providers, requires an interior accessible route throughout the entire building. The ADA includes its requirements for publicly-owned buildings in Title II, 28 CFR 35.151; the requirements for shopping centers, shopping malls, and offices of health care providers are codified in the ADA, Title III, 28 CFR 36.401, and also in ADAAG, Section 4.1.3.(5) Exception 1. The second provision, which applies to buildings that are public accommodations or commercial facilities that either have less than three stories or less than 3,000 square feet per story, requires an accessible route into and through the ground floor only. This requirement is contained in Title III of the ADA at 28 CFR Part 36.401(d)(2) and in ADAAG, Section 4.1.3(5) Exception 1.

The requirement in the BOCA National Building Code/1993 at Section 1104.2. differs from the provisions of the Federal regulations. In the interest of having one standard of access for all publicly-used buildings, whether publicly or privately owned, the 1993 BOCA National Building Code has one basic requirement—interior access throughout the building. The only exception to this requirement is that an interior accessible route is not required to a floor above or below the accessible level if that floor is less than 3,000 square feet and has an occupant load of less than 50. Because this requirement of the adopted model code exceeds the large building/small building requirements of current State rules and also provides compliance with Federal law, the Department has retained the provision in Chapter 11 of the building subcode without modification.

Vertical Access in Multi-Family Residences

The Federal Fair Housing Amendments Act does not require an elevator in multi-family residences. Instead, it establishes access requirements for buildings with elevators and for buildings without elevators. The current BFSC includes elevator requirements for residential buildings based on the use group (for example, R-2 or R-1), the number of floor, and the number of units. Consistency with the FFHAA alone would substantially reduce the accessibility of residential buildings as compared to the requirements of the BFSC enabling legislation (N.J.S.A. 52:32-4 et seq.). That legislation, as amended in 1987, required that large buildings, which have 10,000 square feet or more, provide full building access, and that small buildings, which have less have 10,000 square feet, provide grade level access. This provision of State law is hereby proposed as the threshold for accessibility for multi-family residences required to be accessible.

Section Summary:

For a complete understanding of the amendments to the BOCA National Building Code contained in this proposal, it is helpful to know the section of the Federal or the State law on which the change is based. A section by section summary follows. References to "BOCA" followed by the section number are to the BOCA National Building Code/1993.

N.J.A.C. 5:23-7.1(b)1 modifies BOCA Section 1103.1, and exempts multi-family dwellings with fewer than four dwelling units. The modification is made to comply with the Federal Fair Housing Amendments Act (24 CFR 100.205) and the Federal Fair Housing Act Accessibility Guidelines (24 CFR Ch. 1, Subch. A, App. III).

This section further requires that residences that are otherwise exempt from accessibility requirements, but which contains (B Use) or mercantile (M Use) space must provide access into and through the portion of the dwelling used as public space. This requirement of the ADA is codified at 28 CFR Part 36.401(b).

N.J.A.C. 5:23-7.1(b)2 contains the amendments for vertical access to residential buildings described above.

N.J.A.C. 5:23-7.1(b)3 addresses requirements for accessible parking spaces. This proposal deletes Note a. in BOCA Table 1105.1 which does not require an accessible parking sign for a space in a parking lot with five or fewer spaces. The New Jersey Handicapped Parking Act (P.L. 1989, c.201) does not include such an exemption; therefore, the requirement for a sign at each accessible parking space is retained and the exemption in Note a., Table 1105.1 is not proposed for adoption.

N.J.A.C. 5:23-7.1(b)4 increases the number of wheelchair spaces required at BOCA Section 1107.2.3. in assembly buildings (Use Group A) with over 500 seats. This modification provides compliance with the ADAAG Section 4.1.3(19).

N.J.A.C. 5:23-7.1(b)5 specifies requirements for accessible prison cells and accessible common space areas in prisons, Use Group I-3. The ADA, Title II, State and Local Government, reserved this section and has not promulgated rules at this time. Therefore, the BFSC requirements currently codified at N.J.A.C. 5:23-7.9(c) are retained.

N.J.A.C. 5:23-7.1(b)6 modifies BOCA Section 1107.4.1 regarding the number of accessible guestrooms required in Use Group R-1 (hotels and motels). The modification ensures compliance with the Table in ADAAG Section 9.1.2. which is included in this proposal. The ADAAG further requires that roll-in showers be provided in half the accessible rooms in hotels with more than 50 guestrooms. This requirement has also been included, as has the requirement in ADAAG 9.1.3. for additional rooms equipped with visual devices for those who are hearing impaired.

N.J.A.C. 5:23-7.1(b)7 modifies BOCA Section 1107.4.2 to clearly state when multi-family family dwellings must provide accessible or adaptable dwelling units and the extent to which access must be provided. This is in compliance with the FFHAA (24 CFR 100.205) and the FFHAA Guidelines (24 CFR Ch. 1, Subch. A, App. III).

N.J.A.C. 5:23-7.1(b)8 modifies BOCA Section 1107.4.2 to comply with Requirement 4 of the FFHAA Guidelines which are cited above.

N.J.A.C. 5:23-7.1(b)9 details the requirement for an accessible route of travel in the FFHAA and Requirements 1 and 2 of the FFHAA Guidelines (cited above) regarding an accessible building entrance and an accessible route into the dwelling units.

N.J.A.C. 5:23-7.1(b)10 deletes BOCA Section 1107.4.3 which attempts to simplify the site impracticality standard in the FFHAA Guidelines, which as adapted in BOCA could allow a site to be altered to meet the exemption.

N.J.A.C. 5:23-7.1(b)11 incorporates the requirements of ADAAG Sections 4.1.3(17) and 4.31 for accessible telephones in a newly proposed section 1108.7.4. Chapter 11 of BOCA does not include telephones. However, the requirements included in this proposed section for clear floor space, volume control, and accessible reach have been covered by the BFSC since its inception. Therefore, those requirements from ADAAG are included in this proposal.

This section also addresses clear floor space and reach requirements for Automatic Teller Machines (ATM) from ADAAG Section 4.1.3(20) and 4.34 (promulgated in a separate rule adoption on January 18, 1994, 28 CFR Part 36). This proposal creates a new section 1108.7.5.

N.J.A.C. 5:23-7.1(b)12 modifies BOCA 1108.7.3 to require that where more than one type of check-out aisle is provided, one of each type shall be accessible. This meets the requirements of ADAAG Section 7.3.

N.J.A.C. 5:23-7.1(b)13 establishes the requirements for signage at accessible parking spaces. This section is modified to include the Handicapped Parking Act (P.L. 1989, c.201) requirement for a penalty sign in addition to the accessible parking space sign.

N.J.A.C. 5:23-7.1(b)14 requires accessible signage at each accessible public bathroom or bathing facility. This is necessary because neither BOCA nor CABO/ANSI A117.1 included the requirement which is in ADAAG at 4.1.2(7)(d).

N.J.A.C. 5:23-7.1(b)15 includes the ADAAG Section 4.1.7(3) provisions for access to historic buildings and structures.

N.J.A.C. 5:23-7.1(c)1 through 4 includes the ADAAG Section 4.1.6(a), (d), and (j) requirements for the application of accessibility requirements to alteration or renovation work.

N.J.A.C. 5:23-7.1(d) provides direction for construction officials for granting a variation when alterations meeting the full requirements of this subchapter are technically infeasible.

N.J.A.C. 5:23-7.1(e) delineates enforcement responsibility for code officials.

Social Impact

The primary social impact of these proposed changes is that the national standard for accessible design and construction, as contained in the ADA and the FFHAA, will become a part of the UCC. This will benefit design professionals, who will have one national design standard for accessibility; it will benefit code officials, who will no longer have to address technical discrepancies between State and Federal law; and, most importantly, it will benefit people with disabilities, whose access to public buildings will be improved by a common standard uniformly enforced.

Economic Impact

The Federal rules incorporated through the proposed amendments, repeals and new rule are already in effect and applicable to construction nationwide. Therefore, the changes proposed have no distinct economic impact.

Regulatory Flexibility Analysis

This proposed change in the BFSC to achieve consistency with Federal law is not expected to have any differential impact on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance with Federal rules is required regardless of the size or form of organization of the entity owning or using a building. Because the Federal law is already effective, all building owners are already subject to its requirements. When the New Jersey code has been certified by the U.S. Department of Justice as equivalent to the ADA and ADAAG, building owners whose buildings comply with the code will have a rebuttable presumption of compliance should a lawsuit alleging discrimination be lodged against them or against their building. The fact that the building complies with this code will be evidence that the building owner made a "good faith effort" to comply with the ADA and its technical design requirements. This will be particularly beneficial to small businesses, which are generally less able than larger businesses to sustain the costs of protracted litigation.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:23-7.1 through 7.99.

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

5:23-3.14 Building subcode

(a) (No change.)

(b) The following chapters of the building subcode are modified as follows:

1.-7. (No change.)

8. [The following amendments are made to] Chapter 11 of the building subcode entitled "Accessibility"[:

i. Chapter 11 is deleted in its entirety and replaced with the accessibility requirements contained], **is modified in the manner set forth** in N.J.A.C. 5:23-7.

9.-20. (No change.)

5:23-7.1 Accessibility standards

(a) Chapter 11 of the building subcode, entitled "Accessibility," is adopted with the modifications set forth in this subchapter.

1. Copies of the building subcode, which is the BOCA National Building Code/1993, including all subsequent revisions and amendments thereto, may be obtained from the sponsor at: BOCA, International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

2. Copies of CABO/ANSI A117.1, referenced in the BOCA National Building Code, may be obtained from the secretariat at: Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041.

(b) The following sections of chapter 11 of the building subcode are modified as follows:

1. Section 1103.1, Exception 3 is modified to read as follows: "Buildings of Use Group R-2, R-3 or R-4 with three or fewer dwelling units are not required to comply with the provisions of this Chapter. For purposes of applying this Chapter, dwelling units within a single structure separated by fire walls do not constitute separate buildings.

3.1. Multistory dwelling units in buildings without elevators are not required to comply with the provisions of this Chapter.

3.2. Accessory structures for individual exempt dwelling units are not required to comply with the provisions of this Chapter.

3.3 Facilities and their associated sites available to the general public or available for the common use of the building's residents are required to comply with the provisions of this Chapter.

3.4 When any dwelling unit, regardless of whether it is exempt from the provisions of this Chapter, includes a B use or an M use, the portion of the dwelling unit used exclusively for the B use or M use and that portion used both for the B use or M use and for residential purposes shall comply with all applicable provisions of this subchapter. This shall include the sidewalk, if any, the door or entryway and hallways, and those portions of the dwelling unit, interior or exterior, available to or used by customers or clients, including toilet facilities."

2. Section 1104.2, add the following exceptions:

"3. In buildings of Use Group R-2, R-3 or R-4 with a total gross enclosed floor area of less than 10,000 square feet, floors at other than the entry level are not required to be served by an accessible route of travel.

4. In buildings of Use Group R-2, R-3 or R-4 with a total gross enclosed floor area of 10,000 square feet or more, floors which contain less than 3,000 square feet of total floor area and are at other than the entrance level are not required to be served by an accessible route of travel."

3. Section 1105.1 is modified to read as follows: "Where parking is provided at sites required to be accessible or adaptable, accessible parking spaces complying with CABO/ANSI A117.1 listed in Chapter 35 shall be provided in compliance with Table 1105.1 except as required by Section 1105.2 and 1105.3." At Table 1105.1, delete the title and text of "Note a."

4. In Section 1107.2.3, Table 1107.2.3 is modified to provide that, in assembly spaces with a capacity of over 500 seats, the number of required wheelchair spaces shall be "6 plus 1 for each 100 over 500."

5. Section 1107.3.3 is modified to read as follows: "Buildings or portions thereof of Use Group I-3 shall have at least one accessible inmate confinement area or room per institution, and at least one accessible inmate toilet and bathing facility per institution. All public or common areas and employee areas, including toilet or bathing facilities, shall be accessible."

6. Section 1107.4.1 is modified to read as follows: "In occupancies in Use Group R-1 containing six or more guestrooms, accessible guestrooms shall be provided in accordance with the following table:

Number of Rooms	**Accessible Elements**
1 to 25	**1**
26 to 50	**2**
51 to 75	**3**
76 to 100	**4**
101 to 150	**5**
151 to 200	**6**
201 to 300	**7**
301 to 400	**8**
401 to 500	**9**
501 to 1000	**2% of Total**
1001 and up	**20 plus 1 for each 100 over 1000**

In addition to the accessible guestrooms required above, guestrooms with alarms that comply with CABO/ANSI A117.1, 4.26 shall be provided in compliance with the preceding table. In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms."

7. The main paragraph of Section 1107.4.2 is modified to read as follows: "Unless exempted under Section 1103.1, as modified, all dwelling units in buildings served by elevators and all ground floor units in buildings without elevators shall be made adaptable in accordance with CABO/ANSI A117.1 listed in Chapter 35. For purposes of applying this requirement, the ground floor shall mean the first floor of a building containing dwelling units, regardless of whether that floor is at grade."

8. Section 1107.4.2, Exceptions are modified to read as follows:

"1. In buildings without elevators, multistory dwelling units are not required to comply with the provisions of this Chapter. In multistory dwelling units in buildings with elevators, all rooms or spaces on the entry level must be accessible or adaptable and an adaptable bathroom or powder room must be provided on the entry level; however, an interior accessible route to the other levels of living space is not required.

2. Recreational facilities must be accessible in accordance with N.J.A.C. 5:23-7.2 through 7.18."

9. The main paragraph of Section 1107.4.3 is modified to read as follows: "In buildings of Use Group R-2 and R-3 not otherwise exempted from the provisions of this Chapter by Section 1103.1, as modified, at least one accessible route shall connect accessible building or facility entrances with all accessible and adaptable dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible or adaptable dwelling unit."

10. Delete the title and text of the Exception to Section 1107.4.3.

11. In Section 1108.7, add the following additional subsections:

"1108.7.4 Telephones: When public use telephones are provided, one telephone per floor or one telephone in each bank of public telephones shall comply with CABO/ANSI A117.1, Section 4.29. Each accessible public telephone and 25 percent of other public tele-

phones in each bank shall be equipped with volume control that complies with CABO/ANSI A117.1, Section 4.29.5. At each accessible telephone, either a forward or a parallel approach shall be provided that complies with CABO/ANSI A117.1, Section 4.2.4.

1108.7.5 Automatic Teller Machines (ATM's): At each ATM, clear floor space shall be provided for either a parallel or forward approach pursuant to CABO/ANSI A117.1, Section 4.2.4. If only a forward approach is provided, all operating controls shall comply with the reach ranges in CABO/ANSI A117.1, Section 4.2.5. If only a parallel approach is provided, reach ranges shall be provided as follows: Where the reach depth to the controls is 10" or less, the maximum height for the controls shall be 54". For each increase in reach depth of 1", the maximum height for the controls shall be reduced by ½". The reach depth shall not exceed 24" with a corresponding maximum height of 46". If both a parallel and a forward approach are provided, the reach ranges shall comply with CABO/ANSI A117.1, Section 4.2.5 or with the parallel reach range requirements described above."

12. Section 1108.7.3 is modified to read as follows:

"Where check-out aisles are provided, accessible check-out aisles shall be installed in accordance with Table 1108.7.3. Where check-out aisles of different types are provided (express lanes, for example), at least one of each type shall be accessible. Traffic control devices, security devices and turnstiles located in accessible check-out aisles or lanes shall be accessible."

13. Section 1109.2, number 1, is modified to read as follows:

"1. Accessible parking spaces required by Section 1105.1. Each accessible parking space shall be marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices displaying the international symbol of accessibility. Beneath the R7-8 sign, each accessible parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-197.3.c., containing the following language:

"PENALTY
$100 FIRST OFFENSE
SUBSEQUENT OFFENSES
$100 MINIMUM AND/OR
UP TO 90 DAYS
COMMUNITY SERVICE
TOW-AWAY ZONE"

The bottom of the R7-8 sign shall be mounted approximately 60 inches above the parking lot surface."

14. Section 1109.2, number 4, is modified to read as follows:

"4. Accessible toilet and bathing units."

15. Section 1110.4 is modified to read as follows: "These provisions shall apply to buildings and facilities designated as historic structures that undergo alterations or a change of occupancy, unless technically infeasible. If the historic character of the building is adversely affected, the application of Section 3406.0 shall be permitted. At a minimum, at least one accessible route from an accessible parking space, public transportation stop or passenger loading zone to an accessible entrance shall be provided; at least one accessible entrance shall be provided; an accessible route from the accessible entrance to all publicly-used spaces on the level of the accessible entrance shall be provided; when toilet facilities are provided, at least one accessible toilet facility shall be provided."

(c) When alteration or renovation work is performed on a building, the following shall apply:

1. No alteration work shall decrease the accessibility of the building;

2. No alteration shall be required to provide greater accessibility than is required by the standards for new construction;

3. If compliance with the new construction standards in (b) above is technically infeasible, accessibility shall be provided to the maximum extent feasible.

4. Accessibility shall be included as part of alteration work to the extent that the cost of providing accessible building features, such as, but not limited to, an accessible building entrance, an accessible route to the altered area, accessible restrooms, accessible telephones, or accessible drinking fountains is not disproportionate to the cost of the overall alteration work. A cost is considered disproportionate if it exceeds 20 percent of the cost of the alteration work.

(d) Variations and exceptions are as follows:

1. Where it can be demonstrated that one or more of the provisions of this subchapter are technically infeasible, variations or exceptions to those specific provisions may be granted if:

i. The spirit and intent of the law are observed;

ii. Public welfare and safety are assured; and

iii. Equivalent facilitation and protection for people with disabilities are secured.

2. In no case shall a complete waiver of these requirements be granted.

3. Procedures for granting variations and exceptions shall be in accordance with N.J.A.C. 5:23-2.9 through 2.13.

(e) Enforcement responsibility shall be divided among subcode officials as follows:

i. Plan review with regard to compliance with BOCA, Chapter 11, Section 1108; CABO/ANSI A117.1, Section 4.17.2; Section 4.19; Section 4.20; and Section 4.15 shall be the joint responsibility of the building and plumbing subcode officials.

ii. Plan review with regard to compliance with CABO/ANSI A117.1, Section 4.25 shall be the responsibility of the plumbing, fire protection and electrical subcode officials.

iii. Plan review and inspection with regard to compliance with CABO/ANSI A117.1, Section 4.15.2; Section 4.15.3; Section 4.17.3; Section 4.17.4; Section 4.19.2; Section 4.19.4; Section 4.20.2; Section 4.20.4; Section 4.21.5; Section 4.22.5; Section 4.22.6; Section 4.33.3.2.2; Section 4.33.3.4.4; Section 4.33.4.3; Section 4.33.4.4.1; Section 4.44.4.4.3; Section 4.33.4.5.1; and Section 4.33.4.5.2 shall be the responsibility of the plumbing subcode official.

iv. Inspection with regard to compliance with CABO/ANSI A117.1, Section 4.17.2 and BOCA, Chapter 11, Section 1108.4 shall be the responsibility of the building subcode official.

v. Inspection with regard to compliance with BOCA, Chapter 11, Section 1108, as modified by vi below, shall be the responsibility of the plumbing subcode official.

vi. Inspection of all controls and operating mechanisms referred to in CABO/ANSI A117.1, Section 4.25 regulated by the electrical, fire protection or plumbing subcodes shall be the responsibility of the corresponding subcode official. Controls of all other mechanisms shall be inspected by the building subcode official.

vii. Enforcement of the remaining sections of this subchapter shall be the responsibility of the building subcode official.

5:23-[7.100]**7.2** Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor, active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-[7.101 through 7.116] **7.3 through 7.18.** All support facilities and site access points required to be on an accessible route of travel shall be made accessible in accordance with the applicable provisions of this subchapter.

(b) (No change.)

5:23-[7.101]**7.3** (No change in text.)

5:23-[7.102]**7.4** Recreation: exceptions

These recreation requirements do not apply to undeveloped areas as defined in N.J.A.C. 5:23-[7.101]**7.3**. These requirements also shall not apply to facilities, equipment or sites which are associated with buildings exempted by N.J.A.C. 5:23-[7.3(a)3, 4, 5, 6, 7 or 8] **7.1(b)1, 2 or 3.**

5:23-[7.103]**7.5** (No change in text.)

5:23-[7.104]**7.6** Recreation: pools

(a) At least one pool of each type provided in each distinct area on a site, intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with a depth ranging between 24 inches and 13 feet, and the interior of soaking pools, shall be made accessible by one of the methods detailed in (a)1 through 3 below. Wading pools, defined as pools with a maximum depth of less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure [7.104a] **7.6a**:

i. (No change.)

ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to (a)1ii above, a pool may be equipped with a moving platform meeting the criteria of [N.J.A.C. 5:23-7.81] **CABO/ANSI A117.1, Section 4.11**. A wheelchair shall be provided to the user if this option is used.

iii. Adjoining a clear level floor area meeting the criteria of [N.J.A.C. 5:23-7.17] **CABO/ANSI A117.1, Section 4.3** whose minimum dimensions are five feet by five feet;

iv. Having controls which meet the criteria of [N.J.A.C. 5:23-7.81] **CABO/ANSI A117.1, Section 4.25**; and

v. Located to meet the criteria of Figure [7.104a] **7.6a**.

2. Interior/exterior steps meeting the criteria of Figure [7.104b] **7.6b**:

i. (No change.)

3. A ramp meeting the criteria of Figure [7.104c] **7.6c**.

i.-ii. (No change.)

Figure [7.104a]**7.6a**
Pool Entry

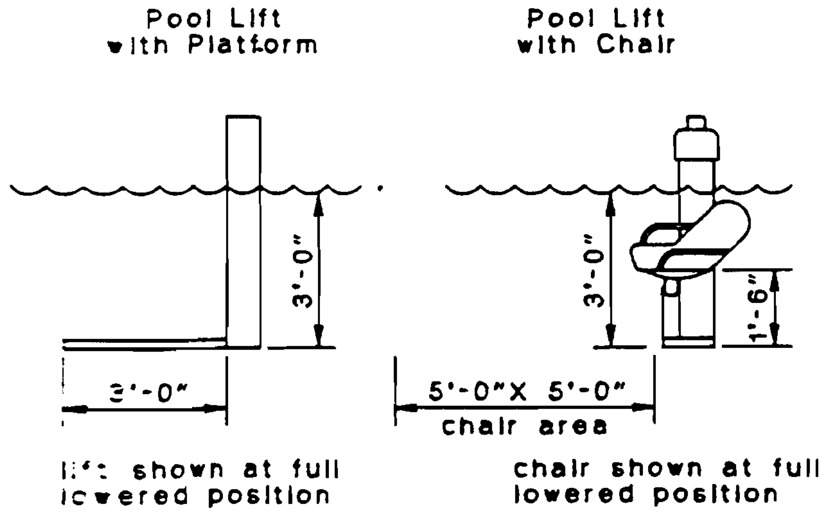


Figure [7.104b]**7.6b** [Figure 7.104b]

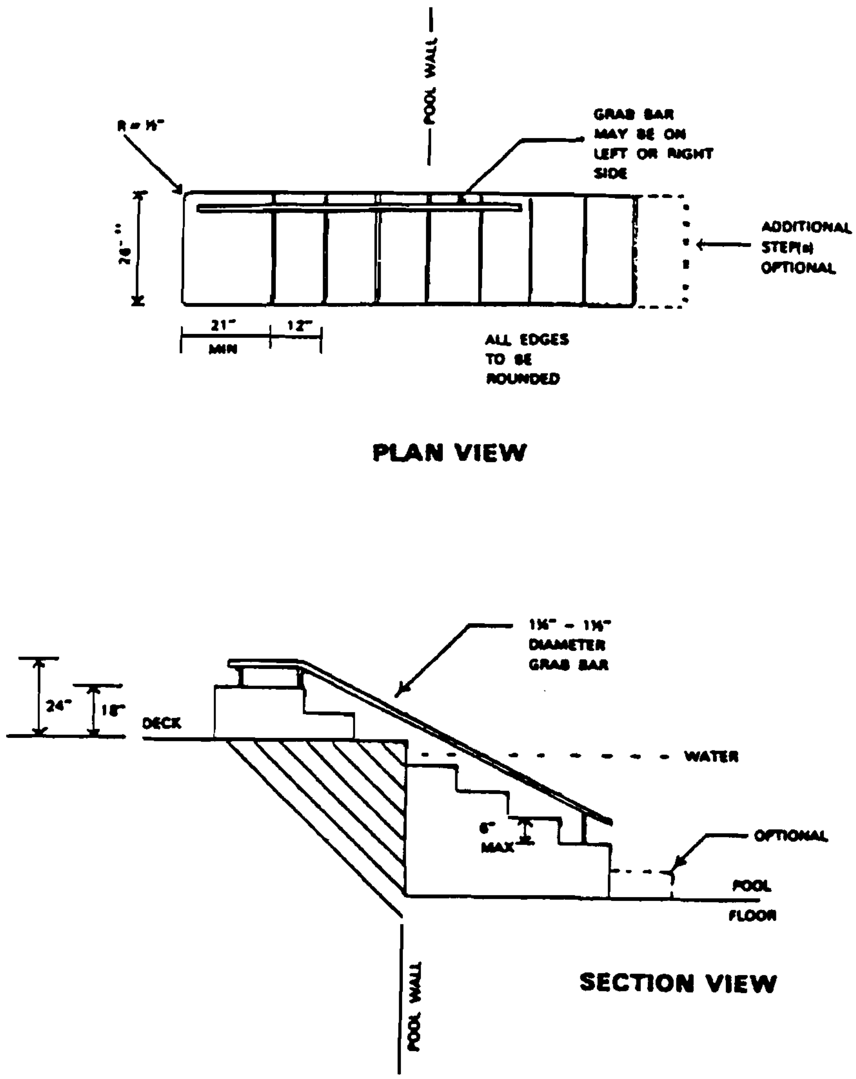
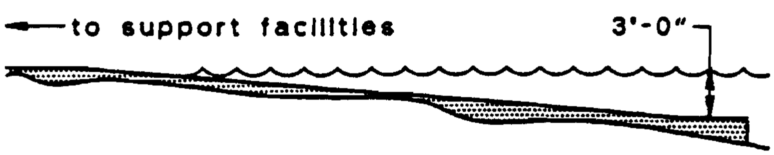


Figure [7.104c]**7.6c**
Ramp Into Water



Maximum ramp slope 1:12.

Provide no handrails but provide curbs.

Maximum ramp run 30'-0", use additional ramp runs with 5'-0" level. platforms between, as necessary.

In pools, assure no access under ramp.

5:23-[7.105]**7.7** Recreation: swimming and skating areas

(a) (No change.)

(b) Where swimming is provided, there shall be a ramp leading into the water to a depth of three feet. The ramp shall meet the criteria of [N.J.A.C. 5:23-7.24] **CABO/ANSI A117.1, Section 4.8** and of Figure [7.104c] **7.6c** except that handrails shall not be provided. Visual markings for the underwater portion of the ramp, such as floats or flags, shall be provided to define the side edges. Alternately, means of access to a minimum water depth of three feet may be achieved by other methodologies, as specified in N.J.A.C. 5:23-[7.104] **7.6**. This provision shall not apply in those ocean front areas where wave action would render the provision of a ramp impractical from an engineering standpoint.

5:23-[7.106]**7.8** (No change in text.)

5:23-[7.107]**7.9** Recreation: fishing areas

If docks are provided in a fishing area, the criteria of N.J.A.C. 5:23-[7.106] **7.8** shall apply.

5:23-[7.108]**7.10** Recreation: court games

(a) The surface of the court must adjoin an accessible route of travel. Entrances to courts required to be accessible shall meet criteria of [N.J.A.C. 5:23-7.37] **CABO/ANSI A117.1, Section 4.13**. On sites with more than one court, at least one of each type of court in each distinct area at a site shall adjoin an accessible route of travel. Where there is a main or center court, this court shall be included as one of those on an accessible route of travel. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

(b) Court surfaces shall meet the criteria of [N.J.A.C. 5:23-7.17] **CABO/ANSI A117.1, Section 4.3**, except in those instances where the recognized rules of the particular game dictate another surface.

Recodify existing 5:23-7.109 and 7.110 as **7.11 and 7.12** (No change in text.)

5:23-[7.111]**7.13** Recreation: golf facilities

(a) (No change.)

(b) Bridges, if provided, shall either be designed for use by golf carts or shall meet the criteria of [N.J.A.C. 5:23-7.24] **CABO/ANSI A117.1, Section 4.8**.

(c) Where curbs are provided at points where courses cross thoroughfares, ramps or curb ramps meeting the criteria of [N.J.A.C. 5:23-7.24] **CABO/ANSI A117.1, Section 4.8** shall be provided.

5:23-[7.112]**7.14** Recreation: ski lifts, aerial tramways, and conveyors

(a) (No change.)

(b) In areas where aerial tramways, conveyors or other comparable mechanisms for sightseeing are provided, there shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible and the moving seat, car or platform of the aerial tramways, conveyors, or comparable mechanisms. A five feet by five feet clear, level area meeting the criteria of [N.J.A.C. 5:23-7.17] **CABO/ANSI A117.1, Section 4.3** shall be provided immediately adjacent to the upper, lower, and any intermediate terminals of such mechanisms to facilitate transfer from a wheelchair to the seat, car, or platform. If seats are involved, they shall be at a height of 16 inches to 18 inches above the clear, level area.

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

5:23-[7.113]**7.15** Recreation: trails

(a) (No change.)

(b) All other trails shall meet the criteria of [N.J.A.C. 5:23-7.17] **CABO/ANSI A117.1, Section 4.3**.

1. Signs, where provided, shall meet the criteria of [N.J.A.C. 5:23-7.86] **CABO/ANSI A117.1, Section 4.28**.

5:23-[7.114]**7.16** Recreation: camping sites

(a) In camping areas in other than undeveloped areas, at least four percent (rounded off to the next higher whole number) of camp sites shall meet the following criteria:

1. (No change.)

2. Sites and signs leading to such sites shall be marked with the International Symbol of Accessibility displayed as specified in [N.J.A.C. 5:23-7.86] **CABO/ANSI A117.1, Section 4.28**;

3. Where tent platforms are provided, each **of those required to be accessible** shall be equipped with a ramp meeting the criteria of [N.J.A.C. 5:23-7.24] **CABO/ANSI A117.1, Section 4.8**;

4. (No change.)

5:23-[7.115]**7.17** (No change in text.)

5:23-[7.116]**7.18** Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for [the disabled] **people with disabilities** shall be provided. The top of the platform shall be at a height 32 inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of [N.J.A.C. 5:23-7.24] **CABO/ANSI A117.1, Section 4.8**, except that a maximum slope of 1:9 shall be [allowable] **allowed**.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Radon Hazard Subcode
Proposed Amendments: N.J.A.C. 5:23-10.1, 10.3 and 10.4

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

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1994-382.

Submit written comments by August 4, 1994 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
Fax No. (609) 633-6729

The agency proposal follows:

Summary

P.L. 1989, c.186 required the Department of Community Affairs (DCA) to incorporate into the State Uniform Construction Code standards to ensure that schools and residential buildings within tier one areas, as defined by the Department of Environmental Protection and Energy (NJDEPE) pursuant to P.L. 1985, c.408, are constructed in a manner that minimizes radon gas or radon progeny entry and facilitates any subsequent remediation that might prove necessary. The amendments are proposed in order to bring the radon hazard subcode into conformity with revised NJDEPE requirements intended to implement the Federal Environmental Protection Agency's Radon Contractor Proficiency Program Interim Radon Mitigation Standards of December 15, 1991.

An example of the proposed amendments is as follows: NJDEPE previously allowed certified radon mitigators to place a mitigation system fan in a residential basement. Subsequently, it became known that a leaking fan might increase, rather than decrease, radon levels. Therefore, NJDEPE no longer allows certified radon mitigators to install fans in residential basements. The proposed amendments are in compliance with the U.S. Environmental Protection Agency's (EPA) Radon Contractor Proficiency Program Interim Radon Mitigation Standards of December 15, 1991. In accordance with these EPA standards, the proposed amendments eliminate the provision allowing capped interior vent pipe sections in basements and require, instead, that a complete vent pipe be installed with provision to install a future in-line vent pipe fan in a non-conditioned (heated/cooled) space, such as an attic space.

The added construction techniques prescribed in the proposed amendments at N.J.A.C. 5:23-10.4 are technologically feasible and can be readily implemented by builders in the field. The effectiveness of the

techniques to reduce radon gas entry and facilitate any subsequent remediation has been demonstrated, involving, as they do, standard construction practices and materials readily available to builders.

Responsibility for enforcement of the revised construction requirements has been assigned to the appropriate subcode officials. In addition, the rules are proposed for amendment to make clear that N.J.A.C. 5:23-10.4, Construction techniques, is applicable to new and substantially altered construction and not applicable to the installation of radon mitigation systems in existing portions of buildings.

Social Impact

As a result of these proposed amendments, construction techniques will be required to be used that will better protect the health and welfare of people occupying residential and school buildings in known or suspected radon hazard areas.

Economic Impact

The proposed amendments will impose a minimal additional cost ($50.00 to $300.00, depending on the type of building) upon builders and property owners. However, since this cost would be substantially less than the cost to remedy a radon problem after construction, the overall economic impact would generally be positive.

Regulatory Flexibility Analysis

The proposed amendments impose revised construction compliance requirements on builders and property owners, some of which are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirement costs are set forth in the Economic Impact statement above. No additional professional services are needed by anyone, "small business" or not, because of this change. For reasons of public health and safety, the same construction standards must apply both to construction work done by small businesses and to that done by other builders. There can be no higher tolerance for radon in buildings built, renovated or owned by "small businesses" than in other buildings used for the same purposes and built, renovated or owned by entities or persons other than "small businesses."

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

5:23-10.1 Title, scope; intent

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

(c) This subchapter seeks to protect and ensure public safety, health and welfare insofar as it is affected by radon entry into schools and residential buildings.

1.-3. (No change.)

4. The installation of radon mitigation systems in existing portions of buildings shall not be subject to the construction technique requirements set forth in N.J.A.C. 5:23-10.4.

5:23-10.3 Enforcement

(a) (No change.)

(b) Enforcement responsibility shall be divided among subcode officials in the following manner:

1. **For new structures and additions:**

i. Plan review and inspection with regard to compliance with N.J.A.C 5:23-10.4(b)1, 2, 10 and 11 shall be the responsibility of the building subcode official;

[2.]**ii.** Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)3, 4, 5, 7, [and] 8 **and 15** shall be the responsibility of the plumbing subcode official;

[3.]**iii.** Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)6, [and] 9 **and 16** shall be the joint responsibility of the building and fire protection subcode officials;

[4.]**iv.** Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)6, [and] 9 **and 16** shall be the responsibility of the building subcode official;

[5.]**v.** Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)12 shall be the joint responsibility of the building, fire protection and plumbing subcode officials; [and]

[6.]**vi.** Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)[3 through 5, 7, 8 and] 12 **and 13** shall be the responsibility of the plumbing subcode official**; and**[.]

vii. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)14 shall be the responsibilty of the electrical subcode official.

2. For existing structures:

i. Construction enforcement responsibility for verification that radon mitigation work in all structures, other than detached one and two family dwellings, is in conformance with the adopted subcodes shall be as set forth in N.J.A.C. 5:23-3.4(a), (c), (d) and (f).

ii. In existing detached one and two family dwellings, the building subcode official shall be responsible for verification that all construction aspects of radon mitigation work are in conformance with the adopted subcodes, except that the electrical subcode official shall be responsible for those construction aspects that are subject to the electrical subcode.

5:23-10.4 Construction techniques

(a) (No change.)

(b) The construction techniques set forth in this subsection shall be the minimum radon hazard protective features required to be incorporated into construction of buildings in Use Groups E and R in tier one areas, and may be incorporated elsewhere, in order to minimize radon and radon progeny entry and facilitate any post-construction radon removal that may be required. Enumeration of these construction techniques is not intended to preclude voluntary use of additional or more extensive techniques.

1.-2. (No change.)

3. Basement slabs with interior foundation pipe drains installed shall have a solid three-inch minimum diameter vent pipe section installed in conjunction with this drainage system [with termination between six and 12 inches above the slab and appropriately capped or] **and be** connected to an independent vent stack pipe terminating at an approved location on the exterior of the building.

4. Basement slabs which do not have an interior foundation pipe drain **and slab on grade construction (excluding non-habitable spaces such as garages)** shall be provided with one three-inch minimum solid vent pipe section with a "T" pipe fitting for every 1,500 square feet, or portion thereof, of slab area, this vent pipe section to be installed into the sub-slab aggregate. The horizontal openings of the "T" pipe fitting shall be placed in the sub-slab aggregate. The vertical portion of the "T" pipe fitting shall [terminate between six and 12 inches above the slab] **be connected to an independent vent stack pipe terminating at an approved location on the exterior of the building.** [These fittings shall be clearly labeled and appropriately capped or connected to an independent vent stack pipe terminating to an approved location on the exterior of the building.]

5.-11. (No change.)

12. [When capped interior vent pipe sections are provided, or venting from the sump installation is provided, in accordance with (b)3, 4 or 8 above, an adequately supported three-inch minimum diameter solid vent pipe shall be installed from a point that is within 10 feet of the capped interior vent pipe section or sump installation, through any enclosed portions of the building, terminating at an approved location on the exterior of the building. This vent pipe shall be clearly labeled and shall meet the termination requirements of section 12.4 of the plumbing subcode. Joints and connections in the vent pipe shall be gas tight. Unused opening shall be closed or capped.] **The independent vent stack pipe provided in accordance with (b)3, 4 or 8 above shall be an adequately supported, gas tight, three-inch minimum diameter solid pipe, through any enclosed portions of the building, meeting the following termination requirements:**

i. Vent pipes shall terminate 12 inches above the roof, measured from the highest point where the vent intersects the roof. Where a roof is to be used for any purpose other than weather protection, the vent extension(s) shall run at least seven feet above the roof.

ii. No vent terminal shall be located directly beneath any door, window, or other ventilating opening of the building or of an adjacent building nor shall any such vent terminal be within 10 feet horizontally of such an opening unless it is at least two feet above the top of such opening.

iii. No vent terminal shall be closer than 10 feet horizontally from any lot line.

13. Radon vent pipes shall be identifiable and clearly labeled at intervals of not more than 25 feet in concealed locations, not more

than 50 feet in exposed locations and not less than once in any room or space.

14. Lighting and at least one 125 volt, single phase, 15- or 20-ampere rated receptable shall be installed near the provided area, such as an accessible attic space, where a future in-line vent pipe fan may be installed.

15. In combination basement/crawl space or slab-on-grade/crawl space buildings a three-inch minimum solid vent pipe shall be provided between the areas and interconnected into the independent vent stack to permit use of a single in-line vent pipe fan if activation of the system is desired.

16. In order to reduce stack effect, air passages that penetrate the conditioned envelope of the building, such as attic access openings, or other openings installed in top-floor ceilings, shall be closed, gasketed or otherwise sealed with materials approved for such applications.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Alternative Claim Procedures for Fire Retardant Treated (FRT) Plywood Failures

Proposed Amendments: N.J.A.C. 5:25A-1.3, 2.1 and 2.5

Proposed New Rule: N.J.A.C. 5:25A-2.6

Authorized By: Deborah DeSantis, Deputy Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 46:3B-13 et seq.

Proposal Number: PRN 1994-386.

Submit comments by August 4, 1994 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
Fax No. (609) 633-6729

The agency proposal follows:

Summary

An estimated 96,000 units in planned real estate developments constructed between 1980 and 1990 were built with fire retardant treated (FRT) plywood roof sheathing. In some cases, FRT roof sheathing has been found to fail prematurely, necessitating replacement of all or part of the roof. P.L. 1991, c.202 was enacted in order to provide a means of paying for these replacements out of the State New Home Warranty Fund administered by the Department of Community Affairs. The Department was authorized to seek recovery of funds expended for this purpose from responsible third parties.

P.L. 1991, c.202 authorized the Commissioner to develop a non-destructive test or other procedure capable of ascertaining inevitable premature failure of an FRT plywood installation. Accordingly, the Department contracted with the U.S. Forest Products Laboratory to develop a non-destructive predictive test. Once established, such a test would have been able to determine whether a piece of FRT plywood sheathing would inevitably fail prematurely during the 10-year warranty period. However, the Appellate Division, in its decision in the case entitled *In the Matter of the Appeal of Adoption of N.J.A.C. 5:25A-1.1, et seq., by the New Jersey Department of Community Affairs, Division of Housing and Development,* Dkt. No. A-4678-91T2, issued July 30, 1993, determined that an eligible claim is one in which the plywood installation would inevitably fail prior to the end of what would otherwise be its useful life, if the determination is made during the 10-year warrant period.

Neither the test being developed by the U.S. Forest Products Laboratory nor any other scientific non-destructive test known to the Department is capable of making that determination. However, based on the best information currently known to the Department, FRT plywood classified as "severe" or "moderate" under the classification method already in use will inevitably fail prematurely, that is, before the end of its scheduled useful life, while FRT plywood classified as "slight" or "none" will not do so. Accordingly, the Department is proposing amendments for a classification system and procedure as an "other procedure" capable of ascertaining inevitable premature failure.

The court held that, while the rules require that any major structural defect, in order to be compensable, actually occur within the warranty period, the statute would allow payment upon a determination within the warranty period that premature failure of the material is inevitable. Consequently, the definition of "major structural defect" at N.J.A.C. 5:25A-1.3 is being amended to state that it is the determination of inevitable premature failure, and not the failure itself, that must be made within the warranty period. While the warranty period is not being extended, warranty coverage is.

Owners and associations whose warranties expired between July 11, 1991, the date on which P.L. 1991, c.202 was signed, and the effective date of the proposed amendments will be given one year from the effective date of the amendments to file claims. Owners and associations who filed timely claims that were denied will be given an opportunity to refile during that same one-year period for reevaluation based on the rules as proposed for amendment.

The classification system and procedure described in N.J.A.C. 5:25A-2.5(a) is proposed to be accepted as a predictive testing procedure for inevitable premature failure. This methodology has proven to be entirely adequate and without contention. The proposed amendment at N.J.A.C. 5:25A-2.6 expresses a technical policy determination that a finding of "moderate" damage in accordance with this existing methodology is the best available method for predicting "inevitable premature failure" as the Appellate Division has defined it.

The deadline for filing of claims by those who have filed civil suits, currently 120 days following adoption of rules setting forth a predictive test for inevitable premature failure, will therefore be 120 days following the effective date of the proposed amendments.

Social Impact

Prior to the issuance of the previously mentioned Appellate Division decision, there was uncertainty as to the eligibility of claims submitted for FRT plywood roof sheathing that was either not damaged at all or had damage that did not qualify as at least "severe." These rules, which both the Department and the counsel for the plaintiffs in the litigation believe to be both fair and responsive to the mandate of the Appellate Division, should have the beneficial social effect of facilitating the resolution of legitimate claims without the need for further litigation.

Economic Impact

The proposed amendments will allow an as yet undetermined number of additional claimants to qualify for payment from the New Home Warranty Security Fund. However, the Department expects that monies expected to be recovered by the Department from responsible parties will be sufficient to protect the integrity of the Fund. In the unlikely event that the resources of the Fund were to prove insufficient, the Department is authorized by statute to levy a surcharge of $100.00 on each sale of a new home in New Jersey. The statute absolves the State of any obligation to pay the costs of FRT plywood roof sheathing remediation out of its General Fund.

Regulatory Flexibility Analysis

P.L. 1991, c.202 and these implementing rules already provide an expedited procedure, in lieu of litigation, for securing the replacement of FRT plywood roof sheathing that is deemed to constitute a "major structural defect." This procedure is available to builders, associations, individuals, and other business entities that may be defined as "small businesses," in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the procedure is simplified for everyone, no special dispensation has been provided for "small businesses."

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

5:25A-1.3 Definitions

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

. . .

"Major structural defect" means any actual damage to the load bearing portion of a building that affects its load-bearing function, or is imminently likely to vitally affect use of the building for residential purposes. "Major structural defect" also means and includes inevitable premature failure of FRT plwywood **roof sheathing** if it can be determined, **in accordance with N.J.A.C. 5:25A-2.5(b) and 2.6, within the 10 year coverage period of the claimant's new home warranty,** that a major structural defect will occur [within the ten year coverage period of the claimant's new home warranty]. "Major structural defect" shall have the same meaning as "major construction defect," as used in the Act.

5:25A-2.1 Claim eligibility

(a) (No change.)

(b) [Nothing in this chapter shall be construed so as to extend either] **Except as otherwise provided in this subsection,** warranty coverage or eligibility for warranty claim coverage [beyond] **shall be in effect only during** the [ten] **10**-year period prescribed by the New Home Warranty and Builders' Registration Act.

1. With regard to new homes in which the warranty coverage expired, or will expire, between July 11, 1991 and 90 days from the effective date of these 1994 amendments, any eligible claimant may file a claim for the remediation of FRT plywood until one year from the effective date of these 1994 amendments. Any eligible claimant that continues to have coverage under a new home warranty may file and/or refile claims at any time during the warrant period.

2. Any claimant that filed a timely claim pursuant to the act prior to the effective date of these 1994 amendments, which claim was not approved, may refile the claim for a reevaluation of eligibility in light of these 1994 amendments at any time during the warranty period or until one year after the effective date of these 1994 amendments, whichever is later.

[1. The commencement date of the warranty on common elements is the date the element was first put to use. Therefore, the warranty commencement date on roof sheathing in a development in which roofs are common elements is the commencement date of the first warranty issued in each structure.

2. Holders of new home warranties with extended structural defect coverage are eligible to file a claim up to the end of the tenth year.]

(c) [No] **Except where a longer period is permitted pursuant to (b) above, any** person who has instituted a civil action may file a claim pursuant to this section at any time [after] **up to and including** the 120th day following the effective date of [rules that set forth an approved testing procedure or an alternative procedure for the detection of defective FRT plywood that is predictive in nature. The examination standards set forth in N.J.A.C. 5:25A-2.5 shall not be deemed to be such a procedure. (Standards for predictive testing shall be set forth at N.J.A.C. 5:25A-2.6)] **these 1994 amendments.**

(d) The commencement date of the warranty on common elements is the date the element was first put to use. Therefore, the warranty commencement date on roof sheathing in a development in which roofs are common elements is the commencement date of the first warranty issued in each structure.

(e) Holders of new home warranties with extended structural defect coverage are eligible to file a claim up to the end of the tenth year.

5:25A-2.5 Claim examinations

(a) (No change.)

(b) To be eligible for funding, the condition of the FRT plywood sheathing must qualify as a major structural defect, as defined in N.J.A.C. 5:25A-1.3. In accordance with the classification system described in N.J.A.C. 5:25A-2.5(a), if the roof sheathing is characterized as "severe" or "failure" by the Bureau, the defect shall be classified as a major structural defect. **If a condition of inevitable premature failure, as determined in accordance with N.J.A.C. 5:25A-2.6, is found to exist by the Bureau, the condition shall also be classified as a major structural defect.**

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

5:25A-2.6 Predictive testing procedure for inevitable premature failure [(Reserved)]

FRT plywood roof sheathing shall be examined in accordance with the procedure and classification system described in N.J.A.C. 5:25A-2.5(a). FRT plywood roof sheathing found by the Bureau, using that classification system, to have experienced deterioration that is "moderate" or worse shall be deemed to be in a condition of inevitable premature failure.

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulation
Cooperative Pricing and Joint Purchasing Systems
Renewal of Registration of a Cooperative Pricing System

Proposed Amendments: N.J.A.C. 5:34-7.2, 7.5, 7.6 and 7.8

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

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

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

Proposal Number: PRN 1994-375.

Submit comments by August 4, 1994 to:
Nelson S. Silver, P.P.
Bureau of Local Management Services
Division of Local Government Services
CN 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

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

The proposed amendments seek to simplify and expedite the process for the renewal of the registration of a Cooperative Purchasing System.

N.J.A.C. 5:34-7.8 provides for the re-registration (renewal) of the individual members of the system to be accomplished through the passage of a new ordinance or resolution, as appropriate, and the execution of a new Cooperative Purchasing Agreement with the lead agency. The lead agency forwards a copy of the resolution and the new agreement to the Director. This process is time consuming and extremely paper intensive. The proposed amendment simplifies the procedures for renewal of a system's registration. The renewal application package submitted to the Director by the lead agency will contain a list of existing members and a copy of an addendum to the existing Cooperative Purchasing Agreement identifying the new termination date for the system's registration to be provided to each active participating member of the system.

N.J.A.C. 5:34-7.9 provides for individual members to renew its participation through the passage of a renewal resolution or ordinance, as appropriate. The proposed amendment to N.J.A.C. 5:34-7.6(f) and the repeal of N.J.A.C. 5:34-7.9 would allow an existing member to continue its membership until such time as it formally notifies the lead agency of its withdrawal from participation. The lead agency is then required to notify the Director within five days of the withdrawal.

N.J.A.C. 5:34-7.2 is being amended to delete the definition of "Form CP-2001." The Form will no longer be used since it duplicates both information received from the lead agency and information contained in approval correspondence from the Director. The Form was the vehicle used by a lead agency when submitting documentation relating to a request For Registration or Modification of a Cooperative Purchasing System. It contained information relating to the action requested by the cooperative purchasing system. Similar information is contained in the letter accompanying supporting documentation. The approval or denial of the requested action is transmitted back to the lead agency by letter over the Director's signature. The letter contains information similar to that contained on the CP-2001. The process of registering or modifying cooperative purchasing systems or enforcing the rule will not suffer as a result of the withdrawal from use of the Form CP-2001.

Social Impact

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

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

There is expected to be minimum reaction to the amendments.

Economic Impact

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

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

Regulatory Flexibility Statement

These rules are necessitated by N.J.S.A. 40A:11-11(5) and other statutes. Because the adoption of these rules would apply only to local governmental units, these rules do not apply to, or affect, small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:34-7.2 Definitions

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

...

["Form CP-2001" means Request For Registration Or Modification of a Cooperative Purchasing System which contains the following information: action requested; name of cooperative purchasing system; name of contact, address, and phone number of lead agency; name of participating contracting units affected by request; and certification of compliance with N.J.S.A. 40A:11-11.]

...

5:34-7.5 System registration

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

[(c) Applications shall be made on Form CP-2001.]

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

[(f)]**(e)** Approval shall be for a period not to exceed five years, and shall be limited to the terms, participants and scope presented for approval. [Any subsequent changes shall be submitted to the Director on Form CP-2001.]

Recodify existing (g) as **(f)** (No change in text.)

5:34-7.6 Membership registration

(a) (No change.)

[(b) The lead agency shall apply to the Director for approval on behalf of the proposed new member on Form CP-2001.]

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

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

(g) The lead agency shall inform the Director in writing of the formal withdrawal of any member of the system within five days of receiving notice from the member.

5:34-7.8 System renewal

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

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

[1. Form CP-2001.

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

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

i. The new expiration date of the system; and

ii. The date of execution of the agreement; and

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

2. A list of the current membership of the System; and

3. A copy of an addendum to the existing agreement identifying the new termination date for the registration of the system shall be forwarded to each active member of the system upon approval of the renewal of the registration of the system.

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

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

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

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

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

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

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

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulation

Municipal, County and Authority Employees Deferred Compensation Programs

Proposed Repeal and New Rules: N.J.A.C. 5:37

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

Authority: N.J.S.A. 43:15B-1 et seq.

Proposal Number: PRN 1994-376.

Submit comments by August 4, 1994 to:
Nelson S. Silver, P.P.
Bureau of Local Management Services
Division of Local Government Services
CN 803
Trenton, NJ 08625-0803

The agency proposal follows:

Summary

N.J.S.A. 43:15B-1 et seq. authorizes counties, municipalities or an authority created by one or more counties or municipalities to establish a deferred compensation plan whereby the employer may enter into a written agreement with any of its employees for voluntary deferral of salary for tax deferment purposes pursuant to Section 457 of the Internal Revenue Code. Furthermore, the statute mandates that any service agreement for the administration of a plan, including the management and investment of deferred funds, be subject to the prior approval of the Director of the Division of Local Government Services based upon restrictions, limitations and other conditions established by the Director through rule and regulation.

The purpose of this proposal is to repeal and propose new rules at N.J.A.C. 5:37 to clarify, simplify and standardize the process for the registration and amendment of a deferred compensation plan to be followed by local governmental units and third party administrators in establishing and operating a deferred compensation plan. In addition, the existing rules have been recodified and rewritten for clarity of statement.

A summary of the proposed new rules at N.J.A.C. 5:37 follows.

Subchapter 1 provides the definitions used to describe deferred compensation plans and has been expanded to include, "complete application package," "Independent auditor," "Prototypical plan," "Self-administered plan," and "Service agreement."

Subchapter 2 describes the role of the Director in approving or rejecting any deferred compensation plan or service agreement.

Subchapter 3 provides for the use of prototypical plans and service agreements to be submitted by a contractor to the Director for approval. Self-administered deferred compensation plans are continued and are defined at N.J.A.C. 5:37-3.2. Subchapter 3 also provides for a uniform system of accounting for each participant and for the investment of deferred compensation funds, and requires a certification to Internal Revenue Code compliance.

Subchapter 4 provides for a mechanism for amendment of the deferred compensation plan.

Subchapter 5 provides for the role of the employer in instituting and adopting a deferred compensation plan for its employees. The areas to be addressed in a resolution of the local governmental unit adopting a deferred compensation plan are detailed at N.J.A.C. 5:37-5.2(b), while the elements to be included in a resolution adopting a supplementary service agreement with a contractor are described at N.J.A.C. 5:37-5.3. Subchapter 5 also provides that the funds deferred remain the asset of the local governmental unit until disbursed and that the employer may not be held liable for returns on investments which are lower than participants in the plan expected. Collusion between any local official or employee and an official or employee of a contractor in the solicitation or award of a service contract for the administration of a deferred compensation plan is prohibited.

Subchapter 6 provides for the responsibilities of the administrator of a deferred compensation plan including bonding and presentation of quarterly reports to each employee participating in the deferred compensation plan.

Subchapter 7 provides the requirements for the contractors contracted by the employer to administer all or part of the deferred compensation plan. The existing rule at N.J.A.C. 5:37-13.6 precludes employers from entering into a service agreement with a contractor which pays money to an organization, of which the employer is a member, for endorsement of its plan. This requirement was designed to prevent the exercise of undue influence upon a local contracting unit in selecting a deferred compensation plan provider.

There are a number of national organizations which encourage professional development of their members through programs of continuing educational opportunities and the advancement of good governmental practices. Several of these organizations have created wholly owned subsidiaries for the sole purpose of providing deferred compensation services to counties, municipalities or authorities. Agreements exist which permit organizations offering deferred compensation plans for local employees to pay an endorsement fee to a statewide affiliated organization whose membership includes county and municipal employers of such employees. If strictly applied, several national providers of deferred compensation plan services would have to either terminate existing service agreements or for client counties and municipalities to withdraw their membership in the state associated organization and forego the benefits of membership. There is little harm in permitting this type of procedure; therefore, this requirement has been deleted from the proposed new rule.

A new provision at N.J.A.C. 5:37-7.1 requires the local contracting unit to solicit written proposals for deferred compensation plans from two or more companies offering deferred compensation plan services. The resolution establishing a deferred compensation plan is required to describe the method used to solicit proposals, identify the responding contractors, and present the rationale for selecting the successful contractor.

The proposed new rule at N.J.A.C. 5:37-7.8 has been revised to compliment N.J.A.C. 5:37-7.1 by requiring the potential contractor to disclose to the employer and employees, any arrangement where it may have to pay endorsement fees to organizations whose membership includes local public employers of such employees.

The modified proposed new rule at N.J.A.C. 5:37-7.8 reflects the need for competitiveness and full disclosure of all relationships and fees to be paid under any plan to any organization whose membership includes local public employers of such employees.

The modifications to the proposed new rules in Subchapter 7 will serve to require disclosure of any potential conflict to the local unit, its employees and the public by ensuring that the process for the solicitation and selection of a deferred compensation vendor will take place in a public forum. Any evidence of self-dealing or impropriety can be dealt with through the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. The Local Ethics Law is the appropriate vehicle to deal with these issues since it establishes standards of conduct and provides a mechanism for review of questionable relationships, appeal and sanctions.

Subchapter 8 concerns the enrollment process, specifically, joinder agreements and leaves of absence.

Subchaper 9 concerns investment policies, specifically, eligible types of investments, choice of investments, investment certification and timing of investments. A new section at N.J.A.C. 5:37-9.3 requires contractors to certify that the investment vehicles offered to local governments comply with the requirements of N.J.S.A. 43:15B-3c.

Subchapter 10 concerns accounting procedures, specifically, pooling of funds, review of prototypical plan, audit of self-administered plan, deferrals, credit to accounts, return to participants, participants records confidential and plan records.

The existing rule at N.J.A.C. 5:37-10.4 required an audit or review of local governments deferred compensation plan to be submitted to the Director within five months of the close of the employer's fiscal year. The proposed new rule at N.J.A.C. 5:37-10.2 requires the local governmental unit to submit its audit or review as part of the annual audit of its books, accounts and financial transactions.

Subchapter 11 concerns enforcement provisions for employer and contractor compliance.

Subchapter 12 concerns the yearly verification of approved deferred compensation plans by contractors.

The proposed new rule at N.J.A.C. 5:37-12.1 requires contractors to certify a list of their contractees annually to the Director. This represents an effort to ensure that deferred compensation plans provided by local governments identified in N.J.S.A. 43:15B-1 et seq. are registered with the Division.

Social Impact

The revisions to the existing rule will have a negligible social impact as they essentially clarify the existing rule. They clearly define the process and procedures to be followed for the review and approval of a deferred compensation plan.

The character of the changes shifts the burden of responsibility for immediate disclosure and oversight of the seletion of a deferred compensation contractor to a more public forum at the local contracting unit level while the Division continues to maintain final approval authority.

The number of local governmental units operating deferred compensation plans has increased significantly in the last few years. The popularity of the plans, as an employee investment option, continues to rise dramatically. The plan also provides a significant benefit as a supplemental retirement plan. At present, the Division of Local Government Services has approved 431 deferred compensation plans. Employees of local units participate on a voluntary basis. Each individual determines their own amount of deferral, subject to a predetermined minimum.

The approval and administrative process provided by the rules continue to afford the participating local governmental units and individuals a necessary degree of security in deferred compensation plans. This is especially important to the fiscal integrity of the involved local units and to the individual planning on utilizing the deferred funds to provide supplemental retirement income.

The proposed new rules for deferred compensation should ease the approval process. In furtherance of the Division's continuing concern for the fiscal integrity of deferred compensation plans, the proposed rules also include provisions to ensure regulatory compliance (N.J.A.C. 5:37-11). Thus, additional local units may be encouraged to make a deferred compensation plan available to employees.

Economic Impact

The principal economic benefit of the rules concerning Municipal, County and Authority Employees Deferred Compensation Programs lies in protecting the fiscal integrity of deferred compensation plans. Thus, participants are more able to rely upon plans as a supplemental retirement fund. This benefit remains unchanged since the original promulgation of the rules in 1980.

Employees of local units operating deferred compensation plans participate on a voluntary basis. The amount deferred is determined by the individual employee participant subject to a predetermined minimum. Generally, there is no cost, except administrative expenses, to the local unit for operating a deferred compensation plan.

Since the proposed rule will clarify regulatory requirements, the impact may be to encourage the participation of additional local units and employees. Also, the enforcement provision (N.J.A.C. 5:37-11) will provide additional program security.

Subsection (b) of the Conflict of Interest Subchapter in the existing rule at N.J.A.C. 5:37-13.6 was removed from the revised rule because it is anticipated that its strict enforcement will have an adverse economic impact on several of the deferred compensation plan providers. The deleted section prohibits an employer from entering into a service agreement with a contractor which pays money to an organization of which the employer is a member, would result in the disruption of numerous existing deferred compensation plans. This would result in a negative impact both upon the local contracting unit and its employees and the company administering the plan. The cost of such a break in service cannot be calculated.

The new rule will serve to require disclosure of any potential conflict to the local unit, its employees and the public by ensuring that the process for the solicitation and selection of a deferred compensation vendor will take place in a public forum. Any evidence of self-dealing or impropriety can be dealt with through the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. This law is the appropriate vehicle to deal with these issues since it establishes standards of conduct and provides a mechanism for review of questionable relationships, appeal and sanctions.

Regulatory Flexibility Analysis

These rules primarily affect the internal practices of local governmental units in offering a personnel benefit. In addition, large companies are generally contracted to administer deferred compensation plans. Involved smaller companies are affiliated with larger companies and, therefore, are not individually directly affected by these rules. Thus, the rules should have limited impact, if any, on businesses addressed under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

It may be possible, however, for a smaller company to administer a deferred compensation plan. The reporting and recordkeeping requirements imposed by these rules are relatively minor and costs are limited to those normally associated with such functions. It should be noted that the employer may pay for the required audit or review and the participants are often assessed a direct administrative fee.

Perhaps the single most noteworthy cost burden results from the bonding and insurance requirements of N.J.A.C. 5:37-7.9. The Division, however, believes this provision provides an essential protection and aids in the preservation of the fiscal integrity of the local unit.

In summary, involved smaller companies are affiliated with larger companies and any cost burden is shared. The proposed new rule does not impose any additional burdens on any companies. To date, these rules have not proved to be onerous and 431 plans have been approved.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:37.

Full text of the proposed new rules follows:

SUBCHAPTER CROSS REFERENCE GUIDE

Old Number	New Number	Subchapter Content
SUBCHAPTER 1.		SUBCHAPTER 1. DEFINITIONS
5:37-1.1	5:37-1.1	Definitions
SUBCHAPTER 2.		SUBCHAPTER 2. THE DIRECTOR
5:37-2.2	5:37-2.1	Approving plans and service agreements
5:37-2.5	5:37-2.2	Review investments
SUBCHAPTER 4.		SUBCHAPTER 3. DEFERRED COMPENSATION PLAN
5:37-4.1	5:37-3.1	Prototypical plans and service agreements
5:37-4.1	5:37-3.2	Self-administered plan
5:37-10.1	5:37-3.3	Uniform system of accounting
5:37-4.4	5:37-3.4	Certification of Internal Revenue Service compliance
5:37-4.5	5:37-3.5	Alternative certification of Internal Revenue Service compliance
SUBCHAPTER 11.		SUBCHAPTER 4. AMENDMENT OF PLAN
5:37-11.1	5:37-4.1	Reason for amendment
5:37-11.2	5:37-4.2	Notification of amendment
5:37-11.1	5:37-4.3	Internal Revenue Service amendment
5:37-11.3	5:37-4.4	Non-Internal Revenue Service amendment
CHAPTER 3.		SUBCHAPTER 5. THE EMPLOYER
5:37-3.1	5:37-5.1	Institution of plan
5:37-4.3	5:37-5.2	Plan and service agreement adoption
—	5:37-5.3	Additional service agreement(s)
5:37-3.3	5:37-5.4	Responsible for administration
5:37-7.4	5:37-5.5	Employer retaining assets
5:37-13.6	5:37-5.6	Conflict of interest
5:37-13.9	5:37-5.7	Non-collusion
5:37-3.5	5:37-5.8	No personal liability
5:37-9.4	5:37-5.9	Administrative expenses
5:37-8.1	5:37-5.10	Minimum amounts
—	5:37-5.11	Inactive plan or service agreement
SUBCHAPTER 5.		SUBCHAPTER 6. THE ADMINISTRATOR
5:37-5.2	5:37-6.1	Responsibilities of administrator
—	5:37-6.2	Bonding and evidence of insurance—self-administered plan
5:37-13.10(c)	5:37-6.3	Document retention
5:37-10.3	5:37-6.4	Quarterly report
SUBCHAPTER 13.		SUBCHAPTER 7. THE CONTRACTOR
5:37-13.8	5:37-7.1	Award of service agreements
5:37-7.5	5:37-7.2	Ban on solicitation prior to award of service agreement
5:37-13.2	5:37-7.3	Insurance companies
5:37-13.3	5:37-7.4	Mutual fund companies
5:37-13.4	5:37-7.5	Non-profit corporations
5:37-13.5	5:37-7.6	Banking institutions
5:37-13.7	5:37-7.7	Non-discrimination
5:37-13.10	5:37-7.8	Contractor disclosure
5:37-13.11	5:37-7.9	Bonding and evidence of insurance—prototypical plan
5:37-13.12	5:37-7.10	Provisions for rule to be part of service agreement
SUBCHAPTER 7.		SUBCHAPTER 8. ENROLLMENT
5:37-7.1	5:37-8.1	Joinder agreement
5:37-7.2	5:37-8.2	Leave of absence
SUBCHAPTER 9.		SUBCHAPTER 9. INVESTMENT POLICIES
5:37-9.2	5:37-9.1	Eligible investments
5:37-9.3	5:37-9.2	Choice of investments
—	5:37-9.3	Investment Certification
5:37-9.7	5:37-9.4	Timing of investments
SUBCHAPTER 10.		SUBCHAPTER 10. ACCOUNTING PROCEDURES
5:37-10.2	5:37-10.1	Pooling of funds
5:37-10.4	5:37-10.2	Audit or review
—	5:37-10.3	Review of prototypical plan
—	5:37-10.4	Audit of self-administered plan
5:37-10.5	5:37-10.5	Deferrals
5:37-9.6	5:37-10.6	Credit to accounts
5:37-9.5	5:37-10.7	Return to participants
5:37-12.1	5:37-10.8	Participant records confidential
5:37-12.2	5:37-10.9	Plan records
SUBCHAPTER 14.		SUBCHAPTER 11. ENFORCEMENT
5:37-14.1	5:37-11.1	Compliance
5:37-14.2	5:37-11.2	Director determination

5:37-14.3	5:37-11.3	Grace period
5:37-14.4	5:37-11.4	Penalties
—	NEW	SUBCHAPTER 12. PLAN VERIFICATION
—	5:37-12.1	Plan list

CHAPTER 37
MUNICIPAL, COUNTY AND AUTHORITY EMPLOYEES DEFERRED COMPENSATION PLANS

SUBCHAPTER 1. DEFINITIONS

5:37-1.1 Definitions

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

"Accounting date" means the annual date at the close of the fiscal year when the employer provides an accounting of its deferred compensation plan and apprises all participants of the value of their accounts.

"Administrator" means the person or group of local public officials or employees, including the local governing body, appointed by the governing body of the local unit as fiduciary responsible for the administration of the deferred compensation plan and for the investments and the accounting of funds maintained under the plan.

"Approved plan" means a deferred compensation plan which has been approved by the Director.

"Beneficiary" means the person, persons or legal entity designated by a participant to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

"Complete application package" means the documentation to be submitted to the Director by an employer for approval of a self-administered deferred compensation plan or by a contractor for a prototypical deferred compensation plan which may include, but not be limited to, the deferred compensation plan document, service agreement and resolution.

"Contractor" means any organization, firm, corporation, partnership, or individual, whether profit making or non-profit, which is not a governmental entity and provides a deferred compensation plan or administers it for an employer.

"Deferred compensation" means future benefits for present services payable pursuant to a contract with an employee.

"Deferred compensation plan" or "plan" means a document consistent with the requirements of Section 457, as amended, of the United States Internal Revenue Code under which an employee may defer payment of a specified amount of compensation until the future receipt thereof.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Employee" means any person, including elected, appointed and salaried persons working for the employer.

"Employer" means a local unit, either municipal, county, or an authority created by one or more counties or municipalities.

"Independent auditor" means a registered municipal accountant for a municipality or county pursuant to N.J.S.A. 40A:5-4 or a registered municipal accountant or a certified public accountant for an authority or fire district pursuant to N.J.S.A. 40A:5A-15.

"Joinder agreement" means the agreement signed by an employee to become a participant in the deferred compensation plan.

"Participant" means a local unit employee who is participating in a deferred compensation plan.

"Pay period" means the period of time for which the employer computes compensation for the employee.

"Prototypical plan" means a deferred compensation plan prepared by a contractor and approved by the Director.

"Self-administered plan" means a deferred compensation plan prepared and administered by the local unit and approved by the Director.

"Service agreement" means a contract between the employer and a third party for the administration of the employer's deferred compensation plan.

SUBCHAPTER 2. THE DIRECTOR

5:37-2.1 Approving plans and service agreements

(a) The Director shall approve or reject any deferred compensation plan or service agreement or amendment thereto prior to its implementation by an employer.

(b) The Director shall approve or reject a self-administered plan or prototypical plan or service agreement or any amendment thereto within 20 working days of receipt of a complete application package. The Director shall explain in writing, the reasons for rejection. Any modifications required by the Director shall be made within 60 days from the time of notification. Failure to submit the modifications within the time provided shall result in the plan being disapproved.

5:37-2.2 Review investments

Any investments made pursuant to an approved deferred compensation plan are subject to review by the Director. With the exception of investments made by domestic insurance companies licensed to sell life insurance and annuities in this State and subject to review by the Commissioner of the Department of Insurance pursuant to Chapter 20 of Title 17B of the New Jersey Statutes, the Director may review and reject any such investment. In making such determinations, the Director shall utilize the standards applicable to the prudent investor as provided in Section 13 of P.L. 1981, c.405 (N.J.S.A. 3B:20-13).

SUBCHAPTER 3. DEFERRED COMPENSATION PLAN

5:37-3.1 Prototypical plans and service agreements

(a) A contractor shall submit to the Director for approval a prototypical plan or service agreement and any amendment thereto to be made available to employers. The plan and service agreement shall contain, but not be limited to, the policies and procedures to be used in operating a deferred compensation plan as set forth in these rules.

(b) The Director shall assign a separate identifier to each approved prototypical plan and service agreement and any amendment thereto. This identifier shall appear in a prominent position on each plan and agreement offered to an employer.

(c) The approval of a prototypical plan or a service agreement by the Director shall not constitute an endorsement of the plan or service agreement.

5:37-3.2 Self-administered plan

The employer may prepare and administer a deferred compensation plan. The plan shall contain, but not be limited to, the policies and procedures to be used in operating a deferred compensation plan as set forth in these rules. Such a plan may be prepared in consultation with representatives of the potential participants.

5:37-3.3 Uniform system of accounting

The plan shall provide for a uniform system of accounting for each participant and for the investment of the deferred compensation funds.

5:37-3.4 Certification of Internal Revenue Service compliance

The resolution of an employer adopting a self-administered plan or a prototypical plan shall certify that an application has been filed with the Internal Revenue Service for a private letter ruling that the plan meets the requirements of Section 457 of the Internal Revenue Code, as amended, and that such ruling will be forwarded to the Director when received.

5:37-3.5 Alternative certification of Internal Revenue Service compliance

As an alternative to the Internal Revenue Service private letter ruling required pursuant to N.J.A.C. 5:37-3.4, the resolution of an employer adopting a prototypical plan shall certify that the employer is adopting a plan substantially similar to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. The certification shall also indicate the use of the ruling is for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another employer is not to be considered precedent.

SUBCHAPTER 4. AMENDMENT OF PLAN

5:37-4.1 Reasons for amendment

The employer may amend the plan to accommodate changes in the Internal Revenue Code, Federal statutes, State laws or rules or operational experience.

5:37-4.2 Notification of amendment

The employer shall notify all participants in writing prior to making any amendment to the plan. The notice shall state that an amendment will be made, what the amendment will be, why the plan is being amended, and what the impact, if any, will be on the participants. The participants shall have the right to modify the joinder agreement to reduce or eliminate any adverse impact on their accounts.

5:37-4.3 Internal Revenue Service amendment

(a) An amendment to a deferred compensation plan necessary to maintain the plan as an eligible deferred compensation plan within the meaning of the Internal Revenue Code does not require approval by the Director prior to implementation; however, any such amendment shall be filed with the Director.

(b) The documentation submitted to the Director shall identify the regulatory authority for the amendment and the specific language of the change.

5:37-4.4 Non-Internal Revenue Service amendment

(a) An amendment to a deferred compensation plan which is not necessary to maintain the plan as an eligible deferred compensation plan within the meaning of the Internal Revenue Code shall be submitted to the Director for approval prior to implementation.

(b) The employer shall adopt the amendment by resolution of the governing body. A certified copy of the resolution shall be forwarded to the Director.

(c) The documentation submitted to the Director shall identify the specific language of the change.

SUBCHAPTER 5. THE EMPLOYER

5:37-5.1 Institution of plan

(a) The employer shall decide whether to institute a deferred compensation plan for its employees.

(b) An employer may at its option exclude certain classes or types of employees from participation in the plan.

5:37-5.2 Plan and service agreement adoption

(a) The employer shall adopt a self-administered plan by resolution. A certified copy of the resolution shall be forwarded to the Director.

(b) The employer shall adopt a prototypical plan or by resolution of the governing body. The resolution shall include, but not be limited to:

1. A formal adoption of the plan;
2. A description of the method used to solicit proposals pursuant to N.J.A.C. 5:37-7.1;
3. An identification of a local plan administrator pursuant to N.J.A.C. 5:37-5.4;
4. An authorization to execute a service agreement with the contractor;
5. A statement of non-collusion pursuant to N.J.A.C. 5:37-5.7;
6. Certification of plan compliance with the rules of the Internal Revenue Service pursuant to N.J.A.C. 5:37-3.4 or 3.5 for a prototypical plan adoption only; and
7. The identification of the contractor and the plan or service agreement identifier.

(c) The Director shall make available a sample resolution for use by employers.

(d) A certified copy of the resolution shall be forwarded to the Director.

5:37-5.3 Additional service agreement(s)

(a) An employer which has adopted a prototypical plan may award a supplementary service agreement to offer the investment options of another contractor. The service agreement shall be adopted by resolution. The resolution shall include, but not be limited to:

1. A description of the method used to solicit proposals pursuant to N.J.A.C. 5:37-7.1;
2. An authorization to execute a service agreement with the contractor;
3. A statement of non-collusion pursuant to N.J.A.C. 5:37-5.7; and
4. The identification of the contractor and the identifier of the service agreement.

(b) A certified copy of the resolution shall be forwarded to the Director.

5:37-5.4 Responsible for administration

The employer shall ensure the sound and proper administration of the plan, which shall include, but not limited to, the proper, accurate and adequate accounting and reporting of all funds by appointing a plan administrator by resolution.

5:37-5.5 Employer retaining assets

Compensation deferred under the plan shall remain the asset of the employer. The obligation of the employer to participating employees shall be contractual only, and no preferred or special interest in the deferred money shall accrue to such participants.

5:37-5.6 Conflict of interest

In undertaking any activities related to the establishment or administration of a deferred compensation plan, including, but not limited to, any activities related to contracting for the administration of such a plan, local government officers and employees shall be governed by and subject to the requirements of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and any county or municipal code of ethics promulgated pursuant thereto.

5:37-5.7 Non-collusion

There shall be no collusion, or evidence or appearance of collusion, between any official or employee of the employer and any official or employee or representative of the contractor, vendor, insurance company, bank, consultant, brokerage firm, or any other profit making or non-profit firm in solicitation or award of a service agreement with the employer. The employer shall so certify to the Director in the resolution implementing each service agreement.

5:37-5.8 No personal liability

The employer or administrator shall not be held personally liable for any returns on investment of plan funds which are less than any participant or group of participants expected. The employer shall require a hold harmless provision in service agreements with contractors which includes an indemnification of the employer from any cause of action, together with the reasonable costs of litigation from acts or omissions by the contractor.

5:37-5.9 Administrative expenses

The employer may charge the plan fund for reasonable administrative expenses in an amount agreed upon between the employer and the employees.

5:37-5.10 Minimum amounts

The employer shall establish minimum deferral amounts.

5:37-5.11 Inactive plan or service agreement

When an employer terminates a plan or a service agreement with a contractor or plan, such action shall be by resolution. The resolution shall include the name of the contractor and the plan or service agreement identifier. A copy of the resolution shall be filed with the Director.

SUBCHAPTER 6. THE ADMINISTRATOR

5:37-6.1 Responsibilities of administrator

The administrator shall have responsibility for all functions of the plan, including, but not limited to, enrollment, deductions, investments, accounting, reporting, and distribution of compensation.

5:37-6.2 Bonding and evidence of insurance—self-administered plan

(a) The administrator of a self-administered plan shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the employer from any loss resulting from fraud or dishonesty. Evidence of such bond or ability to obtain such bond shall be provided to the employer and to the Director.

(b) The amount of the bond shall not be less than 100 percent of the amount of funds managed by the administrator.

5:37-6.3 Document retention

The administrator shall retain in a safe place the original policies, contracts or other legal documents executed by the employer and the contractor.

5:37-6.4 Quarterly report

The administrator shall make available at least quarterly a report to each participant which shall indicate the value or balance of each participant's account, as well as, the value or balance of the entire plan. This report shall indicate for each participant the balance of the participant's account as of the last accounting date, the amount of compensation deferred and any return on investment credited to the participant's account since the last report or accounting date.

SUBCHAPTER 7. THE CONTRACTOR

5:37-7.1 Award of service agreements

(a) In seeking a contractor, the employer shall solicit written proposals from two or more contractors offering prototypical plans or service agreements. After reviewing the proposals, a service agreement shall be awarded by resolution of the governing body. The resolution shall include a description of the method used to solicit proposals, identify the responding vendors and state the rationale for selecting a specific contractor.

(b) The term of the service agreement shall be determined by the employer and the contractor.

5:37-7.2 Ban on solicitation prior to award of contract

An organization seeking a contract shall not solicit employee participation in any deferred compensation plan or solicit employees to support the efforts of the organization to secure such a contract. A representative of an organization under contract shall not communicate with any prospective participant without the expressed consent and knowledge of the employer.

5:37-7.3 Insurance companies

An insurance company offering deferred compensation plans or investment options to local governments shall be authorized by the Commissioner of Insurance to do business in the State of New Jersey.

5:37-7.4 Mutual fund companies

An entity offering a mutual fund or other type of security as part of a deferred compensation plan shall be registered with the Security and Exchange Commission and shall submit to the Director a copy of a "Certification of Good Standing" from the New Jersey Secretary of State.

5:37-7.5 Non-profit corporations

A non-profit, tax-exempt corporation offering deferred compensation plans to local governments shall provide to the Director a copy of their Internal Revenue Service tax exemption certification.

5:37-7.6 Banking institutions

A banking institution serving as a depository for local government controlled program funds or offering deferred compensation plans to local governments shall be a New Jersey State-chartered bank, savings bank, or savings and loan or Federally-chartered bank, savings bank, or savings and loan located in New Jersey; hereinafter referred to as "banking institution." Such banking institution shall be in compliance with capital requirements for State-chartered banking institutions as set forth in N.J.A.C. 3:4, or capital requirements for Federally-chartered banking institutions as set forth in 12 CFR Part 325.

5:37-7.7 Non-discrimination

An organization, person, company, corporation, partnership, or other entity offering deferred compensation plans to local governments shall be in full compliance with all Federal and State laws regarding discrimination in its employment or investment policies and practices and shall so certify to the Director.

5:37-7.8 Contractor disclosure

(a) A potential contractor shall fully disclose to the employer in writing at the time a proposal is submitted for consideration, any arrangement it may have to pay endorsement fees to organizations whose membership includes local public employees of the employer.

(b) A potential contractor shall disclose to the employer and to the employees the fees charged, the fee and commission structure, the investment plan offered, and any other pertinent information which the employer may need in evaluating the contractor's fee and service.

(c) All service agreements shall contain termination clauses with respect to transfers of assets or responsibility under the plan.

5:37-7.9 Bonding and evidence of insurance—prototypical plan

(a) A contractor who provides a prototypical plan shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the employer from any loss resulting from fraud or dishonesty by such contractor. Evidence of such bond or ability to obtain such bond if the service agreement is awarded shall be provided to the employer and to the Director.

(b) The amount of bond shall not be less than 100 percent of the amount of funds managed by such contractor.

(c) A contractor providing services in accordance with these rules shall provide the employer and Director with evidence of appropriate liability insurance and errors and omissions insurance.

5:37-7.10 Provisions for rule to be part of service agreement

A service agreement entered into by an employer shall contain a provision that the service agreement is subject to the rules of the Division of Local Government Services and the rules are made a part thereof.

SUBCHAPTER 8. ENROLLMENT

5:37-8.1 Joinder agreement

(a) An eligible employee may enroll in the plan by executing a joinder agreement.

(b) The amount to be deferred shall be specified in the joinder agreement. The amount deferred may be changed by the participant with prior notice to the administrator at times designated by the employer.

(c) Once a joinder agreement is signed, the participant and beneficiary waive all claims and rights to commute, sell, assign, or otherwise use or transfer rights to receive any payments under the plan, which payments and rights are expressly declared to be non-assignable and non-transferable.

(d) The employer and a participant may execute only one joinder agreement during any one calendar year. The joinder agreement expires upon termination of service or a revocation of deferrals.

5:37-8.2 Leave of absence

A participant on an authorized leave of absence remains a participant.

SUBCHAPTER 9. INVESTMENT POLICIES

5:37-9.1 Eligible investments

(a) The funds deferred shall be invested in one or more of the following types of investments to the exclusion of all others:

1. Interest bearing accounts or securities, in which savings banks of New Jersey are authorized to invest their funds;
2. State of New Jersey Cash Management Fund;
3. Individual or group annuity contracts, whether fixed or variable;
4. Mutual fund shares; or
5. Life insurance contracts, whether fixed or variable.

5:37-9.2 Choice of investments

It shall be at the option of the employer to include in the plan as many of the investment choices identified in N.J.A.C. 5:37-9.1 as deemed prudent.

5:37-9.3 Investment certification

(a) A contractor providing deferred compensation services to an employer shall file with the Director in a form prescribed by the Director on or before the 15th day of January of each year a certification that the investment options offered comply with N.J.S.A. 43:15B-3c.

(b) The chief financial officer of a local unit with a self-administered plan shall file with the Director in a form prescribed by the Director on or before the 15th day of January of each year a certification that the investment options offered comply with N.J.S.A. 43:15B-3c.

5:37-9.4 Timing of investments

All funds from amounts deferred other than those needed to pay benefits shall be invested by the administrator or contractor responsible for investments within 72 hours, exclusive of Sundays and holidays, from the time the administrator or contractor receives the funds or is notified that the funds are available for investment or is in any other manner aware that the amounts deferred have been made and are available for investment.

SUBCHAPTER 10. ACCOUNTING PROCEDURES

5:37-10.1 Pooling of funds

Except for individual annuities and life insurance contracts, the plan shall provide for investments in authorized investment options by pooling the amounts deferred. The return on investments shall be apportioned on a prorated basis among all participants in the plan after deductions for reasonable administrative costs.

5:37-10.2 Audit or review

(a) The employer shall have an audit of all plan funds for a self-administered plan or a review of a contractor administered prototypical plan submitted as part of the annual audit of its books, accounts and financial transactions.

(b) The initial audit or review of the plan shall cover the period from plan initiation to the end of the fiscal year for the local unit and thereafter, the fiscal year of the plan shall conform to the fiscal year of the local unit.

5:37-10.3 Review of prototypical plan

(a) The review of a plan shall be made in accordance with the AICPA's Statements on Standards for Accounting and Review Services, subject to such qualitative inquiry and analytical procedures selected and performed, causing attention to questionable items, procedures or practices of a material nature, constituting a need for balances to be adjusted or creating a need for further auditing.

(b) The contractor shall transmit to the employer a compilation of financial data in statement form providing a full accounting of all plan transactions occurring during the employer's fiscal year, including beginning transactions and ending fund balance. The accounting for the transactions must reflect each participant's amount and date of each contribution received, the beginning fund balance by investment option, earnings or losses incurred, administrative charges and fees assessed, any transfers made among funds, all deposits and withdrawals, and the ending fund balance, including any and all adjustments made to such plan. The contractor must also submit to the employer applicable plan statements together with the opinion from its latest firm audit report prepared by its independent public accountant.

(c) The contractor shall furnish a letter to the Director, from its independent accountant attesting to the adequacy of the contractor's internal controls.

(d) The contractor shall certify to the Director that the annual accounting data supplied to the employer is accurate and complete.

(e) The independent auditor of the employer shall then evaluate the employer payroll records and joinder agreements against the information transmitted by the contractor.

(f) The independent auditor of the employer shall make an appropriate statement and express limited assurances thereon. These assurances shall be made part of the employer's annual audit, pursuant to N.J.S.A. 40A:5-4 or N.J.S.A. 40A:5A-15. The expense of the review shall be incurred by the employer or contractor as agreed upon at the time the service agreement is drawn.

5:37-10.4 Audit of a self-administered plan

If the plan is self-administered, the employer shall conduct an audit of all plan funds. The audit shall be performed pursuant to N.J.S.A. 40A:5-4 or N.J.S.A. 40A:5A-15. A copy of each audit report shall be transmitted to the Director in accordance with N.J.A.C. 5:37-10.2.

5:37-10.5 Deferrals

(a) The amount of compensation deferral specified by each participant in the joinder agreement shall be deferred by the employer at the end of each pay period.

(b) The amount deferred shall not be treated as compensation subject to Federal income tax withholding, but shall be treated as compensation subject to withholding for New Jersey Gross Income Tax, pensions, social security, insurance, and other fringe benefits, except to the extent that applicable law may provide.

5:37-10.6 Credit to accounts

The administrator shall credit to the plan and to each participant's account the return or loss on investment no less than once per month, except for annuity programs.

5:37-10.7 Return to participants

(a) Plan funds, less administrative expenses, including all amounts deferred and any and all return on investment of the plan funds shall be credited to the participants' accounts. Such credit shall be made in a manner that is prorated in a non-discriminatory manner. After the first year of program operation, the administrator shall not permit the cumulative plan balance to be less than the total cumulative sum of all amounts deferred by all participants, or any participant's account to have a balance less than the cumulative sum of all of the individual participant's deferrals since participation in the plan commenced. The only exceptions to this last statement shall be:

1. Variable annuities which guarantee that during the first three years of fund accumulation a participant will have distributed, upon withdrawal from the plan, an amount equal to the amount deferred;

2. A variable annuity with no such guarantee which is offered as part of a fixed and variable product line; and

3. Life insurance contracts.

5:37-10.8 Participant records confidential

All records regarding participation, amounts deferred, account balances, withdrawals, and any other information regarding a participant's account shall be held confidential by the administrator or the contractor.

5:37-10.9 Plan records

The administrator shall make available upon a written request from a participant or the Director, all records, reports or other information relating to the plan as a whole, including, but not limited to cash flow analysis, investment reports, audits and quarterly reports.

SUBCHAPTER 11. ENFORCEMENT

5:37-11.1 Compliance

The employer and contractor shall comply with the provisions of this chapter. Any employer or contractor deemed by the Director to be in noncompliance shall be notified by certified mail to appear before the Director, or designee. Notice shall be given at least 14 days prior to the date of the appearance and shall detail the nature of the alleged non-compliance. Failure to appear shall result in appropriate penalties pursuant to N.J.A.C. 5:37-11.4.

5:37-11.2 Director determination

No later than 10 days after an appearance required by N.J.A.C. 5:37-11.1, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the employer or contractor, as appropriate.

5:37-11.3 Grace period

A Director determination of non-compliance shall result in the immediate commencement of a 60 day grace period. During this time, the employer or contractor shall rectify all items of non-compliance to the satisfaction of the Director.

5:37-11.4 Penalties

Failure to satisfactorily address non-compliance during the grace period shall result in the immediate ineligibility of a contractor to qualify for Division approval of any additional deferred compensation plans. In addition, the Director may take such other actions as provided for by law.

SUBCHAPTER 12. PLAN VERIFICATION

5:37-12.1 Plan list

(a) Each January the Director shall prepare and distribute to the appropriate contractor a list of its approved local units. The list shall clearly identify local units and the date of approval.

(b) The contractor shall have 30 days from the date of mailing of the list by the Director to confirm in writing that the list is accurate.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION LAND USE REGULATION PROGRAM

Standards for Individual Subsurface Sewage Disposal Systems

Proposed Readoption with Amendments: N.J.A.C. 7:9A

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16, 13:1D-1 et seq., and 26:3A2-21 et seq.

DEPE Docket Number: 28-94-06/122.

Proposal Number: PRN 1994-394.

Submit written comments, identified by the Document Number given above, by August 4, 1994 to:

Janis Hoagland
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A (standards), expire on August 21, 1994. As required by the Executive Order, the Department of Environmental Protection and Energy ("Department" or "DEPE") has reviewed these rules, which govern the design, location, construction, installation, alteration and repair of individual subsurface sewage disposal systems pursuant to the Realty Improvement Sewerage and Facilities Act ("RISF Act"), N.J.S.A. 58:11-23, and the Water Pollution Control Act ("WPC Act"), 58:10A-1 et seq., and is proposing to readopt them with amendments for the reasons discussed below.

Standards for the construction of septic systems were first promulgated in 1954 pursuant to the RISF Act, and remained basically unchanged until they were repealed and replaced by the current standards, which became operative on January 1, 1990. The standards reflect current scientific knowledge and engineering practice in order not only to protect public health and safety as provided by the RISF Act, but also to include provisions for the prevention of water pollution and the protection of the environment under the authority of the Water Pollution Control Act. In developing the standards, the Department endeavored to balance social and economic considerations with the protection of public health, safety, and the environment.

In response to many letters received from homeowners, developers, engineers, local health departments and elected officials that identified problems associated with the 1990 standards and their implementation, the Department proposed and adopted amendments in 1992 and in 1993. The amendments were intended to help control the rising costs associated with the design and construction of individual subsurface sewage disposal systems; they also corrected various administrative and technical errors in the standards.

Because the standards are achieving their stated purpose of protecting public health, public safety and the environment, the Department has determined that it is appropriate to readopt them at this time. The Department is continuing to review the standards to see if changes are warranted that would further facilitate the implementation of the standards. The Department is currently reviewing the provision for fill used within the zone of treatment, at N.J.A.C. 7:9A-10.1(f)4, to see if the specification is adequate to achieve its desired purposes of providing treatment media as well as acting as a hydraulic conduit to the zone of disposal for septic tank effluent. The Department is also reviewing the pros and cons of reviving mandatory operation and maintenance requirements for individual subsurface sewage disposal systems. Finally, the Department is reviewing conflicting information concerning the discharge of water softener backwash. If the Department can reconcile whether the discharge of backwash from water softeners is detrimental or innocuous to individual subsurface sewage disposal systems then such a discharge will be allowed into a system, or continue to be prohibited.

The amendments proposed with this readoption are mostly administrative in nature, reflecting organizational changes in the Department, as well as some minor technical amendments to facilitate coordination with other departmental programs, such as the Division of Water Quality's New Jersey Pollutant Discharge Elimination System Underground Injection Control Program (NJPDES-UIC), N.J.A.C. 7:14A-5.1 et seq., and the Land Use Regulation Program's Freshwater Wetlands Program, pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

Following is a summary of the provisions of each section of the chapter proposed for readoption and/or amendment:

Subchapter 1. General Provisions

N.J.A.C. 7:9A-1.1, Purpose, states that this chapter is to provide standards for the location, design, construction, installation, alteration, repair and operation of individual subsurface sewage disposal systems in order to protect the public health, public safety and the environment.

N.J.A.C. 7:9A-1.2, Scope, states that this chapter provides the minimum State standards for the location, design, construction, installation, alteration, repair and operation of individual subsurface sewage disposal systems.

N.J.A.C. 7:9A-1.3, Construction of rules, states that this chapter shall be liberally construed in order to allow the Department to discharge its statutory functions.

N.J.A.C. 7:9A-1.4, Practice where rules do not govern, outlines which Department personnel are authorized to render decisions on issues beyond the scope of these standards.

N.J.A.C. 7:9A-1.5, Severability, states that should one portion of this chapter be held invalid, the validity of the rest of the chapter will not be affected.

N.J.A.C. 7:9A-1.6, General prohibitions, outlines those practices prohibited under this chapter.

N.J.A.C. 7:9A-1.7, Penalties, provides that penalties for violations of the standards are assessed pursuant to the New Jersey Water Pollution Control Act and the rules at N.J.A.C. 7:14-8.

N.J.A.C. 7:9A-1.8, Limitations, sets forth the limits on the types of individual subsurface sewage disposal systems for which approvals may be granted under this chapter.

Subchapter 2. Definitions

N.J.A.C. 7:9A-2.1, Definitions, defines the words and terms used in this chapter.

Subchapter 3. Administration

N.J.A.C. 7:9A-3.1, Ordinances, allows administrative authorities to adopt this chapter by reference and sets forth the requirements for

adopting special ordinances which differ in any detail from these standards.

N.J.A.C. 7:9A-3.2, New system design approvals, states that newly constructed individual subsurface sewage disposal systems must comply with the requirements of these standards. Design approvals issued, prior to January 1, 1990, under the regulations superseded by these standards must be certified to be in conformance with those regulations.

N.J.A.C. 7:9A-3.3, Existing systems, provides the conditions under which the use of systems in existence prior to the effective date of this chapter can continue.

N.J.A.C. 7:9A-3.4, Malfunctioning systems, describes the manifestations of malfunctioning systems and outlines the procedures to correct such malfunctions.

N.J.A.C. 7:9A-3.5, Permit to construct or alter, sets forth the requirements for applications for the construction, installation or alteration of individual subsurface sewage disposal systems.

N.J.A.C. 7:9A-3.6, Witnessing of soil evaluation and testing, requires that the administrative authority must witness soil profile pits and permeability testing.

N.J.A.C. 7:9A-3.7, Modification of plans, provides that plans that have already been approved by the administrative authority may not be modified to account for site conditions encountered which were not previously identified during the initial site evaluation without approval from the administrative authority.

N.J.A.C. 7:9A-3.8, Pinelands area approvals, requires approval from the Pinelands Commission for projects located within the Pinelands Area before an administrative authority can approve such a project.

N.J.A.C. 7:9A-3.9, Treatment works approval, outlines when a treatment works approval is required pursuant to this chapter.

N.J.A.C. 7:9A-3.10, NJPDES permits, provides that New Jersey Pollutant Discharge Elimination System (NJPDES) permits are not required for individual subsurface sewage disposal systems regulated by this chapter.

N.J.A.C. 7:9A-3.11, Experimental systems, provides the requirements for the use of experimental systems that improve the treatment of sanitary sewage before discharge or allow environmentally safe disposal of sanitary sewage in areas where standard sewage disposal systems might not function adequately.

N.J.A.C. 7:9A-3.12, Holding tanks, outlines the requirements for the use of holding tanks in lieu of an individual subsurface sewage disposal system.

N.J.A.C. 7:9A-3.13, Certificate of compliance, sets forth the requirements which must be met before final approval will be issued for a newly constructed individual subsurface sewage disposal system.

N.J.A.C. 7:9A-3.14, Notification of proper operation and maintenance practices, requires that the administrative authority institute a mandatory notification program to educate individual subsurface sewage disposal system owners on proper operation and maintenance practices.

N.J.A.C. 7:9A-3.15, Records, requires the administrative authority to maintain records on an individual subsurface sewage disposal system as long as the system is in use.

N.J.A.C. 7:9A-3.16, Prior tests, allows soil logs and results of percolation tests performed prior to January 1, 1990 to be used as the basis for the design of individual subsurface sewage disposal systems until December 31, 1994.

N.J.A.C. 7:9A-3.17, Registration of personnel, provides for voluntary registration of personnel involved in subsurface sewage disposal system site evaluation, design, construction, inspection and regulation.

N.J.A.C. 7:9A-3.18, Additional requirements for certification of sewerage facilities serving subdivisions involving more than 10 realty improvements, establishes submission requirements for subdivisions consisting of 10 or more realty improvements.

N.J.A.C. 7:9A-3.19, Entry and inspection, permits the administrative authority and the Department to enter sites where individual subsurface sewage disposal systems are located for the enforcement of these standards.

N.J.A.C. 7:9A-3.20, Hearing procedures, outlines the procedure by which an applicant may seek a hearing before the administrative authority for a denial of a certification application.

Subchapter 4. Site Evaluation and System Location

N.J.A.C. 7:9A-4.1, General provisions for site evaluation and system location, outlines the site characteristics which must be addressed in designing an individual subsurface sewage disposal system.

N.J.A.C. 7:9A-4.2, Location generally, provides that individual subsurface sewage disposal systems shall not be located where features such as bedrock outcrops, slope, etc., may affect the functioning of the system.

N.J.A.C. 7:9A-4.3, Distances, provides the minimum required setback distances from septic system components to other features such as dwellings, wells and other septic systems.

N.J.A.C. 7:9A-4.4, Slope, provides the slope restrictions for constructing disposal systems.

N.J.A.C. 7:9A-4.5, Surface drainage, outlines the surface drainage features which must be addressed in the design of individual subsurface sewage disposal systems.

N.J.A.C. 7:9A-4.6, Surface flooding, restricts the construction of individual subsurface sewage disposal systems in low lying areas which are subject to flooding.

N.J.A.C. 7:9A-4.7, Freshwater wetlands, outlines the requirements necessary to comply with the Freshwater Wetlands Protection Act, and the rules at N.J.A.C. 7:7A promulgated pursuant to it.

N.J.A.C. 7:9A-4.8, Area reserved for sewage disposal, provides that the area reserved for sewage disposal shall be kept free from encroachments such as patios, decks and driveways.

Subchapter 5. Determination of Soil Suitability

N.J.A.C. 7:9A-5.1, General provisions for the determination of soil suitability, provides the requirements for determining the suitability of soil for treatment and disposal of the effluent of an individual subsurface sewage disposal system.

N.J.A.C. 7:9A-5.2, Requirements for soil profile pits and borings, contains the requirements for soil profile pits and soil borings for disposal systems, including number, location and depth of the soil profile pits and/or soil borings.

N.J.A.C. 7:9A-5.3, Terminology required for soil logs, outlines the standard terminology required to describe soil profiles.

N.J.A.C. 7:9A-5.4, Criteria for determination of soil suitability classes, provides the procedure for establishing the soil suitability class, which is used to determine what type of disposal field installation may be approved for a site, based upon soil limiting zones.

N.J.A.C. 7:9A-5.5, Rock substrata, provides the requirements for establishing rock substrata.

N.J.A.C. 7:9A-5.6, Excessively coarse horizons and substrata, provides the procedure for determining soil horizons which are excessively coarse.

N.J.A.C. 7:9A-5.7, Hydraulically restrictive horizons and substrata, provides the criteria for determining hydraulically restrictive horizons.

N.J.A.C. 7:9A-5.8, Criteria for recognition of zones of saturation, outlines the procedure for determining zones of saturation.

N.J.A.C. 7:9A-5.9, Hydraulic head test, outlines the procedure for conducting the hydraulic head test to determine perched zones of saturation.

N.J.A.C. 7:9A-5.10, Disturbed ground, outlines the criteria for determining whether a site has been disturbed.

Subchapter 6. Permeability Testing

N.J.A.C. 7:9A-6.1, General provisions for permeability testing, outlines the permeability tests permitted under these standards, and the conditions under which they can be used.

N.J.A.C. 7:9A-6.2, Tube permeameter test, outlines the procedure for performing the tube permeameter test.

N.J.A.C. 7:9A-6.3, Soil permeability class rating, outlines the procedure for performing the soil permeability class rating test.

N.J.A.C. 7:9A-6.4, Percolation test, outlines the procedure for performing the percolation test.

N.J.A.C. 7:9A-6.5, Pit-bailing test, outlines the procedure for performing the pit-bailing test.

N.J.A.C. 7:9A-6.6, Piezometer test, outlines the procedure for performing a piezometer test.

N.J.A.C. 7:9A-6.7, Basin flooding test, outlines the procedure for performing the basin flooding test.

Subchapter 7. General Design and Construction Requirements

N.J.A.C. 7:9A-7.1, Design requirements, sets forth the general requirements for designing an individual subsurface sewage disposal system.

N.J.A.C. 7:9A-7.2, Construction, sets forth the general requirements which must be addressed during the construction of an individual subsurface sewage disposal system.

N.J.A.C. 7:9A-7.3, Type of wastes, lists the types of wastes which may, and may not, be discharged into an individual subsurface sewage disposal system.

N.J.A.C. 7:9A-7.4, Volume of sanitary sewage, provides the design flow criteria to be used in calculating the proper size of the disposal field.

N.J.A.C. 7:9A-7.5, Separate disposal of greywater and blackwater, describes the requirements for separate systems to dispose of greywater and blackwater from a facility.

N.J.A.C. 7:9A-7.6, Type of system, outlines system requirements that must be part of the individual subsurface sewage disposal system design in order to receive approval from the administrative authority.

N.J.A.C. 7:9A-7.7, Building sewer, requires that the building sewer be constructed in conformance with the State Uniform Construction Code at N.J.A.C. 5:23.

Subchapter 8. Pretreatment Units

N.J.A.C. 7:9A-8.1, Grease traps, sets forth the construction specifications and minimum requirements for the design and installation of grease traps.

N.J.A.C. 7:9A-8.2, Septic tanks, sets forth the construction specifications and minimum requirements for the design and installation of septic tanks.

Subchapter 9. Effluent Distribution Networks

N.J.A.C. 7:9A-9.1, General requirements for effluent distribution, outlines the minimum requirements for constructing disposal networks.

N.J.A.C. 7:9A-9.2, Dosing tanks, sets forth the construction specifications and minimum requirements for the design and installation of dosing tanks.

N.J.A.C. 7:9A-9.3, Connecting pipes and delivery pipes, outlines the requirements for the construction of connecting and delivery pipes.

N.J.A.C. 7:9A-9.4, Distribution boxes, provides the specifications and construction and installation requirements for distribution boxes.

N.J.A.C. 7:9A-9.5, Laterals; gravity distribution, sets forth the material specifications and installation requirements for laterals in gravity distribution networks.

N.J.A.C. 7:9A-9.6, Pressure dosing networks, sets forth the installation requirements and material specifications for the construction of pressure distribution networks.

N.J.A.C. 7:9A-9.7, Design procedure for pressure dosing systems, provides the procedure for designing pressure distribution networks.

Subchapter 10. Disposal Fields

N.J.A.C. 7:9A-10.1, General design requirements for disposal fields, provides the minimum requirements for designing each type of disposal field allowed under these standards.

N.J.A.C. 7:9A-10.2, Disposal field sizing requirements, provides the minimum loading rates used in the sizing of disposal fields.

N.J.A.C. 7:9A-10.3, Specific requirements for conventional disposal field installations, provides the minimum requirements for constructing conventional disposal fields.

N.J.A.C. 7:9A-10.4, Specific requirements for soil replacement disposal field installations, provides the minimum requirements for constructing soil replacement disposal fields.

N.J.A.C. 7:9A-10.5, Specific requirements for mounded disposal field installations, provides the minimum requirements for constructing mounded disposal fields.

N.J.A.C. 7:9A-10.6, Specific requirements for mounded soil replacement disposal field installations, provides the minimum requirements for constructing mounded soil replacement disposal fields.

N.J.A.C. 7:9A-10.7, Interceptor drains, provides the minimum requirements for the construction and installation of interceptor drains.

Subchapter 11. Seepage Pits

N.J.A.C. 7:9A-11.1, Site/soil requirements, outlines the minimum soil and site conditions required for the installation of a seepage pit.

N.J.A.C. 7:9A-11.2, Design requirements, provides the required elements for design of a seepage pit.

N.J.A.C. 7:9A-11.3, Construction requirements, outlines the construction requirements for seepage pits.

Subchapter 12. Operation and Maintenance

N.J.A.C. 7:9A-12.1, System use, outlines limitations on the use of individual subsurface sewage disposal systems.

N.J.A.C. 7:9A-12.2 through 12.6 are reserved.

N.J.A.C. 7:9A-12.7, System testing, describes the minimum requirements for hydraulically testing individual subsurface sewage disposal systems.

N.J.A.C. 7:9A-12.8, Abandoned systems, describes the procedures required to abandon individual subsurface sewage disposal systems.

Proposed Amendments to Administrative Provisions

The proposed amendment at N.J.A.C. 7:9A-1.4 deletes the reference to the Division of Water Resources to reflect organizational changes within the Department.

The proposed amendment to N.J.A.C. 7:9A-1.8, in conjunction with the amendment at N.J.A.C. 7:9A-3.3(f), will allow an administrative authority to approve, upon written authorization by the Department, alterations and repairs to an existing malfunctioning community subsurface disposal system for facilities subject to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, in order to correct such malfunctions in a more timely manner.

At N.J.A.C. 7:9A-2.1, the definition of "wetland" is being amended to incorporate the phrase "commonly known as hydrophytic vegetation" so that the definition is consistent with the definition of "freshwater wetland" pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and the Freshwater Wetland Protection Act Rules at N.J.A.C. 7:7A.

The proposed amendments at N.J.A.C. 7:9A-3.3(b) and (c) will allow existing individual subsurface sewage disposal systems to serve facilities that are being expanded, or undergoing a change in use, if the design capacity of the disposal system can adequately handle the increased design flow, thereby no longer requiring that a properly sized and adequately functioning system be abandoned. The Department has determined that current N.J.A.C. 7:9A-3.3(c)3 constitutes a separate subsection and proposes to recodify it as N.J.A.C. 7:9A-3.3(e). The Department is inserting at N.J.A.C. 7:9A-3.3(f) a provision which gives the administrative authority jursidiction to approve, with written authorization from the Department, alterations and repairs to existing malfunctioning subsurface disposal systems for facilities subject to the requirements of the New Jersey Pollutant Discharge Elimination System Rules, N.J.A.C. 7:14A, in order to correct such malfunctions in a more timely manner. In addition, current N.J.A.C. 7:9A-3.3(f) (proposed to be recodified as N.J.A.C. 7:9A-3.3(i)) is being amended to require that application for a NJPDES permit must be made immediately for existing unpermitted facilities which are subject to regulation pursuant to the NJPDES-UIC program. Facilities which did not apply for a NJPDES permit by August 21, 1991 are in violation of the Water Pollution Control Act and must apply to the Department for a NJPDES permit immediately.

The amendment at N.J.A.C. 7:9A-3.5(c)2xi is being proposed to clarify the information required concerning wetlands within 150 feet of the proposed individual subsurface sewage disposal system. Currently the standards require that State approved boundaries of wetlands and transition areas located on the property in question to be shown on the design plans. The proposed amendment will allow for other documentation, such as a Department-issued Letter of Interpretation, showing that there are no wetlands or transition areas within 150 feet of the area of the proposed individual subsurface sewage disposal system.

The proposed amendment at N.J.A.C. 7:9A-3.9(c) reflects the current mailing address of the unit now charged with implementing the standards.

At N.J.A.C. 7:9A-4.7(c), the list of documents which an applicant may submit to show conformance with the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, is being amended to accurately reflect the determinations made pursuant to the Freshwater Wetlands Protection Act Rules. N.J.A.C. 7:9A-4.7(c)4 is being deleted, since exemptions based upon such U.S. Army Corps of Engineers permits expired on January 13, 1992.

Proposed Amendments to Technical Provisions

N.J.A.C. 7:9A-7.4(d) is being amended to make the standards consistent with the New Jersey Pollutant Discharge Elimination System (NJPDES) rules concerning Underground Injection Control (UIC) at N.J.A.C. 7:14A-5. The UIC program determines when a NJPDES permit for a community onsite disposal system is required based only upon design flow of a facility. The current standards allow for water use data, instead of the listed criteria, to establish a design flow. The conflict between the two programs and the two methods arises when the water use data result in a usage of 2,000 gallons per day or less, but the calculation for design flow using the established criteria indicates that the usage will be greater than 2,000 gallons per day. This conflict may lead people to believe that a NJPDES permit is not required when, by departmental calculations, a NJPDES would be required. Such conflicts will be eliminated by allowing the use of other documented criteria, such as actual water use data, only when the facility does not fit an established criterion, as listed in N.J.A.C. 7:9A-7.4(d).

The Department is also proposing a design flow criterion for beauty parlors and salons at N.J.A.C. 7:9A-7.4(d). By proposing a design flow criterion for beauty parlors and salons the Department will give the administrative authority the jurisdiction to approve the design of an individual subsurface sewage disposal system to serve such facilities without the need for a NJPDES permit from the Department.

The proposed amendments at N.J.A.C. 7:9A-12.8 clarify the responsibilities of the local health department and the local plumbing inspector concerning abandoned systems and specifically set forth the requirements for the disposal of components or residuals from abandoned individual subsurface sewage disposal systems being removed. The local plumbing inspector will have jurisdiction concerning the abandonment of individual subsurface sewage disposal systems when the systems are being abandoned due to the connection to a sanitary sewer line, since th local plumbing inspector needs to inspect the sanitary sewer line connection. This amendment will eliminate the need to have inspections performed by two different entities.

Social Impact

The proposed readoption and amendments are expected to continue and enhance the social benefits derived from the current standards in facilitating the protection of the public health, safety, and the environment through proper siting, design and construction practices for new and recently constructed, altered or repaired individual subsurface sewage disposal systems. The major social impact of the standards will continue to be the benefits derived from the reduced risk of septic system malfunctions. The proposed amendments will facilitate coordination of the standards with the rules governing other Departmental programs such as the NJPDES rules, N.J.A.C. 7:14A, and the Freshwater Wetland Protection Act rules, N.J.A.C. 7:7A.

Economic Impact

The readoption of the standards will not have any significant economic impact on the regulated community since the standards are not being significantly changed. The major administrative and technical requirements of the standards that are the most closely related to the cost of individual subsurface sewage disposal systems, such as the cost associated with site evaluation, the engineering costs associated with the actual design of the system and the costs associated with the construction of the system, are not being amended; therefore, the anticipated cost of an individual subsurface sewage disposal system will remain essentially the same.

The proposed amendments that reflect organizational changes in the Department will not have any economic effect on the regulated community. The proposed amendments at N.J.A.C. 7:9A-1.8 and 3.3(f) will have a positive economic impact for existing NJPDES facilities that experience malfunctions of their disposal systems because the administrative authority will have the jurisdiction to approve alterations and repairs, with written authorization from the Department. A treatment works approval for the alteration to such disposal systems will therefore not be required.

The amendments at N.J.A.C. 7:9A-3.3(b) and 3.3(c) will have a positive economic impact for the owners of facilities (including residential homes) which are being expanded and which have existing individual subsurface sewage disposal systems adequately sized to facilitate the additional volume of sanitary sewage generated by the facility expansion. These amendments will allow the administrative authority to approve expansions to such facilities without requiring a new individual subsurface sewage disposal system if the expansion will not exceed the design capacity of the existing system, determined as prescribed in N.J.A.C. 7:9A-7.4(d). Currently, an expansion to any facility (including residential dwellings), which results in an increase in the daily design sewage flow of the facility, would require the existing system to be replaced or upgraded to strictly conform to the standards. The proposed amendment will make such replacement or upgrade of the existing system a requirement only if the existing system is not adequately sized to handle the proposed additional volume of sanitary sewage to be generated by the facility expansion.

The amendments at N.J.A.C. 7:9A-3.3(d) and 3.3(e) will not have an economic impact since the substantive requirements concerning alterations to existing systems are not being changed. The Department has simply determined that the requirement for alterations to existing malfunctioning systems should not be grouped with the requirements for alterations to systems that are functioning properly.

The amendments at N.J.A.C. 7:9A-3.3(i), which required the owners of existing unpermitted community onsite disposal systems to apply for a NJPDES permit by August 21, 1991, will have no economic impact since the requirement for applying for a NJPDES permit is not being changed.

The amendments at N.J.A.C. 7:9A-3.5(c)2xi and 4.7 will not have an economic impact upon the regulated community because the changes are intended only to clarify the information an applicant is required to submit to show conformance with the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A. No additional requirements are being proposed by this amendment.

The proposed amendment at N.J.A.C. 7:9A-7.4(d) will have a negative economic impact from higher construction costs due to the increase in disposal field size since, under most circumstances, a design flow determined pursuant to the criteria listed in N.J.A.C. 7:9A-7.4(d) would be greater than a design flow determined from other documented criteria, such as actual water use data.

The proposed amendment at N.J.A.C. 7:9A-7.4(d)7, which provides a design flow criterion for beauty parlors and salons, will have a positive economic impact for such facilities. The Department has determined that the wastes generated by beauty parlors and salons do not contain high enough percentages of pollutants to be considered industrial discharges requiring NJPDES permits. By not requiring a NJPDES permit and by providing a design flow criterion for such facilities, individual subsurface sewage disposal system designs can be approved by the local administrative authority without any Departmental involvement, which will result in significantly reduced costs for such facilities.

The amendments to N.J.A.C. 7:9A-12.8, which clarify responsibility for ensuring proper abandonment of individual subsurface sewage disposal systems, will have a positive economic impact by not requiring duplicate inspections and/or fees from two different agencies. This amendment also coordinates these standards with the requirements of the Solid Waste Management Act and its implementing regulations. This amendment will have no additional economic impact since the requirements of the Solid Waste Management Act and its implementing regulations must be adhered to, regardless of whether this amendment is adopted.

Environmental Impact

The readoption of the standards will have a positive environmental impact throughout the State by continuing to mandate the minimum standards for suitable soil and fill material within the zone of treatment. The standards also provide for an adequate zone for effluent disposal and requirements for proper disposal field sizing, which is based upon the formation of a biological clogging mat that is essential in the treatment of septic tank effluent. Site evaluation and design and construction standards focused on sites with marginal suitability will accommodate current land use and development patterns in a manner that will minimize potentially adverse environmental impacts.

The proposed amendments to administrative provisions at N.J.A.C. 7:9A-1.4, 2.1, 3.3(d), 3.3(e), 3.3(i), 3.5(c)2xi, 3.9(c) and 4.7(c) will not have an impact upon the environment since these amendments do not affect the protection of the environment provided by the technical provisions of the standards.

The proposed amendments at N.J.A.C. 7:9A-1.8 and 3.3(f) will have a significant positive impact for existing community onsite disposal systems which are malfunctioning. The proposed amendments will give the administrative authority the jurisdiction to approve alterations to existing malfunctioning community onsite disposal systems, rather than requiring such facilities to apply for a treatment works approval. This amendment will significantly reduce the amount of time needed to rehabilitate malfunctioning community onsite disposal systems and thereby limit the adverse impact to the environment.

The proposed amendments at N.J.A.C. 7:9A-3.3(b) and 3.3(c) will not adversely impact the environment since the continued use of an existing individual subsurface sewage disposal system, which must be functioning properly, will only be allowed to serve an expansion of the facility if the design capacity of the existing system will not be exceeded by the proposed facility expansion. If the proposed expansion of an existing facility served by an individual subsurface sewage disposal system will exceed the design capacity of the existing system, a new individual subsurface sewage disposal system must be designed in strict conformance with the standards.

The proposed amendment at N.J.A.C. 7:9A-7.4(d), which allows the use of actual water use data only when the facility to be served does not fit one of the listed criteria, will have a positive environmental impact in those instances when there are actual water use data available for a facility and the facility fits an established criterion. Under most circumstances, the proposed amendment will result in larger disposal fields that are designed based upon the established criteria listed in N.J.A.C. 7:9A-7.4(d).

The proposed amendment at N.J.A.C. 7:9A-7.4(d)7, which gives the administrative authority jurisdiction to approve individual subsurface sewage disposal system designs for beauty parlors and salons, will not adversely affect the environment. The Department has determined that the wastes discharged from beauty parlors and salons do not constitute industrial discharges and can be serviced by individual subsurface sewage disposal systems.

The proposed amendments at N.J.A.C. 7:9A-12.8 will have a positive environmental impact by requiring conformance with the State Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules promulgated pursuant to it, for residuals from abandoned individual subsurface sewage disposal systems.

Regulatory Flexibility Analysis

Any person who proposes to construct an individual subsurface sewage disposal system within the limitations of these standards must strictly comply with the requirements of this chapter. The rules do not require small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to do any reporting or recordkeeping or meet any other compliance requirements beyond the initial system design and construction. The costs for small businesses are the same costs that any other person or entity seeking to construct an individual subsurface sewage disposal system is subject to, including engineering and/or environmental consultant fees as well as the application fees. The actual costs vary depending upon the size of the individual subsurface sewage disposal system and the particular site conditions. These rules do not provide any lesser requirements or exemptions for small businesses because the overall purpose of the rules is to protect the public health, safety, and the environment from improper construction of individual subsurface sewage disposal systems. Lessening the requirements could result in an increased threat to the public health, safety, and the environment.

In developing the standards, the Department balanced the need to protect the public health, safety, and the environment against the economic impact of the standards. The Department determined that to reduce the requirements for small businesses would endanger public health, safety, and the environment. Therefore, no exemption from regulation is provided.

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

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

7:9A-1.4 Practice where rules do not govern

The Commissioner[, the Director of the Division of Water Resources], or any other appropriate management employee within the Department, shall exercise his or her discretion in respect to any matters not governed by this chapter.

7:9A-1.8 Limitations

(a) (No change.)

(b) When an individual subsurface sewage disposal system exceeds the limitations in (a) above, a treatment works approval issued by the Department will be required**, except under the circumstances specified in N.J.A.C. 7:9A-3.3(f),** and a NJPDES permit may also be required.

(c) (No change.)

7:9A-2.1 Definitions

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

...

"Wetland" means any area inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically [adopted] **adapted** for life in saturated soil conditions**, commonly known as hydrophytic vegetation**. Wetlands generally include swamps, marshes, bogs and similar areas.

...

7:9A-3.3 Existing systems

(a) (No change.)

[(b) When an expansion or a change in use of a building or facility served by an individual subsurface sewage disposal system is proposed and this expansion or change will result in an increase in the volume of sanitary sewage (determined as prescribed at N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged, the administrative authority shall not approve such an expansion or change unless all aspects of the location, design, construction, installation and operation of the system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with this chapter.]

(b) When an expansion or a change in use of a commercial building or facility served by an existing individual subsurface sewage disposal system is proposed and such expansion or change will result in an increase in the volume of sanitary sewage (determined as prescribed at N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged, the administrative authority shall not approve such an expansion or change unless all of the following conditions are satisifed:

1. All aspects of the location, design, construction, installation and operation of the existing system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with the requirements of this chapter;

2. The expansion or change of use of the building or facility served will not exceed the design capacity of the existing system; and

3. It is demonstrated to the satisfaction of the administrative authority that the existing system is not malfunctioning.

(c) When an expansion or a change in use of a residential dwelling served by an existing individual subsurface sewage disposal system is proposed and such an expansion or change will exceed 100 square feet of habitable living space (as defined in the New Jersey Uniform Construction Code, N.J.A.C. 5:23) or will result in a change in the type of wastes discharged, the administrative authority shall not approve such an expansion or change unless all of the following conditions are satisfied:

1. All aspects of the location, design, construction, installation and operation of the existing system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with the requirements of this chapter;

2. The expansion or change of use of the dwelling served does not increase the design flow of the dwelling, or will not exceed the design capacity of the existing system; and

3. It is demonstrated to the satisfaction of the administrative authority that the existing system is not malfunctioning.

[(c)]**(d)** Alterations made to a system for reasons other than a change of use or expansion as described in (b) **and (c)** above may be approved by the administrative authority provided that [all] **both** of the following conditions are met:

1. If the scope of the alteration is such that it constitutes the practice of professional engineering according to N.J.S.A. 45:8 and the rules adopted pursuant to [the] same, then such alterations shall be made in conformance with plans and specifications signed and sealed by a licensed professional engineer[.]**; and**

2. Alterations are made in such a way that those components of the system altered are in conformance with the requirements of this chapter or are closer to being in conformance with this chapter than the original components prior to the alteration[; and].

[3.]**(e)** When alterations are made to correct a malfunctioning system, the alterations shall be made **in conformance with (d) above and** in a manner that will eliminate the cause of the malfunction and which, with proper operation and maintenance, will not result in future malfunctions.

(f) Alterations to an existing malfunctioning community onsite subsurface disposal system, as defined in N.J.A.C. 7:14A-1.9, may

be approved by the administrative authority pursuant to the provisions of this chapter upon written authorization of such by the Department.

Recodify existing (d)-(e) as **(g)-(h)** (No change in text.)

[(f)](**i**) A person who discharges sanitary wastes by means of an existing community onsite subsurface disposal system, as defined in N.J.A.C. 7:14A-1.9, who [has] **did** not [already applied] **apply** to the Department for a NJPDES permit **by August 21, 1991 is in violation of the Water Pollution Control Act, and** shall apply [within two years of the effective date of this chapter] **for such a permit immediately.**

7:9A-3.5 Permit to construct or alter

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

(c) The applicant shall submit a complete, accurate and properly executed application to the administrative authority. All soil logs, soil testing data, design data and calculations, plans and specifications, and other information submitted in connection with the subsurface sewage disposal system design shall be signed and sealed by a licensed professional engineer except where N.J.A.C. 7:9A-3.3(c)1 allows otherwise. The application shall include the following information:

1. (No change.)

2. A site plan, prepared in accordance with N.J.A.C. 13:40-7 and drawn at a scale adequate to depict clearly the following features within a 150 foot radius around the proposed system:

i.-x. (No change.)

xi. State approved boundaries of any wetland areas or transition areas within the boundaries of the property **or within 150 feet of the area of the proposed system. Alternatively, the applicant may submit evidence of compliance with the requirements of N.J.A.C. 7:7A as provided pursuant to N.J.A.C. 7:9A-4.7(c).**

3.-8. (No change.)

(d) (No change.)

7:9A-3.9 Treatment works approval

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

(c) Applications for treatment works approval shall be made on forms available from the Department and shall be accompanied by the required application fee. Application forms and instructions regarding administrative and technical submission requirements may be obtained by contacting the [Bureau of Construction and Connection Permits] **Subsurface Disposal Unit of the Land Regulation Program** at the following address:

[Bureau of Construction and Connection Permits
Division of Water Resources
Department of Environmental Protection
CN 029]
Department of Environmental Protection and Energy
Land Use Regulation Program
Subsurface Disposal Unit
CN 401
Trenton, N.J. 08625-**0401**

7:9A-4.7 Freshwater wetlands

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

(c) Evidence that the applicant has complied with applicable State freshwater wetland rules shall consist of any of the following documents:

1. A "letter of interpretation" [or "transition area waiver"] issued by the Department, indicating that the proposed development is not [subject to N.J.A.C. 7:9A] **located in wetlands, waters or transition areas;**

[2. A written notification from the Department indicating that the wetlands aspects of the proposed development are covered by a Statewide General Permit;]

[3.]**2.** A freshwater wetlands [permit] **statewide general or individual permit, or a transition area waiver,** issued by the Department for the wetlands **or transition area** aspects of the proposed development; **or**

[4. A permit issued by the U.S. Army Corps of Engineers ("Corps") prior to July 1, 1988 or an approval letter from the Corps indicating that the wetlands aspects of the proposed development were authorized under a Nationwide Permit prior to July 1, 1988; or]

[5.]**3.** A written determination from the Department that the proposed development is not subject to regulation under the Freshwater Wetlands Protection Act.

(d) (No change.)

7:9A-7.4 Volume of sanitary sewage

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

(d) The criteria listed below are minimum standards for average facilities of the categories listed. In cases where a facility does not fall within any of the categories [listed or where actual water use data is available relating to the facility], the administrative authority may approve the use of other documented criteria, **such as actual water data for the facility or other similar facilities,** provided that the value used for design is at least 50 percent greater than the average daily volume of sewage.

Type of Establishment	Method of Estimation (gallon per user or gallon per unit per day)
1.-6. (No change.)	
7. Beauty parlors and salons	**120 gal/day/sink**

Recodify existing 7.-43. as **8.-44.** (No change in text.)

7:9A-12.8 Abandoned systems

(a) When it is necessary to abandon a system or components of a system **in place for any reason other than connection to a sanitary sewer line,** all septic tanks, dosing tanks, seepage pits, dry wells and cesspools which are to be abandoned shall be emptied of wastes and removed or filled completely with gravel, stones or soil material in a manner which is acceptable to the administrative authority. **In cases where the individual subsurface sewage disposal system, or components thereof, is being abandoned due to the connection of the facility to a sanitary sewer line, the local plumbing inspector shall ensure the system is abandoned in accordance with the requirements of this section.**

(b) When components or residuals, such as gravel filter material, fill material or soil from an abandoned individual subsurface sewage disposal system are removed from the ground, such components or residuals shall be managed as follows:

1. Off-site disposal of components and residuals from an abandoned system shall be managed in accordance with the State Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules promulgated pursuant thereto; or

2. On-site management of excavated components and residuals from abandoned systems shall be in accordance with the State Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules promulgated pursuant thereto, and in a manner which is acceptable to the administrative authority.

(a)

WATER SUPPLY ELEMENT

Safe Drinking Water Act Rules

Proposed Readoption: N.J.A.C. 7:10

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-1 et seq., 58:12A-1 et seq., 58:11-64 et seq., 58:11-23 et seq., 58:11-9.1 et seq., and 58:10A-1 et seq.

DEPE Docket Number: 27-94-06/38.

Proposal Number: PRN 1994-392.

Submit written comments, identified by the Docket Number given above, by August 4, 1994 to:

Janis E. Hoagland, Esquire
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) proposes to readopt, without change, the Safe Drinking Water Act rules at N.J.A.C. 7:10, promulgated pursuant to the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. (hereinafter the State Act). The chapter is scheduled to expire on September 1, 1994, pursuant to the provisions of Executive Order No. 66(1978). The Department has reviewed the rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Over the past two years, however, the Department has been preparing to comprehensively revise aspects of all sections of the rules. The Department has held several meetings with interested persons and has shared various drafts of selected sections with numerous interested persons as well. The Department had originally anticipated that the revisions would be completed in time to propose and adopt them prior to the September 1, 1994 chapter expiration, but has not been able to meet that goal. Therefore, the Department is proposing to readopt the existing chapter without change, but with an expiration date of December 31, 1995, to allow the adoption of the revisions in an effective and timely manner.

The Federal Safe Drinking Water Act, P.L. 93-523, 42 U.S.C. 300 et seq. (hereinafter the Federal Act), establishes a comprehensive regulatory scheme for providing potable water in the United States. The Federal Act applies to each "public water system," defined as a "system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals." The National Primary Drinking Water Regulations, 40 CFR part 141 (hereinafter the Federal regulations), promulgated pursuant to the Federal Act further define public water systems as either "community water systems" which serve year-round residents or "non-community water systems" that serve non-resident or transient users. The Federal Act allows individual states to assume primary enforcement responsibility provided their statutes and regulations are not less stringent than the Federal regulations.

N.J.A.C. 7:10 meets the Federal standards and qualifies New Jersey to assume primary enforcement responsibility under the Federal Safe Drinking Water Act. Expiration of the rules would seriously jeopardize New Jersey's primacy and the Department's funding grants under the Federal Act.

A brief description of the substantive sections of the rules follows:

Subchapter 1, General provisions, contains provisions regarding authority; scope; applicability and purpose; definitions, and procedures for conducting inspections and sanitary surveys of water systems.

Subchapter 2, General Requirements, contains the rules, at N.J.A.C. 7:10-2.1, 2.2 and 2.3, which require the Department to maintain a current inventory of all public water systems in the State, to keep records, and to maintain a plan for the provision of safe drinking water under emergency circumstances. These requirements are imposed by the Federal Act and the Federal regulations upon a State with primary enforcement responsibility. N.J.A.C. 7:10-2.4 requires water suppliers to notify the Department in the event of planned changes or emergencies which may tend to lessen the quality of delivered water or increase the likelihood of delivery of polluted or impure water. N.J.A.C. 7:10-2.5 provides that the Commissioner of the Department may prohibit, by order and subject to a hearing if such is requested, additional service connections to any public water system if such connection may result in a degradation of service to existing users. This is required to prevent the expansion of water systems that are deficient in prime source, distribution or storage capacities, or pressure and volume.

Subchapter 3, Enforcement and Penalties, establishes the administrative procedures for the institution of civil and administrative enforcement actions, in accordance with the provisions of the State Act, for violations of the State Act and this chapter.

Subchapter 4, Disinfection, continues the longtime State requirement that all public community water systems must be disinfected prior to distribution. In addition, the rules allow for a public water system serving 100 or fewer dwellings to forgo disinfection provided it increases the bacteriological sampling frequency. This provision accommodates very small water systems that have difficulty financing the cost of chlorination facilities and a licensed treatment plant operator but assures the continued quality of the delivered water by more frequent bacteriological testing. N.J.A.C. 7:10-4.2, however, does not permit this option for systems that utilize surface water because of greater likelihood that such water is bacterially contaminated. N.J.A.C. 7:10-4.3 reserves the right of the Department to require the disinfection of any public water system if deemed necessary.

Subchapter 5, State Primary Drinking Water Regulations, constitutes the vital element of the Department's efforts to provide safe drinking water. N.J.A.C. 7:10-5.1 adopts, as New Jersey's primary drinking water regulations, the most current Federal regulations, except for those sections of the Federal regulations where discretionary authority of the State has been permitted. The Federal Act requires that the State's rules be no less stringent than those promulgated by the U.S. Environmental Protection Agency, but the Federal regulations allow the Department discretion in the manner and method of implementing certain provisions of the Federal regulations such as reduced microbiological monitoring. The Department's discretional changes to the Federal requirements are set forth in N.J.A.C. 7:10-5.2 and are summarized below.

N.J.A.C. 7:10-5.2(a)1 establishes a monthly average turbidity of up to five turbidity units for specific water systems that have been evaluated and adjudged "safe" at the higher levels. This is a relaxation of the Federal requirement to maintain a monthly average turbidity of less than one turbidity unit in the absence of any further documentation which would demonstrate safeness of supply at turbidity levels of up to five units on a monthly average. This option is no longer permitted under current Federal regulations and will be removed when the Department proposes revised rules, as previously mentioned.

N.J.A.C. 7:10-5.2(a)2 permits microbiological sampling compliance based on a three-month sampling period for those public systems required to take less than four samples per month as opposed to compliance based on a monthly period. The three-month period represents a more practical way of determining compliance for very small systems. However, small public water systems may not further reduce the microbiological sampling frequency. No water system shall be allowed to substitute chlorine residual monitoring in the place of microbiological sampling, as is allowed in specific instances by the Federal regulations. The minimum microbiological sampling frequency is maintained to ensure the safety of supplies; the Department considers any further reduction in sampling frequency counterproductive.

N.J.A.C. 7:10-5.2(a)3 requires non-community water systems to repeat analyses for nitrate at a minimum frequency of once every three years.

N.J.A.C. 7:10-5.2(a)4 requires community systems utilizing surface sources to repeat analysis for organic pesticides and herbicides at a minimum frequency of once every three years. The Department considers any reduction in sampling frequency below this minimum to be inadequate to determine the quality of delivered water in respect of these parameters.

N.J.A.C. 7:10-5.2(a)6 requires community water systems which purchase all their water in bulk from other community systems to monitor microbiological quality, inorganics, and radionuclides with the same frequency as would be required if the primary source was their own. Those systems that purchase more than 50 percent of their annual water requirements from another community system that utilizes surface water must monitor organics with the same frequency as would be required if the primary source was their own surface water supply. A water purveyor can only be assured that its water quality meets the standards at the consumer's tap, as required by the rules, by conducting appropriate sampling.

N.J.A.C. 7:10-5.3 establishes a maximum contaminant level of 2.0 mg/l for fluoride based upon the annual average of the maximum daily air temperature in New Jersey, and follows the requirements of the Federal regulations. This section also prescribes maximum contaminant levels for coliform bacteria in non-public water systems (which are not covered by the Federal regulations), and extends maximum contaminant levels for turbidity, inorganics, organics, and radionuclides to all water systems upon findings by the Department that such is necessary for the protection of health.

N.J.A.C. 7:10-5.4 describes the specific methods whereby suppliers of water must make reports to the Department as required by the Federal regulations, and the method whereby a public non-community water system must inform consumers of violations of the Safe Drinking Water Act standards.

Subchapter 6, Variances and Exemptions, provides that the Commissioner may grant variances and exemptions from maximum contaminant levels or treatment technique requirements in a manner no less stringent than in the Federal Act, and specifies procedures for the application for and disposition of variances and exemptions.

Subchapter 7, Secondary Drinking Water, contains standards that apply to substances in water which are not directly health related, but which may adversely affect the taste, odor, or appearance or otherwise adversely affect the public welfare. These standards may be required to be met by any water supply when the administrative authority having jurisdiction finds a need for them. Subchapter 7 reflects Federal guidelines on those substances which, though they do not have a significant impact on the health of consumers, may discourage consumers from using a public drinking water supply. N.J.A.C. 7:10-7.3 specifies monitoring requirements for the secondary standards.

Subchapters 8 and 9 are reserved.

Subchapter 10, Physical Connections, contains rules designed to protect a public community water system from backflow from a contaminated or questionable supply over which the water purveyor has little or no control. N.J.A.C. 7:10-10.2 requires that an approved physical connection installation must be provided where dual, physically separate piping from a public community water system and an unapproved water system enter a common building. This is necessary to protect against accidental or hidden interconnections between the two systems. N.J.A.C. 7:10-10.5 sets forth the application procedures to be followed to obtain a physical connection permit. N.J.A.C. 7:10-10.6 sets forth the testing requirements and procedures concerning inspections of reduced pressure zone backflow preventers. N.J.A.C. 7:10-10.7 contains the procedures to be followed to obtain permission to make changes in mailing address, manufacturing process or to remove physical connection installations. These procedures are necessary to assure protection of the public water supply and to enable the Department to keep its records up to date.

Subchapter 11, Standards for Construction of Public Community Water Systems, constitutes the rules by which the Department reviews and approves, with appropriate conditions, plans and specifications for the design and construction of new or substantially modified public community water systems. No such system or part thereof can be constructed unless pursuant to subchapter 11.

Subchapter 12, Standards for the Construction of Public Non-Community and Non-Public Water Systems, contains the rules governing the construction of non-community and non-public water systems, excluding water supply systems serving State and county-owned facilities.

Subchapter 13, Water Supply and Waste Water Collection and Treatment Systems: Examining and Licensing of Operators, contains rules governing the licensing of operators of public water distribution systems, public water treatment systems, public wastewater collection systems, public wastewater treatment systems and industrial wastewater treatment systems. Licensing is needed to meet current and future Federal Safe Drinking Water rules and program requirements.

Subchapter 14, Interim Safe Drinking Water Act Testing Schedule for Hazardous Contaminants by Public Community Water Systems, contains rules that implement the statutory requirements of N.J.S.A. 58:12A-1 (Section 1 of P.L. 1983, c.443) pursuant to which the Commissioner established an initial and periodic testing schedule for the owner or operator of each public community water system to determine the presence of hazardous contaminants identified pursuant to N.J.S.A. 58:12A-13(a) (Section 2(a) of P.L. 1983, c.443). Also included in this subchapter are analytical requirements, reporting requirements, recordkeeping violations and penalty provisions. Since these hazardous contaminants are now regulated by the United States Environmental Protection Agency, the Department will consolidate all the primary standards and monitoring requirements in subchapter 5 and eliminate this subchapter when it proposes the revised Safe Drinking Water rules, as mentioned previously.

Subchapter 15, Fees, establishes fees for the Safe Drinking Water program. The fees are based upon the estimated cost of regulating, monitoring, administering and enforcing the Safe Drinking Water standards.

Subchapter 16, Safe Drinking Water Act Maximum Contaminant Levels for Hazardous Contaminants, establishes maximum contaminant levels to be used as drinking water standards. The maximum contaminant levels (MCL) were established based upon recommendations of the New Jersey Drinking Water Quality Institute. Three basic factors were considered in recommending the MCLs within the statutory framework of the State Act: health effects, technological ability to measure the contaminant levels and the ability of existing treatment technology to meet the MCLs. The Department accepted the recommendations of the Institute and adopted MCLs which are in some cases more stringent than those adopted by the United States Environmental Protection Agency. N.J.A.C. 7:10-16.8 mandates that the owner or operator of a public community water system shall analyze for each contaminant listed at N.J.A.C. 7:10-16.7 for which an MCL has been established. The owner or operator must, upon receipt of an analysis reporting an exceedance of the MCL for one or more of the hazardous contaminants set forth in N.J.A.C. 7:10-16.7, take actions in accordance with N.J.A.C. 7:10-16.8(b) to conduct follow-up monitoring. Additionally, there are requirements for notifying the public of any MCL violation (N.J.A.C. 7:10-16.10), remediation procedures (N.J.A.C. 7:10-16.11) and recordkeeping (N.J.A.C. 7:10-16).

Social Impact

The Safe Drinking Water Act rules provide the regulatory framework necessary to assure the availability of and maintenance of high quality potable water, which the Legislature declared essential in order to safeguard the health and welfare of the citizens of New Jersey. The rules directly affect any water system and indirectly affects all citizens of the State. The rules set drinking water quality standards, cover the testing frequency for assessing drinking water quality against the standards, and provide design standards for water systems. The rules are constantly being assessed by both the general public and the New Jersey Drinking Water Quality Institute created by the 1984 amendments to the State Act. The readoption of the rules will continue to enable the Department to ensure the provision of safe drinking water to consumers and maintain New Jersey's primary enforcement responsibility under the Federal Act.

Economic Impact

Expenses incurred as the result of these rules have become standard business expenses for public water systems. However, any additional cost incurred by public water systems over the years to comply with new regulations must be balanced against the paramount policy of the State's protection of the purity of drinking water.

The expenses incurred as a result of the rules fall into the following three categories: (1) Testing expenses, which every water system must incur in order to routinely test the quality of the drinking water. The annual costs of such testing range from $.10 to $20.00 per household depending upon the size of the water system. (2) Compliance expenses incurred by those water systems whose water quality or facilities are in need of improvement in order to meet the standards. The annual cost of these improvements can vary widely among water systems, from $2.00 to $50.00 per household. The estimated total cost of compliance Statewide is approximately $120 million. (3) Water tax, permit and operational fee expenses to support the administration of the Safe Drinking Water program. The cost is approximately $3.5 million annually, which averages approximately $1.00 per household.

The total economic impact of the Safe Drinking Water program on consumers is minimal, considering the total cost of water provided. The Statewide annual average cost for water service is approximately $210.00 per household and regulatory expenses average less than $5.00 per household.

Environmental Impact

The readoption of the rules will provide the Department with the authority to assure the provision and maintenance of high quality potable water necessary to safeguard the health and welfare of the citizens of New Jersey. The Legislature has declared that the water resources of New Jersey are essential to the economic welfare, recreational and aesthetic enjoyment and general welfare of the people of New Jersey (see N.J.S.A. 58:1A-2). The rules help protect this important natural resource.

Regulatory Flexibility Analysis

The readoption of the rules allows for some regulatory flexibility. However, small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which make up a large number of public water systems, must provide safe drinking water and therefore must meet the same basic standards of water quality and testing as large water systems in order to protect the health of the public. Most of the flexibility for small systems is provided in the construction requirements which are generally reflective of the special needs of small systems concerning financial resources.

The small businesses affected by these rules are of two basic types: small water companies regulated by the Board of Regulatory Commissioners and mobile home parks which provide water through rental agreements. There are approximately 200 water systems which can be classified as small businesses. Compliance costs per household served are discussed in the Economic Impact above. Water systems may have to employ outside services to perform the required tests, and, if facility improvement is needed to meet the standards, professionals such as engineers and construction contractors would likely be needed. The cost of any of these services would vary significantly based upon the type and extent of services required. These rules are designed to minimize impacts on small water systems through lower fees, reduced design criteria, and reduced testing frequency requirements. Although efforts have been made to minimize impacts on small businesses, many of these systems which are created by real estate developers are poorly managed and therefore cause much of the drinking water quality problems experienced under this program.

The Department has made every effort to reduce the requirements of these rules as they apply to small businesses. However, minimum requirements must be met by all water systems to assure the provision of safe drinking water to the citizens of the State of New Jersey.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:10.

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1994-384.

A **public hearing** concerning these proposed amendments will be held on Monday, July 25, 1994, at 2:00 P.M. at the following address:

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

Submit comments by August 4, 1994, to:

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

The agency proposal follows:

Summary

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

For example, the proposed cromolyn sodium inhalation solution could be used as a less expensive substitute for Intal, a branded prescription medicine. Similarly, the proposed levobunolol HCl 0.25% ophthalmic solution, could be substituted for the more costly branded product, Betagan.

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

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

Social Impact

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

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

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

Economic Impact

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

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

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

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

Full text of the proposed amendments follows:

ALDORIL
Methyldopa 250 mg with
Hydrochlorothiazide 15 mg
Tablet
Lederle

ALDORIL
Methyldopa 250 mg with
Hydrochlorothiazide 25 mg
Tablet
Lederle

BACITRACIN
Bacitracin 500 units
Per gm
Ointment
Altana

BACTRIM
Sulfamethoxazole/trimethoprim
400 mg/80 mg
Tablet
Par

BACTRIM
Sulfamethoxazole/trimethoprim
800 mg/160 mg
Tablet
Par

BETAGAN
Levobunolol HCl
0.25%
Ophth solution
Pacific Pharma

BETAGAN
Levobunolol HCl
0.025%
Ophth solution
Sight

BETAGAN
Levobunolol HCl
0.5%
Ophth solution
Sight

CHLOROPTIC S.O.P.
Chloramphenicol 0.5%
Ophth ointment
Pharmafair/Sight

CHLOROPTIC
Chloramphenicol 1%
Ophth solution
Pharmafair/Sight

CORTISPORIN
Polymyxin B sulfate 10,000U,
neomycin sulfate 3.5 mg as base,
hydrocortisone 1%
Per ml
Otic solution
Pharmafair/Sight

CORTISPORIN
Bacitracin zinc 400U,
polymyxin B sulfate 10,000U,
hydrocortisone 1%
neomycin sulfate 0.5%
Per gm
Ophth ointment
Altana

DECADRON OPHTHALMIC
Dexamethasone sodium
phosphate 0.1%
Ophth solution
Pharmafair/Sight

DECADRON OPHTHALMIC
Dexamethasone sodium
phosphate 0.05%
Ophth ointment
Pharmafair/Sight

DESYREL
Trazodone HCl
150 mg
Tablet
TEVA

DYAZIDE
Triamterene/
hydrochlorothiazide
37.5 mg/25 mg
Capsule
Penn Labs

ENTEX
Phenylpropranolamine HCl 20 mg,
phenylephrine HCl 5 mg,
guaifenesin 100 mg
Per 5 ml
Liquid
KV Pharm

FLUORESCITE
Fluorescein 10%
Injection
Akorn/Taylor

FLUORESCEIN
Fluorescein 25%
Injection
Akorn/Taylor

FLURESS
Fluorescein sodium 0.25%,
proparacaine 0.5%
Ophth solution
Akorn/Taylor

GARAMYCIN
Gentamicin
0.3%
Ophth solution
Pharmafair/Sight

GLUCOTROL
Glipizide
5 mg
Tablet
Geneva

GLUCOTROL
Glipizide
10 mg
Tablet
Geneva

GLUCOTROL
Glipizide
5 mg
Tablet
Mylan

GLUCOTROL
Glipizide
10 mg
Tablet
Mylan

HISTUSSIN HC
Hydrocodone bitartrate 2.5 mg,
phenylephrine HCl 5 mg,
chlorpheniramine 2 mg
Syrup
KV Pharm

HYCOTUSS
Hydrocodone bitartrate 5 mg,
guaifenesin 100 mg
Per 5 ml
Liquid
KV Pharm

INFLAMASE MILD
Prednisolone sodium phoisphate
0.125%
Ophth solution
Pharmafair/Sight

INFLAMASE FORTE
Prednisolone sodium phosphate
1%
Ophth solution
Pharmafair/Sight

INTAL
Cromolyn sodium
20 mg/2 ml
Solution
Dey

LEVSIN
L-hyoscyamine sulfate
0.125 mg
Tablet
Anabolic

LOPRESSOR
Metoprolol tartrate
50 mg
Tablet
Geneva

LOPRESSOR
Metoprolol tartrate
100 mg
Tablet
Geneva

MAXITROL
Dexamethasone 0.1%,
neomycin sulfate 0.5%,
polymyxin B sulfate 10,000U
Ophth ointment
Altana

MAXITROL
Dexamethasone 0.1%,
neomycin sulfate 0.5%,
polymyxin B sulfate 10,000U
Ophth suspension
Steris

MS CONTIN
Morphine sulfate SR
30 mg
Tablet
Roxane

MS CONTIN
Morphine sulfate SR
60 mg
Tablet
Roxane

MS CONTIN
Morphine sulfate SR
100 mg
Tablet
Roxane

NAPHCON A
Npahazoline HCl 0.25%,
pheniramine maleate 0.3%
Ophth solution
Akorn/Taylor

NEODECADRON
Neomycin (as sulfate) 3.5 mg,
dexamethasone sodium
phosphate, 1 mg
Per ml
Ophth solution
Pharmafair/Sight

NEOSPORIN
Gramicidin 0.025 mg,
neomycin as sulfate 1.75 mg,
polymyxin B sulfate 10,000U
Per ml
Ophth solution
Pharmafair/Sight

NEO-SYNEPHRINE
Phenylephrine HCl 2.5%
Ophth solution
Akorn/Taylor

NEO-SYNEPHRINE
Phenylephrine HCl 10%
Ophth solution
Akorn/Taylor

NOVAFED A
Pseudoephedrine HCl with
chlorpheniramine maleate
120/8 mg
Capsule
Kenmont Labs

ORUDIS
Ketoprofen
50 mg
Capsule
Geneva

ORUDIS
Ketoprofen
75 mg
Capsule
Geneva

POLYSPORIN
Bacitracin zinc 500U,
polymyxin B sulfate 10,000U
Per gm
Ophth ointment
Pharmafair/Sight

RYNATAN PEDIATRIC
SUSPENSION
Chlorpheniramine 2 mg,
phenylephrine 5 mg,
pyrilamine 12.5 mg (each as the
tannate)
Suspension
DSC Labs

SULFACET-R
Sodium sulfacetamide 10% with
sulfur 5%
Lotion
Stiefel

SULAMYD
Sulfacetamide sodium
10%
Ophth solution
Pharmafair/Sight

TAGAMET
Cimetidine
300 mg per 5 ml
Solution
Barre-National

TAGAMET
Cimetidine
200 mg
Tablet
Danbury

TAGAMET
Cimetidine
300 mg
Tablet
Danbury

TAGAMET
Cimetidine
400 mg
Tablet
Danbury

TAGAMET
Cimetidine
800 mg
Tablet
Danbury

TAGAMET
Cimetidine
200 mg
Tablet
Lemmon

TAGAMET
Cimetidine
300 mg
Tablet
Lemmon

TAGAMET
Cimetidine
400 mg
Tablet
Lemmon

TAGAMET
Cimetidine
800 mg
Tablet
Lemmon

TAGAMET
Cimetidine
200 mg
Tablet
Novopharm

TAGAMET
Cimetidine
300 mg
Tablet
Novopharm

TAGAMET
Cimetidine
400 mg
Tablet
Novopharm

TAGAMET
Cimetidine
800 mg
Tablet
Novopharm

TAGAMET
Cimetidine
300 mg
Tablet
Penn Labs

TAGAMET
Cimetidine
400 mg
Tablet
Penn Labs

TAGAMET
Cimetidine
800 mg
Tablet
Penn Labs

THEO-DUR
Theophylline
100 mg
Tablet
Warrick

THEO-DUR
Theophylline
200 mg
Tablet
Warrick

THEO-DUR
Theophylline
300 mg
Tablet
Warrick

THEO-DUR
Theophylline
450 mg
Tablet
Warrick

TOBREX
Tobramycin 0.3%
Ophth solution
Sight

VASOCON
Naphazoline HCl 0.1%
Ophth solution
Pharmafair/Sight

XANAX
Alprazolam
0.25 mg
Tablet
Danbury

XANAX
Alprazolam
0.5 mg
Tablet
Danbury

XANAX
Alprazolam
0.1 mg
Tablet
Danbury

XANAX
Alprazolam
0.25 mg
Tablet
Geneva

XANAX
Alprazolam
0.5 mg
Tablet
Geneva

XANAX
Alprazolam
0.1 mg
Tablet
Geneva

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Joint Insurance Funds for Local Governmental Units

Proposed Amendments: N.J.A.C. 11:15-2

Authorized By: Edward Gross, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 40A:10-36 et seq.
Proposal Number: PRN 1994-389.

Submit comments by August 4, 1994 to:
Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 40A:10-36 et seq. authorizes two or more local units of government (as that term is defined in N.J.S.A. 40A:10-36 and 36.1) to form a joint insurance fund for the purpose of insuring against claims for liability, property damage and workers compensation. The goal of this statute is to reduce insurance costs to local units of government by permitting them to pool risks. Pursuant to N.J.S.A. 40A:10-36 et seq., the Department of Insurance ("Department") adopted N.J.A.C. 11:15-2 (effective December 3, 1984, as amended), which provides standards governing the establishment and operation of joint insurance funds.

Amendments to N.J.S.A. 40A:10-36 et seq. were enacted on November 30, 1990 to expand the risks which a joint insurance fund may insure to include contributory or non-contributory group health insurance or group term life insurance. In order to implement these amendments, the Department adopted N.J.A.C. 11:15-3 (effective July 19, 1993) to set forth the requirements for the establishment, operation, oversight, modification, and dissolution of a joint insurance fund formed for the purpose of providing contributory or non-contributory group health insurance or group term life insurance. The general requirements set forth in those rules reflect the requirements set forth in N.J.A.C. 11:15-2. The rules, however, set forth additional requirements governing the provision of group health and term life insurance and also differ from N.J.A.C. 11:15-2 by establishing additional filing requirements, clarifying filing requirements set forth in N.J.A.C. 11:15-2 and otherwise providing a fund more flexibility regarding certain aspects of its formation and operation.

On July 17, 1992, amendments to N.J.S.A. 40A:10-36 et seq. were enacted which permit certain boards of education to join with constituent municipalities for the purpose of insuring property and liability coverages and workers' compensation. See P.L. 1992, c.51. On September 8, 1993, P.L. 1993, c.269 (N.J.S.A. 40A:10-38.1 et seq.) was enacted which amended and supplemented N.J.S.A. 40A:10-36 et seq. This act generally: (1) provides that a joint insurance fund, in addition to the purposes described above, may be formed for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverages approved by the Commissioner of Insurance ("Commissioner"); (2) permits a fund formed to provide environmental impairment liability to issue bonds or borrow funds and incur other indebtedness, including letters of credit, for the purpose of insuring against environmental impairment liability; (3) provides for proportional voting based upon the current year's assessment for members of a fund formed to insure against environmental impairment liability; and (4) provides for the establishment of a producer arrangement plan by which licensed producers represent member local units in their dealings with the joint insurance fund, and requires that a description of such plan be filed with the Commissioner and the Commissioner of the Department of Community Affairs.

In order to implement these various statutory changes and to ensure consistency with the other requirements as set forth in N.J.A.C. 11:15-3 governing joint insurance funds providing group health and term life benefits, where appropriate, the Department proposes to amend N.J.A.C. 11:15-2. While the number of amendments to these rules is substantial, the Department notes that many of the amendments are not substantive but rather merely reflect newly enacted statutory provisions or clarify existing requirements set forth in the rules.

Changes to the existing rules to be effectuated through these proposed amendments include the following:

1. N.J.A.C. 11:15-2.1 is amended to provide for the authority of two or more local units to form a joint insurance fund for the sole purpose of insuring against environmental impairment liability pursuant to N.J.S.A. 40A:10-36 et seq. as amended by P.L. 1993, c.269;
2. N.J.A.C. 11:15-2.2 is amended to provide definitions of "chairman," "environmental impairment liability fund," "producer," and "secretary," and to revise existing definitions of "excess insurance" (to include coverage provided by other entities approved to provide such coverage in this State pursuant to law), "net current surplus" (to clarify this definition), "joint insurance fund" (to reflect authority of local units to form a joint insurance fund for the sole purpose of providing environmental impairment liability), "lead agency," "servicing organization," "unpaid claims" and "local unit of government" (to reflect authority of certain boards of education to join with constituent municipalities in accordance with N.J.S.A. 40A:10-36.1);
3. N.J.A.C. 11:15-2.3 is amended to provide a new subsection (c) to reflect N.J.S.A. 40A:10-36.1 and 52 to 57, which permit the board of education of certain school districts and constituent municipalities to join together to insure specified coverages, except contributory or non-contributory group health and term life insurance;
4. N.J.A.C. 11:15-2.4(e) is amended to establish additional requirements with respect to the custodian of funds;
5. N.J.A.C. 11:15-2.4(f) is amended to provide additional requirements with respect to the establishment of a joint insurance fund's budget;
6. N.J.A.C. 11:15-2.4(f)6 revises existing requirements to provide that a copy of any amendment to a fund budget must be filed with the Commissioner and the Commissioner of the Department of Community Affairs only when the budget amendment either singly or cumulatively with other adopted amendments changes the total budget five percent from the original budget or the latest filed amended budget;
7. N.J.A.C. 11:15-2.4(g) is amended to provide record retention requirements for claims information;
8. N.J.A.C. 11:15-2.4(j) is amended to clarify that officers, employees and agents of the fund must, on the final day of their office or employ-

ment, return or deliver to the fund those items which are the property of the fund;

9. N.J.A.C. 11:15-2.5 is amended to provide a specific filing format for the bylaws and plan of risk management and any amendments thereto;

10. N.J.A.C. 11:15-2.5, 2.6 and 2.7 are revised to clarify that all of the information set forth in N.J.A.C. 11:15-2.6 constitutes the bylaws and plan of risk management for purposes of approving those submissions pursuant to N.J.S.A. 40A:10-41, and that the "30 working day deemer period" for approving the bylaws and plan of risk management does not begin until all of the required information is received by the Department. The Department has encountered situations where a prospective fund makes a filing which fails to contain all of the information set forth in the rules, but prospective members mistakenly believe that the fund will become operational 30 working days after that submission. Under this mistaken belief, the prospective members cancel or nonrenew existing insurance with the anticipation that coverage will be provided through the fund beginning on the "deemer date." However, the Department may not approve the fund by that date since all required information was not provided. This results in disruptions to both the prospective members and the Department. The Department believes that through these amendments, prospective funds and fund members will more likely submit all requisite information and thus reduce the likelihood of such occurrences in the future;

11. N.J.A.C. 11:15-2.6 sets forth additional supporting documentation to be included with a filing of bylaws and plan of risk management, including information to be submitted by environmental impairment liability funds, and revises and clarifies existing filing requirements;

12. N.J.A.C. 11:15-2.6, 2.10 and 2.21 are amended to recodify and revise existing requirements set forth in those provisions to ensure clarity, and as a matter of form;

13. N.J.A.C. 11:15-2.6(b)10 is revised to provide for the establishment of claims or loss retention trust accounts for environmental impairment liability funds. This rule is further revised as it applies to all funds to recognize and codify the current practice of funds establishing loss fund contingency accounts to replenish deficiencies in claims or loss retention trust accounts, and general contingency accounts to replenish deficiencies in the administrative account. Funds are not required to establish these accounts, but may do so if the fund deems it appropriate. These contingency accounts, if established, are established for a specific fund year to cover deficiencies in that fund year. Moreover, a loss contingency account is considered a claim or loss retention trust account where the total amount of monies assessed and allocated to the various claims or loss retention trust together with the loss contingency account are to be utilized to satisfy the estimate of the fund's actuary of the amounts necessary to pay expected losses for that fund year;

14. N.J.A.C. 11:15-2.6(b)13 requires that a filing of the bylaws and plan of risk management be accompanied by a non-refundable filing fee in the amount of $1,500;

15. N.J.A.C. 11:15-2.6(c)10 provides for the establishment of a producer arrangement plan consistent with N.J.S.A. 40A:10-38.13 and provides filing requirements with respect to the description of any such plan;

16. N.J.A.C. 11:15-2.6(f) is amended to provide specific procedures for the examination of a fund;

17. N.J.A.C. 11:15-2.9(d) requires a fund to set forth in writing the reasons for disapproving an application from a non-member local unit and send the reasons for disapproval to the non-member;

18. N.J.A.C. 11:15-2.8(a) is amended to provide as an additional ground for the Commissioner to suspend or terminate the authority of a fund, the failure of the fund to pay any claim within 30 days after judgment is entered or within 30 days after its obligation to pay becomes final;

19. N.J.A.C. 11:15-2.12(a)4 is amended to provide that the written plan of dissolution must be filed with the Commissioner and the Commissioner of the Department of Community Affairs not later than 90 days prior to the effective date of the plan;

20. N.J.A.C. 11:15-2.13(b) requires an environmental impairment liability fund which issues bonds to establish a separate trust fund account for contingencies and establishes specified requirements regarding the utilization of such contingency account;

21. N.J.A.C. 11:15-2.15 is amended to provide specific requirements with respect to funding of assessment amounts by the proceeds of bonds issued by an environmental impairment liability fund;

22. N.J.A.C. 11:15-2.20 is amended to provide additional flexibility for joint insurance funds with respect to investments, pursuant to N.J.S.A. 40A:10-38;

23. N.J.A.C. 11:15-2.21 is amended to revise the time frames before which a fund may seek approval to make a refund or interyear fund transfer, clarify the general requirements regarding refunds and interyear fund transfers, and establish the time frames and other requirements for such action by an environmental impairment liability fund;

24. N.J.A.C. 11:15-2.23 is amended to clarify the requirements regarding excess insurance or reinsurance.

N.J.A.C. 11:15-2.23(a) is amended to provide that the term of any approval of the fund's determination that excess insurance or reinsurance is not commercially available or reasonably priced generally shall be for a one-year period. This clarifies that the purpose of this provision is to address a temporary condition in the market, rather than to provide a perpetual waiver from the requirement that a fund secure excess insurance or reinsurance. The rule as amended provides, however, that a fund may request that the Commissioner extend the term of the approval.

Subsection (a) is also amended to clarify that required excess insurance or reinsurance may be provided by an insurer or other entity approved to provide such coverage pursuant to law. This provision essentially confirms and codifies the current practice where a fund may obtain required excess insurance or reinsurance from another fund formed for the purpose of providing such coverage.

Finally, N.J.A.C. 11:15-2.23 is amended to provide a new subsection (f). This subsection provides that all funds approved prior to the effective date of these proposed amendments shall secure specific and aggregate excess reinsurance as required by that section to be effective no later than January 1, 1995. Over the past several years, the Department has refined the internal review process for approval of a prospective fund's bylaws and plan of risk management pursuant to N.J.A.C. 11:15-2.5. All funds approved under the refined, formal process have been required to secure specific and aggregate excess insurance and/or reinsurance pursuant to N.J.A.C. 11:15-2.23. During the mid-to-late 1980's, however, several funds were approved for operation which did not secure the required excess or reinsurance coverage. The Department had recognized that the market was constricted during much of that period and thus the required coverage may not have been available or reasonably priced. The Department believes, however, that the market has expanded such that the required coverage should now be available and reasonably priced. The Department's prior actions were intended to address temporary market conditions, rather than to provide a perpetual waiver from the requirements set forth in N.J.A.C. 11:15-2.23. The amendments will ensure that all funds are subject to the same requirements, regardless of date of approval, and thereby ensure consistency and uniformity in the application of these rules to all funds;

25. N.J.A.C. 11:15-2.24 clarifies information to be included in financial reports to be filed, revises the due date for such reports, and requires that a fund file additional quarterly reports for the initial two fiscal years of its operation and semi-annual reports thereafter;

26. N.J.A.C. 11:15-2.26(c) and (d) are amended to permit the fund commissioners to determine whether a servicing organization which is terminated shall be required to handle all claims to their conclusion; and require the fund commissioners to notify the Department and Department of Community Affairs of any determination to terminate or nonrenew a service agreement and describe the manner by which the services will continue to be provided or why the service is no longer necessary;

27. N.J.A.C. 11:15-2.26(e) provides that any employee, officer or director of an administrator, servicing organization or producer must disclose to the fund commissioners any financial interest that person has in any other administrator, servicing organization or producer;

28. N.J.A.C. 11:15-2.27 clarifies that the officials or employees of a participating local unit and family members of such officials or employees shall comply with the "Local Government Ethics Law"; and

29. The rules are amended to provide other clarifying changes to ensure consistency with N.J.A.C. 11:15-3, where appropriate, and to make other clarifying changes as a matter of form.

The Department believes that these rules as amended will continue to provide a regulatory framework by which the Department may ensure that joint insurance funds providing property and liability coverages and workers' compensation, or environmental impairment liability coverage are operating in compliance with N.J.S.A. 40A:10-36 et seq. In addition, the proposed amendments will enhance the Department's ability to assess the financial condition and liability of these funds, thus lessening the likelihood of fund insolvencies. This, in turn, will protect the interest of claimants and taxpayers of this State.

Social Impact

The Department believes these proposed amendments will better enable the Department to monitor the operations and financial conditions of joint insurance funds which provide property and liability coverage and workers' compensation, or environmental impairment liability coverage to ensure their solvency, and thereby protect the interest of claimants and taxpayers. These joint insurance funds will continue to be required to file specified information with the Department prior to operation and operate in compliance with the managerial guidelines set forth in these rules as amended. As noted in the Summary above, however, many of these amendments are not substantive but merely reflect existing statutory language or other requirements imposed on joint insurance funds providing group health and term life insurance. The Department believes that through the regulatory framework as revised by these proposed amendments, joint insurance funds will continue to be afforded uniformity, consistency, and the flexibility to operate in a cost-effective manner.

Economic Impact

As stated in the Social Impact statement above, the rules as proposed to be amended will better enable the Department to monitor the financial condition and operations of joint insurance funds formed to provide property and liability and workers compensation coverage, as well as monitor funds formed to provide environmental impairment liability coverage. This, in turn, will protect the interest of claimants and taxpayers. Further, by effectively maintaining the current mechanism for the creation and operation of joint insurance funds while clarifying and providing additional flexibility, local units of government may continue to stabilize insurance costs and experience savings similar to those achieved in the past.

Joint insurance funds which seek to provide or provide property and liability and workers compensation coverage or environmental impairment liability coverage will be required to file the required information, obtain the required actuarial certifications, bear the cost of examinations, and bear any costs associated with operating the joint insurance fund pursuant to the guidelines set forth in these rules as amended. Since the general operational guidelines are substantially similar to those currently in effect, the Department believes that any additional cost should be minimal.

The Department will be required to review any additional information submitted in accordance with these rules as amended and will be required to review the operations of joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq. and these rules. The Department may experience additional costs to the extent that additional joint insurance funds are formed to provide environmental impairment liability insurance or property and liability and workers compensation coverage. The Department notes that filing fees imposed for the review of a prospective fund's bylaws and plans of risk management will offset some of these costs.

Regulatory Flexibility Analysis

These proposed amendments do not directly impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendments directly apply only to public entities composed of member local units of government. These public entities do not meet the definition of "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Department notes that the proposed amendments will indirectly impose reporting, recordkeeping or other compliance requirements on other entities that have contracted with the joint insurance fund to provide specified services. For example, the rules require that the custodian of funds, servicing organization, and fund administrator report to the fund commissioners and the Commissioner on various activities related to the services it has been retained to perform (see for example, N.J.A.C. 11:15-2.4, 2.17, 2.19 and 2.21). The Department believes that virtually all of these entities would meet the definition of "small business" as defined in N.J.S.A. 52:14B-16 et seq. Accordingly, these small businesses would be required to bear any costs involved in complying with the requirements set forth in these rules. However, for the reasons that follow, the Department does not believe that these requirements will impose any undue burden on these entities or that different reporting, recordkeeping and compliance requirements are feasible. Initially, the Department notes that virtually all of the duties imposed on these "small businesses" are imposed by the existing rules and that additional requirements are generally not imposed through these proposed amendments. Moreover, these entities have contracted with a joint insurance fund to provide specified services. The information required to be reported is intended to ensure that the fund, which is comprised of public entities, is fully apprised of the status of the various services being provided. Accordingly, the information required to be reported should be readily available, and indeed would undoubtedly be required by the fund itself, in the absence of specific regulatory requirements by the Department. Finally, any costs to the entity would be reflected in the compensation provisions voluntarily entered into between the entity and the fund.

Therefore, for the reasons discussed above, and to ensure consistency and uniformity in the data reported to joint insurance funds and the Commissioner, no differentiation in compliance requirements is provided based on business size.

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

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS

11:15-2.1 [Scope] **Purpose and scope**

(a) [P.L. 1983, c.372 entitled "An Act concerning joint insurance funds for local units of government, and supplementing Chapter 10 of Title 40A of the New Jersey Statutes,"] **N.J.S.A. 40A:10-36 et seq.** authorizes two or more local units of government to join together to establish a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation**, and for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverages approved by the Commissioner**. This subchapter provides rules for the establishment, operation, oversight, modification and dissolution of such funds.

(b) No local unit of government shall join together with any local unit or units to act as a joint insurance fund except as authorized by the Commissioner in accordance with the provisions of [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.** and this subchapter.

(c) Except as otherwise specifically provided, all of the requirements of this subchapter shall apply to any joint insurance fund formed to insure against liability, property damage, or workers' compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor.

11:15-2.2 Definitions

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

...

"Administrator" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of a fund [participant] **member** or an independent contractor.

...

"Chairman" means the chairman of the fund commission, elected by the commission pursuant to N.J.S.A. 40A:10-37.

...

"Environmental impairment liability fund" means a joint insurance fund formed for the sole purpose of insuring against bodily injury and property damage claims arising from environmental liability and legal representation therefor to the extent and for coverages set forth in this subchapter.

"Excess insurance" means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, **or from any other entity authorized to provide such coverage in this State pursuant to law,** covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, or per accident, or annual aggregate basis.

"Executive committee" means the committee of insurance fund commissioners, as provided in [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.**

...

"Indemnity and trust agreement" means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

[1. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

2. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in i through iv below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each such risk or liability:

i. Workers' compensation and employers' liability;

ii. Liability, other than motor vehicle;

iii. Property damage, including automobile physical damage;

iv. Automobile liability.]

...

"Joint insurance fund" or "Fund" means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against **liability,** property damage, [general liability, vehicular] and [equipment liability,] workers' compensation [liability and employers' liability], **or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor, to the extent and for coverages** approved by the [Department] **Commissioner** pursuant to the authority of [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.** and this subchapter.

"Joint insurance fund commissioners" means local unit representatives chosen to represent those units in the fund, as provided in [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.**

"Lead agency" means a member of the joint insurance fund responsible for [performing or providing administrative or other services] **the custody and maintenance of the assets of the fund and such other duties** as may be designated by the joint insurance fund commissioners. **The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.**

"Local unit of government" or "local unit" means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A:64A-25.40 and 40A:10-51) [or], any contracting unit as defined in N.J.S.A. 40A:11-2 **or boards of education of certain school districts, to the extent permitted pursuant to N.J.S.A. 40A:10-52 through 57.**

"Net current surplus" or "surplus" means that amount of monies in a trust account **established pursuant to N.J.A.C. 11:15-2.6(b)10,** that is in excess of all costs, earned investment income, [returned surplus] **refunds made pursuant to N.J.A.C. 11:15-2.21,** incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Producer" means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

...

"Secretary" means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

"Servicing organization" means an individual, partnership, **association** or corporation [which provides services to the fund not provided by the administrator, including, but not limited to:

1. Claims adjustment;
2. Safety engineering;
3. Compilation of statistics and the preparation of assessment, loss and expense reports;
4. Preparation of reports required pursuant to P.L. 1983, c.372 or this subchapter;
5. Development of members' assessments and fees; or
6. Claim administration], **other than the administrator, that has contracted with the fund to provide, on the fund's behalf, any function as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the fund's underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter, and such other duties as designated by the fund.**

"Unpaid claims" **or "unpaid losses"** means case reserves for **known claims and reserves for** incurred but not reported claims attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Workers' compensation law" means the provisions of N.J.S.A. 34:15-7 et seq.

11:15-2.3 Agreement to join joint insurance fund; duration

(a) Pursuant to [Section 1 of P.L. 1983, c.372] **N.J.S.A. 40A:10-36,** the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined [herein] **in this subchapter.** The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the fund's bylaws as approved and adopted pursuant to [section 4 of the Act] **N.J.S.A. 40A:10-39.** The agreement shall specify the extent of the local unit's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). The agreement shall also specify that the fund members have never defaulted on claims if self-insured and have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to [join] **rejoin** the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance of resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement.

(c) For purposes of N.J.S.A. 40A:10-52, the governing body of any municipality and the board of education of the local school district operating within that municipality may, subject to N.J.S.A. 40A:10-52, by ordinance or resolution, as the case may be, agree to join together for purposes of insuring coverages as set forth in that statute, provided that the district is not part of a limited purpose regional school district, an all purpose regional school district, or a consolidated school district. All purpose regional school districts, consolidated school districts, limited purpose regional school districts, the board of education of local school districts which are part of a limited purpose regional school district as described above, and county vocational school districts and the board of education of local school districts within a county vocational school district, may otherwise agree to join together with one or more constituent municipalities for the purposes of insuring coverages as described in and in accordance with N.J.S.A. 40A:10-53 to 57, as applicable. The board of education of a local or regional school

district, consolidated school district or county vocational school district may not otherwise join with any municipality for the purpose of insuring coverages of the kinds set forth in N.J.S.A. 40A:10-52 to 57, except pursuant to this subsection. Notwithstanding any other provision to the contrary, no board of education, except the board of education of county vocational school districts, may join together with a municipality or other local unit for the purpose of providing contributory or non-contributory group health insurance or term life insurance, or both, to employees or their dependents, or both, as otherwise permitted pursuant to N.J.S.A. 40A:10-36 et seq.

11:15-2.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.), the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.), regulations (**including, but not limited to,** N.J.A.C. [5:30-14 et seq.] **5:34**), [and] the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), **40A:10-38,** 17:12B-241 and [17:9-4.1] **17:16I-1 et seq., and in the case of a joint insurance fund providing environmental impairment liability coverage, the "Local Bond Law" (N.J.S.A. 40A:2-1 et seq.), but shall not be subject to the debt limitation set forth in N.J.S.A. 40A:2-6**.

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

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim or administrative accounts periodically as authorized by law. **The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2.** The custodian shall periodically report to the fund commissioners on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare in November of each year the proposed budget for the fund's subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure of its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year, and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a [cash] basis **that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year**.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a **public** hearing has been held **in accordance with N.J.S.A. 40A:4-1 et seq.** giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than December 31 of each year, the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for the **subsequent** fiscal year.

3. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

4. A copy of each adopted budget [and any amendment thereto] shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) [Except as provided at N.J.A.C. 11:15-2.22(e), all] **All** books, records, files [and others], documents **and equipment** of the joint insurance fund **are the property of the fund, except as provided at N.J.A.C. 11:15-2.22(e),** and shall be retained by the secretary of the fund or fund administrator [as designated by] **at the discretion of** the fund commissioners or executive committee.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

i. For financial information, seven years from the date of their creation; for claims information, seven years after all claims for that year have been fully paid; or

ii. Until the completion and filing of the next financial condition examination of the fund by the Commissioner.

(h) Each fund shall maintain **written** minutes of its meetings and shall make such minutes available to the Commissioner upon request.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the [executive director's] **administrator's or lead agency's** report and a summation of fund activity, including comments on previously reported claims and newly reported claims**, and other information required by the fund commissioners**. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund.

(j) All officers, employees and agents**, including the administrator and servicing organization** of the joint insurance fund, on the final day of their [office] **contract** or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to [such office] **their contract** or employment **which are the property of the fund.**

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund. [The lead agency may agree to perform such duties and have such responsibilities as the joint insurance fund commissioners may determine and assign including but not limited to those of the executive director or custodian of funds.]

1.-2. (No change.)

11:15-2.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the [Commissioners of Insurance] **Commissioner** and **the Commissioner of** the Department of Community Affairs, as provided in [P.L. 1983, c.372] **N.J.S.A. 40A:10-41,** its bylaws and plan of risk management and any amendments thereto. [The] **In addition, the** initial filing shall **contain and** be accompanied by the information and documentation specified at N.J.A.C. 11:15-2.6[(c)], **and such other information as the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-2.6. The loose-leaf sheets used shall be eight and one-half inches wide by 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth in this subsection to the Department and one copy to the Department of Community Affairs**. All information shall be submitted completely and accurately.

[1. All filings and accompanying documents shall be submitted to the Department in duplicate.]

(b) **All of the information and documentation set forth in N.J.A.C. 11:15-2.6 shall constitute the fund's bylaws and plan of risk management for purposes of N.J.S.A. 40A:10-41.** No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management**, including all of the information required pursuant to N.J.A.C. 11:15-2.6,** have been approved by the Commissioner.

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

(e) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-2.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions, as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department and the Department of Community Affairs at:

1. New Jersey Department of Insurance
Division of Financial Examinations
Attn: Municipal JIF Admissions
20 West State Street
CN-325
Trenton, NJ 08625-0325; and

2. New Jersey Department of Community Affairs
Division of Local Government Services
101 South Broad Street
CN-803
Trenton, NJ 08625-0803

11:15-2.6 Bylaws and plan of risk management; contents

(a) The commissioners of a joint insurance fund shall prepare and, after the approval, by resolution, of the governing body of each participating local governmental unit, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund [commission] **commissioners** and alternates and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency [to be responsible for the custody and maintenance of the assets of the fund and such other duties as may be assigned by the commissioners of the fund];

2. (No change.)

3. Procedures for the **establishment,** maintenance and administration of appropriate reserves in accordance with sound actuarial principles;

4. Procedures for the purchase of [commercial] direct insurance or reinsurance if any;

5.-7. (No change.)

8. Procedures **in compliance with N.J.A.C. 11:15-2.10** for the withdrawal **or expulsion** from the fund by a local unit, **including any requirement that a terminated or withdrawing member provide security in a form and amount acceptable to the Commissioner and fund commissioners as applicable, as a guarantee for the continued payment of the member's obligations pursuant to N.J.A.C. 11:15-2.10(c);**

[9. Procedures for the expulsion of a member local unit;]

[10.]**9.** Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations; **and**

10. Procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments.

(b) In addition, the bylaws shall:

1.-3. (No change.)

4. Be accompanied by a **pro forma** financial statement, **with underlying assumptions and methodology,** on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

5. Where self-insured, provide a plan for specific and aggregate excess insurance or reinsurance and[/or] for retention in accordance with sound actuarial principles and the plan of risk management;

6. Be accompanied by proof of competent personnel and ample facilities within the fund organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or present a contract with a [service company] **servicing organization** for the provision of such services;

7.-8. (No change.)

9. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-2.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and **Commissioner of the** Department of Community Affairs;

10. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-2.2, and in a form satisfactory to the Commissioner.

i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

ii. Where a fund, other than an environmental impairment liability fund, shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in (b)10ii(1) through (4) below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability, and may provide for the establishment of contingency accounts, each by fund year, as follows:

(1) Workers' compensation and employers' liability;

(2) Liability, other than motor vehicle;

(3) Property damage, including automobile physical damage;

(4) Automobile liability;

(5) General contingencies, if deemed appropriate by the fund, to replenish the administrative account established pursuant to N.J.A.C. 11:15-2.14 for that specific fund year; and

(6) Loss fund contingencies, if deemed appropriate by the fund, to replenish a trust account established pursuant to (b)10ii(1) through (4) above for that specific fund year; and where the total amount of monies assessed and allocated to the accounts established pursuant to (b)10ii(1) through (4) and this subparagraph (b)10ii(6) are utilized to satisfy the amounts estimated by the fund's actuary to be necessary to pay claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability set forth in (b)10ii(1) through (4) above for that fund year.

iii. Where an environmental impairment liability fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in (b)10iii(1) through (3) below, or where the fund has issued bonds pursuant to N.J.S.A. 40A:10-38.1 and this subchapter, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability, and for the service of the debt on any bonds issued, and may provide for the establishment of contigency accounts, each by fund year, as follows:

(1) Legal or defense services;

(2) Environmental management or risk management services;

(3) Any bodily injury or property damage liability or other coverages, separated by specific coverage, for which individual members join the fund for coverage, including, but not limited to, aboveground/underground storage tank and/or off-site storage/spills, sudden and accidental spills, and third-party liability;

(4) Debt service for any bonds issued pursuant to N.J.S.A. 40A:10-38.1;

(5) General contingencies, if deemed appropriate by the fund, to replenish the administrative account for that specific fund year as set forth in (b)10ii(5) above; and

(6) Loss fund contingencies, if deemed appropriate by the fund, to replenish a trust account established pursuant to (b)10iii(1)

through (3) above for that specific fund year; and where the total amount of monies assessed or raised through the issuance of any bonds and allocated to the accounts established pursuant to (b)10iii(1) through (3) and this subparagraph (b)10iii(6) are utilized to satisfy the amounts estimated by the fund's actuary to be necessary to pay claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability set forth in (b)10iii(1) through (3) above for that fund year.

iv. In addition to the accounts set forth in (b)10iii above, an environmental impairment liability fund that issues bonds shall establish a separate contingency account in accordance with N.J.A.C. 11:15-2.13(b).

v. A fund shall not be otherwise required to establish separate trust accounts as required by (b)10ii or iii above for each fund year, provided the fund provides a plan in its bylaws which provides for the recording and accounting of all transactions by fund year.

vi. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner and **the Commissioner of the** Department of Community Affairs;

11. Provide [a plan satisfactory to the Department] **procedures** for the establishment [and], maintenance **and administration** of reserves for unearned assessments, loss reserves and loss expense reserves and for the determination and distribution of assessment and/or investment refunds [which shall include a statement from an actuary that the fund's proposed plan is actuarially sound], **in accordance with sound actuarial principles**;

12. With respect to the funds providing for self-insurance of workers' compensation liabilities, the bylaws of each fund shall:

i. (No change.)

ii. [The bylaws of the fund shall mandate] **Mandate** a minimum contribution of at least $250,000 for the fund's first year of operation and thereafter the minimum contribution shall be at least $500,000 for each subsequent year of operation unless approved by the Commissioner[.]**;**

iii. Unless otherwise approved by the Commissioner, provide for assessments based upon the [mandatory merit rating plan] **Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual** on file with the Commissioner;

13. Be accompanied by copies of duly executed resolutions by two or more local units evidencing their intent to form the fund; and

14. Be accompanied by a non-refundable filing fee in the amount of $1,500.

(c) The bylaws shall be accompanied by the following information and documentation **and any amendments thereto**:

1. (No change.)

2. Copies of the fund's prospective and executed agreements or contracts **and any renewal or new agreements or contracts** with any administrator, servicing organization, [attorney, auditor, treasurer or actuary] **or custodian of the fund's assets**. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization or administrator;

3. A fidelity bond for [the administrator] **all persons handling fund assets** in a form and amount acceptable to the Commissioner;

4. A surety bond for the **administrator, claims administrator or any other** servicing organization **deemed necessary by the Commissioner** in a form and amount acceptable to the Commissioner; **and a surety bond for any other servicing organization as deemed appropriate by the fund commissioners in a form and amount acceptable to the fund commissioners**;

5. Errors and omissions coverage for [both] the servicing organization**(s)** [and], administrator **and producer, if employed by the fund, who negotiates excess insurance or reinsurance on behalf of the fund**;

6. [Contain a] **A** designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

7. A list of commissioners, officers and executive committee members, updated annually;

8. [Biographical data] **Data forms incorporating the appropriate and necessary professional qualifications** for [the] senior officers and directors of the administrator and servicing organizations providing services to the fund **updated and submitted to the Commissioner annually**; [and]

9. Copies of each [commercial] insurance **or reinsurance** policy purchased by the fund;

10. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the fund. The description shall include, but not be limited to, the producer's obligations, responsibilities and compensation; and the duration of such contracts. Copies of all producer contracts shall be appended to the description.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable; and

11. A cash management plan.

(d) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided at N.J.A.C. 11:15-2.5(a), file its plan of risk management and any amendment thereto with the Department as provided in [P.L. 1983, c.372] **N.J.S.A. 40A:10-41 containing the information** as specified in (e) below.

(e) The commissioners shall prepare, or cause to be prepared a plan of risk management for the joint insurance fund. The plan **description** shall include, but not be limited to:

1. The perils or liability to be insured against;

2. [Limits] **The limits** of coverage, whether self-insurance, direct insurance purchased from a commercial carrier, or reinsurance;

3. The amount of risk to be retained by the fund;

4. The amount of [reserves] **unpaid claims** to be established;

5.-8. (No change.)

9. Procedures for the closure of fund years including the maintenance of all relevant accounting records;

10. The assumptions and methodology used for the calculation of appropriate reserves required to be established, maintained and administered in accordance with sound actuarial principles pursuant to (a)3 above;

11. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-2.22; and

12. For environmental impairment liability funds, a full description of all coverages to be provided, including, but not limited to, defense services, environmental management or risk management services, above-ground/underground storage tank and/or off-site storage/spills involving sudden and accidental claims, and third-party liability claims.

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he deems it expedient, **but at a minimum not less frequently than once every five years,** make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of any fund. For the purpose of the examination, the Commissioner may **retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, or may** request the fund commissioners or the executive committee, if any, to authorize and employ such person or persons to conduct the same or to assist therein as he deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the fund examined to the appropriate entity or person upon presentation of a detailed account.

1. For purposes of completing an examination of any fund pursuant to N.J.S.A. 40A:10-47 and this subchapter, the Commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the fund.

2. Every fund or person from whom information is sought, including its officers, directors and agents, shall provide the Commissioner or other person appointed as an examiner pursuant to this subsection, timely, convenient, and free access at all reasonable hours at

its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the fund being examined.

3. The administrator and servicing organization(s), and their officers, directors, employees and agents, or other person, shall facilitate the examination and aid in the examination so far as it is in their power to do so. The Commissioner may, in accordance with the procedures set forth in N.J.A.C. 11:15-2.8, suspend or terminate the authority of any fund, if the fund, by its administrator, servicing organizations, or officers, directors, employees, or agents thereof, refuses to submit to an examination or to comply with any reasonable request of the examiners.

11:15-2.7 Disapproval of bylaws and plan of risk management

If the Commissioner determines that the bylaws or plan of risk management of the fund or any subsequent amendments **or changes** thereto **do not contain all of the information set forth in N.J.A.C. 11:15-2.6, is not submitted in the proper format set forth in N.J.A.C. 11:15-2.5, or otherwise** do not meet the requirements of [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq. or this subchapter, the Commissioner shall disapprove the bylaws or plan of risk management and** [issue a written order containing] **notify the fund in writing, which notice shall contain** the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved by the Commissioner within 30 working days of receipt of the bylaws and plan of risk management **or any amendments or changes thereto, which contain all of the information and documentation set forth in N.J.A.C. 11:15-2.6, in the format set forth in N.J.A.C. 11:15-2.5, and which meet the requirements of N.J.A.C. 40A:10-36 et seq. and this subchapter,** the bylaws and plan shall be deemed approved.

11:15-2.8 Revocation of approval

(a) After notice and opportunity for a hearing, the Commissioner may [revoke his approval of a fund's bylaws or plan of risk management] **suspend or terminate the authority of any fund, or direct or take any action deemed necessary for good cause, to enable a fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs** if a fund:

1. Is found to be insolvent or [in a financial condition hazardous to the public] **has experienced a deterioration in financial condition to the extent that it causes or may cause an adverse affect upon the ability of the fund to pay expected losses;**

2. Fails to pay any fee or assessment; [or]

3. Fails to pay any claim within 30 days after a final judgement is rendered against the fund or the fund's obligation for such claim otherwise becomes final; or

[3.]**4.** Fails to comply with any of the provisions of [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.** or this subchapter, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may [revoke approval] **suspend or terminate a fund's authority** if, after notice and opportunity for hearing, he **or she** finds that:

1. (No change.)

2. The fund, or any of its commissioners [or its], administrator, **servicing organization or agents** has otherwise shown itself to be untrustworthy or incompetent; or

3. The fund, its commissioners, [or its] administrator, **servicing organization or agents** has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto [and that have been entrusted to the fund, its commissioners, or its administrator in their fiduciary capacities].

11:15-2.9 Approval of non-member local units

(a) Prospective new members of the fund shall submit an application for membership to the fund's [commission] **commissioners,** or executive committee, as applicable, on a form [approved by] **acceptable to** the Commissioner. Such application shall include [the] **a copy of the resolution of participation and executed** indemnity trust agreement [executed herein]. The [commission] **commissioners** or executive committee may approve or disapprove the application for additional members, pursuant to the bylaws of the fund.

(b) [The] **Any** application approved by the fund shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by a revised budget with assessment detail, **if otherwise required pursuant to N.J.A.C. 11:15-2.4(f)6;** the name of the new member's insurance fund commissioners, **and alternates in accordance with N.J.A.C. 11:15-2.6(a);** an actuarial statement regarding the adequacy of the member's assessment to cover anticipated losses [and such]; amendments to the fund's bylaws and plan of risk management as may be necessary; **and any other information the Commissioner may deem necessary.** Where a fund purchases [commercial] **direct** insurance, or where an actuary has determined a "per capita" rate for the member's assessment to cover anticipated losses which has been previously filed with the Department, actuarial certification of the adequacy of these same rates for each new member is not required. The Commissioner may nevertheless require actuarial certification of a per capita rate for the new member's assessment to cover anticipated losses if, in his or her opinion, the new member will impose an extraordinary impact on the exposure of the fund.

(c) No new membership in the fund shall become effective until the application and accompanying amendments to the fund's bylaws and plan of risk management are approved by the [Commissioners of Insurance] **Commissioner** and **the Commissioner of the Department of** Community Affairs.

(d) If a non-member is not approved for membership, the fund shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member. The fund shall retain a copy of all membership application disapprovals for five years.

11:15-2.10 Termination and/or withdrawal of fund members

(a) A member of the fund must remain a member for the full term of membership, as provided in the fund's bylaws, unless earlier terminated by the fund for nonpayment of assessments, noncompliance with risk management or underwriting standards, or other reasons subject to [the] prior approval by the Commissioner [of Insurance] as causes for expulsion. However, such member shall not be deemed terminated for any reason until:

1. [At least] **After** 10 days **written** notice [in writing] of the intention to terminate [such] **the** member [is] **has been** given [by registered mail] by the fund to the member, **which notice shall state the reasons for termination and shall be given by registered mail or certified mail, return receipt requested;** and

2. [Until like] **Like** notice shall [be] **have been** filed with the Department and the Department of Community Affairs, together with a certified statement that the notice provided for by (a)1 above has been given; and

3. [Until 10] **Ten** days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the fund that does not desire to continue as a member after the expiration of its membership term, as provided in the fund's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period. **A member of the fund that did not approve any amendment to the fund bylaws approved pursuant to N.J.S.A. 40A:10-43, shall provide written notice of its intent to withdraw 90 days prior to its withdrawal.** The fund shall immediately notify the Department and the Department of Community Affairs of all members that have given notice of withdrawal from the fund.

(c) A member that has been terminated by or does not continue as a member of the fund shall nevertheless **share in any refund in the appropriate trust accounts for that fund year and** remain jointly and severally liable for claims incurred by the fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(d) The fund shall immediately notify the Department[,] and the Department of Community Affairs, if termination or withdrawal of a member causes the fund to fail to meet any of the requirements of [P.L. 1983 c.372] **N.J.S.A. 40A:10-36 et seq.** or this subchapter. Within 15 days of such notice, the fund shall advise the Department and the Department of Community Affairs[,] of its plan to bring the fund into compliance.

[(e) A fund member is not relieved of the claims incurred during its period of membership except through payment by the fund or member of those claims.]

11:15-2.12 Voluntary dissolution of a fund

(a) A fund may not voluntarily dissolve, or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the fund's members must have voted in favor of a resolution to dissolve the fund, pursuant to a written plan [of operation, provided for] **adopted pursuant to the procedures set forth** in the fund's bylaws, at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred losses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the fund or the trust fund accounts may be used for any other purpose[.];

3. [Such] **The** plan of dissolution shall contain a statement of the fund's current financial condition computed **both on a statutory basis and** according to generally accepted accounting principles as attested to by any independent certified public accountant; **and**

4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs. **The plan shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs not later than 90 days prior to the proposed effective date of dissolution.**

11:15-2.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account **in accordance with N.J.A.C. 11:15-2.6(b)10** from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each type of liability or risk retained jointly on a self-insured basis. Such accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be affected for a claim or loss retention fund without prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within a fund's fiscal year, may be conducted by the fund at any time, by providing 30 days prior written notification to the Commissioner and the **Commissioner of the** Department of Community Affairs. If the Commissioner does not disapprove of the transfer, in writing, within 30 days after receiving such written notification, the request for intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation, **and be accompanied by a certification signed by an actuary that the amount remaining in the trust fund account after the intertrust fund transfer will be at a level which is reasonable in relation to that account's unpaid losses, along with all documentation in support of such certification.** Intertrust fund transfers may be conducted only where each member [municipality] participates in each and every claim or loss retention fund account during that fund year. **Notwithstanding anything in this subsection to the contrary, an environmental impairment liability fund may not transfer any monies from the account established for purpose of paying the debt on any bonds issued pursuant to N.J.S.A. 40A:10-38.1.**

(b) An environmental impairment liability fund which issues bonds pursuant to N.J.S.A. 40A:10-38.1 et seq. shall establish by resolution a separate trust fund account for contingencies to be funded by the proceeds of any bond issue and interest income earned thereon. The resolution shall specify the uses of the contingency account consistent with (b)1 below, and provide a formula for the equitable distribution and return of contingency funds to terminated or withdrawing members in accordance with the procedures and time frames of N.J.A.C. 11:15-2.21.

1. By resolution, an environmental impairment liability fund may transfer funds from a contingency trust fund account to a claims or loss retention trust fund account to pay claims, allocated claim expenses, and excess insurance and reinsurance premiums in a fund year which has an inadequate cash balance. The transaction shall be accounted for as a permanent transfer, and the fund shall notify the Department within 30 days of any such transfers.

2. A fund shall not transfer funds to a claim or loss retention trust fund account from a contingency trust fund account if the transfer would result in a deficit in the contingency trust fund account.

3. If a fund utilizes an amount from a contingency account during a fiscal year, the joint insurance fund commissioners shall, within 10 days of such utilization, submit to the Commissioner and the Commissioner of the Department of Community Affairs a report on the causes of the utilization and the steps taken to prevent a recurrence of such circumstances.

4. The fund shall maintain accounting records on contingency accounts by fund year which shall include:

i. The sources of bond proceeds and interest thereon;

ii. Transfers from the account to a claims or loss retention trust fund account by fund year;

iii. Interest earned, which shall be allocated by the average balance in the contingency account by fund year; and

iv. The pro-rata share of each participating member local unit allocable to each member.

11:15-2.14 Administrative account

Each fund shall establish an administrative account **for each fund year** which shall be utilized for payment of the fund's general operating expenses, **including, but not limited to,** loss prevention activities, data processing services and general legal expenses. **A fund shall not be required to establish a separate administrative account by fund year, provided the fund provides a plan in its bylaws which provides for the recording and accounting of all transactions by fund year.**

11:15-2.15 Assessments

(a) (No change.)

(b) Each member's annual assessment shall consist of an amount allocated for the administrative account, **payment of interest and repayment of principal on bonds issued for environmental impairment liability funds, when appropiate,** plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which such member participates.

(c) The total amount of each member's annual assessments to the [joint insurance] fund shall be certified by the [joint insurance] fund commissioners to the governing body of each participant at least one month prior to the beginning of the next fiscal year. As a condition of continued participation in the [joint insurance] fund, each member shall pay the amount certified at such time and in such manner provided in the fund's bylaws.

(d) Unless otherwise approved by the Commissioner, the annual assessment of each fund member [funds] providing for the self-insurance of workers' compensation and employers' liability coverages shall be based upon the [mandatory merit rating plan] **Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual** on file with the Commissioner. The Commissioner [of Insurance] may withdraw his **or her** approval of any assessment [not based upon the mandatory plan] if he [shall find] **or she finds** that such assessment is unreasonable or inadequate for the members of the fund to which it applies. In taking any action under this section, the Commissioner may [seek assistance from] **require that** the fund commissioners, the executive committee [or], the administrator, **any servicing organization or agent of the fund provide such information as he or she deems necessary.**

(e) (No change.)

(f) In the case of an environmental liability fund, notwithstanding any provision of this section to the contrary, an annual assessment may be funded by proceeds of any bonds issued by the fund pursuant to N.J.S.A. 40A:10-38.1, including any interest income earned thereon, in an amount not to exceed 25 percent of the amount of such assessment. Any remaining amounts from the proceeds of a bond

issue and interest income shall be deposited in the contingency account established pursuant to N.J.A.C. 11:15-2.13(b). The 25 percent limitation shall not apply to the funding of any supplemental assessments that may be required pursuant to N.J.A.C. 11:15-2.16. In no event shall the proceeds of a bond issue be used to replenish the administrative account, but interest income earned on such proceeds may be used for this purpose.

11:15-2.16 Supplemental assessments

(a) (No change.)

(b) The [joint insurance] fund commissioners shall submit to the Commissioner [of Insurance] and the Commissioner of the Department of Community Affairs a report of the causes of the [fund's or] account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The participants shall provide such additional assessments in accordance with the provisions of Local Budget Law (N.J.S.A 40A:4-1 et seq.)**, or Local Authority Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.), as applicable**.

11:15-2.17 Failure or refusal to provide required assessments

Should any member of a [joint insurance] fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the [joint insurance] fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the [joint insurance] fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify **in writing** the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-2.18 Individual loss reserve funds

(a) Whenever the risk management plan of a joint insurance fund requires the fund's members to individually retain a specific amount of risk, potential liability, or incurred losses, the participant shall provide for such liability, or incurred loss:

1. As a deductible to be charged to the operating expenses of the incurring department or agency;

2. Through a separate item of appropriation for the [loss] **fund** year in its annual budget; or[,]

3. Through establishment of an insurance fund pursuant to N.J.S.A. 40A:10-1 et seq.

11:15-2.19 Certification of funds

Prior to any commitment or agreement requiring the expenditures of funds by the [joint insurance] fund, the custodian of the fund's assets shall certify [as to] the availability of sufficient unencumbered funds **in the account** to fully pay all charges or commitments to be accepted.

11:15-2.20 Investments; application of investment income

(a) The free balance of any account maintained by a [joint insurance] fund, whether for **claim or loss retention**, administrative, **contingency, or, in the case of an environmental impairment liability fund, the contingency account to be funded by bond proceeds pursuant to N.J.A.C. 11:15-2.13(b)** [or claims or loss purposes], shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b. **In addition, the fund commissioners may transfer monies held to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the fund in accordance with standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. Any monies transferred to the Director for investment may not thereafter be withdrawn except under the conditions set forth in N.J.S.A. 40A:10-38b.**

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be [credited] **allocated** to each such account **by fund year**.

(c) The investment and interest income earned by investment of the assets of administrative **and contingency** accounts shall be credited to that account.

11:15-2.21 Refund; interyear fund transfers

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for a fiscal year as certified by an actuary may be declared to be refundable by the fund not sooner than [24 months] **the time periods** after the end of the fiscal year **as set forth in (b)1 and 2 below**.

(b) The fund may seek approval from the Commissioner to make initial **and subsequent** refund payments from a claims or loss retention fund account remaining from any year which has been completed for at least [24 months] **the time periods set forth in (b)1 and 2 below** by submitting a written request to the Department [of Insurance] and Department of Community Affairs with appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that **the loss and loss expense reserves are adequate for** the fund [has] **to have** an overall surplus for that fiscal year; and such other information that the Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus **in the account from which the refund is made** must exceed 35 percent of unpaid claims **for that account** for the fiscal year, **plus, in the case of an environmental impairment liability fund, an amount in the fund's debt service account equal to two years' debt service on any outstanding bonds.** [Claims must be undiscounted, and the IBNR reserve must be certified by an actuary] **Unpaid claim reserves, including reserves for incurred but not reported claims, shall be established at full value and not discounted, and shall be so certified by an actuary.** [The fund may seek approval as above for subsequent refund payments at any time from a claims or loss retention fund account remaining from any year which has been completed for at least 36 months.] A full and final refund of net current surplus will not be allowed until all case reserves and all [IBNR] **incurred but not reported** reserves are closed. [If a joint insurance fund subject to this subchapter prior to September 18, 1989 made an initial refund prior to September 18, 1989, such joint insurance fund may seek approval to make an additional initial refund subject to the requirements contained in this subsection as amended.] **Notwithstanding anything in this subsection to the contrary, an environmental impairment liability fund may not refund any monies from the account established for purposes of paying the debt on any bonds issued pursuant to N.J.S.A. 40A:10-38.1.**

1. A fund other than an environmental impairment liability fund may seek approval pursuant to (b) above to make an initial refund payment from a trust account remaining from any year which has been completed for at least 60 months, in the case of liability or workers' compensation coverages, or at least 36 months, in the case of property coverage; and may seek approval to make subsequent refund payments from a trust account remaining from any year which has been completed for at least 72 months, for liability and workers' compensation coverages, or at least 48 months, in the case of property coverage.

2. An environmental impairment liability fund may seek approval pursuant to (b) above to make an initial refund payment from any trust account remaining from any year which has been completed for at least 120 months, in the case of any liability or legal or defense services coverages, or at least 12 months, in the case of environmental or risk management services coverage; and may seek approval to make subsequent refund payments from a trust account remaining from any year which has been completed for at least 132 months, in the case of any liability or legal or defense services coverages, or at least 24 months, in the case of environmental or risk management services coverage.

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

(e) In the case of an environmental impairment liability fund, the commissioners or executive committee may appropriate a portion of any refund to the appropriate contingency account subject to the provisions of N.J.A.C. 11:15-2.13(b).

[(e)]**(f)** [The] **A** fund may seek approval from the Commissioner to make interyear fund transfers at any time from a claims or loss retention trust account from any year [which has been completed for at least 12 months] **not sooner than 12 months in the case of property coverage, 36 months in the case of liability and workers' compensation coverages, or 60 months in the case of an environmental impairment liability fund, after the end of that year** by submitting a written request to the Department [of Insurance] and Department of Community Affairs with appropriate documentation as set forth in (b) above. The interyear fund transfer may be in any amount subject to the limitation that after the transfer, the remaining net current surplus **in the account from which the transfer is made** must exceed 35 percent of unpaid claims for **that account for** the fiscal year. [Claims must be undiscounted, the IBNR reserve must be certified by an actuary and the] **Unpaid claim reserves, including reserves for incurred but not reported claims, shall be established at full value and not discounted, and shall be so certified by an actuary. The** membership for each fiscal year involving interyear fund transfers must be identical between fiscal years.

11:15-2.22 Disbursements and/or payment of claims

(a) All disbursements, payments of claims settlements or other expenditures of funds of the [joint insurance] fund whether for administrative expenses or for claims purposes must be approved by a majority of the [joint insurance] fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the [joint insurance] and fund commissioners may designate the fund's administrator, **lead agency** or servicing organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the [joint insurance] fund commissioners to approve for payment of any or specified types of claims in an amount not to exceed [$5,000 per claim or payment] **an amount approved by the Commissioner in the plan of risk management.** The [designation] **authority** of the certifying and approving officer may be conditioned or restricted by the [joint insurance] fund commissioners to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or such other procedures or restrictions as the [joint insurance] fund commissioners may deem appropriate. **The authority of the certifying and approving officer may be revoked or modified at any time by the fund commissioners.**

1. (No change.)

2. The certifying and approving officer shall prepare a report of all claims approved by him or her since the last such report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the [joint insurance] fund commissioners at their next scheduled meeting. The [joint insurance] fund commissioners shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the [joint insurance] fund commissioners, they shall direct appropriate action to be taken.

(c) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the joint insurance fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the [joint insurance] fund's claims administrator, if there be one, shall certify as to the [claim's] correctness and validity **of the claim.**

(d) All claims shall be paid by check. The check shall be signed by two persons so designated by the [joint insurance] fund commissioners.

(e) All claims and other disbursements approved for payment by the [joint insurance] fund commissioners, **the executive committee thereof** or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

11:15-2.23 Excess insurance and/or reinsurance

(a) Each fund providing primary or underlying coverage on a self-insured or commercially insured basis shall secure excess insurance or reinsurance in a form, in an amount and by an insurance company, **or other entity authorized to provide such coverage in this State pursuant to law,** acceptable to the Commissioner, if commercially available and not unreasonably priced, as determined by the fund's executive committee **for each fund year,** and as approved by the Department of Insurance and the Department of Community Affairs.

1. Any approval by the Department and the Department of Community Affairs pursuant to (a) above shall be for a period not to exceed either the longer of 12 months from the date of approval or the end of the next succeeding fund year. Any fund seeking to extend the period of the approval shall notify the Department and Department of Community Affairs not later than 45 days prior to the expiration of the term of the approval. The notification shall specify the basis upon which the fund commissioners have determined that excess insurance or reinsurance required pursuant to (a) above is not commercially available or is not reasonably priced, and shall include all actions taken by the fund to obtain required excess insurance or reinsurance.

(b) (No change.)

(c) Certificates of excess insurance and/or reinsurance showing policy limits, **specific and aggregate retentions,** and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(d) (No change.)

(e) Any proposed change in the terms of limits of excess insurance and/or reinsurance shall be submitted to the Department and the Department of Community Affairs for approval at least 30 days prior to the effective date of the proposed change.

(f) Any fund approved by the Commissioner prior to the effective date of the amendments to this subchapter shall secure specific and aggregate excess insurance coverage in accordance with (a) through (e) above to be effective no later than January 1, 1995. Such funds shall file an amendment to their bylaws or plan of risk management for approval pursuant to N.J.A.C. 11:15-2.5 to provide a plan for specific and aggregate excess insurance or reinsurance pursuant to N.J.A.C. 11:15-2.6(b)5. The amendments to the fund's bylaws or plan of risk management as set forth herein shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 10 days of such amendment but not later than 30 days prior to the effective date of the plan.

11:15-2.24 Financial statement and reports

(a) A sworn annual report in a form prescribed by the Commissioner shall be prepared by each fund, filed concurrently with the Department and Department of Community Affairs and made available to each fund member on or before [June 30] **March 31** of each year. The report shall [be accompanied by] **include**:

1. An annual audited statement of the financial condition of the fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and [section 11 of P.L. 1983, c.372.] **N.J.S.A. 40A:10-46, which shall include a statement of the organization of the fund indicating the persons who perform each function for the fund and the relationship and interdependency of each function, and including its balance sheet and receipts and disbursements for the preceding year;**

2. Reports of outstanding liabilities **by line of coverage** showing the number of claims, amounts paid to date and current reserves for **unpaid** losses, claims and unearned assessments as certified by an actuary[.];

3. A certification by the chairman or administrator that periodic reports were made to fund members in the form and manner required by N.J.A.C. 11:15-2.4(i);

4. Any material changes in information from that previously submitted; and

[3.]**5.** Such other information, as may be required by the Department **upon request from a particular fund.**

(b) In addition to the reports required pursuant to (a) above, for the initial two fiscal years of a fund, a fund shall file with the Department quarterly unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner within 45 days after the end of each calendar quarter. After the initial

two years, a fund shall file with the Department semiannual unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner within 45 days after the end of each six month period. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant, registered municipal account, or the actuarial opinion statement shall not be required.

11:15-2.25 Examination of funds possibly in financial condition detrimental to the public

(a) [The] **In addition to any examination conducted pursuant to N.J.A.C. 11:15-2.6(f), the** Commissioner [shall examine] **may conduct an examination of** any fund [which] **as he or she deems necessary, or at any time** the Commissioner has reasonable cause to believe **the fund** may be insolvent or in a financial condition detrimental to its members or to the public. It shall be the duty of the fund members, **commissioners, executive committee, administrator and chairman** [upon majority vote,] to notify the Commissioner of any information indicating that any fund may be insolvent or in a financial condition detrimental to the fund's members or the public.

(b) The **fund** members, **commissioners or executive committee** may, upon majority vote, request that the Commissioner order an examination of any fund member which the fund, commissioners or executive committee, [if any,] in good faith believes may be in a financial condition detrimental to [other fund] **the fund's** members or to the public.

(c) Any examination made pursuant to [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.** and this subchapter shall be conducted [in a manner satisfactory to the Commissioner and by such persons as the Commissioner designates. The cost of any examination shall be borne by the fund] **in accordance with the procedures set forth in N.J.A.C. 11:15-2.6(f).**

11:15-2.26 Servicing organizations; administrator

(a) Except with the approval of the Commissioner, no servicing organization **of a fund, or producer that may be appointed pursuant to N.J.A.C. 11:15-2.6(c)10,** or [its] **their** employees, officers or directors shall have either a direct or indirect financial interest in [an] **the** administrator **of that fund** or be an employee, officer or director of [an] **the** administrator.

(b) Except with the approval of the Commissioner, no administrator **of a fund**, or its emloyees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization **of that fund, or the insurance producer that may be appointed by that fund pursuant to N.J.A.C. 11:15-2.6(c)10.**

(c) Each service contract shall include a clause stating, "Unless the [Commissioner] **fund commissioners** otherwise permit[s], the [service] **servicing** organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

(d) The fund commissioners shall notify the Department and the Department of Community Affairs within 10 days of any determination to terminate or nonrenew any agreement with a servicing organization. The notification shall include a detailed statement that sets forth the manner and method by which claims handling and other obligations performed by the servicing organization will be provided or a statement that sets forth the reasons why the fund commissioners believe that the particular service is no longer necessary.

[(d)]**(e)** The fund commissioners or the executive committee, if any, [shall] **may** designate an administrator **or lead agency** to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee **meetings**, if any, [meetings] shall detail the areas of authority delegated to the administrator **or lead agency.**

(f) Any employee, officer or director of an administrator, servicing organization or insurance producer that may be appointed pursuant to N.J.A.C. 11:15-2.6(c)10 shall disclose to the fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.

11:15-2.27 Conflict of interest

[(a) No official or employee of a participating local unit or any members of the family of such officials or employees, or any businesses in which such officials, employees or family members have a beneficial interest shall seek to obtain or participate in any contract to be entered into by the joint insurance fund for administration, loss control, investment or depository services, insurance coverage or any other service, commodity or material without first fully disclosing in writing the nature and extent of such interest, financial or otherwise, to the joint insurance fund commissioners. It shall be the responsibiity of the joint insurance fund commissioners to determine if the interest so disclosed is such as to constitute an actual or potential conflict of such degree as to impair the ability of the officer, employee, family member or business from fully and impartially performing the duties required by the joint insurance fund. If so, the officer, employee, family member or business shall be prohibited from entering into such contract until the cause of such conflict is removed.

(b) Any contract entered into between the joint insurance fund and any individual, firm corporation or agency which fails to disclose an actual or potential conflict situation shall be void.

(c) There shall be no collusion or evidence or appearance of collusion, between any official or employee of the members or employees of the joint insurance fund and any official or employee of any contractor, vendor, insurance company, bank, consultant, brokerage firm or any other profit making or non-profit firm attempting to solicit a contract with the joint insurance fund or awarded a contract by the joint insurance fund.]

All officials or employees of a participating local unit or any members of the family of such officials or employees shall comply with N.J.S.A. 40A:9-22.1 et seq. (the "Local Government Ethics Law").

11:15-2.28 Notice and hearings

(a) The Commissioner shall give prior written notice of any proposed suspension[,] **or** revocation **of authority**, cease and desist order, [assessment] or other enforcement action to the fund commissioners, [its] executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the [fund or the person] **interested party** of its right to request a hearing on the proposed enforcement action. A copy of such written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The [fund] **interested party** involved shall have 20 days from the mailing of the notice to request a hearing, [which may be formal or informal,] on the proposed enforcement action. **Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.** Failure to mail a request for hearing within the time prescribed shall result in the **suspension,** revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled. [If, after complying with the requirements of this section, the Commissioner orders the revocation of a fund's authority, such revocation shall become effective 30 days after issuance of the Commissioner's order. The Commissioner, in his discretion, may for good cause shown, provide for a reasonable extension of such 30 day period.]

11:15-2.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-2.28, the Commissioner may issue an order **revoking or suspending a fund's authority or** requiring a person or fund to cease and desist from engaging in an act or practice to be in violation of any provision of [P.L. 1983, c.372] **N.J.S.A. 40A:10-36 et seq.** or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, that a fund has violated any cease and desist order, the Commissioner may revoke his **or her** approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, the Commissioner may issue an order requiring the [joint insurance] fund commissioners, or the executive committee, if any, to dismiss an administrator **or servicing organization** or terminate the service contract of [a] **an administrator or** servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibility by such administrator or servicing organization, or any of the employees, officers or directors thereof.

(d) (No change.)

(a)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Good Faith Marketing Report

Proposed New Rule: N.J.A.C. 11:20-9.6

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

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

Proposal Number: PRN 1994-369.

Submit written comments by June 13, 1994 to:
New Jersey Individual Health Coverage Program
Comments to Rules
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

The New Jersey Individual Health Coverage ("IHC") Program was established pursuant to N.J.S.A. 17B:27A-2 et seq. ("the Act") in order to make health benefits plans available to individuals. The IHC Program Board of Directors ("the Board") proposes a new rule, N.J.A.C. 11:20-9.6, which would require carriers that requested an exemption from assessment for 1993 reimburseable losses to submit a report to the Board, on a one-time basis, that details the efforts they undertook to market and sell individual health benefits plans. The report is necessary for the Board to determine whether the carrier made a good faith effort to enroll the minimum number of non-group persons, as required by N.J.A.C. 11:20-9.5(f)2, and whether the carrier should be exempt from assessments for reimbursable losses. The Good Faith Marketing Report is due on or before July 1, 1994.

P.L. 1993, c.164, section 7 provides a special procedure by which the Board may take actions, such as promulgation of these rules. Prior to the adoption of an action, the Board shall provide notice and a detailed description of its intended action to three newspapers of general circulation. The Board is further required to forward the notice of intended action and detailed description to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board is also required to provide all interested persons an opportunity to comment in writing on the intended action of at least 20 days. The Board may adopt an action immediately following the close of the public comment period, and the action shall be effective on the date the regulations are submitted to the OAL for publication in the New Jersey Register, or such later date as the Board may establish. Within a reasonable time after submission of the comments, the Board is also required to prepare a report for public distribution listing all parties who provided comments, summarizing the content of the comments, and providing the Board's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register. Because of the expedited nature of this process, this rule may already have been adopted by the Board and be effective by the time the notice of proposal appears in the New Jersey Register.

N.J.A.C. 11:20-9.6 establishes a one-time reporting requirement for all carriers that received a conditional exemption in 1993.

Social Impact

The proposed new rule is purely a reporting requirement. However, the information reported will be used by the Board in determining whether a carrier that has received a conditional exemption should receive a final exemption. A carrier that cannot demonstrate a good faith marketing effort will not receive an exemption from assessments for reimbursable losses.

Economic Impact

The proposed new rule will have a minor economic impact on carriers that have sought exemptions from assessments for reimbursable losses because they will be required to compile and submit information to demonstrate what marketing activities they undertook to sell individual health benefits plans. If a carrier is unable to demonstrate a good faith effort, it will not receive a final exemption and will be required to pay the same share of reimbursable losses as if the carrier had not received a conditional exemption.

Regulatory Flexibility Analysis

The proposed amendment may impact "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment will affect only the 13 carriers that have filed for exemptions from assessment for 1993 reimbursable losses. This is a one-time reporting requirement, the results of which will be used to establish permanent standards to judge good faith marketing efforts. Compliance costs are discussed in the Economic Impact above; it is not anticipated that professional services will be required for compliance. It is essential that the Board receive as much hard data as is available for this purpose; therefore, no variation in the size of businesses subject to the reporting requirement is appropriate.

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

11:20-9.6 Good Faith Marketing Report

(a) In order for the Board to determine whether a carrier has made a good faith marketing effort as required by N.J.A.C. 11:20-9.5(f)2, members that requested exemptions from assessments for 1993 reimbursable losses shall submit to the Board a marketing report on or before July 1, 1994 containing the following information pertaining to advertising, marketing, and promotion efforts in direct support of sales of standard health benefits plans in calendar year 1993:

1. With respect to print media, the names of newspapers, magazines or other print media, including billboards, in which advertising was placed; the number of times an advertisement appeared in each; the dates those advertisements appeared; the size of the advertisements in each; and copies of such advertisements; and the total cost of print media advertising;

2. With respect to broadcast media, the names of television stations, radio stations, or cable television franchises over which commercial advertising appeared; the number of times a commercial advertisement was broadcast or played, the time of day and the duration of each; audio or video tapes of such commercial advertisements; and the total cost of such broadcast media advertising;

3. With respect to direct marketing by mail or telephone, the number of mailings distributed or calls placed; the approximate dates of the mailings or telephone calls; the geographic areas to which the mailings or calls were addressed; copies of the mailings or scripts of the telephone calls; and the total cost of direct marketing through mail or telephone solicitation;

4. With respect to sales through producers licensed by the State of New Jersey, details of efforts to recruit and educate producers to sell standard health benefits plans; the number of producers through whom such sales were made; and the total cost of commissions or other incentives paid to producers for sales of standard health benefits plans; and

5. With respect to other forms of marketing or promotion of standard health benefits plans, describe the methods or media used; the frequency of use; and the total cost of such efforts.

(b) Carriers required to submit the marketing report described in (a) shall send it to the following address:

New Jersey Individual Health Coverage Program
20 West State Street, 10th floor
CN 325
Trenton, NJ 08625

(c) A member's failure to file the marketing report described in (a) may result in the Board's denial of a final exemption from assessment for reimbursable losses.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES
DEPARTMENT OF INSURANCE

Driver Control Service

Proposed Readoption with Amendments: N.J.A.C. 13:19

Authorized By: C. Richard Kamin, Acting Director, Division of Motor Vehicles as to only N.J.A.C. 13:19-1 to 12, inclusive; Andrew J. Karpinski, Commissioner, Department of Insurance, in consultation with C. Richard Kamin, Acting Director, Division of Motor Vehicles, as to only N.J.A.C. 13:19-13.

Authority: N.J.S.A. 17:29A-35, 39:2-3, 39:3-10, 39:3-10.4 et seq., 39:3-11, 39:3-15, 39:3-15.1, 39:3-16, 39:5-30, 39:5-30.1, 39:5-30.5, 39:5D-4, 39:5F-1 et seq., 52:14B-1 et seq. and Pub. L. 99-570.

Proposal Number: PRN 1994-385.

Submit written comments relevant to the proposed readoption with amendments of N.J.A.C. 13:19-1 to 13:19-12, inclusive, on or before August 4, 1994 to:

C. Richard Kamin, Acting Director
Division of Motor Vehicles
Attention: Legal Staff
225 East State Street
CN 162
Trenton, New Jersey 08666-0162

Submit written comments relevant to the proposed readoption of N.J.A.C. 13:19-13, or relevant to the proposed amendment of N.J.A.C. 13:19-13.1 or to the proposed repeal of N.J.A.C. 13:19-13.3, on or before August 4, 1994 to:

Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Motor Vehicles (Division) proposes to readopt with amendments the provisions of N.J.A.C. 13:19-1 to N.J.A.C. 13:19-12, inclusive, concerning driver control service in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on August 18, 1994.

The Department of Insurance, after consultation with the Division of Motor Vehicles pursuant to N.J.S.A. 17:29A-35, proposes to readopt with amendments the provisions of N.J.A.C. 13:19-13 concerning supplemental motor vehicle insurance surcharges in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on August 18, 1994.

The rules contained in N.J.A.C. 13:19 implement various provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:1-1 et seq.) pertaining to driver qualification, administrative hearing procedures, and driver license denial and suspension, as well as the relevant insurance surcharge provision, N.J.S.A. 17:29A-35. The Division of Motor Vehicles has reviewed N.J.A.C. 13:19-1 to N.J.A.C. 13:19-12 in accordance with Executive Order No. 66(1978) and has determined that said rules are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated," but has also determined to propose amendments to various rules contained in said subchapters as part of this proposal. Many of the rules contained in N.J.A.C. 13:19 implement the public policy of this State as set forth in the Motor Vehicle and Traffic Law; namely, to foster highway safety by limiting licensure to those who can demonstrate an ability to operate motor vehicles safely.

A summary of each subchapter and important sections in N.J.A.C. 13:19 follows:

Subchapter 1 pertains to administrative hearings.

N.J.A.C. 13:19-1.1 provides that the provisions of N.J.A.C. 13:19-1 shall apply to administrative hearings in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges by the Division pursuant to N.J.S.A. 17:29A-35. However, the provisions of N.J.A.C. 13:19-1 do not apply to hearings in fatal accident cases in which the Division has initiated administrative suspension action against a licensee pursuant to subsection b, c, or e of N.J.S.A. 39:5-30; requests for hearings and the scheduling and conduct of same in such cases are governed by the provisions of subsection b or e of N.J.S.A. 39:5-30.

N.J.A.C. 13:19-1.2 affords a licensee or his or her attorney a period of 25 days from the date of notice of proposed Division action against such licensee in which to make a written hearing request to the Division. N.J.A.C. 13:19-1.2 also provides that requests for a hearing must specify all disputed material facts which the licensee or his or her attorney intends to raise at such hearing. Requests for a hearing must also set forth all legal issues which the licensee or his or her attorney intends to raise, and must present all arguments on those issues which the licensee wishes the Division to consider. N.J.A.C. 13:19-1.2 further provides that where a hearing request fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on those issues, the request for a hearing shall be denied. The Division shall notify the licensee of this denial and the grounds thereof, and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. The rule further provides that such notice of denial of a hearing request shall be deemd to constitute the final decision of the Division in such matter. N.J.A.C. 13:19-1.2 also provides that where a hearing request sets forth disputed material facts which the licensee or his or her attorney intends to raise at such hearing, the Director shall require the licensee to attend a prehearing conference conducted by designated Division employees. N.J.A.C. 13:19-1.2 further provides that where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference conducted by designated employees of the Division; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1.

N.J.A.C. 13:19-1.3 provides that the Division shall notify the licensee of the date, time and place of each prehearing conference scheduled pursuant to N.J.A.C. 13:19-1. N.J.A.C. 13:19-1.4 is reserved. N.J.A.C. 13:19-1.5 governs adjournments and failure to appear. N.J.A.C. 13:19-1.6 concerns representation by counsel. N.J.A.C. 13:19-1.7 provides for conduct of prehearing conferences by driver improvement analysts.

N.J.A.C. 13:19-1.8 provides that the purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the Uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken. A typographical error in the text of N.J.A.C. 13:19-1.8(a) is corrected by this proposal.

N.J.A.C. 13:19-1.8 also provides that a Division driver improvement analyst shall conduct a prehearing conference with each licensee who has been scheduled for such a conference pursuant to N.J.A.C. 13:19-1. N.J.A.C. 13:19-1.8 further provides that where the Division and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1, unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. The rule further provides that in the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall constitute the final agency decision in the matter.

N.J.A.C. 13:19-1.9 through 1.12 are reserved.

N.J.A.C. 13:19-1.13(a) provides that the Division shall not take administrative action against a person unless it has first afforded the person an opportunity to be heard in conformity with N.J.A.C. 13:19-1 except as set forth in subsections (b), (c) and (d) of the rule. Subsection (b) of the rule provides that when the administrative action proposed by the Division against any person is one wherein the Division has authority to act without first providing an opportunity to be heard, such action shall be valid, but the Division shall promptly afford the person an opportunity to be heard in conformity with N.J.A.C. 13:19-1. Subsection (c) of the rule provides that no hearing shall be provided when the action taken by the Division is required by any law which prescribes a suspension or revocation of a license or a privilege and which requires no exercise of discretion on the part of the Division. No hearing shall be provided when a license or privilege is suspended or revoked by order of a court of competent jurisdiction. Subsection (d) of the rule provides that when a license is not suspended or is restored with the understanding that any subsequent moving violation will be cause for a summary suspension, the issue of any hearing provided with respect to a proposed suspension for such subsequent moving violation will be limited to whether or not the licensee has been convicted of a subsequent moving violation and ascertaining whether the licensee received notice that the license had been restored with that understanding.

Subchaper 2 was repealed effective June 20, 1983. This subchapter contained rules concerning probationary driver licenses.

Subchapter 3 was repealed effective August 18, 1989. This subchapter contained rules concerning accident claims filed with the Unsatisfied Claim and Judgment Fund Board.

Subchapter 4, Cardiovascular Disorders, provides for the appointment of a Cardiovascular Committee (Committee) to advise the Division concerning the physical qualifications of drivers. The Director, in determining the driver qualification of a person affected by a cardiovascular disorder, may require the person to provide a statement of his or her medical history and a statement from his or her physician pertaining to diagnosis, treatment and prognosis. The Director may refer cases to the Committee for review and recommendation relating to driver qualification. The Director's determination to deny or suspend a driver's license is based on the medical statements and the Committee's recommendation. Cases may also be referred to the Committee upon application for restoration of driving privileges. Restoration of driving privileges may be conditioned upon the driver's agreement to submit interval medical reports. The Director may require a driver to be reexamined as to his or her ability to safely operate motor vehicles prior to the restoration of driving privileges.

Subchapter 5, Convulsive Seizures, requires a person who has been subject to recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination to establish that he or she has been free of such condition for one year as a prerequisite to the issuance of a learner's permit, driver's license, driver's license renewal or the retention of the driver's license which has been issued to said person. The Director, after notice and hearing, may suspend the driving privilege of, or deny the issuance of a learner's permit or driver's license to a person who is affected by a seizure disorder. When the Director determines it to be in the public interest, a suspension may be imposed pending administrative hearing.

The Director, in determining the driver qualification of a person affected by a seizure disorder, may require the person to provide a statement of his or her medical history, a statement from the treating physician pertaining to diagnosis, treatment and prognosis, and any other information deemed necessary.

The Director may refer individual cases to the Division's Neurological Disorder Committee for review and recommendation relating to driver qualification. The Division proposes to amend N.J.A.C. 13:19-5.7 to conform the rule to existing Division procedures and to address the concerns expressed by the New Jersey Superior Court—Appellate Division in *Division of Motor Vehicles v. Granziel*, 236 *N.J. Super.* 191, 203-204 (App. Div. 1989). As amended by the proposal, the rule provides that notwithstanding N.J.A.C. 13:19-5.1, the Director, upon consultation with members of the Neurological Disorder Committee, may grant a learner's permit or initial driver's license or permit a motorist to retain his or her driver's license although such person may have suffered a seizure, period of impaired consciousness, or from impairment or loss of motor coordination within a one year period when the specific characteristics of a person's disorder do not adversely impact on the person's ability to safely operate a motor vehicle.

A determination to issue or restore driving privileges is predicated on the submission of a current statement of medical history, a current physician's statement, and evidence that the seizure-free requirement has been satisfied or that waiver thereof has been granted by the Director upon consultation with members of the Neurological Disorder Committee. Amendments of a technical nature to the text of N.J.A.C. 13:19-5.8 are included as part of this proposal.

A determination to issue or restore driving privileges is conditioned upon the person's agreement to submit interval reports containing the medical history and physician's statement. Interval reports must be submitted every six months for a period of two years from the date of license issuance or restoration. Thereafter, yearly reports must be submitted. The Director, in his or her discretion, may waive or alter the interval report requirement. A driver reexamination may be required as a condition of restoration.

Subchapter 6 was repealed effective April 5, 1982. This subchapter contained rules concerning reciprocity between Delaware and New Jersey.

Subchapter 7, Reciprocity Agreement Between Connecticut and New Jersey, contains the reciprocity agreement between the two states concerning motor vehicle violations, bail forfeitures and failures to appear by drivers licensed in the respective states.

Subchapter 8, Reciprocity Agreement Between Province of Alberta and State of New Jersey, contains the reciprocity agreement concerning motor vehicles registered in the respective jurisdictions.

Subchapter 9, Designation of State Official to Be Notified by Drivers of Commercial Motor Vehicles Concerning Out-of-State Motor Vehicle Convictions, is amended by this proposal. As amended, N.J.A.C. 13:19-9.1 designates the Division of Motor Vehicles' Manager, Regulatory Affairs as the State official to be notified by commercial motor vehicle drivers of out-of-State motor vehicle convictions pursuant to the Federal Commercial Motor Vehicle Safety Act of 1986, and also indicates the correct address to which such notification is to be sent.

Subchapter 10, Point System and Driving During Suspension, provides a framework for administrative action against repetitive violators of the Motor Vehicle and Traffic Law.

N.J.A.C. 13:19-10.1 sets forth a schedule of points to be assessed for convictions of enumerated motor vehicle offenses. The proposal amends N.J.A.C. 13:19-10.1 to provide that two points shall be assessed against a driver convicted of violating N.J.S.A. 39:4-66.2 (P.L. 1993, c.326, §1), which prohibits operating a motor vehicle on public or private property to avoid a traffic control signal or sign. A violation of N.J.S.A. 39:4-66.2 may contribute to the occurrence of a motor vehicle accident, and it is therefore appropriate that such a violation be denoted a point system offense as authorized by N.J.S.A. 39:5-30.5.

N.J.A.C. 13:19-10.2 sets forth the periods of suspension for point system violators N.J.A.C. 13:19-10.3 provides for attendance at a driver improvement or probationary driver program for point system violators and probationary drivers. A typographical error in the title of N.J.A.C. 13:19-10.3 is corrected by this proposal. As amended, the title of said section is "Driver improvement program attendance." N.J.A.C. 13:19-10.4 provides for advisory notices to drivers accumulating six or more points and probationary drivers upon their first conviction resulting in the assessment of points. N.J.A.C. 13:19-10.5 provides for point reduction in accordance with the statutory provisions contained in N.J.S.A. 39:5-30.9.

N.J.A.C. 13:19-10.6, Restoration; official warning; completion of Driver Improvement or Probationary Driver Program, is amended by this proposal. As amended, subsection (a) of the rule provides that persons whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 or after a suspension imposed under 13:19-10.6, persons who are officially warned after an administrative hearing, and persons who successfully complete a Division Driver Improvement Program or Probationary Driver Program may retain their licenses upon the condition that any subsequent violation of the Motor Vehicle Laws of the State of New Jersey committed within one year of the restoration, official warning, or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the periods of time set forth in the subsection. This amendment conforms the rule to existing Division procedures. Subsections (b) and (c) of the rule remain unchanged by the proposal.

N.J.A.C. 13:19-10.7 provides that the point system provisions are not affected by suspensions or revocations imposed by a court. N.J.A.C. 13:19-10.8 provides for the suspension of driving and registration privileges when a person has operated a motor vehicle during a period of driver license suspension.

Subchapter 11, Suspension for Out-of-State Convictions; Administrative Determinations and Bail Forfeitures for Driving While Under the Influence of Intoxicating Liquor or Drugs; Refusal to Submit to Chemical Test, provides for the uniform application of New Jersey law in matters relating to out-of-State convictions for alcohol-related violations. New Jersey licensed drivers are subject to the terms of suspension and alcohol education or rehabilitation program requirements specified at N.J.S.A. 39:4-50 and 39:4-50.4a.

Subchapter 12, Motor Vehicle Insurance Surcharge, specifies the Division's motor vehicle insurance surcharge hearing request and suspension procedures to implement the New Jersey Merit Rating Plan as provided for in N.J.S.A. 17:29A-35, as well as procedures for the payment of surcharges in installments.

The Division of Motor Vehicles levies surcharges on any driver who accumulates six or more motor vehicle points within a three year period. Surcharges in the amount of $100.00 for six points and $25.00 for each additional point are levied for each year in which the driver possesses six or more points accumulated in the immediately preceding three year period.

The Division of Motor Vehicles also levies surcharges for convictions under N.J.S.A. 39:4-50 (operating under the influence of liquor or drugs) for violations occurring on or after February 10, 1983, and for convictions under N.J.S.A. 39:4-50.4a (refusal to submit to chemical test) or for offenses committed in other jurisdictions of a substantially similar nature to those under N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a, for violations occurring on or after January 26, 1984. Surcharges in the amount of $1,000 per year for three years for each of the first two convictions, and $1,500 per year for three years for the third conviction occurring within a three year period, are levied.

The Division of Motor Vehicles also levies surcharges pursuant to N.J.A.C. 13:19-13 for certain motor vehicle convictions and administrative suspensions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes.

Subchapter 12 provides for the suspension of operating privileges of any driver who fails to pay a surcharge. A driver may request a surcharge hearing in writing in accordance with the provisions of N.J.A.C. 13:19-1. If a driver does not request a hearing in accordance with the provisions of N.J.A.C. 13:19-1 regarding the initial surcharge bill, or thereafter abandons the hearing request, the driver shall not be granted a hearing on future billings for the convictions contained in the initial surcharge bill. Any resolution at a prehearing conference conducted in accordance with N.J.A.C. 13:19-1 regarding a surcharge bill or any final administrative decision is conclusive as to the issues contained in that resolution or decision, and shall preclude any hearing on those issues on future billings. Indigents as defined by the rule, and licensees surcharged for convictions for driving while intoxicated or for refusing to submit to a chemical test, are allowed to pay the surcharge in installments.

Subchapter 13, Motor Vehicle Insurance Surcharge; Supplemental Surcharges, implements the New Jersey Merit Rating Plan of the New Jersey Automobile Insurance Reform Act of 1982 (N.J.S.A. 17:29A-35) which provides for the imposition of motor vehicle insurance surcharges. The rules establish, in accordance with N.J.S.A. 17:29A-35, surcharges for certain motor vehicle convictions and administrative suspensions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes. The supplemental surcharges are levied for serious motor vehicle violations such as driving while suspended and driving without liability insurance. The Department of Insurance, after consultation with the Division of Motor Vehicles pursuant to N.J.S.A. 17:29A-35, has reviewed N.J.A.C. 13:19-13 in accordance with Executive Order No. 66(1978) and has determined that said rules are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated", but has also determined to propose to amend N.J.A.C. 13:19-13.1 and to repeal N.J.A.C. 13:19-13.3.

The Department of Insurance, after consultation with the Division of Motor Vehicles, proposes to amend N.J.A.C. 13:19-13.1(b)3 by correcting the statutory citation set forth in said provision for the surchargeable violation of failing to have insurance on a motorized bicycle. As amended, the rule indicates that a violation of N.J.S.A. 39:4-14.3e shall result in the assessment of an insurance surcharge against the convicted motorist. The amount of said surcharge, which is set forth in the rule, remains unchanged by the amendment.

The Department of Insurance, after consultation with the Division of Motor Vehicles, proposes to repeal N.J.A.C. 13:19-13.3. The rule pertains to the refund of driver license restoration fees and rescission of administrative suspensions for nonpayment of supplemental insurance surcharges imposed by the Division pursuant to N.J.A.C. 13:19-13.1 and 13.2 for violations or suspensions that occurred on or after January 1, 1983 but before March 19, 1984. The rule has been fully executed and has no current application and is therefore proposed for repeal.

Social Impact

The readoption of N.J.A.C. 13:19 will have a beneficial social impact. Drivers subject to proposed suspension or surcharge action will be cognizant of the Division's administrative hearing procedures.

The rules proposed for readoption enhance highway safety. Persons may be disqualified from driving because their medical condition creates an unreasonable risk to the safety of other motorists. Drivers who have demonstrated their disqualification by repeated violation of the Motor Vehicle and Traffic Law may also be removed from the highways because they too pose a disproportionate risk to other motorists. Driver improvement programs for motor vehicle violators and alcohol education or rehabilitation requirements for persons committing alcohol-related violations also foster highway safety in that said programs are designed and intended to modify driver behavior.

The supplemental surcharge rules proposed for readoption have a beneficial social impact in that they implement the New Jersey Automobile Insurance Reform Act of 1982 by assessing surcharges for certain motor vehicle convictions and administrative suspensions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes. The proposed repeal of N.J.A.C. 13:19-13.3 has a beneficial social impact. The rule, which pertains to the refund of driver license restoration fees and rescission of administrative suspensions for nonpayment of supplemental insurance surcharges imposed by the Division pursuant to N.J.A.C. 13:19-13.1 and 13.2 for violations or suspensions that occurred on or after January 1, 1983 but before March 19, 1984, has been fully executed and has no current application, and its repeal will reduce the potential for misunderstanding by the public of the supplemental surcharge rules.

The proposed amendment of N.J.A.C. 13:19-5.7 pertaining to convulsive seizure disorders has a positive social impact in that it conforms the rule to existing Division procedures and addresses the concerns expressed by the New Jersey Superior Court—Appellate Division in *Division of Motor Vehicles v. Granziel*, 236 *N.J. Super.* 191, 203-204 (App. Div. 1989).

The proposed amendment of N.J.A.C. 13:19-10.1 to provide for the assessment of points against a driver convicted of violating N.J.S.A. 39:4-66.2 (P.L. 1993, c.326, §1) has a positive social impact, since such a violation may contribute to the occurrence of a motor vehicle accident.

Economic Impact

The economic impact on the State in funding the Division of Motor Vehicles is partially defrayed by the driver improvement program fees that are charged to drivers pursuant to N.J.A.C. 13:19. There is an adverse economic impact on drivers who commit motor vehicle violations and who as a result incur these fees; or who as a result incur a driver license suspension necessitating the payment of a license restoration fee or alcohol program fee as a prerequisite to license restoration; or who as a result incur an insurance surcharge.

There is an economic impact on the State in funding the Division's Automobile Insurance Surcharge and Collection Section which is charged with the administration of the supplemental surcharge rules. Administrative costs incurred in collecting insurance surcharges are partially offset in that the Division of Motor Vehicles is permitted by N.J.S.A. 17:29A-35 to retain 10 percent of the monies collected, or the actual cost of administering the collection of the surcharge, whichever is less. The Division of Motor Vehicles is also permitted by N.J.S.A. 17:29A-35 to retain five percent of the monies collected, or the actual cost of administering the insurance cancellation notification system established pursuant to N.J.S.A. 17:33B-41, whichever is less. The remainder of the surcharge monies collected must be remitted pursuant to N.J.S.A. 17;29A-35 to the New Jersey Automobile Insurance Guaranty Fund created pursuant to N.J.S.A. 17:33B-5. There is an adverse economic impact on drivers who incur serious motor vehicle violations. They are subject to the imposition of insurance surcharges. The supplemental surcharges collected pursuant to the rules are part of the existing funding provisions for the New Jersey Automobile Insurance Guaranty Fund. The proposed repeal of N.J.A.C. 13:19-13.3 will have no economic impact on the State, the New Jersey Automobile Insurance Guaranty Fund, or the public, since the rule has been fully executed and has no current application.

The proposed amendment of N.J.A.C. 13:19-10.1 to provide for the assessment of points against a driver convicted of violating N.J.S.A. 39:4-66.2 (P.L. 1993, c.326, §1) has a direct economic impact on the public in that insurance surcharges are assessed against drivers who accumulate points pursuant to the formula set forth in N.J.S.A. 17:29A-35.

Regulatory Flexibility Statement

The rules proposed for readoption have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption imposes no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules regulate individual driver licensees.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:19, as amended in the New Jersey Register.

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

13:19-1.8 Prehearing conference; purpose; conduct; report; transmittal to the Office of Administrative Law

(a) The purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the [uniform] **Uniform** Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken.

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

13:19-5.7 Committee recommendations

Notwithstanding the provisions of N.J.A.C. 13:19-5.1 [(Satisfaction of physical qualifications), if the members of the committee so recommend], the Director, **upon consultation with the members of the Committee,** may grant a learner's permit or initial driver's license or permit a motorist to retain his driver's license although such person may have suffered [from] a seizure, period of impaired consciousness, or from impairment or loss of motor coordination within a one year period from the date of the Director's determination **when the specific characteristics of a person's disorder do not adversely impact on the person's ability to safely operate a motor vehicle.**

13:19-5.8 Restoration qualifications

(a) When the Director has denied an applicant a driver's license or has suspended the license of a licensed operator pursuant to this subchapter, issuance or restoration may be considered providing the individual submits:

1.-3. (No change.)

4. Satisfactory evidence that [section 1 (Satisfaction of physical qualifications)] **N.J.A.C. 13:19-5.1** or [section 5 (Penal review of case) of this subchapter] **13:19-5.5** have been complied with where applicable.

13:19-9.1 Designation of State official; notification

(a) The [Chief, Bureau of Violation Records,] **Manager, Regulatory Affairs,** is designated as the State official to be notified, pursuant to the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, concerning out-of-state motor vehicle convictions.

(b) A driver of a commercial motor vehicle, as defined in the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, shall submit within 30 days of conviction a notice concerning an out-of-state conviction(s) for a violation(s) of any law relating to motor vehicle traffic control to the following address:

[Chief, Bureau of Violation Records
Division of Motor Vehicles
137 East State Street
Trenton, New Jersey 08666]
Manager, Regulatory Affairs
Division of Motor Vehicles
CN 174
Trenton, New Jersey 08666-0174

13:19-10.1 Point assessment

Any person who is convicted of any of the following offenses, including offenses committed while operating a motorized bicycle, shall be assessed points for each conviction in accordance with the following schedule:

Section Number	Offense	Points
1.-14. (No change.)		
15. N.J.S.A. 39:4-66.2	**Operating a motor vehicle on public or private property to avoid a traffic control signal or sign**	**2**

Recodify existing 15.-52. as **16.-53.** (No change in text.)

13:19-10.3 [Drive] **Driver** improvement program attendance

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

13:19-10.6 Restoration; official warning; completion of Driver Improvement or Probationary Driver Program

(a) Persons whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 [(Point accumulation; period of suspension)] **or after a supension imposed under this section,** persons who are officially warned after an administrative hearing, and persons who successfully complete a Division Driver Improvement Program or [a] Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle Laws of the State of New Jersey committed within [a period of] one year of the restoration, official warning, **or warning** following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods[.]**:**

1.-3. (No change.)

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

13:19-13.1 Surcharges for three year period; convictions; amounts

(a) (No change.)

(b) The following violations shall be subject to surcharges as indicated in (a) above for the amount set forth below:

1.-2. (No change.)

3. N.J.S.A. [39:4-14e] **39:4-14.3e** Failing to have insurance on motorized bicycle $100.00

4. (No change.)

13:19-13.3 [Refund of surcharge; deletion of suspension] **(Reserved)**

[A person who previously had been suspended for failing to pay a surcharge pursuant to N.J.A.C. 13:19-13.1 or 13:19-13.2 for a violation or suspension that occurred on or after January 1, 1983, but before March 19, 1984, will have the driving privilege suspension deleted without the payment of the mandatory restoration fee. If the restoration fee had been previously paid, the fee will be refunded, provided the person was serving no other suspension.]

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Fee Schedule; Requirement of Identification Card Defined

Proposed Amendments: N.J.A.C. 13:31-1.11 and 1.16

Authorized By: State Board of Examiners of Electrical Contractors, Edward O'Hara, President.
Authority: N.J.S.A. 45:5B-1.
Proposal Number: PRN 1994-378.

Submit written comments by August 4, 1994 to:
Christine DeGregorio, Executive Director
State Board of Examiners of Electrical Contractors
Post Office Box 45006
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Examiners of Electrical Contractors is proposing amendments to N.J.A.C. 13:31-1.11, Fee schedule, and N.J.A.C. 13:31-1.16, Requirement of identification card defined. The proposed amendments will bring the structure of the Board's fee schedule into conformity with the fee schedule structures of other professional boards within the Division and will ensure that the Board continues to meet its operating expenses. No increase in the $150.00 triennial licensing fee is necessary at this time.

In particular, the application fee has been raised from $50.00 to $100.00, and the word "non-refundable" has been added to clarify that both the application fee and the fee regarding a telecommunications wiring exemption are non-refundable. The initial license fee and the initial business permit have been prorated on an annual basis for the benefit of individuals who apply for a license or permit during the first or second years of the triennial licensing period. Finally, several additional categories of fees have been created: late renewal fee, reinstatement fee, late renewal fee for a permit, replacement seal press, duplicate license fee, replacement wall certificate, and verification of licensure.

The amendment to N.J.A.C. 13:31-1.16 reflects the Board's transition from a biennial to triennial renewal period.

Social Impact

Pursuant to N.J.S.A. 45:1-3.2, the Board must be self-funding by generating revenue from fees that shall meet but not exceed its operating costs. These proposed amendments will enable the Board to continue to comply with the statute and will also bring the Board's fee schedule structure into conformity with those of other professional boards within the Division. The amendments will have no social impact upon the public.

Economic Impact

The proposed amendments to the Board's fee schedule will affect only applicants for licensure, in that they will be required to pay an increased application fee, and licensees and permit holders who do not pay renewal fees in a timely manner or who require a duplicate license or permit. The proposed fee schedule amendments are not expected to result in an increase in fees charged to the consumer.

Regulatory Flexibility Analysis

The proposed amendments will apply to all of the 8,824 current licensees and 7,028 business-permit holders of the Board of Examiners of Electrical Contractors. The Board estimates that all of the licensees and business-permit holders would be categorized as "small businesses" according to the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements consist, in certain cases, of paying increased licensing fees in a timely manner. No reporting or recordkeeping requirements exist, nor are any professional services required. Since the 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:31-1.11 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application fee **(non-refundable)**	[$50.00] **$100.00**
[2. Initial licensure	$100.00]
2. Initial license fee:	
i. If paid during the first year of a triennial renewal period	**$150.00**
ii. If paid during the second year of a triennial renewal period	**$100.00**
iii. If paid during the third year of a triennial renewal period	**$ 50.00**
3. Triennial license renewal	$150.00
4. Late renewal fee (within 30 days)	**$ 50.00**
5. Reinstatement fee	**$100.00**
[4.]**6.** Initial business permit:	[$ 25.00]
i. If paid during the first year of a triennial renewal period	**$ 75.00**
ii. If paid during the second year of a triennial renewal period	**$ 50.00**
iii. If paid during the third year of a triennial renewal period	**$ 25.00**
[5.]**7.** Triennial business permit renewal	$ 75.00
8. Late renewal fee, permit	**$ 25.00**
9. Replacement seal press	**$ 40.00**
10. Duplicate license/business permit fee	**$ 25.00**
11. Replacement wall license/business permit	**$ 40.00**
12. Verification of licensure	**$ 25.00**
[6.]**13.** Telecommunications wiring exemption—application fee and issuance of identification card **(non-refundable)**	$120.00

13:31-1.16 Requirement of identification card defined

(a) At the time of [biennial] **triennial** renewal of the license and business permit, the Board of Examiners of Electrical Contractors shall furnish a wallet size identification card to every licensee. The card shall be used exclusively by the licensee in the conduct of his practice. A licensee who willfully or negligently allows an unlicensed or an unauthorized person to use his identification card shall be deemed to have engaged in occupational misconduct and shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:5A-1 et seq. and N.J.S.A. 45:1-14 et seq. The licensee is required to present said identification card upon request to the appropriate duly licensed inspection agency upon all applications for electrical permits.

(b) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Standards for Licensure of Physicians with Post-Secondary Educational Deficiencies

Proposed New Rule: N.J.A.C. 13:35-3.12

Authorized By: State Board of Medical Examiners, Charles A. Janousek, Executive Director.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1994-379.

Submit written comments by August 4, 1994 to:
Charles A. Janousek, Executive Director
State Board of Medical Examiners
140 East Front Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

By P.L. 1993, c.145, the Legislature conferred upon the Board of Medical Examiners the authority to adopt a more flexible approach to permit qualified applicants for licensure to remediate educational defi-

ciencies in undergraduate education. This proposed new rule establishes the guidelines to which both the Board and its applicants can look to determine whether substantial equivalents to the post secondary education requirements have been presented.

Social Impact

By allowing the Board to assess other educational qualifications, this proposed new rule will permit physicians who have obtained educational pre-requisites outside of the standard track to be deemed eligible for licensure. Thus, it will open up avenues for employment for physicians and will allow the citizens of New Jersey to obtain their services.

Economic Impact

Those who may have previously been foreclosed from practicing and earning a livelihood will now be deemed eligible for licensure. Allowing this group of individuals such an opportunity will also have a salutary impact on hospitals and other health care facilities who may be seeking their services.

Regulatory Flexibility Statement

Since this rule impacts upon individuals, there is no anticipated impact on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the physicians affected by this rule may be hired by ongoing practices, obviously it will allow for better functioning of those practices. No additional reporting requirements, however, will be imposed on ongoing business concerns.

Full text of the proposed new rule follows:

13:35-3.12 Standards for licensure of physicians with post-secondary educational deficiencies

(a) An applicant for licensure to practice medicine and surgery in this State shall, prior to having commenced medical school studies, submit proof to the Board that he or she has successfully completed a satisfactory course of at least two years, at a college or university accredited by an agency recognized by the Board, during which period he or she shall have earned at least 60 credits, and passed at least one three credit course in chemistry, physics and biology.

(b) The Board in its discretion may waive any or all of the pre-medical requirements set forth in (a) above if the credentials presented include proof of the following:

1. Certification by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association;

2. Award of a Ph.D. degree in a health related field from a college or university accredited by an agency recognized by the Board;

3. Award of an M.P.H. degree from a college or university accredited by an agency recognized by the Board; or

4. Award of an N.I.H. Research Award.

(c) The Board in its discretion may waive up to one half of the required credits and/or the required subjects if the credentials presented include proof of successful completion of the full term of an A.C.G.M.E. accredited fellowship program acceptable to the Board.

(d) The Board in its discretion may waive any or all of the required subjects if the credentials presented include proof of a score of 80 on each part of the FLEX USMLE.

(e) If the Board identifies substantive deficiencies, and none of the credentials identified at (b), (c) or (d) above have been presented, the applicant may be provided leave to secure such credentials and the Board, upon request, may provide guidance to applicants seeking to remediate deficiencies.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

Pharmacy Technicians

Proposed Amendments: N.J.A.C. 13:39-1.2, 6.7, 9.1, 9.7, 10.4 and 11.1

Authorized By: State Board of Pharmacy, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 45:14-1.

Proposal Number: PRN 1994-383.

Submit written comments by August 4, 1994 to:
H. Lee Gladstein, Executive Director
State Board of Pharmacy
Post Office Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

Because pharmacy technicians are now more frequently employed as assistants than ever before, the State Board of Pharmacy is proposing amendments to N.J.A.C. 13:39-1.2, 6.7, 9.1, 9.7, 10.4 and 11.1 in order to capture and set forth the parameters defining the role and responsibilities of pharmacy technicians. The amendments being proposed are related in that they acknowledge the role that pharmacy technicians fulfill, prescribe the supervised realm in which pharmacy technicians may operate, and state what pharmacy technicians are specifically allowed to do or not do.

Three of the amended sections involve definitions. In N.J.A.C. 13:39-1.2, 9.1 and 11.1, the role that pharmacy technicians fulfill is acknowledged by including pharmacy technicians along with supportive personnel as individuals subject to the "direct supervision" of a registered pharmacist. Additional amendments that appear only in N.J.A.C. 13:39-1.2 consist of the insertion of a definition of "pharmacy technician," and an expanded statement in the existing definition of "supportive personnel" that notes that pharmacy technicians form their own professional category.

As proposed, the other three amended sections address the supervisory relationship between pharmacists and pharmacy technicians, and the actual duties of pharmacy technicians. In N.J.A.C. 13:39-6.7, the greater degree of professional assistance that pharmacy technicians may offer pharmacists as compared to that offered by supportive personnel is affirmed in subsection (a), while subsection (b) details eight duties that both supportive personnel and pharmacy technicians are not allowed to perform. The supervisory responsibilities of a pharmacist who employs a pharmacy technician are covered in N.J.A.C 13:39-6.7(d), as well as in N.J.A.C. 13:39-9.7 and 10.4.

Social Impact

The social impact that these proposed amendments will have on consumers involves ensuring the public's safety, health and welfare by mandating those duties which pharmacy technicians are allowed to perform and the supervisory responsibilities to be assumed by pharmacists who employ pharmacy technicians. The social impact that these amendments will have on pharmacists and pharmacy technicians is likewise beneficial in that both parties gain a clear sense of the parameters of a pharmacy technician's duties and the supervisory role that pharmacists must fulfill, while at the same time pharmacists are relieved of some of their technical duties.

Economic Impact

The proposed amendments will have no economic impact on the public because they merely codify the three-tiered professional structure that now exists in pharmacies, with pharmacy technicians occupying the middle tier below pharmacists but above supportive personnel. While the amendments will also have no economic impact on pharmacists whose professional status is secure, the amendments may have some beneficial economic impact on pharmacy technicians in that their role is hereby acknowledged and given definitive shape.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed amendments will apply. If, for the purposes of the Regulatory Flexibility Act, pharmacists are deemed to be "small businesses," the following analysis applies:

The proposed amendments, which are broadly concerned with the way in which pharmacy technicians fit into the work force employed by a pharmacist, will apply to all of the approximately 11,000 current licensees of the State Board of Pharmacy. A pharmacist who employs a pharmacy technician must prepare and provide to the Board upon request a copy of the established job description, task protocol and policies and procedures in the pharmacy setting in which the technician is to perform his or her duties. Additional recordkeeping is required for supervising pharmacists employed within institutional pharmacies in that all notations made on a patient's profile record by a pharmacy technician must be verified and countersigned by the supervising pharmacist. The proposed amendments will not require the retention of professional services or initial capital costs. The proposed amendments may involve other costs of compliance to a minimal degree, however, because the pharmacist who employs pharmacy technicians must be sure to train pharmacy technicians regarding their duties and shall, as previously noted, provide the Board at its request with a copy of guidelines stating the way in which the technician is to perform his or her duties.

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

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

13:39-1.2 Definitions

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

...

"Direct supervision" means that the registered pharmacist shall be physically present in the compounding/dispensing area where [the] supportive personnel **and pharmacy technicians** are performing delegated duties, and shall conduct in-process and final checks of all steps in preparation, compounding, and dispensing of drugs. This supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

...

"Pharmacy technician" means a person trained to prepare and distribute prescription medications under the direct supervision of a registered pharmacist in compliance with the code of conduct set forth in N.J.A.C. 13:39-6.7.

...

"Supportive personnel" means those persons who perform **non-**pharmaceutical functions under the direct supervision of a registered pharmacist. Interns, [and] externs **and pharmacy technicians** are specifically excluded from this definition.

13:39-6.7 Supportive personnel, **pharmacy technicians**

(a) Supportive personnel **and pharmacy technicians** may assist the registered pharmacist in a clerical manner such as the retrieving of prescription files, profile cards, and other such records, the typing of labels and the completing of prescription receipts and other such forms. **Only a pharmacy technician under the direct supervision of a registered pharmacist may count, weigh, measure, pour prescription medication or stock legend drugs and CDS (controlled drug substances).**

(b) Supportive personnel **and pharmacy technicians** shall not [interpret a prescription order or consult with a patient or physician or the agent of the physician. Supportive personnel may, however, count, weigh, measure, or pour prescription medication under the direct supervision of the registered pharmacists as long as the contents and finished-product are verified by a registered pharmacist.];

1. Receive oral, telecommunicated prescriptions;
2. Determine the refillability of prescriptions;
3. Interpret a prescription or order;
4. Verify dosage and directions;
5. Be involved in patient counseling;
6. Monitor prescription usage;
7. Engage in drug utilization review (DUR) activity (except data gathering); or
8. Seek permission from a physician or the agent of the physician to refill a prescription.

(c) [There shall be no more than two supportive personnel, not including cashier, stocking and clerical help, being supervised by one pharmacist at any given time. Those personnel who do computer processing of prescriptions are to be included in the 2 to 1 ratio.] **A pharmacy technician shall wear a name tag identifying him or herself to the public as a pharmacy technician.**

(d) A registered pharmacist who wishes to employ a pharmacy technician shall:

1. Establish a written job description, task protocol, and policies and procedures that pertain to the duties performed by a pharmacy technician;

2. Ensure that the pharmacy technician is knowledgeable of the established job description, task protocol, and policies and procedures in the pharmacy setting in which the technician is to perform his or her duties;

3. Provide the Board, upon its request, with a copy of the established job description, task protocol, and policies and procedures in the pharmacy setting in which the technician is to perform his or her duties;

4. Ensure that the duties assigned to a pharmacy technician do not exceed the established job description, task protocol, and policies and procedures, and shall ensure that those duties do not involve any of the prohibited activities cited in (b) above;

5. Ensure that the pharmacy technician receives adequate in-service training before the technician officially assumes his or her professional responsibilities;

6. Provide the direct supervision as defined in N.J.A.C. 13:39-1.2 under which the pharmacy technician performs all professional activities; and

7. Have under his or her direct supervision at any one time no more than two pharmacy technicians, a ratio that does not include cashier, stocking or clerical help but does include personnel performing the computer processing of prescriptions.

13:39-9.1 Definitions

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

...

"Direct supervision" means that the registered pharmacist shall be physically present in the compounding/dispensing area where [the] supportive personnel **and pharmacy technicians** are performing delegated duties, and shall conduct in-process and final checks of all steps in preparation, compounding, and dispensing of drugs. This supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

...

13:39-9.7 Records and reports

(a) (No change.)

(b) The institutional pharmacy shall maintain a patient profile record for each patient receiving drug therapy in accordance with N.J.A.C. 13:39-7.14 and as follows:

1. (No change.)

2. All notations made on the inpatients' profile records by [supportive personnel] **a pharmacy technician** shall be verified and countersigned by the supervising pharmacist.

3. (No change.)

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

13:39-10.4 Pharmacist's responsibilities

(a) (No change.)

(b) This pharmacist shall have the responsibility, in that section of the pharmacy which provides this special service for the following at a minimum:

1.-4. (No change.)

5. Assuring that only licensed pharmacists meeting the requirements of (a) above [or supportive personnel] **and pharmacy techni-**

cians under direct supervision of a pharmacist prepare, compound, and dispense the sterile admixture preparations.

13:39-11.1 Definitions

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

...

"Direct supervision" means that a qualified nuclear pharmacist shall be physically present in the compounding/dispensing area where [the] supportive personnel **and pharmacy technicians** are performing delegated duties, and shall conduct in-process and final checks of all steps in preparation, compounding, and dispensing of drugs. This supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

...

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Change of Address; Business Name or Telephone Number; Place of Business

Proposed Amendment: N.J.A.C. 13:44D-2.2. Proposed New Rule: N.J.A.C. 13:44D-2.6

Authorized By: Board of Public Movers and Warehousemen, Thomas B. Quicksell, President.

Authority: N.J.S.A. 45:14D-1 et seq.

Proposal Number: PRN 1994-380.

Submit written comments by August 4, 1994 to:
Diane Romano, Executive Director
Advisory Board of Public Movers and Warehousemen
Post Office Box 45018
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Public Movers and Warehousemen is proposing amendments to N.J.A.C. 13:44D-2.2, Change of address, business name or telephone number and a new rule N.J.A.C. 13:44D-2.6, Place of business, which sets forth the operating procedures to be required of a licensee at the licensee's permanent place of business. The amendments to N.J.A.C. 13:44D-2.2 clarify the requirement that a licensed public mover and/or warehouseman shall provide notification that the licensee's address has changed by detailing that said address applies both to the licensee's mailing address and the licensee's permanent place of business address. The amendments to N.J.A..C 13:44D-2.2 also reflect the fact that the Board of Public Movers and Warehousemen is no longer an Advisory Board but rather a Board authorized in its own right, and as such all notifications of change of address, business name or telephone number should no longer be sent to the Director of Consumer Affairs but rather to the Board.

In regard to new rule N.J.A.C. 13:44D-2.6, the Board has formulated these required operating procedures in response to concerns by both the Board and the public at large that consumers are too frequently incapable of contacting public movers in a timely fashion in order to resolve consumer complaints, handle consumer inquiries, or accept or process necessary consumer documents. In addition, the proposed rule aims to assist State investigators who have also been frequently incapable of gaining access to a licensee's original business records and forms in a timely fashion.

The proposed rule establishes four specific operating procedures to be followed by licensees. One procedure requires a licensee to keep all original business records and forms related to the business at the permanent place of business so as to facilitate the efforts of State investigators who require access to business records related to consumer complaints. Another procedure ensures that a representative of the mover shall be available in-person on the premises of the licensee's permanent place of business for a minimum of 20 hours per week between the hours of 7:00 A.M. to 7:00 P.M., in order to resolve consumer complaints and accept or process necessary documents.

The third and fourth operating procedures involve a notice that the licensee shall conspicuously post on the premises of his or her permanent place of business in order to make it easier for consumers to reach a licensee from whom they need information or assistance. The third procedure mandates that the notice include the telephone number of the company representative available to handle customer inquiries for a minimum of 35 hours per week. The fourth and final procedure mandates that the notice include the schedule of a minimum of 20 hours per week when an employee will be on the premises to resolve consumer complaints and accept or process necessary documents.

N.J.A.C. 13:44D-2.6(c) prevents either a post office box or a maildrop location as constituting a permanent place of business. N.J.A.C. 13:44D-2.6(d) defines "conspicuously posted" to mean that the required notice will be placed such that person will be able to read it while outside the licensee's permanent place of business. The proposed amendments to N.J.A.C. 13:44D-2.2 changing references to the Director of the Division of Consumer Affairs to references to the Board are in recognition of the Board's independent authority under P.L. 1993, c.365, and repeat amendments already proposed at 26 N.J.R. 1758(a).

Social Impact

The amendments to N.J.A.C. 13:44D-2.2 are meant to ensure that the Board, and therefore consumers, will be aware of both the licensee's mailing address and permanent place of business address so as to enable consumers to contact licensees in a timely fashion. In regard to new rule N.J.A.C. 13:44D-2.6, the four stipulated operating procedures should provide consumers and State investigators alike with greatly improved access to public movers. As far as consumers are involved, perhaps the single greatest benefit of this proposed rule is the required posting of a notice with a schedule of 20 hours per week when an employee will be on the premises in order to assist customers and to fully discharge the licensee's responsibilities during a move. The posting of a notice that includes a telephone number by which a company representative is available 35 hours per week should likewise greatly improve a customer's chances of having his or her needs resolved in a timely fashion.

A mover who does not retain the services of a company employee to be on the premises 20 hours per week to resolve consumer complaints and accept or process necessary documents may find that his or her own scheduling flexibility is curtailed.

Economic Impact

The amendments to N.J.A.C. 13:44D-2.2 will have no economic impact on consumers or licensees of the Board. Proposed new rule N.J.A.C. 13:44D-2.6 will not have any major economic impact on consumers, aside from enabling them to avoid expenses caused by delays in having their inquiries or documents handled in a timely fashion by a company representative or employee of a public mover. Licensees who do not already operate their business in a manner that includes the services of an employee available on the premises 20 hours per week to resolve consumer complaints and to accept or process necessary documents are likely to be adversely affected by the proposed new rule in an economic sense. Such licensees will find it necessary to hire or otherwise supply, for a minimum of 20 hours per week, an individual capable of resolving a consumer's needs in person. The requirement concerning a company representative available 35 hours per week to handle telephone inquiries may also involve additional expenses for licensees who have not previously provided that kind of service to consumers. The Board believes, however, that any adverse economic impact upon the licensee will be offset by the opportunity to assure consumers that public movers will be available to handle their needs.

Regulatory Flexibility Analysis

The proposed amendments and new rule will affect all of the approximately 400 public movers currently licensed by the Board of Public Movers and Warehousemen. The Board estimates that a majority of these licensees are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments will impose new reporting requirements upon licensees only in that they will need to provide notification of any change in either or both their mailing address and permanent place of business address. The amendments impose no other additional requirements in terms of recordkeeping, initial capital costs, costs of professional services or any other costs of compliance.

The new rule does not impose any reporting requirements upon licensees, but it does require recordkeeping only in that a notice shall be posted listing the schedule of a minimum of 20 hours per week when an employee will be on the premises to resolve consumer complaints and to accept or process necessary documents. The rule will not require licensees to employ professional services. Nor will the rule result in initial capital costs. The one significant cost of compliance required by this rule will occur should a licensee find it necessary to hire someone to be available in-person for a minimum of 20 hours per week to resolve consumer complaints and to accept or process necessary documents, or to have a company representative available 35 hours a week to handle telephone inquiries. The Board recognizes that small operators may use their primary residence as their permanent place of business, and further recognizes that those same operators may fulfill the requirement to have a representative available as necessary either in person or on the phone by utilizing a person, including, but not limited to, a spouse or family member, who shall be regarded as serving as an agent of the company.

Since the intent of the amendments and new rule is to create uniformity in the profession by ensuring consumer accessibility to public movers in a timely fashion, the proposed amendments and new rule must be applied identically without differentiation as to size of practice.

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

13:44D-2.2 Change of address, business name or telephone number

(a) A licensed public mover and/or warehouseman shall notify the [Director of the Division of Consumer Affairs] **Board** in writing of any change of **mailing** address, **permanent place of business address** or business name from that currently registered with the [Director] **Board** and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of **mailing** address, **permanent place of business address** or business name.

(b) A licensed public mover and/or warehouseman shall notify the [Director of the Division of Consumer Affairs] **Board** in writing of any change of business telephone number from that currently registered with the [Director] **Board**. Such notice shall be given not later than 30 days following the change of telephone number.

13:44D-2.6 Place of business

(a) A licensee shall maintain a permanent bona fide place of business in the State of New Jersey wherein:

1. All original business records and forms related to a licensee's business dealings shall be kept; and

2. A representative shall be present and authorized to act on behalf of the licensee and to accept or process necessary documents. The representative shall be present and available for a minimum of 20 hours per week between the hours of 7:00 A.M. to 7:00 P.M.

(b) A licensee shall conspicuously post a notice on the premises of his or her permanent place of business that includes:

1. The telephone number of a representative available to handle consumer inquiries for a minimum of 35 hours per week; and

2. The schedule of a minimum of 20 hours per week when a representative will be present and available at the place of business.

(c) A permanent place of business shall not include either a post office box or a maildrop location.

(d) For the purpose of this section, "conspicuously posted" shall mean a placement location that will permit the average consumer to readily read the notice required herein without having to enter the premises of the licensee's place of business.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
Charitable Fund Raising
Proposed Repeal and New Rules: N.J.A.C. 13:48

Authorized By: James F. Mulvihill, Assistant Attorney General in Charge.

Authority: P.L. 1994, c.16, Section 4b.

Proposal Number: PRN 1994-399.

Submit written comments by August 4, 1994 to:
James F. Mulvihill
Assistant Attorney General in Charge
Division of Consumer Affairs
P.O. Box 45021
Newark, NJ 07101

The agency proposal follows:

Summary

Charitable fund raising in New Jersey has been regulated since the enactment of the Charitable Fund Raising Act of 1971. In the 23 years since the original law became effective, the proliferation of diverse types of fund raising organizations and personnel, technological developments in communications, a number of fund raising scandals, and the difficulties of enforcement under an outdated statute, made increasingly apparent the need for revised legislation.

The new Charitable Registration and Investigation Act, P.L. 1994, c.16, which became law on April 12, 1994, creates a more effective structure for the regulation of fund raising organizations, fund raising counsel, independent paid fund raisers, and solicitors of contributions.

With the repeal of the prior statute, the Division of Consumer Affairs, as designee of the Attorney General for implementation of the Act, must replace its entire chapter of administrative rules on charitable fund raising. This proposal constitutes the first step in the development of the stronger administrative framework made possible by the new statute. It consists of three subchapters that the Division believes to be required immediately for efficient administration and enforcement, and for the guidance of registrants.

The first subchapter, General Provisions, covers delegation of the Attorney General's duties to the Director of the Division of Consumer Affairs, applicability of the rules, definitions, and the address for all matters relating to registration. The second subchapter contains the fee schedule for registrants and required filings, and the third sets forth requirements for extensions of time for filing annual financial reports.

Further regulations will be proposed in the near future. Since the new law is unusually detailed, present and potential registrants are advised to consult its provisions for many of the procedural requirements.

Social Impact

The proposed new rules will enable the Division of Consumer Affairs immediately to implement the modernized statute, which will eventually have profound beneficial impact upon the public. When the entire regulatory structure is in place, not only will the registration process be more equitable, but also the Division will be armed with the means for more efficient enforcement against fraud and questionable practices in fund raising.

Economic Impact

Although the fee schedule includes increased registration fees, the proposed fees are fair and will have a minimal impact upon the regulated parties. The schedule is more equitable than in the past, because the registration fees for charitable organizations are graduated and based upon the amount of gross contributions received annually. Uniform fees have been imposed upon professional fund raisers and solicitors. The administrative cost of regulating this for-profit part of the fund raising industry is higher than the cost of regulating charitable organizations.

The Division has proposed a fee schedule which will cover costs for processing registrations, reviewing contracts and various documents, as well as other mandated tasks, such as the maintenance of the telephone information service—the charities "hot line." Expenses will also be incurred for complex investigations and enforcement actions.

The proposed fee schedule is expected to have no effect upon the public, since its direct impact is confined to charitable organizations and personnel involved in solicitation campaigns. Nor is the schedule so onerous, in the opinion of the Division, as to cut into total revenue applied to charitable purposes. Indeed, the tighter control and consumer protections embodied in these regulations, and those to come, may in the long run enhance contributions; as public trust increases, larger donations may be inspired. The Division must meet its expenses to enforce the statute, and disseminate information to the public. This fee schedule will make efficient, effective administration possible.

Regulatory Flexibility Analysis

The proposed new rules will eventually affect approximately 15,000 charitable organizations nationwide, and approximately 1,000 fund raising counsels, independent paid fund raisers and solicitors. These are the numbers the Division projects as entities subject to registration, since exact figures cannot be predicted. As of May 1, 1994, there were 3,672 charitable organizations, and 148 fund raising counsels and independent paid fund raisers registered with the Division.

These proposed new rules will impact upon both profit and non-profit organizations. Some of these organizations are incorporated and can be characterized as small businesses under the criteria set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules create no recordkeeping requirements beyond those in the statute upon which the new rules are based. Several reporting requirements have been added in N.J.A.C. 13:48-3, but these apply only to those registrants seeking extensions of time to file their annual financial reports. Small businesses may utilize the services of accountants to prepare annual reports and verify the Division's determination of which registration fee is applicable to a particular entity. Accountants may also be used to prepare requests for an extension of time for the financial report. Similarly, lawyers may be consulted as to the applicability of certain definitions to a fund raising counsel or independent paid fund raiser. These professional services, however, are likely to be used on a continuing basis in the ordinary course of business. Therefore, it is unlikely that annual costs for professional services would increase significantly.

Compliance with these proposed new rules does entail payment of a registration fee, in amounts specifically authorized by the new statute. These registration fees are graduated to minimize the financial burden imposed upon small, non-profit organizations. There are, in addition, several fees for filing documents. These have been set at the lowest possible level ($10.00) consistent with costs for processing and review.

The proposed rules cannot be varied for small for-profit businesses because to do so would negate their value and effectiveness. The Division believes that any adverse economic impact on small businesses will be slight, and must be weighed against the protective benefits accruing to the public—as well as to charitable organizations—as a result of the new law.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:48.

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

CHAPTER 48
CHARITABLE FUND RAISING

SUBCHAPTER 1. GENERAL PROVISIONS

13:48-1.1 Director

(a) The Director of the Division of Consumer Affairs shall be the person charged with the administration and enforcement of the Charitable Registration and Investigation Act, P.L. 1994, c.16.

13:48-1.2 Applicability

(a) These rules shall govern the registration and charitable fund raising activities of charitable organizations, federated fund raising organizations, professional fund raisers, solicitors, and commercial co-venturers, pursuant to the Charitable Registration and Investigation Act of 1994.

(b) These rules shall apply to any person engaging within this State in any of the activities regulated by the Act, including persons whose principal place of business is located outside this State.

(c) Upon initial request by a potential registrant, or as the result of independent information received by the Attorney General, a determination form, to determine the applicability of the Act, will be supplied. There is no fee for this form, which may be requested by telephone, facsimile, or letter sent to the address set forth in N.J.A.C. 13:48-1.4.

13:48-1.3 Definitions

(a) Where words or terms used in this chapter have been defined in P.L. 1994, c.16, Section 3, the statutory definitions shall be deemed to apply unless defined differently within these regulations. The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Charitable Registration and Investigation Act of 1994, P.L. 1994, c.16.

"Attorney General" means the Attorney General of the State of New Jersey or, as applicable, the Attorney General's designee, the Director of the Division of Consumer Affairs.

"Campaign" means an operation or plan organized to solicit a contribution to further a charitable organization's stated or implied purpose.

"Division" means the Division of Consumer Affairs within the Department of Law and Public Safety.

"Event" means a planned happening, occurrence, activity or social occasion.

"Government grant" means:

1. Any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant;

2. Tax revenues levied for the organization's benefit and either paid to or expended on its behalf;

3. The value of services or facilities furnished by a governmental unit to the organization without charge.

"Gross contributions" means the total amount of contributions received nationwide by a charitable organization, before any deductions for expenses of collection or overhead or for anyone's services, such as the services provided by fund raising counsel or independent paid fund raisers.

"Gross receipts" means the total amount, without deductions, of cash or other assets received, including, but not limited to, all contributions.

"Professional fund raisers" means both independent paid fund raisers and fund raising counsel.

13:48-1.4 Address for all matters related to registration

All matters related to registration should be communicated to:

Division of Consumer Affairs
Regulated Business Section
P.O. Box 45021
Newark, N.J. 07101
Tel: (201) 504-6262
FAX: (201) 648-2807

SUBCHAPTER 2. FEES

13:48-2.1 Fee schedule

(a) The fees charged by the Division of Consumer Affairs for registration of charitable organizations (which shall be read to include, for the purposes of this subchapter, federated fund raising organizations), professional fund raisers and solicitors, and for filing of contracts and other documents, shall be the following:

1. A charitable organization, which is required under the Act to file a short form registration statement and which received gross contributions of not more than $10,000 during the most recently filed fiscal year of the organization, shall not be required to pay an annual registration fee. A late fee of $25.00 shall be incurred by any organization that fails to submit the annual filing within 30 days of the annual filing deadline.

2. A charitable organization, which is required under the Act to file a short form registration statement and which received gross contributions in excess of $10,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $30.00 a year with the annual filing unless a filing extension was

granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

3. A charitable organization, which is required under the Act to file a long form registration statement and which received gross contributions of not more than $100,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $60.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

4. A charitable organization, which is required under the Act to file a long form registration statement and which received gross contributions of more than $100,000 but not more than $500,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $150.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

5. A charitable organization, which is required under the Act to file a long form registration statement and which received gross contributions of more than $500,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $250.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

6. A parent organization that registers local units in accordance with the Act shall pay its own fee and an additional fee of $10.00 for each local unit.

7. All fund raising counsel and independent paid fund raisers shall pay an annual registration fee of $250.00, payable upon initial registration and on July 1 of each renewal year thereafter. A partnership or corporation which offers either fund raising counsel or independent paid fund raiser services, or both types of services, shall pay a single annual registration fee, payable upon initial registration and on July 1 of each renewal year thereafter. Upon renewal of registration, failure to pay the fee within 30 calendar days of July 1 shall result in a late fee of $25.00.

8. In addition to the fee paid by independent paid fund raisers, a solicitor shall pay a registration fee of $25.00, payable upon initial registration and on July 1 of each renewal year thereafter. Upon renewal of registration, failure to pay the fee within 30 calendar days of July 1 shall result in a late fee of $25.00.

9. The fee for filing a contract, defined for purposes of this subsection as any written agreement between a charitable organization and a fund raising counsel, independent paid fund raiser or commercial co-venturer, at least 10 days prior to commencement of any solicitation activity in the State set forth in that contract, shall be $30.00.

10. The fee for filing a final report, required to be filed by the charitable organization under Section 12b of the Act at the conclusion of a charitable sales promotion conducted by a commercial co-venturer on behalf of a charitable organization, shall be $10.00.

11. The fee for filing a financial report required to be filed by a fund raising counsel or independent paid fund raiser under Section 10g(3) of the Act for a solicitation campaign, shall be $10.00.

12. The fee for filing a written commitment, required to be filed by a fund raising counsel or independent paid fund raiser under Section 15e(1) of the Act, confirming a charitable organization's acceptance of donated tickets to an event, shall be $10.00.

13. The fee for filing a 10 day notice, required to be filed by Section 13d(1) of the Act by a law officers' organization to provide notice of any campaign involving multiple solicitations, shall be $10.00.

14. The fees for photocopies of any public record maintained pursuant to the Act shall be in accordance with N.J.S.A. 47:1A-2, specifically:

First page to tenth page	$0.75 per page
Eleventh page to twentieth page	$0.50 per page
All pages over 20	$0.25 per page

(b) Where the fee imposed is based upon the gross contributions received during the most recently filed fiscal year, and a charitable organization failed to make a required filing which reports gross contributions, the fee shall be based upon the gross contributions received in the prior fiscal year.

(c) A late fee shall be deemed a primary, but not exclusive, remedy for any registration statement or other document which is not filed in a timely fashion. Any failure to file in a timely fashion is a violation of the Act and may be enforced accordingly.

(d) All fee payments shall be in the form of a check or money order made out to "The N.J. Division of Consumer Affairs", and sent to:

Division of Consumer Affairs
Regulated Business Section
P.O. Box 45021
Newark, NJ 07101

SUBCHAPTER 3. GENERAL REQUIREMENTS

13:48-3.1 Extensions of time for annual filing of the renewal statement and financial report

(a) The annual filing of the renewal statement and financial report shall be due no later than six months after the close of an organization's fiscal year unless the organization has been granted an extension of time as set forth below.

(b) For good cause shown, the Attorney General may extend the time for the annual filing of the renewal statement and financial report, for a period not to exceed 180 days, during which time the previous registration shall remain in effect. For purposes of this section and Section 6b of the Act, "good cause" shall mean that:

1. The Internal Revenue Service has granted an extension of time for filing the organization's tax return;

2. The chief financial officer of the charitable organization has been replaced for any reason within three months prior to the request for the extension; or

3. There is pending litigation alleging misconduct by the charitable organization which could be deemed a violation of this Act.

(c) The request for an extension shall be in writing, accompanied by the full payment of the fee due for the annual filing, and sent by registered mail (return receipt requested) to the Division of Consumer Affairs at the address set forth in N.J.A.C. 13:48-1.4. The request must be received by the Attorney General before the filing deadline. The request shall be signed by the chief executive officer of the charitable organization.

(d) If the charitable organization sought and received from the Internal Revenue Service an extension of time for filing the organization's tax return, the request shall include a photocopy of the approval granted by the Internal Revenue Service.

(e) If the chief financial officer of the charitable organization has been replaced for any reason within the three months prior to the request for extension, the chief executive officer shall certify to that fact before a request for extension can be granted.

(f) If there is pending litigation alleging misconduct by the charitable organization which could be deemed a violation of this Act, the request shall include the caption, docket number, and a statement regarding the nature of the litigation. The Attorney General may also require submission of any or all relevant financial records before a request for extension shall be granted. If documents are unavailable because they have been subpoenaed, the applicant shall have retained and be able to provide certified true copies of all documents. The applicant shall include in the request for an extension a certification that the originals are not in the applicant's possession, and shall also provide a true copy of the subpoena.

(g) Subsections (b) through (f) notwithstanding, no extension will be granted if:

1. The charitable organization is already delinquent in filing the previous year's report;

2. Fees or penalties, if any, have not been paid; or

3. The extension request does not contain full and accurate information.

(h) Acceptance of an application for extension will be acknowledged by regular mail within 10 business days of the date it was received by the Division, as evidenced by the date appearing on the return receipt. All denials will be sent to the applicant by certified mail, return receipt requested, within 10 business days.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route 23
Franklin Borough, Sussex County
Proposed Amendment: N.J.A.C. 16:28-1.25

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

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

Proposal Number: PRN 1994-372.

Submit comments by August 4, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.25 to revise certain "speed limit" zones along Route 23 in Franklin Borough, Sussex County for the efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children attending Franklin Elementary School.

The request was initiated by a letter from the Chief of Police of Franklin Borough, Sussex County, dated September 15, 1993, requesting an investigation of traffic conditions along Route 23, including the feasibility of speed limit reduction. As part of a review of this request, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that certain "speed limit" revisions along Route 23 were warranted to assure the safety of student pedestrians in the vicinity of the Franklin Elementary School.

Appropriate signs shall be erected in areas where the speed limit zones have been changed. The sign in the vicinity of the school will be changed from a plain notice to a sign containing flashers which will operate when students are present.

Social Impact

The proposed amendment will establish a "speed limit" zone along Route 23 in Franklin Borough, Sussex County for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1.-3. (No change.)

4. For both directions of traffic:

i. (No change.)

ii. In Franklin Borough, Sussex County:

[(1) Zone two:

(A) 40 miles per hour to Mabie Street, except

(B) 30 miles per hour for the Franklin High School zone during recess or while children are going to or leaving school, during opening or closing hours;

(C) 45 miles per hour to the intersection of King Cole Road (milepost 34.8).]

(1) Zone one: 40 mph between the Hardyston Township-Franklin Borough corporate line and 1,100 feet north of Munsonhurst Road (County Road 517) (approximate mileposts 31.40 to 31.90); thence

(2) Zone two: 35 mph between 1,100 feet north of Munsonhurst Road (County Road 517) and Mabie Street, except for 25 mph when passing through the Franklin Elementary School zone while "25 mph When Flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 31.90 to 33.40); thence

(3) Zone three: 40 mph between Mabie Street and the Franklin Borough-Hamburg Borough corporate line (approximate mileposts 33.40 to 34.28).

iii.-iv. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route 35
Berkeley Township, Ocean County
Proposed Amendment: N.J.A.C. 16:28A-1.25

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-373.

Submit comments by August 4, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.25 to establish no stopping or standing zones on Route 35 in Berkeley Township, Ocean County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Berkeley, County of Ocean, which submitted a resolution adopted on April 26, 1994, requesting the New Jersey Department of Transportation to adopt a highway regulation for no stopping or standing zones along Route 35. The Township of Berkeley, County of Ocean also submitted a certified copy of Ordinance Number 91-20-OAB adopted on August 26, 1991 which established the requested no stopping or standing zones along Route 35. A traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing zones along Route 35 were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions zones along Route 35 in Berkeley Township, Ocean County to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1.-21. (No change.)

22. No stopping or standing in Berkeley Township, Ocean County:

[i. Along the southbound (westerly) side:

(1) Beginning 100 feet north of the northerly curb line of 20th Avenue to the southerly curb line of 24th Avenue.

ii. Along the northbound (easterly) side:

(1) Beginning at the northerly curb line of 24th Avenue to the southerly curb line of 14th Avenue.]

i. Along the southbound (westerly) side:

(1) Beginning at a point 100 feet north of the northerly curb line of 20th Avenue and extending southerly to Island Beach State Park property line.

ii. Along the northbound (easterly) side:

(1) From the Island Beach State Park property line and extending northerly to the northerly curb line of 14th Avenue.

iii. Along the center of the roadway:

(1) Beginning at the northerly curb line of 24th Avenue and extending to the Island Beach State Park.

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route 42

Monroe and Washington Townships; Gloucester County

Proposed New Rule: N.J.A.C. 16:31-1.35

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-125, 39:4-183.6 and 39:4-199.1.

Proposal Number: PRN 1994-374.

Submit comments by August 4, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:31-1.35 concerning turning movements along Route 42 in the Townships of Monroe and Washington in Gloucester County.

The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system by prohibiting "U" turns at the newly installed left turn slots which were constructed in conjunction with the Department's Regional Maintenance Project. This Project was instituted after numerous Town meetings in Washington and Monroe Townships in Gloucester County and approved by both municipalities.

The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the "U" turn restrictions along Route 42 in Monroe and Washington Townships in Gloucester County were warranted where left turn lanes have been installed. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish "U" turn restrictions along Route 42 in the Townships of Monroe and Washington, Gloucester County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:31-1.35 Route 42

(a) Turning movements on certain parts of State highway Route 42 described in this subsection are regulated as follows:

1. In Gloucester County:

i. Monroe Township:

(1) No "U" turn for vehicles over four tons registered gross weight northbound at:
(A) Route N.J. 42 and Lindale Avenue (approximate milepost 0.30).
(B) Route N.J. 42 and Pedrick Avenue (approximate milepost 0.35).
(C) Route N.J. 42 and Maxine Avenue (approximate milepost 0.62).
(D) Route N.J. 42 and Grandview Avenue (approximate milepost 1.28).
(E) Route N.J. 42 and Columbus Manor (approximate milepost 1.40).
(F) Route N.J. 42 and Kennedy Drive (approximate milepost 2.05).
(G) Route N.J. 42 and Georgiana Avenue (approximate milepost 2.24).
(H) Route N.J. 42, 650 feet south of Berlin-Cross Keys Road (County Road 689) (approximate milepost 2.50).
(2) No "U" turn for vehicles over four tons registered gross weight southbound at:
(A) Route N.J. 42 and Pine Street (approximate milepost 0.15).
(B) Route N.J. 42 and Lake Avenue (approximate milepost 0.75).
(C) Route N.J. 42 and Laurel Avenue (approximate milepost 1.48).
(D) Route N.J. 42, 400 feet north of Fenwick Avenue (approximate milepost 1.75).
(E) Route N.J. 42 and Prosser Avenue (approximate milepost 2.25).
(3) No "U" turns northbound at:
(A) Route N.J. 42 and Pine Street (approximate milepost 0.15).
(B) Route N.J. 42 and Lake Avenue (approximate milepost 0.75).
(C) Route N.J. 42 and Laurel Avenue (approximate milepost 1.48).
(D) Route N.J. 42, 400 feet north of Fenwick Avenue (approximate milepost 1.75.
(E) Route N.J. 42 and Prosser Avenue (approximate milepost 2.25).
(4) No "U" turns southbound at:
(A) Route N.J. 42 and Lindale Avenue (approximate milepost 0.30).
(B) Route N.J. 42 and Pedrick Avenue (approximate milepost 0.35).
(C) Route N.J. 42 and Maxine Avenue (approximate milepost 0.62).
(D) Route N.J. 42 and Grandview Avenue (approximate milepost 1.28).
(E) Route N.J. 42 and Columbus Manor (approximate milepost 1.40).
(F) Route N.J. 42 and Kennedy Drive (approximate milepost 2.05).
(G) Route N.J. 42 and Georgiana Avenue (approximate milepost 2.24).
(H) Route N.J. 42, 650 feet south of Berlin-Cross Keys Road (County Road 689) (approximate milepost 2.50).
ii. Washington Township:
(1) No "U" turns for vehicles over four tons registered gross weight northbound at:
(A) Route N.J. 42, 740 feet north of Ledden Avenue (approximate milepost 4.50).
(B) Route N.J. 42, 1,000 feet south of Fries Mill Road (approximate milepost 4.71).
(C) Route N.J. 42, 230 feet south of Madison Avenue (approximate milepost 4.18).
(2) No "U" turns for vehicles over four tons registered gross weight southbound at:
(A) Route N.J. 42 and Madison Avenue (approximate milepost 4.2).
(3) No "U" turns northbound at:
(A) Route N.J. 42 and Madison Avenue (approximate milepost 4.20).
(4) No "U" turns southbound at:
(A) Route N.J. 42, 740 feet north of Ledden Avenue (approximate milepost 4.50).
(B) Route N.J. 42, 1,000 feet south of Fries Mill Road (approximate milepost 4.71).
(C) Route N.J. 42, 230 feet south of Madison Avenue (approximate milepost 4.18).

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

International Government and Agency Obligations Limitations

Proposed Amendment: N.J.A.C. 17:16-20.2

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1994-393.

Submit comments by August 4, 1994 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
50 West State Street, 9th floor
CN 290
Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

The proposed amendment would permit the State-administered pension funds to slightly expand their range of permissible international investments. Such investments are currently limited to countries which are rated double-A by both Moody's and Standard & Poor's. The proposed changes would permit investment in countries which have only one double-A rating. The effect of the change would be to permit investment in Italy and Portugal.

Social Impact

The proposed change has no direct social impact on New Jersey, although the long term economic effects could benefit New Jersey taxpayers.

Economic Impact

A broader range of investment opportunities could provide higher returns and greater diversification for the State-administered pension funds.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments have no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

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

17:16-20.2 Limitations
(a) (No change.)
(b) All international government and agency obligations must be rated at least [Aa/AA] **double-A** by **either** Moody's Investors Service Inc. [and] **or** Standard & Poor's Corporation or have equivalent ratings.
(c) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organization of the Division of Taxation

Proposed Readoption with Amendments: N.J.A.C. 18:1

Authorized By: Richard D. Gardiner, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1994-395.

Submit comments by August 4, 1994 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:1 will expire on July 21, 1994. The Division of Taxation has reviewed these rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order. It should be noted that the Division intends to propose, in a future issue of the New Jersey Register, rules implementing the Taxpayer Bill of Rights, P.L. 1992, c.175. These rules will provide further information on Division organization and procedures for appeals.

Subchapter 1 contains information about the organization of the Division of Taxation, which includes rules outlining the existence of a Conference and Appeals Branch and the procedures to appeal assessments.

Subchapter 2 deals with procedures for petitioning the Division for rules.

N.J.A.C. 18:1-1.1(c) is amended to correct the names of different branches. N.J.A.C. 18:1-1.2 is expanded to explain how taxpayers may obtain information from the Division. This helps to implement P.L. 1992, c.175, the Taxpayer Bill of Rights, which requires, in amendments to N.J.S.A. 54:48-6 and 54:50-6, dissemination of information on tax procedures. N.J.A.C. 18:1-1.3 is amended to remove references to the Office of Inspection, which was eliminated.

P.L. 1992, c.175 amended N.J.S.A. 54:49-18 to extend the time in which taxpayers may protest assessments from 30 to 90 days. This change is noted in the proposed amendments to N.J.A.C. 18:1-1.8(a) and (b). A cross-reference to N.J.A.C. 18:1-1.8(b)7 has been added to N.J.A.C. 18:1-1.8(c), requiring the inclusion in a hearing request of the statement of the facts and of the evidence or documentation supporting the taxpayer's position. N.J.A.C. 18:1-1.8(d) was modified by the Taxpayer Bill of Rights. This subsection is, therefore, deleted and will appear in new rules to be proposed by the Division under the Taxpayer Bill of Rights. N.J.A.C. 18:1-1.8(e) has been recodified as (d) and has had a sentence added to note that, if a taxpayer fails to appear for a scheduled conference, the Division may issue a Final Determination, based on the facts documented in the file.

Social Impact

The proposed rule readoption and amendments should have a beneficial social impact by helping to implement P.L. 1992, c.175, the Taxpayer Bill of Rights. The Taxpayer Bill of Rights changed certain existing tax procedures and mandated new procedures, as outlined in the Summary above. These procedures are relevant to virtually all individual taxpayers and taxpaying entities in that they determine the nature of the relationship between the taxpayer and the Division at various points in the process of complying with the tax statutes.

Reaction to the proposal should be positive since the rules inform the public of the Division's desire to follow the spirit of the legislation, which was designed to expand the rights of taxpayers and improve the quantity and quality of information about the procedures that is available to the taxpaying public.

The legislation was intended to protect taxpayers in their contacts with the Division, particularly when involved in controversies with the Division, and inform taxpayers of their rights, and conform New Jersey's tax procedures to the prevailing provisions in the majority of other states. The amendments, by explaining how the Division will interpret and administer the legislation, should assist in reaching the aim of the legislation to bolster the rights of taxpayers.

Economic Impact

The rules proposed for readoption are procedural in nature and do not directly affect tax collections. The rules should have negligible economic impact or effect on revenues.

The improvements in tax procedures and wider dissemination of information about tax procedures mandated by P.L. 1992, c.175 and incorporated into N.J.A.C. 18:1-1.2 was hoped to reduce costs to taxpayers of complying with tax laws. The provisions would also have the effect of benefiting taxpayers by extending the time to appeal assessments from 30 days to 90 days, as noted in N.J.A.C. 18:1-1.8(a). P.L. 1992, c.175 was hoped to have the effect of helping to stabilize revenues by improving compliance with the tax laws.

Regulatory Flexibility Analysis

The rules proposed for readoption apply to all taxpayers, including small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules address a number of issues related to administration, including how to obtain information from the Division, how to protest an assessment and how to obtain an exemption opinion. The rules also set forth the requirements applicable to petitions for rules. The readoption includes several changes to existing rules, described in the Summary, to bring the rules into conformance with P.L. 1992, c.175 and current administrative procedures. Neither P.L. 1992, c.175 nor the rules proposed for readoption impose reporting or recordkeeping requirements or any annual compliance costs on small businesses. Therefore, no differentiation based on business size has been provided in the rules.

The modifications to procedures brought about by P.L. 1992, c.175 were intended to make the procedures more equitable by extendng the time to protest. Small businesses and other taxpayers may wish to retain the services of accounting or legal professionals, charging at normal rates, to review the rules to determine if they are relevant to their own tax situation. However, the costs for professional services to interpret the rules should ultimately be reduced as the readoption brings the rules up to date and helps to reduce the difficulty of complying with Division procedures.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:1.

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

18:1-1.1 Organization of the Division of Taxation

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

(c) The following functional subunits exist under the Director and are headed by Assistant Directors:

1. Audit;
2. [Administration/Processing/Taxpayer Registration] **Processing/ Administration Activity;**
3. [Special Procedures/Investigations; and] **Compliance;**
4. [Office of Inspection.] **Property Administration; and**
5. **Planning and Policy.**

(d) Beneath the level of Assistant Director, subunits as required are headed by Superintendents **and Branch Chiefs.**

(e) [Beneath the level of Superintendent, subunits as required are headed by Branch Chiefs.]

[(f)](e) (No change in text.)

18:1-1.2 Public information and submissions or requests

(a) The public may obtain general information regarding their **rights and** responsibilities under the tax laws of the State of New Jersey by [contacting] **writing to the New Jersey Division of Taxation** Taxpayer [Information Service] **Services Branch, Office of Communications,** [50 Barrack Street, CN 269] **CN 281,** Trenton, NJ 08646-[0269]**0281. The public may obtain specific information regarding their rights or responsibilities under one or more State tax laws by writing to the New Jersey Division of Taxation, Tax Services Branch, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.**

(b) The Division will provide an explanation of the audit and collection processes and of the taxpayer's rights pursuant to P.L. 1992, c.175 before or at interviews with taxpayers relating to the determination or collection of tax. For this purpose, a taxpayer may request or receive Publication TBR-P from the Division.

(c) To request New Jersey tax forms or publications, a taxpayer may call the Tax Hotline at 609-588-2200 or 800-323-4400 (touch-tone only), or write New Jersey Division of Taxation, Forms Distribution Section, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.3 [Office of Inspection background] **Background** investigations

(a) The [Office of Inspection] **Division of Taxation** may conduct background inquiries on applicants for Division positions to ensure that only qualified individuals of good character are appointed and that information contained on Taxation employment applications is accurate and complete. The inquiry will be conducted and the acquired information will be kept confidential in accordance with the Civil Service Act (N.J.S.A. 11A:1-1[,] et seq.) and any other applicable laws, and may include the following:

1.-7. (No change.)

18:1-1.4 Exemption opinions

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

(e) Requests for exemption opinions should be submitted to the Tax [Counselors] **Services** Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.8 Conference **and Appeals** Branch

(a) A Conference **and Appeals** Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director, **except administrative hearings and reviews of findings of transfer inheritance and estate taxes which are conducted by the Transfer Inheritance Tax Branch. See N.J.S.A. 18:26-12.5-12.10.** A protest, and a request for hearing, if any, by a taxpayer to the Conference **and Appeals** Branch must be made within the time mandated by the appropriate taxing statute, if any. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made **pursuant to N.J.S.A. 54:49-18** within [30] **90** days of the giving of the notice or the action of the Director sought to be reviewed. In the case of a petition for a redetermination under the Gross Income Tax Act, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court within 90 days of the date of issuance pursuant to N.J.S.A. 54:51A-14 and 54A:9-10. **The 90 day period for appeals to the Tax Court cannot be relaxed.**

(b) Upon the timely filing of a protest and a request for hearing pursuant to (a) above, the hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1.-6. (No change.)

7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the [30] **90** day period, the Division will, upon written request, extend the time for complying with this submission [until 30 days prior to the conference date] **for an additional 90 days.**); and

8. (No change.)

(c) A submission which, in particular, does not set forth the information in (b)5, [and] (b)6 **and (b)7** above will not be considered a valid protest and will not result in a hearing or review. If a taxpayer does not submit a payment under (b)8 above, a hearing will nevertheless be held. The Division may, however, in accordance with applicable law, proceed to collect outstanding amounts which are due.

[(d) The filing of any protest shall not abate penalties and interest for nonpayment, nor shall it stay the right of the Director to collect the tax in any manner provided by law, unless the taxpayer shall furnish security of the kind and in the amount satisfactory to the Director.]

[(e)]**(d)** Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellations are discouraged except in cases that make attendance unavoidable. In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference **and Appeals** Branch's soonest available date. **A Final Determination based on facts documented in the file may be issued if the taxpayer fails to appear at a scheduled conference.**

[(f)]**(e)** Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10 **and may be scheduled by contacting the Transfer Inheritance Tax Branch, 50 Barrack Street, Trenton, NJ 08646.** Railroad tax hearings are held pursuant to N.J.A.C. 18:23-11.2 and 11.3 **and may be scheduled by contacting Property Administration, 50 Barrack Street, Trenton, NJ 08646.**

[(g)]**(f)** Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference **and Appeals** Branch, Division of Taxation, [University Office Plaza, 3635 Quakerbridge Road] **50 Barrack Street,** CN 269, Trenton, NJ 08646-0269.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Permissible Uses of Candidate Funds

Proposed Amendments: N.J.A.C. 19:25-1.7 and 6.5
Proposed New Rules: N.J.A.C. 19:25-6.6, 6.7, 6.8 and 6.9

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Authority: N.J.S.A. 19:44A-6.
Proposal Number: PRN 1994-377.

A **public hearing** concerning this proposal will be conducted on Wednesday, July 13, 1994 at 10:00 A.M. at:

Somerset County Administration Building
Freeholders' Meeting Room
20 Grove Street
Somerville, New Jersey

To reserve time to speak, telephone the Commission offices at (609) 292-8700 by Monday, July 11, 1994.

Submit written comments by August 4, 1994 to:

Gregory E. Nagy, Esq.
Legal Director
Election Law Enforcement Commission
CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission, or ELEC) is responsible for determining permissible or impermissible uses of funds contributed to candidates. Specifically, amendments to the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act) enacted into law in 1993 provide that all contributions received by a candidate, a candidate committee, a joint candidates committee or a legislative leadership committee must be spent only for the specific purposes provided in the statute (N.J.S.A. 19:44A-11.2; P.L. 1993, c.65, sect. 17).

The permitted uses of campaign funds are set forth in the proposed amendment to subsection (a) of N.J.A.C. 19:25-6.5, Use or disposition of campaign funds, and it recites the statutory text. The first permitted

use is for the payment of "campaign expenses," a term that is defined in the statute and reiterated in subsection (b). The term "campaign expenses" means generally an expense incurred by a candidate for the purpose of paying for an item or service used in connection with a candidate's election campaign, other than an item or service which can reasonably be considered to be for the "personal use" of the candidate, or any person associated with the candidate. In subsection (c) of the proposed amendment, the Commission proposes a definition of the term "personal use" which is defined as any use of a contribution to pay an expense of a person that would arise or exist irrespective of the candidate's campaign, or irrespective of the candidate's ordinary and necessary expense of holding public office.

A list of specific uses of campaign funds that would constitute "personal use" of those funds is set forth in subsection (d). The list is intended to provide only some examples of prohibited uses of campaign funds, but is not intended to be all-inclusive, because it would be impossible for the Commission to anticipate the great variety of fact situations that could constitute prohibited "personal use." Therefore, the absence of any particular use of campaign funds in subsection (d) is not intended by the Commission to suggest that it is necessarily permissible. The examples of specifically prohibited "personal use" of campaign funds include a mortgage payment on property that is not owned by a candidate committee, joint candidates committee or legislative leadership committee making such payment; a purchase, loan or lease payment on a vehicle that is not owned or leased by such a committee; the purchase of clothing, household food, and personal hygiene or health items or services; a tuition payment for a course of study that is not related to the candidacy or officeholding duties of the candidate; payment for dues, fees or gratuities to a country club or similar organization; and the payment of a salary to a candidate by that candidate's committee.

The Commission is also proposing a new rule, N.J.A.C. 19:25-6.6, Limitations on permissible expenses, which sets forth the circumstances under which a candidate committee, a joint candidates committee, or a legislative leadership committee is permitted to make certain kinds of expenditures. For example, subsections (a) and (b) permit these committees to pay a salary to a family member of a candidate who controls the committee, or permits a legislative leadership committee to pay a salary to a family member of a legislator who controls the committee, provided that the salary is for bona fide services received by the committee and does not exceed fair market value. Also proposed is a definition at N.J.A.C. 19:25-1.7 of the term "family member" to mean a spouse, child, parent or sibling.

Subsections (c) and (d) of N.J.A.C. 19:25-6.6 permit payments for the use of an office facility or other property owned or leased by a candidate or legislator provided that the payment does not exceed the fair market value for such bona fide use by the committee. Also, subsections (e) and (f) permit the purchases of goods or services by a committee from a business or other enterprise in which the candidate or legislator has a financial interest (for example, a candidate who owns a printing business and uses campaign funds to pay for the printing of campaign materials) provided that the goods or services are bona fide and are sold to the committee at a fair market value, or less. In the case that goods or services are sold at less than fair market value, the committee must report the receipt of an in-kind (that is, non-monetary) contribution from the vendor to the extent that the price is beneath fair market value.

A person holding elected office is permitted to use campaign funds for the payment of "ordinary and necessary expenses of holding public office" (see N.J.S.A. 19:44A-11.2(a)(6)). However, the Act also provides that such funds may not be used for the payment of any expense arising from the "furnishing, staffing or operation of an office used in connection with that person's official duties as an elected public official" (see N.J.S.A 19:44A-11.2(b)). The Commission has therefore proposed a new rule, N.J.A.C. 19:25-6.7, Ordinary and necessary officeholding expenses, which in subsection (a) reiterates the statutory definition of the term "ordinary and necessary expenses of holding public office" and recites the statutory prohibition against "furnishing, staffing or operation of an office." An "ordinary and necessary expense" means any expense that reasonably promotes or carries out the responsibilities of the person holding elected public office, except that funds cannot be used for the payment of any expense arising out of the "furnishing, staffing or operation" of an office (that is, office facility) used in connection with the official duties of the elected public official. Subsections (b), (c) and (d) define the words "furnishing," "staffing," and "operation," respectively.

The word "furnishing" is construed to prohibit the use of campaign funds for the purchase or lease of furniture, equipment or other appointments that are physically situated at an office facility. However, the definition specifically permits the use of campaign funds for the purchase or lease of office furniture or equipment that is situated in the residence of the officeholder for use in conjunction with the officeholder's duties.

The word "staffing" is construed in subsection (c) to prohibit the use of campaign funds to pay a salary or fee as compensation to any person for performing duties to assist the officeholder in carrying out the officeholder's duties as an elected public official. Finally, the word "operation" is construed in subsection (d) to prohibit the use of campaign funds for the payment of any rent, utility or maintenance expense incurred for the office facility. Subsection (e) permits as ordinary and necessary expenses of holding public office the production, circulation and postage of newsletters to constituents, or the sponsorship or holding of a seminar or meeting to be attended by constituents. This listing of permissible officeholding expenditure is intended to provide examples of customary constituent communication activity that may be paid for with campaign funds.

The Commission is also proposing a new rule, N.J.A.C. 19:25-6.8, Vehicle use, governing the circumstances under which campaign funds can be used to pay expenses arising out of use of a vehicle by a candidate or officeholder for election-related activities or officeholding duties. Pursuant to subsection (a), a candidate or officeholder may be reimbursed for travel necessitated by campaign or officeholding duties in a vehicle owned by the candidate or officeholder. The rate of reimbursement cannot exceed that authorized for compensation of Executive Branch employees of the State of New Jersey as established by the Department of Treasury, or the rate provided by the Internal Revenue Service for deduction of business use of a vehicle.

Pursuant to subsection (b), a candidate committee, joint candidates committee or legislative leadership committee may purchase or lease a vehicle for the campaign or officeholding travel of a candidate or officeholder provided that the vehicle remains an asset of the committee, and provided that the candidate or officeholder reimburses the committee at fair market value for any travel by the candidate that was not necessitated by campaign or officeholding duties.

Proposed N.J.A.C. 19:25-6.9, Funds remaining unspent at death of candidate, reiterates statutory provisions for disposition of campaign funds upon the demise of a candidate or officeholder pursuant to N.J.S.A. 19:44A-11.2(c). This text currently appears as N.J.A.C. 19:25-6.5(b).

Prior to the proposal of these rules, the Commission circulated a draft text for the consideration of the Joint Committee on Ethical Standards of the New Jersey State Legislature. That committee has been instrumental in urging the Commission to propose and promulgate rules that provide more detailed guidance to elected officeholders than that currently available under the broad statutory mandates that permit an elected officeholder to use campaign funds for "ordinary and necessary expenses of holding public office" but prohibit such use for the "furnishing, staffing or operation" of an office used in connection with official duties. The Commission hopes that this proposal will help draw some parameters for officeholders attempting to comply with the somewhat conflicting statutory objectives of permissible "ordinary and necessary" officeholding use as opposed to impermissible "furnishing, staffing and operation" of an office. The Commission cannot anticipate all circumstances under which officeholders may wish to expend campaign funds and therefore relies on officeholders to seek advisory opinions from the Commission as new or unanticipated circumstances arise.

Social Impact

The proposed new rules and amendments regulate the uses to which a candidate, candidate committee, joint candidates committee or legislative leadership committee can put the funds that are contributed to it. Therefore, the rules will promote public confidence in the integrity of the electoral system and its financing.

Prior to the enactment of Section 17 of the Laws of 1993, chapter 65, (codified at N.J.S.A. 19:44A-11.2), there were no statutory controls on how a candidate could use the funds contributed to that candidate. However, as a result of the enactment of the above-cited statutory amendments to the Act, which became effective on April 7, 1993, campaign contributions made to candidates or their committees can only be used for purposes that are election-related, or for contributions to charity. The restrictions on these funds continue even after the demise of a candidate or elected officeholder (see N.J.S.A. 19:44A-11.2(c)). These statutory provisions prohibit paying for or leasing items or services which might be reasonably construed to be for the personal use of the candidate (see N.J.S.A. 19:44A-11.2(a), defining the term "campaign expenses"). Therefore, a person making a contribution to a candidate or any of the committee entities covered by this section can anticipate that the contribution will be used ultimately for election-related or officeholding purposes of the candidate receiving the contribution, or for charitable donations.

The proposed rules will affect all candidates or officeholders who controlled contributions after the effective date of the amendments (that is, April 7, 1993). The proposed rules expand upon some of the broad statutory definitions of terms such as "campaign expenses" and "ordinary and necessary expenses of holding public office" so that candidates and officeholders alike have further guidance in attempting to comply with the restrictions on the use of campaign funds. Further, in some cases specific examples of permissible and impermissible uses are given. However, the Commission anticipates that many questions will arise as candidates and officeholders attempt to apply the broad statutory mandates in specific fact settings, and therefore the Commission views its rulemaking effort as an evolving process that will continue as new and unanticipated uses of campaign funds are contemplated.

Economic Impact

The proposed amendments and rules are not expected to generate any additional compliance costs for candidates and committees observing the reporting requirements of the Act. The economic impact is derived from P.L. 1993, c.65, which lists the permissible uses of contributions, which uses have been specified in greater detail in the rules proposed. The impact on a particular individual or committee would depend upon the difference between the past use of contributions and the uses permitted by the rules.

There will be an economic impact upon the Commission in attempting to administer and monitor compliance with the restrictions on use of campaign funds. In calendar year 1994, over 21,000 candidate and committee reports were filed with the Commission, most of which are subject to these restrictions. In the absence of any additional appropriation to carry out this responsibility, the Commission anticipates that administration and enforcement of the restrictions may necessarily be very difficult.

Regulatory Flexibility Statement

The proposed rules and amendments do not place any reporting or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect candidates and elected officeholders and their committees, and the government entities responsible for the enforcement of the rules.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act shall have the following meanings unless a different meaning clearly appears from the context.

...

"Family member" shall mean a spouse, child, parent or sibling.

...

19:25-6.5 Use or disposition of campaign funds

(a) All contributions received by a candidate, candidate committee, joint candidates committee or legislative leadership committee shall be used only for the following purposes:

1. The payment of "campaign expenses" [which may be any expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the personal use of the candidate, any person associated with the candidate, or any of the members of a legislative leadership committee] **as that term is defined in (b) below.**

2.-5. (No change.)

6. The payment of ordinary and necessary expenses of holding public office, [provided that no funds received by a candidate, candidate committee, or joint candidates committee be used by any candidate or committee for the payment of the expenses arising from the furnishing, staffing or operation of an office used in connection with the candidate's or former candidate's official duties as an elected public official] **as provided in N.J.A.C. 19:25-6.7.**

[(b) Any funds remaining upon the death of a candidate in the campaign depository of the deceased candidate's candidate committee, or joint candidates committee, shall be used for one or more of the purposes set forth in (a) above by the committee's treasurer, or by whomever has control of the depository upon the death of the candidate.]

(b) The term "campaign expenses" means any expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee from a campaign or organizational depository account for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the "personal use" of the candidate, any person associated with the candidate or any of the members of a legislative leadership committee.

(c) The term "personal use" as used in (b) above means any use of contributions to pay or fulfill a commitment, obligation or expense of any person that would arise or exist irrespective of the candidate's campaign or irrespective of the candidate's ordinary and necessary expense of holding public office. "Personal use" includes, but is not limited to, the following:

1. A mortgage payment on property not owned by a candidate committee, joint candidates committee or legislative leadership committee making the payment;

2. A purchase, loan or lease payment on a vehicle not owned or leased by the candidate committee, joint candidates committee or legislative leadership committee making the payment, except that nothing herein shall be construed to prohibit reimbursement for use of a vehicle pursuant to N.J.A.C. 19:25-6.8;

3. The purchase of clothing, household food, and personal hygiene or health items or services;

4. A tuition payment, unless made for a course of study specifically related to the candidacy or officeholding duties of the candidate or officeholder who established or who controls the candidate committee, joint candidates committee or legislative leadership committee making the payment;

5. A payment for dues, fees or gratuities paid to a country club, fitness club, or other social or fraternal association, to its employees, or to a person working on its premises, unless the payment is part of the cost of a fundraising event held on the premises; or

6. The payment of a salary to a candidate by that candidate's candidate committee or joint candidates committee, or to a legislator by a legislative leadership committee established by or under the control of that legislator.

19:25-6.6 Limitations on permissible expenses

(a) A candidate committee, or a joint candidates committee, may pay a salary or fee to a family member of a candidate who has established or who controls the committee provided that the salary or fee paid for bona fide services received by the committee does not exceed fair market value.

(b) A legislative leadership committee may pay a salary or fee to a family member of a legislator who has established or who controls the committee provided that the salary or fee paid for bona fide services received by the committee does not exceed fair market value.

(c) A candidate committee, or a joint candidates committee, may pay for the use of an office or other property owned or leased by a candidate who has established or who controls the committee provided that the office or property is used by the committee and the payment does not exceed the fair market value for the bona fide use by the committee.

(d) A legislative leadership committee may pay for the use of an office or other property owned by a legislator who has established or who controls the committee provided that the office or property is used by the committee and the payment does not exceed the fair market value for the bona fide use by the committee.

(e) A candidate committee, or joint candidates committee, may purchase goods or services for use by the committee from a business or other enterprise in which the candidate who established or who controls the committee has a financial interest provided that the goods or services are bona fide and are sold or provided to the committee at fair market value, or if sold or provided at less than fair market value, that the committee reports receipt of an in-kind contribution to the extent the price is under fair market value.

(f) A legislative leadership committee may purchase goods or services for use by the committee from a business or other enterprise in which the candidate who established or who controls the committee has a financial interest provided that the goods or services are bona fide, and are sold or provided to the committee at fair market value, or if sold or provided at less than fair market value, that the committee reports receipt of an in-kind contribution to the extent the price is under fair market value.

19:25-6.7 **Ordinary and necessary officeholding expenses**

(a) The term "ordinary and necessary expenses of holding public office" as used in N.J.A.C. 19:25-6.5(a)6 means any expense that reasonably promotes or carries out the responsibilities of a person holding elective public office, except that no funds received by a candidate, candidate committee, or joint candidates committee shall be used for the payment of any expense arising from the furnishing, staffing or operation of an office used in connection with the officeholder's official duties as an elected public official.

(b) The word "furnishing" as used in (a) above shall be construed to prohibit the use of contributions received by a candidate, candidate committee or joint candidates committee for the purchase or lease of furniture, equipment or other appointments that are physically situated at an office facility used in connection with the officeholder's official duties as an elected public official. This prohibition shall not be applicable to the purchase or lease of office furniture or equipment situated in the residence of the officeholder and used in conjunction with the officeholder's duties.

(c) The word "staffing" as used in (a) above shall be construed to prohibit the use of contributions received by a candidate, candidate committee or joint candidates committee to pay a salary or fee as compensation to any person for performing duties to assist the officeholder in carrying out the officeholder's duties as an elected public official.

(d) The word "operation" as used in (a) above shall be construed to prohibit the use of contributions received by a candidate, candidate committee or joint candidates committee for the payment of any rent, utility or maintenance expense incurred for an office facility used in connection with the officeholder's official duties as an elected public official.

(e) Permissible uses of funds as ordinary and necessary expenses of holding public office shall include, but not be limited to, the following:

1. The production, circulation and postage of newsletters, mailings or other written materials to constituents of the officeholder; and

2. The sponsorship of holding of a seminar or other meeting to be attended by constituents of the officeholder.

19:25-6.8 Vehicle use

(a) A candidate committee, joint candidates committee or legislative leadership committee may reimburse a candidate or officeholder for the use of a vehicle owned by that candidate provided that:

1. The candidate provides the committee with written records of:

i. The date of the vehicle use;

ii. The departure and arrival locations of the travel;

iii. The number of miles the vehicle was used; and

iv. The purpose of the use, which purpose must be for travel for campaign or officeholding duties; and

2. The rate of reimbursement does not exceed the rate permitted by the New Jersey Department of Treasury for compensating Executive Branch employees for use of personal vehicles, or the rate provided by the Internal Revenue Service for deduction of business travel mileage.

(b) A candidate committee, joint candidates committee or legislative leadership committee may purchase or lease a vehicle for campaign or officeholding travel by a candidate or officeholder provided that:

1. The vehicle remains an asset of the committee; and

2. The candidate or officeholder reimburses the committee at fair market value for any travel made by the candidate or any other person that was not necessitated by campaign or officeholding duties.

19:25-6.9 Funds remaining unspent at death of candidate

Any funds remaining upon the death of a candidate in the campaign depository of the deceased candidate's candidate committee, or joint candidates committee, shall be used for one or more of the purposes set forth in N.J.A.C. 19:25-6.5 by the committee's treasurer, or by whomever has control of the depository upon the death of the candidate.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Notice of Public Hearing and Reopening of Comment Period

Eligibility for Services

Waiting List Procedures

Proposed New Rules: N.J.A.C. 10:48-4

Take notice that the Department of Human Services, Division of Developmental Disabilities will hold a **public hearing** on the rule proposed May 2, 1994 at 26 N.J.R. 1752(a) regarding the management of waiting lists for services of the Division as follows:

Wednesday, July 27, 1994
The State University of New Jersey, Rutgers
The Labor Education Center
Ryders Lane and Clifton Ave.
New Brunswick, New Jersey
Room 133
Time: 4:30 P.M.-8:30 P.M.

All facilities are barrier free. Should persons require special arrangements (Signing or Translation) please contact the person(s) listed below on the dedicated telephone line. **Please note** that the seating capacity of the room is limited to 50 individuals at one time.

Individuals interested in testifying at the hearing must advise the Division of Developmental Disabilities, Trenton, New Jersey, by telephone and/or in writing **no later than Friday, July 22, 1994**. Individuals should provide their name(s), organization represented (if any), and telephone number.

The Division will develop a schedule for testimony. Speakers will be limited to 10 minutes of oral testimony. Interested parties may submit written testimony at the hearing. If time permits, individuals who are not scheduled to speak in advance may be provided an opportunity to present testimony.

The **comment period** has been extended from June 1, 1994 to July 27, 1994. Submit comments by July 27, 1994 to:

James Evanochko
Administrative Practice Officer
CN 726
Trenton, New Jersey 08625

For a copy of the proposed rule, additional information or to be listed as a speaker contact:

James Evanochko or Deborah Barry
Division of Developmental Disabilities
CN 726
Trenton, NJ 08625
Telephone: (609) 633-3828

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration
Recovery of Payments and Sanctions
Recovery of Payments Correctly Made
Proposed Amendment: N.J.A.C. 10:49-14.1

Authorized By: William Waldman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-3i, 7, 7a, b, c, and r; N.J.S.A. 30:4D-7.2a and 7.2aa; P.L. 1992, c.115.
Agency File Number: 93-P-39.
Proposal Number: PRN 1994-390.

Submit comments by August 4, 1994 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services shall be referred to as "the Division" in this Summary. The proposed amendments deal with recovery from estates of Medicaid recipients for correctly paid benefits, and relate to a change in State law.

The proposed amendment reflects the statutory restoration of the Division's authority to recover correctly paid benefits received on or after age 65 from the estate of a deceased Medicaid recipient or former recipient who leaves surviving children aged 21 or over who are not blind or permanently and totally disabled, and who leaves no surviving spouse. This proposed rule will apply to estates coming into being on or after October 21, 1992. The proposed rule provides consistency with the recently enacted State legislation, P.L. 1992, c.115, effective October 21, 1992.

In those instances where the surviving child is not a minor (age 21 or over) and is not blind or disabled, the Medicaid program is allowed to recover from the estate of the decedent.

If the child is a minor, or is blind or permanently and totally disabled, then the Medicaid program is precluded from recovery.

All determination(s) will be made on a case-by-case basis.

Social Impact

This proposed amendment may ultimately impact on all Medicaid recipients on whose behalf correctly paid benefits are provided after the 65th birthday, in that it may impact on their estates. This amendment will impact upon surviving children of deceased Medicaid recipients, who also are aged 21 or over and who are not blind or permanently and totally disabled, for estates that come into being on or after October 21, 1992. The Division will be able to recover from estates of Medicaid recipients if the child is not a minor and not blind or disabled.

There is no impact upon Medicaid providers.

Economic Impact

This proposed amendment clarifies the situations in which the New Jersey Medicaid program can recover from the estates of those recipients on whose behalf Medicaid payments were correctly made. The Division's ability to recover would be limited by the amount of monies spent by Medicaid on behalf of the recipient.

It is estimated that an additional $250,000 per year in Federal and State funds could be recovered from the estates of deceased Medicaid recipients who are survived by an adult child who is neither blind nor permanently and totally disabled.

Regulatory Flexibility Statement

The proposed amendments do not impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Therefore, no regulatory flexibility analysis is required because small businesses are not affected.

The Division of Medical Assistance and Health Services, which is a governmental agency, processes recoveries from the estates of deceased Medicaid recipients, and the amendments reflect these recovery standards.

There are no small businesses involved in the recovery process.

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

10:49-14.1 Recovery of payments correctly made

(a) Correctly paid benefits shall only be recoverable from the estate of an individual who was 65 years of age or older when he or she received medical assistance if:

1. (No change.)

2. [The individual leaves no surviving child;] **For estates coming into being between February 1984 and October 20, 1992, the individual leaves no surviving child;**

3. For estates coming into being on or after October 21, 1992, the individual leaves no surviving child who is under the age of 21 or any surviving blind or permanently and totally disabled children;

[3.]**4.** The amount to be recovered is in excess of $500.00; and

[4.]**5.** The gross estate is in excess of $3,000.

(b) Paragraphs [(a)3 and 4] **(a)4 and 5** above shall apply to recoveries from the estates of individuals who died on or after July 20, 1981, the effective date of P.L. 1981, c.217 (N.J.S.A. 30:4D-7.2a).

(b)

DIVISION OF FAMILY DEVELOPMENT

General Assistance Manual
Proposed Readoption with Amendments: N.J.A.C. 10:85

Authorized By: William Waldman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).
Proposal Number: PRN 1994-391.

Submit comments by August 4, 1994 to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:85 will expire on December 20, 1994.

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:85.

N.J.A.C. 10:85 is the compilation of rules and procedures related to the General Assistance (GA) program which primarily assists single adults and childless couples. Responsibility for administration of the program rests with each of the 567 municipalities in the State of New Jersey. The GA program is 100 percent State-funded for non-administrative costs. Accordingly, N.J.S.A. 44:1-1 et seq. and 44:8-1 et seq. provide for State supervision so that the program is uniformly administered throughout the State. The General Assistance Manual (GAM) is the basis of that supervision.

The Department has evaluated the rules contained in N.J.A.C. 10:85 and has found that they are necessary and responsive to the purposes for which they were promulgated in that they serve as a link between the requirements of the New Jersey Statutes and the operation of the program. Failure to readopt these rules would leave the GA program without direction.

The GAM has always been the subject of continuing review. Two review methodologies are employed, either singly or in combination, to ensure continued responsiveness to changing social and economic conditions. The first is staff review and discussion of case situations and instances in which rules work inappropriately or not at all. The second and more formal review is through the General Assistance Advisory Committee. The committee is composed of members of policy level staff of the Department's Division of Family Development, municipal welfare directors and representatives from client advocacy groups.

Subchapter 1 provides information on the purpose, funding and administration of the GA program. Each municipality in New Jersey, pursuant to N.J.S.A. 44:1-1 et seq. and 44:8-1 et seq., is required to provide financial and medical assistance to eligible persons who are ineligible for participation in any other public assistance program. The GA program is administered by the municipality's Director of Welfare.

Subchapter 2 is concerned with GA municipal administrative obligations which include the establishment of a local assistance board, appointment of employees and establishment of a Public Assistance Trust Fund Account. The subchapter provides rules concerning the appointment of a director of welfare, as well as guidelines for the agency when fraud and/or criminal activity is suspected.

Subchapter 3 details financial and nonfinancial eligibility criteria for the GA program. The subchapter describes the various procedures applicable to special groups of people such as those for which coordination with State institutions is required. Subchapter 3 covers procedures for determining the amount of the monthly assistance payment which include rules for countable income, applicable earned income disregards, and the resources that must be taken into consideration when determining the amount of the grant. The subchapter also establishes provisions for continuing eligibility which include monthly review procedures as well as six-month redetermination of eligibility procedures. Additionally, subchapter 3 confers eligibility for medical payments upon all those found eligible for maintenance payments and describes the methods whereby certain people who have medical expenses beyond their ability to pay may have a part of those expenses met by the program, even though eligibility for maintenance payments does not exist. (The rules dealing with medical payments are detailed in subchapter 5.) Procedures for recovery of overpayments or repayment of underpayments are also established in the subchapter.

Subchapter 4 is concerned with the amount of GA that may be paid under specific conditions and time periods. The subchapter includes procedures for weekly and other non-monthly assistance periods and for various emergency and special payment situations. Payment allowance standard schedules (Schedule I and Schedule II) are set forth in this subchapter and reflect the amounts to which eligible individuals are entitled, less countable income and other available income. This subchapter delineates the rules that govern the authorization of emergency assistance (EA) within the GA program to provide for the prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance. In addition, provisions that establish eligibility criteria for payment of funeral and burial expenses are covered in this subchapter.

Subchapter 5 presents rules for the provision of medical assistance. Included are types of medical treatment which a recipient is eligible to receive and the method of payment for those services.

Subchapter 6 deals with reporting requirements that MWDs are required to comply with in order to qualify for State aid. The subchapter describes procedures required to establish a Public Assistance Trust Fund Account and a Petty Cash Fund Account. The subchapter also delineates fiscal procedures concerning reimbursement of interim assistance provided to clients pending approval of their Supplemental Security Income (SSI) applications; provides instructions for case record retention; sets forth the procedures for payment of pharmaceutical charges; and describes the various computerized matched reports that are used for investigative purposes by the Bureau of Integrity Control.

Subchapter 7 affirms the MWD's responsibility to provide written notification of denials, reductions or terminations of assistance to individuals who apply for or receive GA. The subchapter also establishes procedures concerning an individual's right to request a fair hearing and describes criteria and procedures for convening an emergency fair hearing.

Subchapter 8 briefly summarizes other governmental benefits to which applicants may be entitled. The subchapter outlines referral procedures to county welfare agencies which administer the Aid to Families with Dependent Children (AFDC), Medicaid Only, Home Energy Assistance, Food Stamp, and Refugee Resettlement programs. Referral procedures to Federally administered programs are also described. These include the Veterans Administration program and the Social Security Administration's Retirement, Survivors, Disability and Health Insurance (RSDHI), Medicare and Supplemental Security Income (SSI) programs. Additionally, the subchapter provides referral procedures to the following State agencies: The Department of Health; the Division of Unemployment and Disability Insurance; the Division of Youth and Family Services; the Division of Medical Assistance and Health Services; the Division of Vocational Rehabilitation Services; the New Jersey Commission for the Blind and Visually Impaired; the Division on Aging; the Division of Mental Health and Hospitals and the Division of Developmental Disabilities.

Subchapter 9 states the requirements for periodic evaluation of legally responsible relatives (LRRs) in order to obtain support for GA clients. The subchapter provides rules concerning the evaluation of an LRR's capacity to contribute support and standards used to determine the appropriate amount of such contribution.

Subchapter 10 describes the various aspects of the General Assistance Employability Program (GAEP) including work assignments, worksite agreements, worksite locations and activities, scheduling of worksite assignments, program compliance standards and penalties for noncompliance.

Subchapter 11 (Glossary) provides an explanation of the acronyms and defines certain terms used throughout the GAM.

Subchapter 12 concerns the authority of the Commissioner of the Department of Human Services to ensure that the GA program is administered in an accessible, efficient and cost-effective manner. The subchapter also concerns the conditions that will perpetuate action by the State to assume direct administration of an MWD's GA program and the ensuing measures to be undertaken by the Department when it is determined such action is warranted.

Since January 1990, the following significant revisions to N.J.A.C. 10:85 were adopted:

As a result of Public Law 1990 c.66, text throughout N.J.A.C. 10:85 was amended to establish 100 percent State funding of non-administrative costs in the GA program and that the State shall provide, through each municipality, public assistance to eligible persons.

N.J.A.C. 10:85-1.1(g)2 was amended to establish a 90 day ineligibility penalty for individuals identified as having received GA from multiple municipal welfare departments (MWDs) during the same benefit period for the same items of need. In addition, text at N.J.A.C. 10:85-1.1(g)3 was added to state that GA benefits received from any MWD while an individual is under an imposed sanction period is to be considered duplicative assistance.

N.J.A.C. 10:85-2.2(f) was amended to set forth the requirement for the posting of a sign(s) to identify who is available to deal with emergencies beyond normal office hours.

N.J.A.C. 10:85-3.1(b) was amended to eliminate the concept of household size in the determination of GA allowances. Accordingly, Schedules I and II at N.J.A.C. 10:85-4.1 were revised to reflect the appropriate allowances without the household size considerations. The elimination of the household concept aligned the GA grant determination methodology with that employed in the AFDC program. Further, it was recognized that GA recipients who live with others may not necessarily experience a reduction in economic need due to such living arrangements.

N.J.A.C. 10:85-3.2(e)1i was amended to identify certain eligibility factors that must be verified and documented by the MWD.

N.J.A.C. 10:85-3.2(e)4i and ii and 3.5(b)5 were amended to add an earned and unearned income verification clearance mechanism through the Division's Integrity Control Unit.

N.J.A.C. 10:85-3.2(f)5 was amended to eliminate the 30 consecutive day residency time frame stipulation used by the Division of Family Development to determine client residency when resolving municipal payment responsibility disputes. This entire provision was subsequently deleted due to 100 percent State funding of the GA program and the elimination of MWD chargebacks.

N.J.A.C. 10:85-3.3(f)4iv was amended to eliminate MWD chargeback stipulations due to the 100 percent funding of the GA program.

N.J.A.C. 10:85-3.6 was amended to establish certain actions to be undertaken by the MWDs to attempt to recover overpayments amounting to $500.00 or more from former GA recipients.

N.J.A.C. 10:85-4.1 was amended to establish a "Standard of Need" in the GA program. This fulfilled the statutory obligation of the Commissioner of the Department of Human Services to establish standards of need based upon the actual cost of basic necessities as stipulated by New Jersey's Supreme Court decision (*In the Matter of Petitions for Rulemaking, N.J.A.C. 10:82-1.2 and 10:85-4.1,* 117 *N.J.* 311, 1989). The responsibility for setting public assistance payment levels is a separate and distinct decision which is part of the State appropriations process.

N.J.A.C. 10:85-4.3(a)2 was amended to designate a time period of six months for submittal of bills for commodities and non-medical services to the MWD for payment.

N.J.A.C. 10:85-4.3(c) was amended to state that a portion of a client's benefit amount shall be issued in the form of cash or check for incidental items, such as laundry and personal needs. Additional text was added to require MWDs to use vouchers for payments of assistance to establish a Petty Cash Fund Account to facilitate the issuance of funds in the form of cash or check.

N.J.A.C. 10:85-4.6 was amended to modify the EA program to include entitlement to post five-month EA benefits (temporary rental assistance and EA extensions) for those EA recipients whose initial five-month EA period expires and who continue to require EA benefits. Shared MWD and client responsibilities were established at the outset to address the EA client's short and long term emergency needs. Provisions were established for the development of a service plan that provides an individual plan of action to address the EA client's immediate emergency needs and to outline the measures to be taken to move toward a permanent resolution of the emergency situation.

A "30 calendar day" stipulation for establishing EA eligibility was eliminated at N.J.A.C. 10:85-4.6(a).

N.J.A.C. 10:85-4.6(b) was amended to designate certain municipalities as high impact, based on population criteria, and to set forth the responsibility for such municipalities to establish affiliation agreements with local human service agencies in order to utilize EA resources and other services offered by those agencies to meet special needs of EA clients.

N.J.A.C. 10:85-4.6(d) was amended to set forth procedures for the personal delivery of EA due process notices, EA appeal rights and EA fair hearing procedures.

N.J.A.C. 10:85-4.6(e) was amended to change the initial five-month EA period of three months with two incremental one-month extensions to a continuous five-month period.

N.J.A.C. 10:85-4.6(e)1i was amended to stipulate certain EA eligibility and benefit issuance considerations specific to those GA eligible individuals who have been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), are Human Immunodeficiency Virus (HIV) Positive with symptoms or are terminally ill. Also, text was added to stipulate client functional capacity considerations.

N.J.A.C. 10:85-4.6(e)1i and ii were amended to stipulate that a physician's certification is required to document a diagnosis of AIDS or HIV Positive with symptoms or that a person is terminally ill.

N.J.A.C. 10:85-4.6(e)2 was amended to establish the parameters for authorization of temporary rental assistance and for the authorization of EA extensions beyond the initial five-month EA period to provide EA benefits for temporary shelter arrangements to eligible EA recipients.

N.J.A.C. 10:85-4.6(e)5 was amended to set forth the opportunity for MWDs to initiate and operate special EA programs, through the submission of plans to the Division of Family Development, in order to serve specific population groups.

N.J.A.C. 10:85-4.6(f)1 was amended to increase the emergency food allowance by $3.00 to $7.50 per day and to stipulate that the emergency food allowance shall be authorized until other funds become available.

N.J.A.C. 10:85-5.3(a) was amended to add the stipulation that bills for medical care rendered after July 1, 1991 shall be submitted to the MWD within six months after the date of the service. This provision subsequently was recodified as N.J.A.C. 10:85-5.1(a) as it now stands.

N.J.A.C. 10:85-6.1(c) was amended to state the authority of the Commissioner to approve municipal welfare agency budgets.

N.J.A.C. 10:85-6.2 was amended to set forth the effective date of July 1, 1991 for 100 percent State funding for the GA program and to state that approved GA commitments prior to that date will be State matched at 75 percent.

N.J.A.C. 10:85-6.3 was amended for the establishment of Public Assistance Trust Fund I and II as a result of 100 percent State funding of GA non-administrative costs and the fiscal procedures specific to the maintenance of the Public Assistance Trust Fund Accounts.

N.J.A.C. 10:85-6.4 was amended to establish fiscal and statistical procedures specific to GA expenditure reporting requirements.

N.J.A.C. 10:85-6.5(e) was amended to establish fiscal procedures specific to reimbursement of GA interim assistance granted to individuals pending SSI entitlement and the submittal of other recoveries as a result of 100 percent State funding.

N.J.A.C. 10:85-6.6 was amended to establish appropriate fiscal procedures concerning the establishment and maintenance of a Petty Cash Fund Account as a result of 100 percent State funding.

N.J.A.C. 10:85-6.7(c) was amended to delineate the time frames for retention of Form GA-12, Form GA-30 and Form GA-31 records.

N.J.A.C. 10:85-6.9 was amended to codify current operational procedures governing the processing of computerized match reports provided to MWDs.

N.J.A.C. 10:85-7.2(b)2 was amended to provide an additional instance for the issuance of a time-limited notice to the applicant.

N.J.A.C. 10:85-9.4 was amended to establish one monthly income standard schedule for all LRRs for use in calculating their capacity to support.

N.J.A.C. 10:85-12 was amended to set forth in rule the additional authorities of the Commissioner of Human Services in accordance with P.L. 1990, c.66.

As a result of a continuous review process, the following significant changes are being proposed at this time as part of the proposed readoption of N.J.A.C. 10:85:

In accordance with the Americans with Disabilities Act, the term "disability(ies)" is added at N.J.A.C. 10:85-1.4(a) and (a)1i(1) and at N.J.A.C. 10:85-2.2(g)2ii. At N.J.A.C. 10:85-3.3(f)2ii; 5.1(h)3; throughout 8.4(c)2iv; at 8.4(g)3; and 8.4(h)2v, the term "handicap(s)" is replaced with an appropriate derivative of the term "disability(ies)". At N.J.A.C. 10:85-8.4(g)1 the term "handicap" is replaced with the term "impairment" rather than the term "disability" for sentence clarity, since the word "disability" is already used within the sentence.

The terms "household" and "household size" are deleted at N.J.A.C. 10:85-3.1(a)5ix and N.J.A.C. 10:85-11.2, respectively, since the household size concept is no longer a consideration in the GA program.

N.J.A.C. 10:85-3.1(a)5ix changes the age level of children from "under age six" to "under age two" in the provision that may establish unemployable status for one person in an eligible unit whose presence is required at home to care for such children. This provision is being amended to align the GA program with the Family Development Program (FDP) in that area.

N.J.A.C. 10:85-3.1(a)5x(1) adds reference to Form GA-40, Medical Employability Evaluation. The completion of this standardized form represents the "written certification by an examining physician". In addition, text concerning the observed time frame stipulations for such written certifications, which was inadvertently omitted through a previous adoption process, is reinstated. The proposed amendment provides that any time period or termination date included in the written certification shall be observed. A time period of "indefinite" shall be construed to mean "three months" unless renewed by the examining physician or extended under N.J.A.C. 10:85-3.1(a)5x(4). When no date or time period is indicated, the certification shall be renewed monthly or for such longer period as may be specified under N.J.A.C. 10:85-3.1(a)5x(4).

N.J.A.C. 10:85-3.1(a)5x(4) adds reference to Form GA-39, Evaluation for General Assistance Employable/Unemployable Status, which is the form that is to be used by the MWDs for submitting pertinent social information concerning the client to the General Assistance Program Unit.

N.J.A.C. 10:85-3.2(c)1iii is deleted to remove a citation concerning hospitalization which was inadvertently overlooked when inpatient hospitalization was eliminated for GA in accordance with the Senate Budget Appropriations Bill for Fiscal Year 1993.

N.J.A.C. 10:85-3.4(c)4i and ii identify prepaid irrevocably assigned funeral/burial insurance policies and prepaid irrevocably assigned funeral/burial annuity policies as exempt resources for GA eligibility purposes.

N.J.A.C. 10:85-5.1(f) deletes DFD/GAP Unit's level of care determination responsibility since there are no longer different levels of nursing home care classifications as a result of the Federal nursing home reform legislation that went into effect October 1, 1990. In addition, N.J.A.C. 10:85-5.1(f)1 sets forth in regulations DFD/GAP Unit's ongoing responsibility of determining the "necessity of nursing home care" for GA clients.

N.J.A.C. 10:85-5.1(f)2i eliminates the process of submitting nursing facility bills to the DFD/GAP Unit for costing prior to payment.

N.J.A.C. 10:85-5.1(f)2i(1) sets forth the time frame of up to 25 days in a calendar year for therapeutic visits during which the MWD shall continue to authorize per diem payments for GA nursing home clients.

N.J.A.C. 10:85-6.3(a)4i sets forth provisions concerning the separation of deposits to Public Assistance Trust Fund I and II accounts. Deposits into the Public Assistance Trust Fund I Account will include any municipal appropriation for non-GA eligible assistance, certain miscellaneous donations, refunds of non-GA assistance, refunds of 75 percent reimbursed assistance and 75 percent reimbursed SSI interim assistance. Deposits into the Public Assistance Trust Fund II Account will include State aid advances for expenditures eligible for 100 percent State aid, refunds of all 100 percent reimbursed assistance (to include fraud recoveries, insurance recoveries, vendor repayments, and so forth) and Supplemental Security Income (SSI) Interim Assistance checks (except as noted at N.J.A.C. 10:85-6.3(a)4i(1) above.)

N.J.A.C. 10:85-6.3(b)2iii establishes the disbursement of payments of SSI proceeds from the Public Assistance Trust Fund II account. This provision provides that disbursement from the Public Assistance Trust Fund II Account are also limited to payment of Supplemental Security Income (SSI) proceeds to SSI recipients, the Social Security Administration, or other municipal welfare departments from which the SSI recipient received Interim Assistance and completed a Form GA-30.

N.J.A.C. 10:85-6.4(a)4 sets forth procedures for the use of Form GA-48, **General Assistance—Data Input**, for the submission of required case data to the Division of Family Development by those MWDs which do not have computer capabilities.

N.J.A.C. 10:85-6.5(e)1iii sets forth the time frame of "within three working days" for receipt of Form SSA-(L)8125 from the Social Security Administration/District Office.

N.J.A.C. 10:85-6.5(e)5i and ii provides current fiscal operational procedures concerning the deposit of the State's share of Interim Assistance recovered. If the retroactive eligibility period of the award began on or after July 1, 1991, the initial check received by the municipal treasurer shall be deposited into the Public Assistance Trust Fund II Account. If the retroactive eligibility period of the award includes periods of Interim Assistance prior to July 1, 1991, the deposit shall be made and the recovery allocated in accordance with N.J.A.C. 10:85-6.3(a)4i.

N.J.A.C. 10:85-6.7(c) provides that Form GA-48, General Assistance—Data Input, shall be retained for a period of three years.

N.J.A.C. 10:85-6.8(d)1 sets forth current operational procedures for the MWD payment for the processing of MC-6 forms. Current rule provides that a check shall be drawn from the municipal account used for administrative expenses and made payable to the Public Assistance Trust Fund II Account for the total amount billed the municipality for the processing of each Form MC-6. Under the proposed amendment a check shall be drawn from the municipal account used for administrative expenses and made payable to the Treasurer, State of New Jersey for the total amount billed the municipality for the processing of each prescription claim. The check shall be forwarded to the Division of Family Development, Bureau of Business Services.

N.J.A.C. 10:85-6.8(d)2 is deleted since that provision is no longer required with the proposed amendment at N.J.A.C. 10:85-6.8(d)1.

N.J.A.C. 10:85-7.1(e), 7.2(a)1 and 7.2(c) are deleted to eliminate reference to the defunct Appendix A. Appendix A was repealed February 1, 1985 pursuant to Executive Order 66(1978).

N.J.A.C. 10:85-8.3(a) updates the toll-free telephone number for contacting the Social Security Administration.

N.J.A.C. 10:85-8.4(c)2iv(2) updates informational material available from the Special Child Health Services and corrects the "CN" number for that agency.

N.J.A.C. 10:85-8.4(e)2 updates the addresses and telephone numbers of the DYFS regional and district offices.

N.J.A.C. 10:85-11.1 updates the list of acronyms used at N.J.A.C. 10:85.

N.J.A.C. 10:85-11.2 updates "Definitions" significant to the GA program. The definition for "emergency assistance", "immediate need" and "income exclusions" has been added. Of significance is the definition of "emergency assistance" (EA) which states that EA means assistance provided to otherwise eligible GA clients, in addition to the regular GA grant, for the prevention of homelessness, the granting of emergency shelter or temporary rental assistance when such needs are a result of specific emergency circumstances as outlined at N.J.A.C. 10:85-4.6.

Form GA-33C (Exhibit 2) and Form GA-53 (Exhibit 3) are deleted from Appendix D to remove obsolete material concerning time-limited assistance for employable GA clients.

Revisions in grammar, capitalization, and sentence structure have been included throughout the text of the proposed readoption to improve clarity. Additional amendments include the updating of cross-references.

Social Impact

The GA program provides assistance to persons who are categorically ineligible for any other public assistance program. As a program of "last resort", therefore, the benefits provided by the GA program are as important to society as to the individual recipient, since such assistance may help mitigate social problems such as homelessness. The readoption of the entire manual is essential for the efficient and effective administration of the GA program by the MWDs.

The proposed amendments throughout N.J.A.C. 10:85, which add the term "disability" as it relates to non-discrimination or replace the term "handicap(s)" with an appropriate derivative of the term "disability(ies)", are expected to be viewed positively since the term "disability" is currently the acceptable term in accordance with the Americans with Disabilities Act.

The proposed amendment at N.J.A.C. 10:85-3.1(a)5ix changes the age level of children from "under age six" to "under age two" for establishing unemployability status for one person in the eligible unit, whose presence is required at home for the care of such children. This proposed amendment is not expected to have any significant impact on GA clients since the majority of GA clients are single individuals without children or couples without children.

The proposed amendments at N.J.A.C. 10:85-3.1(a)5x(1) add reference concerning the use of Form GA-40, Medical Employability Evaluation, as the standardized form for physician certifications that serves to document a client's incapacity status and timeframe considerations for such physician certifications. Those proposed amendments are expected to be beneficial to all concerned since all information submitted by a physician for documentation purposes will now be uniform and will be updated timely.

The proposed amendment at N.J.A.C. 10:85-3.1(a)5x(4), which references Form GA-39, Evaluation for General Assistance Employable/Unemployable Status, will be beneficial to the municipal welfare director and the State since this form provides pertinent social information required by the State to help determine a client's employability status.

The proposed amendment at N.J.A.C. 10:85-3.4(c)4i and ii designating prepaid irrevocably assigned funeral/burial insurance policies and prepaid irrevocably assigned funeral/burial annuity policies as exempt resources is expected to be viewed positively by clients and client advocacy groups, as well as considered acceptable by the MWDs since "life insurance policies" are already considered an exempt resource for GA purposes. Such policies, therefore, would be considered an extension of that exempt resource. In addition, this proposed amendment will be beneficial since it aligns the GA program with the Medicaid program and establishes a common resource ground, in this area, which in the past created a disparity between the two assistance programs that serve the population requiring nursing home care assistance.

The proposed amendments at N.J.A.C. 10:85-5.1(f), (f)1 and (f)2i deleting level of care considerations, determinations, and billing will not have any significant impact on the client; however, the proposed amendments may benefit the State by removing certain costing and determination responsibilities.

The proposed amendment at N.J.A.C. 10:85-5.1(f)2i(1), which increases the timeframe from up to 10 days to a timeframe of up to 25 days for therapeutic visits during which the MWD shall continue to authorize per diem payments to the nursing home so that the client will be able to return to the nursing home, will be beneficial to the client and will benefit the MWDs administratively.

The proposed amendments at N.J.A.C. 10:85-6.3(a)4i, (b)2iii and 6.5(e)5i and ii concerning Public Assistance Trust Fund I and II accounts will have a positive impact on both the State and the MWDs since the proposed amendments clarify the types of deposits that are required to be put into each account in order for those accounts to be accurate.

The proposed amendment at N.J.A.C. 10:85-6.4(a)4 concerning the procedures for using Form GA-48, General Assistance—Data Input, will benefit the State and the MWDs, since this reporting process will facilitate the identification of demographic data as well as fraudulent activity.

The proposed amendment at N.J.A.C. 10:85-6.5(e)1iii, which sets a specific timeframe for the receipt of Form SSA-(L)8125 from the Social Security Administration, may benefit the client since it will ensure that the proceeds from the retroactive SSI award check that is due to the client will be received in a timely manner.

The proposed amendment at N.J.A.C. 10:85-6.7(c) concerning the retention of GA-48 forms will not have any significant impact since it merely identifies the retention period for that document.

The proposed amendment at N.J.A.C. 10:85-6.8(d)1, which establishes the current operational procedures for MWD payment of the administrative expenses for the processing of prescription claims, will benefit both the State and the MWDs by providing a more simplified process for the payment of such claims to the State.

The proposed amendments at N.J.A.C. 10:85-8.3(a), (c)2, and 8.4(e) update respectively the toll-free telephone number for contacting the Social Security Administration, general information relating to Special

Child Health Services and the address and telephone numbers of the Division of Youth and Family Services (DYFS) District Offices. These proposed amendments will be beneficial to the MWDs clients, as well as any person or agency who use N.J.A.C. 10:85 since Subchapter 8 is the section of the manual that addresses referrals to other agencies and programs.

The proposed amendments at N.J.A.C. 10:85-11.1, which update the acronyms that are used in N.J.A.C. 10:85, will be beneficial to all persons who use the manual.

The proposed amendments at N.J.A.C. 10:85-11.2, which provide definitions of significant words and terms used in N.J.A.C. 10:85, will be beneficial to all persons who use the manual.

The proposed amendments deleting the term "household" at N.J.A.C. 10:85-3.1(a)5ix; the term "household size" at N.J.A.C. 10:85-11.2; deleting in its entirety N.J.A.C. 10:85-3.2(c)1iii concerning a citation relating to hospitalization; and deleting Exhibit 2 and Exhibit 3, which are forms concerning time-limited assistance for GA employable individuals, will not have any significant impact since all these proposed amendments merely remove obsolete language or material inadvertently overlooked during previous rulemaking processes.

The proposed amendments throughout N.J.A.C. 10:85 that reflect technical changes for clarity purposes, or provide grammatical or capitalization changes will not have any social impact.

Economic Impact

The proposed readoption is essential for the efficient and effective administration of the GA program by the municipal welfare departments. The following figures reflect the monthly average of GA recipients served and the total yearly GA expenditures from Fiscal Year 1990 through 1993 and estimates for Fiscal Year 1994.

Fiscal Year	Monthly Average of GA Recipients	Total GA Yearly Expenditures*
1990	19,207	$ 95,038,158
1991	24,698	$129,340,102
1992	30,887	$132,518,533
1993	37,613	$162,815,677
1994(Estimated)	39,494	$169,602,342

*Includes State and Municipal Share

The State of New Jersey assumes 100 percent of the non-administrative costs for the GA program. The municipalities are responsible for all GA administrative costs.

The proposed amendments throughout N.J.A.C. 10:85, which add the term "disability" as it relates to non-discrimination or replace the term "handicap(s)" with an appropriate derivative of the term "disability(ies)" in accordance with the Americans with Disabilities Act, will not have any economic impact.

The proposed amendment at N.J.A.C. 10:85-3.1(a)5ix, which changes the age level of children from "under age six" to "under age two" for establishing unemployability status for one person in the eligible unit, whose presence is required at home for the care of such children, is not expected to have any significant economic impact since the majority of GA clients are single individuals without children or couples without children.

The proposed amendments at N.J.A.C. 10:85-3.1(a)5x(1), which add a reference concerning the use of Form GA-40, Medical Employability Evaluation, as the standardized form for physician certifications and that serves to document a client's incapacity status, and timeframe considerations for such physician certifications, will not have any significant economic impact.

The proposed amendment at N.J.A.C. 10:85-3.1(a)5x(4), which references Form GA-39, Evaluation for General Assistance Employable/Unemployable Status, as the form to use to provide pertinent social information required by the State to help determine a client's employability status, will not have any economic impact.

The proposed amendment at N.J.A.C. 10:85-3.4(c)4, which identifies prepaid irrevocably assigned funeral/burial insurance policies and annuity policies as exempt resources, will allow individuals applying for GA the option of using available resources to purchase such funeral/burial policies or annuities without any penalty for transfer of assets because of the equitable provision of services to be rendered at time of death. This proposed amendment, although applicable for all GA recipients, will primarily be most beneficial to those GA clients entering a nursing home. It is expected that GA nursing home clients may view the purchase of such funeral/burial policies/annuities as a visible option to use up funds that would normally be earmarked for payment to the nursing home at the private rate and delay eligibility for GA. In that respect, the proposed amendment is expected to have some financial impact at the State level since GA nursing home payments are 100 percent State-funded and in such cases GA nursing home eligibility would be attained at an earlier date. The purchase of such policies or annuities, however, would eliminate the responsibility to provide payment of funeral or burial expenditures for that individual through the GA program.

The proposed amendments at N.J.A.C. 10:85-5.1(f), (f)1 and (f)2i deleting level of care considerations, determinations, and billing will not have any significant financial impact; however, administratively, it will have a positive impact on the State.

The proposed amendment at N.J.A.C. 10:85-5.1(f)2i(1) that increases the timeframe from up to 10 days to a timeframe of up to 25 days for therapeutic visits during which the MWD shall continue to authorize per diem payments to the nursing home so that the client will be able to return to the nursing home, may have a minimal economic impact on the State. If, however, the nursing home was not held for that client, the cost of reinstating the client back into the nursing home would, from a financial and administrative standpoint, probably equal, if not exceed, the expenditure for retaining that nursing home slot.

The proposed amendments at N.J.A.C. 10:85-6.3(a)4i, (b)2iii and 6.5(e)5i and ii concerning Public Assistance Trust Fund I and II accounts is not expected to have any economic impact on the State nor the MWDs because the proposed amendments simply identify the types of deposits that are required to be put into each account for those accounts to be accurate.

The proposed amendment at N.J.A.C. 10:85-6.4(a)4 concerning the procedures for using Form GA-48, General Assistance—Data Input, which is a reporting process that will facilitate the identification of demographic data as well as any fraudulent activity, may prove to have a positive economic impact when such data identifies those individuals who are receiving duplicate assistance payments.

The proposed amendment at N.J.A.C. 10:85-6.5(e)1iii, which sets a specific timeframe for the receipt of Form SSA-(L)8125 from the Social Security Administration, is expected to have a positive economic impact on the client because the proceeds from the retroactive SSI award check that is due the client will be processed and forwarded to the client in a timely manner.

The proposed amendment at N.J.A.C. 10:85-6.7(c) concerning the retention of GA-48 forms will not have any significant impact since it merely identifies the retention period for that document.

The proposed amendment at N.J.A.C. 10:85-6.8(d)1, which establishes the current operational procedures for MWD payment of the administrative expenses for the processing of prescription claims, will benefit the MWDs from an administrative standpoint since the amendment provides a more simplified process for the payment of such claims to the State. The proposed amendment will also benefit the State economically since the payments to the State will be expedited.

The proposed amendments at N.J.A.C. 10:85-8.3(a), (c)2, and 8.4(e) update respectively the toll-free telephone number for contacting the Social Security Administration, general information relating to Special Child Health Services and the address and telephone numbers of the Division of Youth and Family Services (DYFS) District Offices. Although these proposed amendments are beneficial to the MWDs, clients, as well as any person or agency who use N.J.A.C. 10:85, no direct economic impact will be realized by any person or entity.

The proposed amendments at N.J.A.C. 10:85-11.1, which update the acronyms that are used in N.J.A.C. 10:85, will be beneficial to all persons who may use the manual but will have no direct economic impact.

The proposed amendments at N.J.A.C. 10:85-11.2, which provide definitions of significant words and terms used in N.J.A.C. 10:85, will be beneficial to all persons who use the manual, but will have no direct economic impact.

The proposed amendments, deleting the term "household" at N.J.A.C. 10:85-3.1(a)5ix; the term "household size" at N.J.A.C. 10:85-11.2; deleting, in its entirety, N.J.A.C. 10:85-3.2(c)1iii concerning a citation relating to hospitalization; and deleting Exhibit 2 and Exhibit 3, which are forms concerning time-limited assistance for GA employable individuals, will not have any economic impact since all these proposed amendments merely remove obsolete language or material inadvertently overlooked during previous rulemaking processes.

The proposed amendments throughout N.J.A.C. 10:85 that reflect technical changes for clarity purposes, or provide grammatical or capitalization changes will not have any economic impact.

Regulatory Flexibility Statement

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

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:85, as amended and supplemented by the New Jersey Register.

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

10:85-1.4 Policy of nondiscrimination

(a) Eligibility [of] **for** program benefits shall be determined without regard to race, color, sex, religious creed, marital or birth status, national origin, [or] political beliefs**, or disability**.

1. Purchase of services: The municipality shall not purchase services for beneficiaries of the program from any organization, agency, or institution which practices discrimination.

i. The director shall notify appropriate vendors of this policy.

(1) Official statement on invoices: The director shall see that the following statement appears on all official invoices used in the municipality's [general assistance] **General Assistance** program:

Services are provided to all recipients without regard to race, color, sex, religious creed, marital or birth status, national origin, [or] political beliefs**, or disability**.

ii. (No change.)

2. Notification of staff: The director of welfare shall inform his or her staff of the policy of nondiscrimination in the administration of the [general assistance] **General Assistance** program.

3. (No change.)

10:85-2.2 Establishment of local assistance board

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

(g) The LAB shall act as a body in discharging its duties. A board member shall not individually take upon himself or herself the responsibility for creation of policy, investigation of a client or disclosure of data contained in a case record. Actions taken by the LAB on all matters pertaining to the administration of [general assistance] **General Assistance** shall be discharged by the board at regular or special meetings and recorded in the secretary's minutes. Functions and activities of the LAB include the study of employment possibilities in local industry, health, housing, and social conditions of the community. Analysis of municipal financial needs, insofar as they are related to General Assistance, shall also be a matter of concern to the LAB.

1. (No change.)

2. Duties described: Specific duties of the local assistance board include, but are not limited to, the following:

i. (No change.)

ii. Assurance of nondiscrimination: Responsibility is vested in the LAB to safeguard the applicants for and/or recipients of public assistance from discrimination by MWD employees and vendors who provide services to clients. Any discrimination based upon race, color, sex, religious creed, national origin, marital or birth status, [or] political beliefs **or disability** is unlawful and subject to appropriate action (see N.J.A.C. 10:85-1.4).

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

10:85-3.1 Persons eligible for General Assistance

(a) General Assistance shall be provided to all eligible needy persons who, while in the State, are entitled to receive such assistance. Entitlement does not extend to persons who have been found eligible for or are recipients of public assistance programs administered by the county welfare agency, or who have been found ineligible for such programs due to voluntary refusal to comply with program requirements. (See also (c) and (d) below.)

1.-4. (No change.)

5. An "unemployable" person is any person who meets any of the unemployable criteria below:

i.-viii. (No change.)

ix. Persons whose presence is required at home to care for one or more children under age [six] **two** or for disabled family member(s). No more than one person in [a household] **an eligible unit** may be considered unemployable for this reason without written authorization from the Division of Family Development (DFD)/GAP Unit; and/or

x. Persons determined to be incapacitated by the MWD are unemployable when such determination of incapacity is supported by any of the following circumstances:

(1) **Form GA-40, Medical Employability Evaluation, shall be completed to provide** [Written] **written** certification by an examining physician that the individual is, by reason of an identified physical or mental defect, disease, or impairment, unable to engage in any useful occupation. Such certification shall include the date of examination, diagnosis, length of incapacity, functional limitations, prescribed treatment, an indication of whether or not reevaluation will be necessary, and the examining physician's signature. **Any time period or termination date included in the written certification shall be observed. A time period of "indefinite" shall be construed to mean "three months" unless renewed by the examining physician or extended under (a)5x(4) below. When no date or time period is indicated, the certification shall be renewed monthly or such longer period as may be specified under (a)5x(4) below;**

(2)-(3) (No change.)

(4) Written Record of Action (Form GA-38) from DFD/GAP Unit. The record may be applied for by MWD submission of such documentary material as the MWD finds appropriate. This may include, but is not limited to, medical or hospital reports and the MWD's own statement of specific observations and recommendations with reasons. Form PA-5/DRS-1, Examining Physician's Report, may be used in this process. [Social information submitted by the MWD should include at a minimum, the client's age, educational level attained, experience, and general description of the individual, especially as the description may relate to employment.] **MWDs shall submit social information on Form GA-39. Evaluation for General Assistance Employable/Unemployable Status, which provides such pertinent social information as client's age, educational level attained, experience, and a general description of the individual, especially as it relates to employment.** The DFD/GAP Unit shall consider the individual's age, experience, education, vocational training, and work history as well as physical or mental defects, diseases or impairments in determining whether an individual is able to engage in any useful occupation for which he or she has competence, or his or her ability to engage in retraining.

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

(d) Rules concerning aged, blind and disabled are as follows:

1. Referral for SSI: Individuals who are aged, blind or disabled shall be referred to the nearest Social Security district office (SSA/DO) to apply for supplemental security income (SSI). However, any immediate need shall be met through [general assistance] **General Assistance** as a loan to the needy individual. (See N.J.A.C. 10:85-8.3[(e)3ii]**(c)3ii** for referral procedures and N.J.A.C. 10:85-[6] **6.5** for reimbursement procedures.)

2.-3. (No change.)

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

10:85-3.2 Application process

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

(c) Rules concerning taking applications are:

1. Application/affidavit: Any person who indicates a wish to apply for General Assistance shall be recognized as an applicant. Such individual will be assisted by an MWD worker in completing the application (Form GA-1). He or she shall then be required to sign under oath the attached affidavit attesting to the correctness of his or her statements.

i.-ii. (No change.)

[iii. See N.J.A.C. 10:85-5.2 regarding delay in completion of the application when applicant is hospitalized.]

Recodify existing iv.-v. as **iii.-iv.** (No change in text.)

2.-7. (No change.)
(d)-(i) (No change.)

10:85-3.3 Financial eligibility
(a)-(e) (No change.)
(f) Assistance allowance standards are as follows:
1. (No change.)
2. Allowance schedules: Schedules I and II at N.J.A.C. 10:85-4.1 have been established under the authority in N.J.S.A. Title 44 and give the standards, in monthly amounts, to be used as the basis for granting assistance.
i. (No change.)
ii. Assistance allowance standards as given in Schedule I apply only to persons who, because of physical, mental, or emotional [handicaps] **disabilities**, are unable to accept employment.
iii.-vi. (No change.)
3.-5. (No change.)
(g) (No change.)

10:85-3.4 Resources
(a)-(b) (No change.)
(c) Exempt resources: Exempt resources are not subject to any requirement for liquidation and are not considered in determining the assistance grant. Any resource which is not or is no longer exempt shall be considered as either available income or a potential resource, according to its nature. The exempt resources are:
1.-3. (No change.)
4. Life insurance policies[;], **including:**
i. Prepaid irrevocably assigned funeral/burial insurance policies; and
ii. Prepaid irrevocably assigned funeral/burial annuity policies.
5.-10. (No change.)
(d)-(g) (No change.)

10:85-5.1 Medical service payment
(a)-(e) (No change.)
(f) Care of individuals in long term care facilities: The director of welfare shall authorize payments for patient care and allow for a personal needs allowance (PNA) in a [skilled nursing home or intermediate care] **nursing** facility when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client. In the event that a person who is determined ineligible for Medicaid Only benefits by the county welfare agency applies promptly, and is found eligible for GA, payment of eligible medical expenses shall be made retroactive to the date of application for Medicaid Only.
1. Physician certification (completion of GA-18): Physician certification shall be accomplished by means of Form GA-18, Certification of Need for Patient Care in Facility Other than Public or Private General Hospital. This form shall be completed in duplicate, by the attending, or staff physician and the operator or superintendent of the appropriate facility. One copy shall be submitted to the DFD/GAP Unit for [level-of-care] **necessity of nursing facility care** determination and subsequently, filed in the case record and the other copy shall be retained by the nursing [home] **facility** or institution.
2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities, by the DFD/GAP Unit. The MWD shall contact the DFD/GAP Unit to obtain the per diem rate for room, board and nursing care. A personal needs allowance of $35.00 per month shall be allowed to the patient.
i. In determinng the amount the MWD will be authorized to pay the facility for room, board and nursing care, the Medicaid rate times the number of days of care less the payment by or on behalf of the client shall be used. Each month the MWD will obtain a current bill for all services rendered during the previous month [and will submit it to the DFD/GAP Unit for costing prior to payment].
(1) The MWD shall authorize per diem payments for periods of up to 10 days during which the client is temporarily absent from the facility for hospitalization or **for periods of up to 25 days in a calendar year for** therapeutic visits.
ii. (No change.)
(g) (No change.)
(h) Miscellaneous services: The director of welfare shall authorize payment for drugs, blood, blood plasma, infusions, hearing aids, prosthesis, oxygen, dental services or dentures, eyeglasses and other visual prosthetics, braces and appliances, if recommended in writing by an appropriately licensed practitioner and if not otherwise available without cost to the patient.
1. (No change.)
2. [PAAD Program: See N.J.A.C. 10:85-8.4(g)1i regarding referral to the Pharmaceutical Assistance to the Aged and Disabled program.] **Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program: See N.J.A.C. 10:85-8.4(f)1i regarding referral to the PAAD program.**
3. Prosthetics and orthotics (for example, artificial limb, eye or brace): Clients who have a job [handicap] **disability** which may be reduced or diminished if provided with an appliance (that is, prosthesis or brace) should be referred to the Division of Vocational Rehabilition Services **(DVRS)** (see N.J.A.C. 10:85-8.4[(h)]**(g)**). If accepted for service by that agency, the cost of the appliance is the responsibility of DVRS. Only if the client is rejected as not feasible for the services furnished by DVRS should the municipal welfare agency consider authorizing payment for such an appliance, and then only after consulting with the DFD/GAP Unit.
(i)-(j) (No change.)

10:85-6.3 Public Assistance Trust Fund Accounts
(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account. Effective July 1, 1991, approved municipalities will have both a Public Assistance Trust Fund I and a Public Assistance Trust Fund II account.
1.-3. (No change.)
4. Deposit of refunds and receipts: Except as noted in (a)3 above, all payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" designed on Form GA-12 and duly accounted for on a monthly basis.
i. Refunds and other receipts shall be separated and deposited as follows:
(1) Deposits to the Public Assistance Trust Fund I Account are as follows:
(A) Deposits into this account will include any municipal appropriation for non-GA eligible assistance, certain miscellaneous donations, refunds of non-GA assistance, refunds of 75 percent reimbursed assistance and 75 percent reimbursed SSI interim assistance.
(B) After calculation of the State funded portion (75 percent) of refunds, a check for that amount shall be drawn from the Public Assistance Trust Fund I Account and deposited into the Public Assistance Trust Fund II Account. Amounts remaining after this transfer of funds will be solely municipal funds.
(2) Deposits to the Public Assistance Trust Fund II Accounts are as follows:
(A) Deposits into this account will include State aid advances for expenditures eligible for 100 percent State aid, refunds of all 100 percent reimbursed assistance (to include fraud recoveries, insurance recoveries, vendor repayments, and so forth) and Supplemental Security Income (SSI) Interim Assistance checks (except as noted at N.J.A.C. 10:85-6.3(a)4i(1) above).
Recodify existing i.-ii. as **ii.-iii.** (No change in text.)
(b) Disbursement may be made from the Public Assistance Trust Fund Accounts only for payment of public assistance costs, exclusive of administrative costs. Disbursements will be made on the authority of the municipal treasurer or other authorized official.

1. (No change.)

2. Disbursements from the Public Assistance Trust Fund II Account are limited to:

i.-ii. (No change.)

iii. Payment of Supplemental Security Income (SSI) proceeds to SSI recipients, the Social Security Administration, or other municipal welfare departments from which the SSI recipient received Interim Assistance and completed a Form GA-30.

3. (No change.)

10:85-6.4 Fiscal and statistical reporting requirements

(a) General completion and submittal requirements: Forms described below shall be complete and either submitted to the Division of Family Development, as indicated, or retained by each municipality approved to receive State aid in the General Assistance program. Use of the forms described herein is required.

1.-3. (No change.)

4. All MWDs are required to submit, electronically or manually, data concerning actions taken on General Assistance cases. Those MWDs, which do not have computer capabilities to report data electronically, shall, at the end of every business day, complete a GA-48, General Assistance-Data Input for each case when any of the following actions are taken:

i. Opening of a case;

ii. Closing of a case;

iii. Denying a case;

iv. Imposing a sanction;

v. Changing a homeless code;

vi. Reopening a case;

vii. Changing a case type (employability status); or

viii. Issuing a payment on a case.

10:85-6.5 Reimbursement of assistance for cases pending SSI entitlement

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

(e) Rules concerning remittal of balance of SSI award to clients are:

1. Form SSA-(L)8125, Social Security Administration Supplemental Security Income Notice of Interim Assistance Reimbursement, provides the necessary information (SSI eligibility date, payment summary, client's address) to permit distribution of any proceeds due the client from the initial SSI award check, which shall be done as follows:

i.-ii. (No change.)

iii. If form SSA-(L)8125 is not received prior to Municipal Treasurer's receipt of the SSI award check, the local SSA/DO shall be [promptly] contacted **by the MWD, within a period of not more than three working days,** to obtain the necessary information to permit distribution of the proceeds due the client from the SSI award check.

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

2.-4. (No change.)

5. The deposit of State share of Interim Assistance recovered shall be as follows:

i. [A check representing the State share of Interim Assistance recovered must be drawn on Public Assistance Trust Fund I for deposit into Public Assistance Trust Fund II.] **If the retroactive eligibility period of the award began on or after July 1, 1991, the initial check received by the municipal treasurer shall be deposited into the Public Assistance Trust Fund II Account.**

ii. If the retroactive eligibility period of the award includes periods of Interim Assistance prior to July 1, 1991, the deposit shall be made and the recovery allocated in accordance with N.J.A.C. 10:85-6.3(a)4i.

(f) (No change.)

10:85-6.7 Retention and destruction of case records

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

(c) Cases shall be selected for destruction in accordance with the following schedule:

Record	Retention period
Inactive case records	6 years
Denied cases	10 years
Copies of relief orders or vouchers	6 years
General correspondence not relating to policy or active cases	3 years
Form GA-6, Report of Assistance Commitments	6 years
Form 100, Original Invoice for Expenses	6 years
Form GA-12, Statement of Refunds	6 years
Form GA-30, Authorization for Reimbursement of Initial Supplemental Security Income or Initial SSI Post Eligibility	6 years
Form GA-31, Repayment of Interim Assistance Authorization	6 years
Form GA-48, General Assistance Data Input	**3 years**

The current year shall not be counted when determining the retention period.

10:85-6.8 Pharmaceutical payments

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

(d) Periodically, the administrative costs of processing the MC-6 forms up to that time will either be billed to or deducted from payments of State aid to the respective municipalities.

1. [For municipalities that maintain a zero balance Public Assistance Trust Fund II Account, a check shall be drawn from the municipal account used for administrative expenses and made payable to the Public Assistance Trust Fund II Account for the total amount billed the municipality for the processing of each Form MC-6, the prescription processing form. The amount of the check must be recorded on GA-12, Statement of Refunds, as administrative costs of the pharmaceutical (Rx) program (abbreviate as "Admin Rx Pgm").] **A check shall be drawn from the municipal account used for administrative expenses and made payable to the Treasurer, State of New Jersey for the total amount billed the municipality for the processing of each prescription claim. The check shall be forwarded to the Division of Family Development, Bureau of Business Services, CN 716, Trenton, New Jersey 08625.**

[2. For municipalities that receive quarterly advance payments of State aid for deposit into the municipality's Public Assistance Trust Fund II Account, the total amount of the administrative costs of processing the MC-6 forms will be deducted from one State aid advance payment. Therefore, a check shall be drawn on the municipal account used for the payment of administrative expenses, made payable and deposited to the Public Assistance Trust Fund II Account, and recorded as a refund on Form GA-12, Statement of Refunds, to the Public Assistance Trust Fund II Account for "Admin Rx Pgm."]

10:85-7.1 General provisions

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

(e) Denial of assistance: When an application for assistance is denied, the applicant shall be so informed in writing by a notice mailed as soon as possible, but in no event later than 30 days from the date of application. Such notice shall include a statement of the applicant's right to appeal the decision. [(See notice forms in Appendix A.)]

1.-2. (No change.)

10:85-7.2 Notice to applicants or recipients

(a) A timely notice is the notice which must be sent by the municipal welfare department in advance of any action which adversely affects the eligibility of a person who is receiving assistance.

1. Termination or reduction of assistance: The municipal welfare department shall send a notice to every recipient for whom assistance is to be terminated or reduced no later than 10 days before the date such action will be taken [(see Appendix A for notice forms)]. In the event the 10-day period extends beyond the last date for which assistance has already been granted, the MWD will continue assistance at an unreduced per diem rate for the balance of the full 10-day period.

(b) (No change.)

(c) Content of notices: Notices of denial, reduction or termination and time-limited notices shall state in clear, simple language the nature of the action, the effective date and the reason such action is being taken. [(See notice forms in Appendix A.)]

1.-3. (No change.)

10:85-8.3 Referral to SSA district office

(a) Referral shall be made to the appropriate Social Security Administration district office when the General Assistance applicant appears eligible for the programs identified in (c) below. The Social Security Administration may be contacted directly, 24 hours a day, by calling toll free, [800-2345-SSA] **1-800-772-1213**.

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

10:85-8.4 Referral to State agencies

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

(c) The New Jersey State Department of Health administers the programs and services described in (c)2 below.

1. (No change.)

2. Description of programs: The Department of Health administers the following programs:

i.-iii. (No change.)

iv. Special Child Health Service (SCHS): This program is designed to promote early identification, diagnosis, evaluation and treatment of any child under the age of 21 with [handicapping] **disabling** or potentially [handicapping] **disabling** conditions.

(1) This program replaces the former "Crippled Children's Program" and "Juvenile Terminal Illness Assistance Program" with expanded services for children and families who are at risk for developing a [handicapping] **disabling** condition. Services are provided by health care agencies/facilities throughout the State, which have contracted with the State Department of Health. Financial assistance is available through these agencies/facilities on a limited basis when third party resources are exhausted or unavailable to the child or family. Services that are supported include:

(A) Specialized and subspecialized evaluation, diagnostic and treatment services for infants and children who have multiple [handicapping] **disabling** conditions, chronic diseases/disorders and/or are at risk for delayed development.

(B)-(D) (No change.)

(2) Additional information may be obtained by telephone (609-292-5676) or by requesting a copy of ["Resources for Detection, Prevention and Treatment Services for Children with Handicapping Conditions"] **"Specialized Pediatric Services Program Network Agencies" or "What You Need To Know About Case Management Services"**, from Special Child Health Services, CN [364] **363**, Trenton, New Jersey 08625. The individual program details may be obtained from the same address. Referrals may be made directly to the appropriate health care agency/facilities that the State Department of Health lists as an approved contracted provider in their resource directory.

(d) (No change.)

(e) Division of Youth and Family Services (DYFS): This State agency, which is a division of the New Jersey Department of Human Services, administers foster care, homemaker services, adoption, counseling, residential placement, parole supervision, and child abuse services.

1. (No change.)

2. How to apply for services: Information and application for adoption services may be made at one of the Division's four regional offices. The DYFS regional offices are listed below:

[Northern Regional Office
100 Hamilton Plaza
Paterson, N.J. 07505
201-977-4000

Central Regional Office
719 Alexander Rd.
Princeton, N.J. 08540
609-452-7728

Central Regional-Newark Office
1180 Raymond Blvd.
18th Floor
Newark, N.J. 07102
201-648-4100

Southern Regional Office
302 North White Horse Pike
P.O. Box 594
Hammonton, N.J. 08037
609-567-0010]

**Northern Regional Office
100 Hamilton Plaza
7th Floor, Room 710
Paterson, N.J. 07501
(201) 977-4000**

**Central Regional Office
CN 717
Capital Center
50 E. State Street
5th Floor
Trenton, N.J. 08625
(609) 777-2000**

**Metropolitan Regional Office
153 Halsey Street, 2nd Floor
Newark, N.J. 07101
(201) 648-4100**

**Southern Regional Office
392 North White Horse Pike
P.O. Box 594
Hammonton, N.J. 08037
(609) 567-0010**

Information and application for all other services may be made at the DYFS district office serving the area in which the MWD is located. The DYFS district offices are listed below.

[DIVISION OF YOUTH AND FAMILY SERVICES
DISTRICT OFFICES

NORTHERN REGION

BERGEN DISTRICT OFFICE
60 State Street
Hackensack, NJ 07601
(201) 487-5380

CENTRAL PASSAIC DISTRICT OFFICE
2 Market Street
Paterson, NJ 07501
(201) 977-4525

BAYONNE DISTRICT OFFICE
690 Broadway
Bayonne, NJ 07002
(201) 823-5000

SOUTH PASSAIC DISTRICT OFFICE
925 Clifton Avenue
Clifton, NJ 07013
(201) 472-4949

JERSEY CITY DISTRICT OFFICE
2815 Kennedy Boulevard
3rd Floor
Jersey City, NJ 07306
(201) 915-3500

NORTH PASSAIC DISTRICT OFFICE
223 Wanaque Avenue, 2nd Floor
Pompton Lakes, NJ 07442
(201) 831-7405

NORTH HUDSON DISTRICT OFFICE
8901 Bergin Line Avenue
North Bergen, NJ 07407
(201) 854-7100

SUSSEX DISTRICT OFFICE
15 Route 306 North
Newton, NJ 07860
(201) 383-8400

MORRIS DISTRICT OFFICE
855 Route 10 East
Randolph Twp., NJ 07801
(201) 927-0931

WARREN DISTRICT OFFICE
5 West Washington Avenue
P.O. Box 148
Washington, NJ 07882
(201) 689-7000

CENTRAL REGION—NEWARK

SUB ESSEX-ORANGE DISTRICT OFFICE
240 South Harrison Street
East Orange, NJ 07018
(201) 414-4299

NEWARK SOUTH DISTRICT OFFICE
1100 Raymond Boulevard,
Room 101-C
Newark, NJ 07102
(201) 648-2400

NEWARK CENTRAL DISTRICT OFFICE
1100 Raymond Boulevard,
Room 305
Newark, NJ 07102
(201) 648-4200

PLAINFIELD DISTRICT OFFICE
700 Park Avenue
3rd Floor
Plainfield, NJ 07060
(201) 499-5825

NEWARK WEST DISTRICT OFFICE
1180 Raymond Boulevard,
Room 1522
Newark, NJ 07102
(201) 648-2960

UNION DISTRICT OFFICE
208 Commerce Place,
2nd and 3rd Floors
Elizabeth, NJ 07201
(201) 820-3000

NEWARK NORTH/EAST
DISTRICT OFFICE
1180 Raymond Boulevard,
9th Floor
Newark, NJ 07102
(201) 648-6150

SUB ESSEX-MAPLEWOOD
DISTRICT OFFICE
2040 Millburn Avenue
Maplewood, NJ 07040
(201) 761-7127

CENTRAL REGION—PRINCETON

HUNTERDON DISTRICT OFFICE
84 Park Avenue, 2nd Floor
Flemington, NJ 08822
(201) 782-8784

MIDDLETOWN DISTRICT OFFICE
225 Highway #35
Red Bank, NJ 07701
(201) 747-7655

MERCER DISTRICT OFFICE
Princess Road
Building 9F
Lawrenceville, NJ 08648
(609) 895-0400

HOWELL DISTRICT OFFICE
220 Route 9, Suite 100
Howell, NJ 07731
(201) 577-9210

EDISON DISTRICT OFFICE
100 Metroplex Drive
Suite 400
Edison, NJ 08817
(201) 819-7003

LONG BRANCH DISTRICT OFFICE
1 Main Street, 1st Floor
Eatontown, NJ 07724
(201) 389-2700

PERTH AMBOY DISTRICT OFFICE
275 Hobart Street, 2nd Floor
Perth Amboy, NJ 08861
(201) 324-1700

OCEAN DISTRICT OFFICE
954 Route 166
Toms River, NJ 08876
(201) 244-4300

EAST BRUNSWICK DISTRICT OFFICE
105 Old Matawan Road
Old Bridge, NJ 08857
(201) 390-2100
(4/12—for 6 months)

SOMERSET DISTRICT OFFICE
75 Franklin Street
Suite 202
Somerville, NJ 08876
(201) 722-2224

ASBURY PARK DISTRICT OFFICE
601 Bangs Avenue
2nd, 3rd & 4th Floors
Asbury Park, NJ 07712
(201) 988-2161

SOUTHERN REGION

ATLANTIC DISTRICT OFFICE
10-14 South New York Avenue
Atlantic City, NJ 08401
(609) 441-3232

CAMDEN ADOLESCENT SERVICES DO
518 Market Street—Lower Level
Camden, NJ 08101
(609) 757-4603

BURLINGTON DISTRICT OFFICE
50 Rancocas Road
Mt. Holly, NJ 08060
(609) 267-7550

CAPE MAY DISTRICT OFFICE
Route 47 and 9
Social Services Building
P.O. Box 222
Rio Grande, NJ 08242
(609) 886-1105

NORTH CAMDEN DISTRICT OFFICE
808 Market Street
P.O. Box 738
Camden, NJ 08101
(609) 757-2700

CUMBERLAND DISTRICT OFFICE
106 West Landis Avenue
Vineland, NJ 08360
(609) 696-6590

SOUTH CAMDEN DISTRICT OFFICE
2 Echelon Plaza
Laurel Road
Suite 210
Voorhees, NJ 08033
(609) 757-2903, 2911, 2921, 2924

GLOUCESTER DISTRICT OFFICE
251 North Delsea Drive
Suite 100
Deptford, NJ 08096
(609) 848-6604

SALEM DISTRICT OFFICE
Five Woodstown Road
Salem, NJ 08079
(609) 935-6350]

DIVISION OF YOUTH AND FAMILY SERVICES DISTRICT OFFICES

NORTHERN REGION

BERGEN DISTRICT OFFICE
60 State Street
3rd Floor
Hackensack, NJ 07601
(201) 996-8900

CENTRAL PASSAIC DISTRICT OFFICE
2 Market Street, 3rd Floor
Paterson, NJ 07501
(201) 977-4525

BAYONNE DISTRICT OFFICE
690 Broadway, 4th Floor
Bayonne, NJ 07002
(201) 823-5000

JERSEY CITY DISTRICT OFFICE
433 Summit Avenue
4th Floor
Jersey City, NJ 07306
(201) 217-7000

NORTH PASSAIC DISTRICT OFFICE
223 Wanaque Avenue, 2nd Floor
Pompton Lakes, NJ 07442
(201) 831-7405

MORRIS DISTRICT OFFICE
855 Route 10 East
Randolph, NJ 07860
(201) 927-0931

NORTH HUDSON DISTRICT OFFICE
8901 Bergenline Avenue
2nd Floor
North Bergen, NJ 07047
(201) 854-7100

SUSSEX DISTRICT OFFICE
1 Cochran Plaza
3rd Floor
Newton, NJ 07860
(201) 383-8400

WARREN DISTRICT OFFICE
5 West Washington Avenue
3rd Floor
P.O. BOX 148
Washington, NJ 07882
(908) 689-7000

METROPOLITAN REGION

EAST ORANGE DISTRICT OFFICE
240 South Harrison Street
East Orange, NJ 07018
(201) 414-4200

NEWARK SOUTH DISTRICT OFFICE
153 Halsey Street, 4th Floor
Newark, NJ 07101
(201) 648-2400

NEWARK CENTRAL DISTRICT OFFICE
153 Halsey Street, 3rd Floor
Newark, NJ 07101
(201) 648-4200

PLAINFIELD DISTRICT OFFICE
700 Park Avenue
2nd Floor
Plainfield, NJ 07060
(908) 412-7900

NEWARK WEST DISTRICT OFFICE
153 Halsey Street, 4th Floor
Newark, NJ 07101
(201) 648-2960

ELIZABETH DISTRICT OFFICE
208 Commerce Place, 2nd Floor
Elizabeth, NJ 07201
(908) 820-3000

NEWARK NORTH/EAST DISTRICT OFFICE
153 Halsey Street, 3rd Floor
Newark, NJ 07101
(201) 648-6150

MAPLEWOOD DISTRICT OFFICE
2040 Millburn Avenue, 3rd Floor
Maplewood, NJ 07040
(201) 761-7127

EDISON DISTRICT OFFICE
100 Metroplex Drive
4th Floor, Suite 400
Edison, NJ 08817
(908) 819-7003

PERTH AMBOY DISTRICT OFFICE
275 Hobart Street, 2nd Floor
Perth Amboy, NJ 08861
(201) 389-2700
(908) 324-1700

EAST BRUNSWICK DISTRICT OFFICE
4 Cornwall Court
East Brunswick, NJ 08819
(908) 390-2100

CENTRAL REGION

HUNTERDON DISTRICT OFFICE
84 Park Avenue, 2nd Floor
Flemington, NJ 08822
(908) 782-8784

NORTHERN MONMOUTH DISTRICT OFFICE
225 Highway #35
Middletown, NJ 07701
(908) 747-7655

MERCER DISTRICT OFFICE
CN 717
676 North Olden Avenue
Trenton, NJ 08625
(609) 530-8770

WESTERN MONMOUTH DISTRICT OFFICE
1001 Route 9 North
Suite 100
Howell, NJ 07731
(908) 577-9210

COASTAL MONMOUTH DISTRICT OFFICE
601 Bangs Avenue
2nd, 3rd & 4th Floors
Asbury Park, NJ 07712
(908) 988-2161

OCEAN DISTRICT OFFICE
1510 Hooper Avenue
2nd Floor, Suite 210
Toms River, NJ 08753
(908) 255-0700

SOMERSET DISTRICT OFFICE
75 Veteran's Memorial Drive East
Suite 202
Somerville, NJ 08876
(908) 704-3050

SOUTHERN REGION

ATLANTIC DISTRICT OFFICE
10-14 South New York Avenue
Atlantic City, NJ 08401
(609) 441-3232

CAMDEN CENTRAL DISTRICT OFFICE
101 Haddon Avenue, 3rd Floor
Camden, NJ 08101
(609) 757-2700

BURLINGTON DISTRICT OFFICE
50 Rancocas Road
Mt. Holly, NJ 08060
(609) 267-7550

CAPE MAY DISTRICT OFFICE
Village Shoppes at Rio Grande
Routes 9 and 47
Rio Grande, NJ 08242
(609) 886-1105

CAMDEN NORTH DISTRICT OFFICE
101 Haddon Avenue
3rd Floor
P.O. Box 738
Camden, NJ 08101
(609) 757-2700

CUMBERLAND DISTRICT OFFICE
40 East Broad Street
4th Floor
Bridgeton, NJ 08302
(609) 453-3833

CAMDEN SOUTH DISTRICT OFFICE
2 Echelon Plaza
2nd Floor, Suite 210
Laurel Road
Voorhees, NJ 08043
(609) 757-2903, 2911, 2921, 2924

GLOUCESTER DISTRICT OFFICE
251 North Delsea Drive
Suite 100
Deptford, NJ 08096
(609) 848-6604

SALEM DISTRICT OFFICE
5 Woodstown Road, 2nd Floor
Salem, NJ 08079
(609) 935-6350

(f) (No change.)

(g) The Division of Vocational Rehabilitation Services, which is a division of the New Jersey Department of Labor and Industry, is responsible for the administration of services described [in (h)2] **at (g)2** below.

1. General eligibility requirements: To be eligible for vocational rehabilitation services, a person must be at or near working age, have a physical or mental disability that is or will be a substantial [handicap] **impairment** to employment, and have a capacity for benefiting from services offered under the rehabilitation program to the extent that [he/she] **he or she** can become employable in a competitive or sheltered situation. Financial help offered by the division is based upon establishment of economic need.

2. (No change.)

3. How to apply for services: The New Jersey Division of Vocational Rehabilitation Services maintains a network of offices throughout the State. The addresses of these offices, with area of coverage, may be obtained directly from the division's main office, which is located in the Labor and Industry Building, Room 1005, John Fitch Plaza, Trenton, New Jersey 08625. A [handicapped] **disabled** person, or a relative or friend acting on [his/her] **his or her** behalf, may make inquiry at any of the district offices.

4. (No change.)

(h) New Jersey Commission for the Blind and Visually Impaired: The New Jersey Commission for the Blind and Visually Impaired, which is a component of the New Jersey Department of Human Services, administers the programs and services described [in (i)2] **at (h)2** below.

1. (No change.)

2. Description of programs: Services are available through the following programs:

i.-iv. (No change.)

v. Vocational Rehabilitation Department: This program attempts to place capable blind persons in remunerative work. It also attempts to help the newly-blind person adjust to [his/her handicap] **his or her disability.**

vi. (No change.)

3. (No change.)

(i)-(k) (No change.)

10:85-11.1 Acronyms

The acronyms used in this manual are as follows:

"ACE" means Active Corps of Executives.

...

"AIDS" means Acquired Immune Deficiency Syndrome.

...

"CEAS" means Comprehensive Emergency Assistance System.

...

["DARM" means Division of Archives and Records Management.]

...

"DFD/BIC" means Bureau of Integrity Control, Division of Family Development.

...

"DMAHS" means Division of Medical Assistance and Health Services.

...

"FDP" means Family Development Program.

...

"FSP" means [food stamp] **Food Stamp** program.

"GA" means [general assistance] **General Assistance.**

...

"HEA" means Home Energy Assistance program.

"HIV" means Human Immunodeficiency Virus.

"HSAC" means Human Services Advisory Council.

...

"JPTA" means Job Training Partnership Act.

...

"LAP" means Lifeline Assistance Program.

...

"MDO" means Medicaid District Office.

...

"PNA" means personal needs allowance.

...

"RMA" means registered municipal accountant.

...

"SCHS" means Special Child Health Services.

"SCORE" means Service Corps of Retired Executives.

"SDX" means State Data Exchange.

...

"TDI" means Temporary Disability Insurance.

...

"TRA" means temporary rental assistance.

...

"VA" means Veterans Administration.

...

10:85-11.2 Definitions

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

...

"Emergency Assistance" means assistance provided to otherwise eligible GA clients, in addition to the regular GA grant, for the prevention of homelessness, the granting of emergency shelter or temporary rental assistance when such needs are a result of specific emergency circumstances as outlined at N.J.A.C. 10:85-4.6.

...

"General [assistance] **Assistance**" means financial and/or medical assistance provided by municipal welfare departments to needy persons currently ineligible for participation in any other public assistance program in New Jersey or for supplemental security income.

...

["Household size" means the numbers of related persons living together as a family unit.]

"Immediate need" means that the available resources of a GA applicant are insufficient to meet his or her current living expenses.

...

"Income exclusions" means income that is not counted when determining financial eligibility.

...

"Monthly review (of eligibility)" means required monthly evaluation of any changes in client's circumstances or income; [entails appropriate] **may entail grant** adjustment.

...

"Temporary rental assistance" means assistance payment provided to preclude the loss of an existing or potential housing arrangement.

[APPENDIX D
Exhibit 2

GA-33C
(New 7/92)

AGENCY LETTERHEAD

TIME-LIMITED BENEFIT PERIOD EXPIRATION NOTICE FOR GENERAL ASSISTANCE EMPLOYABLES FOR STATE FISCAL YEAR (SFY): July 1, 1992-June 30, 1993

TO: ______________________________ CASE NO.:______________

______________________________ DATE MAILED:______________

____

IMPORTANTE: ESTA ES UNA NOTICIA IMPORTANTE. SI USTED NO ENTIENDE LA INFORMACIÓN CONTENIDA EN ESTA NOTICIA O NO LEE INGLÉS, PÓNGASE EN CONTACTO CON UN REPRESENTANTE DEL DEPARTAMENTO DE BIENESTAR PÚBLICO DEL MUNICIPIO.

IMPORTANT: The information checked below shows action taken on your General Assistance case. If you do not understand, or if you disagree, you should contact your General Assistance worker for an explanation. You also have a right to appeal this matter at a fair hearing. Please read the reverse side of this form which explains fair hearings.

TIME-LIMITED SFY BENEFIT PERIOD. Your specific benefit period for entitlement to General Assistance benefits will end on the last day of ____________ for this SFY.

Check one of the blocks below, if applicable:

- ☐ Your Emergency Assistance (EA) benefits will end as of the above date since such benefits are contingent on continuing GA eligibility.
- ☐ Your Temporary Rental Assistance (TRA) benefits will end as of the above date since such benefits are contingent on continuing GA eligibility.

If your circumstances change, and due to illness, injury or other incapacity you think that you may be eligible for assistance as an unemployable person, you should come to the municipal welfare department to reapply for benefits.

The reason this action has been taken:

____

____

____

DATE ______________ ______________________________ DIRECTOR

______________________________, MUNICIPAL WELFARE DEPARTMENT

New Jersey Department of Human Services—Division of Family Development

(month/year)

GA-33C (Reverse)
(New 7/92)

REQUEST FOR A LOCAL HEARING
IF YOU DISAGREE WITH THE ACTION TAKEN REGARDING THE EXPIRATION OF YOUR TIME-LIMITED ELIGIBILITY PERIOD, YOU HAVE THE RIGHT TO REQUEST A LOCAL HEARING BEFORE A MUNICIPAL WELFARE DEPARTMENT REPRESENTATIVE.

TIME LIMITS
A REQUEST FOR A LOCAL HEARING MUST BE MADE WITHIN TEN (10) DAYS OF THE MAILING DATE OF THIS NOTICE. SINCE TIME-LIMITED ASSISTANCE IS BASED ON AVAILABLE FUNDING LEGISLATION, YOU WILL NOT BE ENTITLED TO CONTINUED BENEFITS PENDING THE FINAL HEARING DECISION.

HOW TO REQUEST A LOCAL HEARING
IF YOU WISH A HEARING, PLEASE CONTACT IN PERSON, BY TELEPHONE OR WRITE THE ____________________ MUNICIPAL WELFARE DEPARTMENT AT
____ OR CALL ______________.

YOUR RIGHTS
Concerning the hearing, you have the right to:

- Present your own case or have a friend, relative or attorney make the presentation.
- Submit any evidence and/or bring any witnesses that have knowledge of your case.
- Question or challenge any witness or evidence presented by the municipal welfare department.
- Examine at a reasonable time before the date of the hearing, as well as during the hearing, the contents of your file and all the documents and records to be used at the hearing.
- Review a complete and up-to-date copy of the General Assistance Manual.

STATE FAIR HEARINGS
IF YOU WISH TO APPEAL THE LOCAL HEARING DECISION YOU MAY REQUEST A STATE FAIR HEARING WITHIN TEN (10) DAYS OF THE MAILING DATE OF THE LOCAL DECISION. YOU MAY ALSO REQUEST A STATE FAIR HEARING IF THE LOCAL FAIR HEARING IS NOT CONVENED WITHIN FIFTEEN (15) DAYS OF THE DATE OF THE HEARING REQUEST. A WRITTEN REQUEST FOR A STATE FAIR HEARING MUST BE MADE EITHER TO THE MUNICIPAL WELFARE DEPARTMENT (LISTED ABOVE) OR DIRECTLY TO THE NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF FAMILY DEVELOPMENT, CN 716, TRENTON, NEW JERSEY 08625.

IF YOU WISH FURTHER INFORMATION ON THE FAIR HEARING PROCESS, YOU MAY CALL THE STATE TOLL FREE HOTLINE NUMBER 800-792-9774.

LEGAL SERVICES
You have a right to pursue legal consultation in your area, if you wish.

Legal Services projects are private, nonprofit organizations that are not connected in any way with any local or county welfare agencies or any other government agencies, and they provide free legal services to poor people in most civil matters.

New Jersey Department of Human Services—Division of Family Development]

(Address)

(Phone Number)

GA-53 (New 7/92)

[APPENDIX D
Exhibit 3

NOTICE OF TIME-LIMITED AVAILABILITY OF GENERAL ASSISTANCE FOR EMPLOYABLE CLIENTS

This is to advise you that the eligibility period for receipt of assistance benefits for individuals considered to be employable in the General Assistance (GA) program is limited to a maximum cumulative total of any six calendar months in State fiscal year 1993. State fiscal year 1993 is the period of time from July 1, 1992 through June 30, 1993.

In addition, you are further advised that eligibility for Emergency Assistance (EA) or Temporary Rental Assistance (TRA) benefits in the General Assistance program is also limited to a cumulative total of any six calendar months in State fiscal year 1993, since eligibility for such benefits is contingent on your period of eligibility for General Assistance.

The above benefit limitations have been fully explained to me (us) and I (we) understand that since I (we) am considered to be an employable individual(s) in accordance with the provisions of the General Assistance program, assistance benefits afforded to me (us) will be limited to a maximum cumulative total of six calendar months in State fiscal year 1993. I (we) further understand that a notice (Form GA-33C) will be provided to me (us) in the month prior to, or when necessary in the actual month of the expiration of my (our) GA eligibility period.

(Employable GA Client's Signature)	(Date)
(Employable GA Client's Signature)	(Date)
(MWD Representative's Signature)	(Date)

Municipal Welfare Department]

LABOR

(a)

DIVISION OF BUSINESS AND WORKER DEVELOPMENT

Application and Review Process for Customized Training Under Workforce Development Partnership Act

Proposed New Rules: N.J.A.C. 12:23-1 and 2

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

Authority: P.L. 1992, c.43.

Proposal Number: PRN 1994-396.

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

Monday, July 25, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

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

Submit written comments by August 4, 1994 to:

Deirdre L. Webster, Regulatory Officer
Office of the Regulatory Services
Department of Labor
Office of the Commissioner
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at 609-777-1727 or N.J. Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The New Jersey Workforce Development Partnership Program (WDDP) is a seven bill legislative package which was signed into law (P.L. 1992, Chapters 43 through 49) on July 7, 1992. Chapter 43 provided for employment and training services for New Jersey's unemployed, employed and displaced workers and is designed to provide opportunity for occupational development, increased productivity, and earning power.

The Workforce Development Partnership Program, under Chapter 43, specifically establishes the Office of Customized Training in the Department of Labor. The Office of Customized Training will provide financial assistance to eligible employers, consortia of employers and educational and/or training institutions, labor organizations, community-based organizations, or other entities that will lead to increased job creation or retention in New Jersey. These proposed new rules specifically address the activities of customized training.

Subchapter 1 and 2 were originally proposed by the Department on February 1, 1993 at 25 N.J.R. 449(a). Comments were received until March 3, 1993. As a result of the comments submitted, it was determined that rules would be reevaluated and the subject of a future proposal. The rules are being reproposed at this time with non-substantive and technical changes from the original proposal. Subchapter 1 contains definitions of terms that will be used in this chapter. Subchapter 2 contains general provisions dealing with the purpose, eligibility and scope of the proposed new rules; covers the application process and describes the information that must be provided as part of the application for customized training assistance; addresses the conditions and standards of eligibility for customized training assistance; sets forth the process for the review of customized training applications; and indicates where to obtain and send an application for customized training assistance as well as identifying where assistance in completing the application may be obtained.

Social Impact

The establishment of the Office of Customized Training under the WDPP and the service available from that office will have a positive impact on both employers and workers in New Jersey. Employers will be eligible for financial assistance to help them arrange a comprehensive package of services to meet their employment and training needs by increasing productivity and competitiveness. Employers that are better able to compete in the marketplace are less likely to relocate out of New Jersey. Workers are similarly impacted by being able to obtain retraining on the job or in cooperation with an educational and/or training institution that should result in higher work skills and increased earning power. The New Jersey economy also benefits by having a better trained workforce for the future. Customized Training services will enhance workers' ability to retain or obtain employment, thus generating both tax revenue and contributions to rather than deductions from the unemployment insurance fund. At the same time, the general economy will be strengthened through stimulation from the earnings of employed workers.

Economic Impact

The creation and retention of employment in New Jersey are critical to improving the State's economy. The wide range of employment and training services and financial assistance available through the Department's Office of Customized Training can help stimulate the economy, resulting in increased job creation and business retention. In addition, the Office of Customized Training will have the necessary resources to facilitate the expansion of companies through technological advancement and increased productivity. Customized training activities will contribute to an environment favorable to start-up, growth, and prosperity of all types of businesses, thereby expanding the employment base in the State. Customized training services will be particularly beneficial to small businesses which are the principal sources of job creation but which often lack the financial resources necessary to expand their operations. Applicants seeking customized training services would have to bear the costs of application, which includes the formulation of a business needs plan pursuant to N.J.A.C. 12:23-2.3(b). Each applicant that receives customized training services is to generally contribute a minimum of 40 percent of the cost of the services. An employer who receives customized training services and relocates outside the State within three years of the conclusion of the customized training contract will be required to return all monies provided to the company by the State for customized training services.

Regulatory Flexibility Analysis

The proposed new rules will have minimal impact in terms of imposing additional burdens upon businesses of any type, including small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in New Jersey. Through an application and review process administered by the Department of Labor, eligible employers, educational institutions, labor organizations, and community-based organizations will be able to access financial assistance to help train workers and create, upgrade, or retain jobs.

Businesses seeking customized training services would have to bear the costs of the application process, which includes the formulation of a business plan pursuant to N.J.A.C. 12:23-2.3(b). Each applicant that receives customized training services shall contribute a minimum of 40 percent of the cost of the services. An employer who receives customized training services and relocates outside the State within three years of the conclusion of the customized training contract will be required to return all monies provided to the company by the State for customized training services.

Depending on the nature of the training provided, capital costs may be incurred for any needed training facilities and material. Professional services may need to be engaged to provide the training. Small business participants will be required to bear a portion of such capital costs and costs of services. As the aim of the program is to benefit employers and employees through training, of the latter, and the requirements imposed on applicants/participants are the minimum necessary to meet that goal, no exemptions or lesser requirements based on business size are provided.

Full text of the proposed new rules follows:

SUBCHAPTER 1. DEFINITIONS

12:23-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.)

"Administrative cost" means any costs incurred by the Department to administer the program, including any cost required to collect information and conduct evaluations of service providers pursuant to section 8 of P.L. 1992, c.43 and surveys of occupations pursuant to section 12 of P.L. 1992, c.43 to the extent that funding is not available from Federal or other sources.

"Commissioner" means the Commissioner of Labor or the Commissioner's designees.

"Customized training services" means services that are provided by the Office of Customized Training or through arrangements made or coordinated by the Office of Customized Training.

"Department" means the New Jersey Department of Labor.

"Employability development plan" means a written signed agreement between a qualified job counselor and a claimant in which an occupational goal, course of training or educational and other related activities in the Workforce Development Partnership Program are specified.

"Employer" or "business" means any employer subject to the provisions of N.J.S.A. 43:21-1 et seq.

"Employment and training services" means:

1. Counseling;
2. Vocational training;
3. Remedial education; or
4. Occupational safety and health training.

"Fund" means the Workforce Development Partnership Fund.

"Identifiable job skills" means a specific ability which provides for a reasonable opportunity for employment in an occupation.

"Labor demand occupation" means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers as determined by the New Jersey Occupational Information Coordinating Committee or approved by a qualified job counselor based on documented local labor market data and projected labor market conditions.

"New Jersey Occupational Information Coordinating Committee (NJOICC)" is the interagency consortium responsible for developing, managing, and overseeing a Statewide comprehensive occupational labor market supply and demand system to meet the common information needs for the planning for, and the operation of, all public training and job placement programs.

"Occupational safety and health training" means training or education that is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation that is the subject of vocational training.

"Office" means the Office of Customized Training established pursuant to section 5 of P.L. 1992, c.43 (N.J.S.A. 34:15D-5).

"Program" means the Workforce Development Partnership Program.

"Prospective recipient" means an organization, community-based organization, labor organization, employer, consortium, agency, unit of government or other entities which may submit proposals for discretionary funds under the Workforce Development Partnership Program.

"Qualified disadvantaged worker" means a worker who is not a qualified displaced worker or a qualified employed worker, but who otherwise meets the following criteria:

1. Is unemployed;
2. Is working part-time and actively seeking full-time work or is working full-time but is earning wages substantially below the median salary for others in the labor force with similar qualifications and experience; or
3. Is certified by the Department of Human Services as:
   i. Currently receiving public assistance;
   ii. Having been recently removed from the public assistance rolls because of gross income exceeding the grant standard for assistance; or
   iii. Being eligible for public assistance but is not receiving assistance because of a failure to apply for it.

"Qualified displaced worker" means a worker who:

1. Is unemployed, and:
   i. Is currently receiving unemployment benefits pursuant to N.J.S.A. 43:21-1 et seq. or any Federal or State unemployment benefit extension; or
   ii. Has exhausted eligibility for benefits or extended benefits during the preceding 52 weeks; or
2. Meets the criteria set by Title III of the "Job Training Partnership Act," P.L. 97-300 (29 U.S.C. 1651 et seq.) to be regarded as an "eligible dislocated worker" pursuant to that Act.

"Qualified employed worker" means a worker who is employed by an employer participating in a customized training program.

"Qualified job counselor" means an individual who is engaged in employment counseling and who meets the following standards established by the Commissioner:

1. A qualified job counselor must have a bachelor's degree including or supplemented by:

i. Fifteen college semester hours in vocational guidance or other courses directly related to vocational counseling preparation;

ii. One year of related professional counseling experience; and

iii. Knowledge of State and Federal education laws, employment and training laws, wage and hour laws, and temporary disability and unemployment insurance laws.

2. Substitution of experience for education is allowed, provided the 15 college credits have been successfully completed. Master's degrees in psychology, education, social work and personnel administration may be substituted for the one year of experience.

3. The job counselor must be an employee of the Department or an employee of an organization or agency designated by the Commissioner to deliver Workforce Development Partnership Program services.

4. An individual who is employed as a counselor and who does not meet the qualifications specified in 1 through 3 above, may continue in this function provided that such individual meets the requirements by January 1, 1996 or such further extension as approved on a case-by-case basis by the Commissioner.

"Remedial education" means any literacy or other basic skills training or education that may not be directly related to a particular occupation but is needed to facilitate success in vocational training or work performance.

"Service provider" or "provider" means a provider of employment and training services including, but not limited to, a private or public school or institution of higher education, a business, a labor organization or a community-based organization. A service provider must be located in New Jersey.

"Total revenue dedicated to the program during any one fiscal year" means all monies received for the funding during any fiscal year including monies withdrawn from the State disability benefits fund pursuant to section 3 of P.L. 1992, c.44 (N.J.S.A. 34:15D-14), reduced by any repayment made during that fiscal year from the fund to the State disability benefits fund pursuant to that section.

"Training grant" means a grant provided to fund vocational training and any needed remedial education for a qualified displaced or disadvantaged worker pursuant to section 6 of P.L. 1992, c.43 (N.J.S.A. 34:15D-6).

"Vocational training" means training or education that is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

SUBCHAPTER 2. CUSTOMIZED TRAINING SERVICES; PURPOSE, ELIGIBILITY AND SCOPE

12:23-2.1 Purpose

The purpose of this subchapter is to establish procedures concerning the application and approval process for customized training services under the Workforce Development Partnership Program.

12:23-2.2 Eligibility and scope

(a) The following shall be eligible for customized training services:

1. An individual employer who seeks customized training services to create, upgrade, or retain jobs in a labor demand occupation;

2. An individual employer who seeks customized training services to upgrade or retain jobs in an occupation which is not a labor demand occupation, if the Commissioner determines that the services are necessary to prevent the likely loss of jobs with a negative impact on currently employed workers, or that the services are being provided to employees at a facility which is being relocated into New Jersey;

3. An employer organization, labor organization, or community-based organization seeking customized training services to provide training in labor demand occupations in a particular industry; or

4. A consortium made up of one or more educational or training institutions and one or more eligible individual employers or labor, employer, or community-based organizations which seek customized training services to provide training in labor demand occupations in a particular industry.

12:23-2.3 Application for customized training assistance

(a) It is the intent of the Workforce Development Partnership Program to link customized training services directly to the demands of the workplace by providing high quality training and education through active participation by New Jersey's business and labor communities. The approval of applications and execution of contracts for the delivery of customized training services will be accomplished in accordance with this intent.

(b) Each applicant seeking customized training services shall submit an application for customized training to the Commissioner in a format approved by the Commissioner. The completed application shall include the applicant's (or if applicable, applicants') name, address, basic descriptive information concerning the applicant, and specific details concerning training needs and requirements. In addition, each employer will submit a business needs plan and a human resources plan. The business needs plan shall include:

1. Justification of the need for the training services and/or funding from the Office of Customized Training, including financial and other information sufficient to demonstrate to the satisfaction of the Commissioner that the applicant will be unable to provide the training service or will provide significantly less of the service if the requested funding is not provided by the Office of Customized Training;

2. A comprehensive long-term human resource development plan which:

i. Extends significantly beyond the period of time in which the services are funded by the Office of Customized Training; and

ii. Significantly enhances the productivity and competitiveness of the employer's operations located in the State and the employment security of workers employed by the employer in the State;

3. Evidence, if the training sought is for an occupation which is not a labor demand occupation, that the customized training services are needed to prevent job loss caused by obsolete skills, technological change, or national or global competition or that the services are being provided to employees at a facility which is being relocated into New Jersey;

4. Information demonstrating that most of the individuals receiving the services will be trained primarily for work in the direct production of goods or services. This does not preclude training in areas of need such as total quality management and remedial education to upgrade workplace literacy; and

5. Any additional information from a specific applicant which the Commissioner deems appropriate.

(c) Non-employer applicants will not be required to submit a business plan but will submit justification of the need for the training services and funding from the Office of Customized Training as noted in (b)1 above and the evidence and information specified in (b)4 above.

(d) For those applicants who are members of a consortium application, an overall justification for the need for training shall be provided by the lead member/organization identifying why the training is critical to this industry.

(e) The New Jersey Occupational Information Coordinating Committee (NJOICC) shall determine or clarify the labor demand status of an occupation which is contained in an application for customized training services upon request by the Office of Customized Training. The NJOICC shall collect, review and analyze worker supply and demand data and other relevant information; evaluate this information in the context of current and projected local, State, and/or regional labor market conditions; and provide a determination of the current and projected labor demand status of the occupation in question. In making this determination, the NJOICC may consider any relevant information provided by the Office of Customized Training and the applicant for customized training services. The determination made by NJOICC shall be utilized by the Department in its review and evaluation of applications for customized training services.

12:23-2.4 Conditions and standards of eligibility for customized training assistance

(a) All vocational training provided shall be training which is likely to enhance substantially the individual's marketable skills and earning power, and shall be training for a labor demand occupation, except for customized training provided to the present employees of a business which the Commissioner deems to be in need of the training to create jobs or prevent job loss caused by obsolete skills, technological change, or national or global competition, or customized training provided to employees at a facility which is being relocated into New Jersey.

(b) Funds available under the program shall not be used for activities that induce, encourage, or assist any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers, or replacement of laid off workers by trainees, or any relocation of operations outside of the State, resulting in a loss of employment at previous workplaces located in the State.

(c) No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

(d) Each employer that receives customized training services shall contribute a minimum of 40 percent of the total cost of the customized training services, except that the Commissioner shall set a higher or lower minimum contribution by an applicant, if warranted by the size and economic resources of the applicant or other factors deemed appropriate by the Commissioner. Examples of contributions to the costs of services include items such as training facilities, training material, direct funds and training personnel. Non-employer applicants may be required to contribute to the cost of customized training services at an amount determined by the Commissioner and/or otherwise demonstrate a commitment to training programs through identification of prior programs, staffing or other measures as determined by the Commissioner. However, applications of non-employers would not be rejected on the basis of an inability to make contributions.

(e) Each employer receiving customized training services shall hire or retain in permanent employment each worker who successfully completes the training and education provided through the customized training program. The employer shall be entitled to select those workers who will participate in the customized training, except that if any collective bargaining unit represents an employed worker, the selection shall be conducted in a manner acceptable to both the employer and the collective bargaining unit. The Commissioner of Labor shall withhold such funds as he or she deems necessary as final payment for customized training services contingent upon the hiring and retention of the workers completing the training program. The final payment amount will be stipulated in the contract for customized training services executed between the approved applicant for customized training services and the Department of Labor.

(f) The Department of Labor requires that if the company receiving financial assistance for customized training services relocates out of State within three years following the ending date of the customized training contract, the company must return all monies provided to the company by the State for customized training services.

(g) Any employer seeking customized training services for workers represented by a collective bargaining unit shall notify the collective bargaining unit and permit it to participate in developing the plan. No customized training services shall be provided to a business employing workers represented by a collective bargaining unit without the written consent of both the business and the collective bargaining unit.

(h) Any employer receiving customized training services shall be responsible for providing workers' compensation coverage for any worker participating in the customized training.

12:23-2.5 Review and evaluation of customized training applications

(a) In accordance with N.J.S.A. 34:15D-1 et seq., the factors that will be required in reviewing and evaluating and approving or disapproving applications for training services will at least include the following:

1. Whether the training will result in the creation or retention of jobs;

2. Whether the training will increase marketable skills and earning power of the participants;

3. Whether the training is critical to the applicant's ability to either remain in business or to supply a trained workforce for occupations that are in demand;

4. Whether the training will result in permanent employment for the trainees;

5. Whether there will be an emphasis on the training of individuals primarily in the direct production of goods and services;

6. Whether the training will be provided within the context of a Business Needs and long-term Human Resources Development Plan;

7. Whether the training involves occupational safety and health education which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training; and

8. The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity and earning power.

(b) All applications will be reviewed and evaluated, with notice of approval or disapproval issued by the Department of Labor.

(c) No application will be funded unless approved by the Commissioner of Labor.

(d) All approved applicants will be required to submit information on training results as required by the Commissioner of Labor. These results may include, but are not limited to, the individual demographics of the participants, data on post training skills and wages, the impact of the training investment on company performance.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy and to establish appropriate application review and approval methods consistent with those conditions.

(f) Upon approval of the application, a contract for customized training services containing the terms and conditions of the application will be executed between the applicant and the Department. A copy of the mandatory contract provisions is available from the Department of Labor upon request.

12:23-2.6 Where to obtain and send an application

(a) Customized training applications may be obtained from the Department of Labor, Office of Customized Training.

(b) Assistance in completing an application is available from the Office of Customized Training.

(c) Completed applications should be forwarded to:

Office of Customized Training
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625-0058

12:23-2.7 Disclosure of information

(a) Disclosure of information obtained from applicants in the course of administering customized training services under the Workforce Development Partnership Program shall be authorized unless the information requested is non-public information as defined below:

1. Public information includes the name and location of applicants and approved applicants for customized training services as well as the number of trainees, type of training, grant amount and grant time period.

2. Non-public information includes all records concerning financial or proprietary information submitted by applicants or potential applicants for customized training services and by applicants approved for services.

(b) The Department of Labor may deny access to any correspondence, documents or other information where non-disclosure is necessary to protect the public interest.

(a)

DIVISION OF PROGRAMS

Occupational Safety and Health Training Services under the Workforce Development Partenrship Program

Proposed New Rules: N.J.A.C. 12:23-7

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

Authority: P.L. 1992, Chapters 43 through 49 (N.J.S.A. 34:15D-1 et seq.).

Proposal Number: PRN 1994-397.

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

Monday, July 25, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

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

Submit written comments by August 4, 1994 to:

Deirdre Webster, Regulatory Officer
Office of Regulatory Services
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at 609-777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The New Jersey Workforce Development Partnership Program (WDPP), signed into law on July 7, 1992, is a seven-part legislative package which provides a cohesive plan to upgrade and improve the skills level of the State's workforce. A more detailed description of the substantive provisions of the Workforce Development Partnership Program was earlier published and is contained in the February 1, 1993 issue of the New Jersey Register at 25 N.J.R. 449(a). These proposed new rules constitute the seventh installment under the chapter governing the Workforce Development Partnership Program.

To accomplish one of the Program's goals, funding assistance is available for the purpose of providing qualified displaced, disadvantaged and employed workers with occupational safety and health training services needed to assist in the recognition and prevention of potential health and safety hazards related to an occupation(s) which is the subject of vocational training.

These proposed new rules establish the allocation of funds reserved under N.J.S.A. 34:15D-4(e) for the provision of occupational safety and health training services for qualified displaced, disadvantaged and employed workers and the application and review process for awarding grants under this subchapter.

N.J.A.C. 12:23-7.1 sets forth the purpose of the proposed new rules.

N.J.A.C. 12:23-7.2 establishes the scope of the subchapter.

N.J.A.C. 12:23-7.3 establishes grants to be awarded by the Commissioner of Labor for occupational safety and health training services for qualified displaced, disadvantaged, and employed workers who are participating in vocational training.

N.J.A.C. 12:23-7.4 provides a brief description of the information to be included in the application submitted by prospective recipients.

N.J.A.C. 12:23-7.5 sets forth the application review and evaluation process for awarding funds to provide occupational safety and health training services pursuant to this subchapter.

N.J.A.C. 12:23-7.6 establishes how occupational safety and health training will be identified for customized training, vendor selection and delivery of services.

N.J.A.C. 12:23-7.7 allocates the funds for occupational safety and health.

N.J.A.C. 12:23-7.8 sets forth the eligibility requirements for individuals to receive training or services under this subchapter.

N.J.A.C. 12:23-7.9 sets forth the eligibility requirements for service providers.

N.J.A.C. 12:23-7.10 sets a limitation on administrative costs which may be charged against funds awarded under this subchapter.

N.J.A.C. 12:23-7.11 sets forth monitoring and oversight requirements.

N.J.A.C. 12:23-7.12 sets forth the criteria for evaluating services provided under this subchapter.

N.J.A.C. 12:23-7.13 imposes upon grantees under this subchapter the duty to maintain appropriate records and to make records and reports available for monitoring and inspection purposes.

Social Impact

The proposed new rules will have a positive impact on the eligible displaced, disadvantage and employed workers participating in the program along with the employers who hire or retain these workers. Training and services to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject vocational training contribute to a safe and accident free workplace, thus enhancing the well-being and productivity of the worker and the competitiveness of the employer.

Economic Impact

Occupational safety and health training designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation, which is the subject of vocational training, will reduce the amount of time lost by workers due to injury and illness in the workplace. This will enhance the productivity and earning power of workers participating in occupational health and safety training.

At the same time, employers will be more likely to maintain production schedules and improve competitiveness since trained workers are expected to experience fewer accidents and injuries, thereby reducing worker absenteeism.

In addition, more workers will remain in a wage earning status, thus contributing to the well-being of the general economy and generating tax revenues. This, in turn, is expected to reduce the need for disability-related expenditures generally and to favorably impact employer worker compensation rates.

Regulatory Flexibility Analysis

The proposed new rules and regulations will have minimal impact in terms of imposing additional burdens upon businesses of any type, including small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Through a relatively simple application submitted by prospective recipients and a review process administered by the Department of Labor, workers and employers, including small businesses, will be able to benefit from reserved funds to provide occupational safety and health training services to displaced, disadvantaged, and employed workers. Since the reporting, recordkeeping (see N.J.A.C. 12:23-7.13) and compliance requirements constitute the minimum necessary to administer the program, no lesser requirements can be allowed for small business.

Full text of the proposed new rules follows:

SUBCHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH TRAINING SERVICES

12:23-7.1 Purpose

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved under N.J.S.A. 34:15D-4(e) to provide occupational safety and health training services under the Workforce Development Partnership Program.

12:23-7.2 Scope

This subchapter establishes the allocation of funds reserved under the Workforce Development Partnership Program for occupational safety and health training services to qualified displaced, disadvantaged and employed workers as defined at N.J.A.C. 12:23-1 and who are participating in training or education which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training. It sets forth the application, review and administrative process for awarding grants and the administration of this program under this subchapter to prospective recipients, including organizations such as labor organizations, consortia, corporations, agencies, or other entities. This subchapter is not applicable to individual grants.

12:23-7.3 Occupational safety and health training grants to serve qualified displaced, disadvantaged and employed workers

A portion of funds reserved for occupational safety and health training services to qualified displaced, disadvantaged, and employed workers will be awarded through an application process for prospective recipients in accordance with N.J.A.C. 12:23-7.4 and 7.5.

12:23-7.4 Application process

Each applicant seeking funding to provide occupational safety and health training services to qualified displaced, disadvantaged and employed workers shall submit an application to the Commissioner. The completed application shall include the applicant's name and address, basic descriptive information concerning the prospective recipient, specific details documenting the need for and exact nature of the proposed occupational safety and health training services to be delivered, its relationship to individuals involved in a vocational training experience, the anticipated number of individuals or target group to be served and cost of services, and any other information concerning a specific applicant which the Commissioner deems necessary to fully evaluate the application.

12:23-7.5 Review and evaluation of applications

(a) Occupational safety and health training under the Workforce Development Partnership Program means training or education which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training. The factors that will be considered in reviewing and evaluating applications for funds are:

1. The number of individuals who will benefit from the safety and health training services;
2. The target industry and/or occupation and subject matter for training services;
3. The degree of hazard faced within the target industry and/or occupation as demonstrated by accident and injury documentation, exposure information, and other data illustrating hazards;
4. The need for services as demonstrated by the seriousness of the problem and lack or scarcity of alternative resources;
5. The extent to which the services are related to training for a labor demand occupation;
6. The extent to which the services are likely to enhance participants' marketable skills;
7. The organizational capability of the prospective recipient to provide the proposed services;
8. The previous effectiveness of efforts of the prospective recipient in providing similar services;
9. The cost of the proposed services; and
10. The potential for the proposed services to be replicated throughout the State or to have a positive impact beyond the ending date of the proposed services.

(b) Applications will be reviewed and evaluated by the Department of Labor and in consultation with specialized services which may be provided by the Department on a cost basis.

(c) The Commissioner retains the authority to modify application review factors based on changing workplace occupational safety and health training needs and establish appropriate application review and approval methods consistent with those circumstances. Such modification shall be through the rulemaking process.

(d) No application will be funded unless approved by the Commissioner of Labor.

(e) Funds awarded under this section will be limited to prospective recipients and to approve service and/or training providers as defined at N.J.A.C. 12:23-1.1.

(f) Upon approval of an application, a contract for occupational safety and health training services will be executed between the approved applicant and the Department. A copy of mandatory contract provisions is available from the Department of Labor upon request.

(g) The Commissioner or his or her designee will identify target industries and/or occupations, provide information and assistance to prospective recipients and employment and training staff, review and evaluate applications, execute, monitor, and evaluate contracts for training services, and provide technical support for contracted activities.

(h) Instructions for the application process for funds available under this section shall be obtained by writing to:

Assistant Commissioner for Employment Security and Job Training
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625

12:23-7.6 Assessment of need and delivery of services

(a) The Commissioner or his or her designee, within the Department of Labor, will review all customized training applications to determine if there is a need for occupational safety and health training services related to the industry and/or occupation which is the subject of vocational training.

(b) The Commissioner or his or her designee, within the Department of Labor, will review and approve the use of vendors selected by the customized training applicant to provide occupational safety and health training services, review course content and training material to determine its appropriateness and relationship to the occupational training, and ascertain the reasonableness of costs charged by vendors.

12:23-7.7 Allocation of funds

(a) Pursuant to section 4(e) of the Act, not less than three percent of the total revenues dedicated to the program during any one fiscal year shall be reserved for occupational safety and health training. The Commissioner is authorized to provide services to the extent that funding for these services is not available from federal or other sources.

(b) From the amounts reserved for occupational safety and health training for qualified displaced, disadvantaged and employed workers under N.J.S.A. 34:15D-4(e), monies may be allocated upon approval of the Commissioner of Labor to providers of employment and training services designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training.

(c) The Commissioner retains the authority to change the scope of this funding based on changing workplace occupational safety and health training needs.

12:23-7.8 Eligibility for services

Individuals receiving training or services under this subchapter must be qualified displaced, disadvantaged, or employed workers as defined at N.J.A.C. 12:23-1.1.

12:23-7.9 Eligibility of service providers

Occupational safety and health training services must be obtained from an approved service provider located in the State of New Jersey.

12:23-7.10 Limitation on administrative costs

Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative and statistical research expenses.

12:23-7.11 Monitoring and oversight

The Commissioner or his or her designee, within the Department of Labor, will monitor the overall effectiveness of the occupational safety and health training services provided under this subchapter to assess the programmatic, management, and financial performance of the grantee(s). The Department will consider the past performance of a grantee in evaluating application(s) for funding in subsequent years.

12:23-7.12 Evaluation of occupational safety and health training

The results of occupational safety and health training services provided under this subchapter shall be evaluated based upon criteria negotiated at the time the funds are awarded.

12:23-7.13 Records and reports

(a) Each grantee shall maintain appropriate records and make any records available upon request for monitoring or inspection by the Commissioner including:

1. A record for each student enrolled, including the student's name, social security number, and address upon enrollment;

2. A record of all direct administrative and overhead expenses of the grantee related to the provision of occupational safety and health training services funded under this subchapter; and

3. Any other information deemed appropriate by the Commissioner for a specific granteee or service provider.

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees

Proposed Readoption with Amendments: N.J.A.C. 12:100

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

Authority: N.J.S.A. 34:20-1, 34:1A-3(c); and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1994-398.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Thursday, July 28, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

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

Submit written comments by August 4, 1994:

Deirdre L. Webster, Regulatory Officer
Office of the Commissioner
Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Work and Disability at 609-777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The New Jersey Public Employees Occupational Safety and Health Act (PEOSHA), N.J.S.A. 34:6A-25 et seq., effective January 1984 was enacted to ensure that all public employees are provided with safe and healthful work environments free from recognized hazards. The rules which implement the Act are promulgated at N.J.A.C. 12:100-1.1 through 17.3. Pursuant to Executive Order No. 66(1978), these rules expire on September 22, 1994. The New Jersey Department of Labor (the Department) has reviewed the rules and, with the exception of the amendments described below, has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated and is therefore, proposing them for readoption at this time. In conjunction with the Department of Health, the Department has determined that additional amendments to the firefighter standards at subchapter 10 are necessary, specifically with regard to respiratory protection. However, due to the substantive nature of these amendments, they are not being proposed at this time. Instead, the Department will propose these amendments at a later date.

The provisions of N.J.A.C. 12:100 were originally adopted by the Commissioner of Labor and became effective January 1, 1970. On April 1, 1975, the Commissioner of Labor announced the withdrawal of the New Jersey State Plan for Occupational Safety and Health, and jurisdiction was vested fully with the United Staes Department of Labor for the regulation of occupational safety and health under the Federal Occupational Safety and Health Act of 1970 (OSHA); 29 U.S.C. and 651 et seq. As a result, this chapter became ineffective as of April 1, 1975. The rules were subsequently repealed effective August 16, 1978 and a new chapter was filed and became effective November 5, 1984. The rules were subsequently amended on July 21, 1986, N.J.A.C. 12:100-9, Work in Confined Spaces, became effective September 19, 1988 and N.J.A.C. 12:100-11, Control of Hazardous Energy Sources, was adopted on May 1, 1989. N.J.A.C. 12:100-10, Standards for Firefighters, became effective January 4, 1993. Additionally, numerous Federal rules have been adopted by reference at N.J.A.C. 12:100-4.2, pursuant to N.J.S.A. 34:6A-30.

A summary of the subchapters of N.J.A.C. 12:100 follows:

Subchapter 1 contains rules relating to the authority, purpose, scope and validity of the chapter. Subchapter 2 covers definitions for terms used throughout the chapter. Subchapter 3 discusses the administration of the chapter, including the interrelation of the State agencies involved with the enforcement of the chapter. Subchapter 4 sets forth general standards, including a section for standards which are adopted from the Federal rules by reference. Subchapter 5 addresses construction standards, and Subchapter 6 provides agricultural standards. Subchapter 7 is reserved. Subchapter 8 addresses work practices in indoor firing ranges. Subchapter 9 sets forth procedures to protect employees from the hazards of entry into and work within confined spaces. Subchapter 10 addresses safety equipment for firefighters. Subchapter 11 addresses the control of hazardous energy sources. Subchapter 12 provides standards for all employers and employees who may be directly exposed to asbestos. Subchapters 13 through 16 are reserved. Finally, subchapter 17 lists the standards and publications which are referred to throughout the chapter.

Proposed amendments deemed necessary for the protection of public employee health and safety are provided. Specifically, several changes to the firefighter and indoor firing range standards are being proposed. The proposed amendments to the indoor firing range standards are contained at subchapter 8. N.J.A.C. 12:100-8.5(g), which requires that all air exhausted from the firing range be emitted in accordance with Federal, State and local law, is being deleted. This amendment is warranted because the New Jersey Department of Labor and Department of Health assert no jurisdiction in the enforcement of air exhaustion standards. N.J.A.C. 12:100-8.7(a) is being amended to remove the mandatory language which requires that each firing range be equipped with a floor drain and trap. N.J.A.C. 12:100-8.7(b) which requires that all water drained from the firing range be discharged in accordance with Federal, State and local laws is being deleted. This amendment is warranted because the New Jersey Department of Labor and Department of Health assert no jurisdiction in the enforcement of water discharge standards. A definition for a HEPA filter, which is already in use in N.J.A.C. 12:100-12, is being added to N.J.A.C. 12:100-8.8(b).

The proposed amendments further include revisions to rules concerning standards for firefighters contained at subchapter 10. Most of these changes were recommended by the New Jersey Fire Safety Commission and also by several fire departments. The adoption of these changes will result in making the rules more clear and better attained. N.J.A.C. 12:100-10.2 is being amended to provide a definition for remanufactured. This definition is necessary due to confusion among firefighters as to what constitutes remanufactured as the term is used in N.J.A.C. 12:100-10.15(c). N.J.A.C. 12:100-10.5 is being amended to clarify the difference in the Personal Protective Equipment (PPE) standard treatment of volunteer firefighters and career firefighters. N.J.A.C. 12:100-10.8 is being amended to correct the NFPA number. N.J.A.C. 12:100-10.12(a) and (d) are being amended to more clearly define the responsibility for, and the location of, the placement of the PASS device. N.J.A.C. 12:100-10.15 is being amended to allow for the donning of equipment other than standard turn-out gear when firefighters are responding to situations other than fire alarms, because in those situations the standard turn-out gear for firefighting is clearly not required. The proposed amendment in N.J.A.C. 12:100-17.1 corrects the NFPA number.

Social Impact

The proposed readoption with amendments will enable the Department to continue to help protect the safety and health of public employees in the workplace. Enforcement of the rules will provide safe and healthful work environments free from recognized hazards, which is in the best interest of both employers and employees.

Economic Impact

Pursuant to N.J.S.A. 34:6A-26, the Legislature mandated that all public employees be provided with a safe and healthful work environment free from recognized hazards. The safety and health standards contained in the proposed readoption were promulgated in accordance with this legislative mandate. The proposed readoption with amendments, by providing a safe and healthful workplace, will decrease the number of occupational injuries and illnesses among employees. It will also decrease the amounts expended in workers compensation benefits, medical expenses and lost wages. In addition, public employer compliance costs will be present in the form of equipment modification costs, worker training costs.

These costs are the result of these rules, and the Department is constrained by the law which requires the programs to be adopted. The Department feels that the benefits provided by the rules outweigh any costs associated with implementing the standards. The Department feels that the proposed amendments to the indoor firing range and firefighter standards are not substantive with regard to any incremental costs. Specifically, the proposed amendments to the indoor firing range standards will result in minimal, if any, economic costs because indoor firing ranges are currently being cleaned using HEPA vacuums as provided by the rules. The proposed amendments to the firefighter standards also will result in minimal, if any, economic costs because they provide for protective clothing which is traditionally worn by firefighters and the costs are already included in fire department budgets.

Regulatory Flexibility Statement

The proposed readoption with amendments does not impose any reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since only public employers are affected by the rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:100.

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

12:100-8.2 Definitions

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

...

"HEPA" means a high efficiency particulate absolute filter which is 99.97 percent efficient for 0.3 microns.

...

12:100-8.5 Ventilation system

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

[(g) All air exhausted from the firing range should be emitted in accordance with applicable Federal, State and local laws.]

12:100-8.7 Water Drains

[(a)] Each firing range [shall] **should** be equipped with a floor drain and trap to facilitate cleaning by a wet method. The drain location should be approximately 20 feet down range of the firing line. The floor should slope two to three inches toward the drain.

[(b) All water drained from the firing range shall be discharged in accordance with applicable Federal, State and local laws.]

12:100-10.2 Definitions

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

...

"Remanufactured" means the complete dismantling and reassembly of the fire apparatus body with or without removal from the chassis during the process.

12:100-10.5 Protective clothing

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

(c) The employer shall assure that:

1.-2. (No change.)

3. [All] **Career** firefighters wear **foot, leg and body** protective clothing complying with this subchapter except that existing **foot, leg and body** [protective clothing] **protection** meeting the previous OSHA standards that are superseded by this subchapter may continue to be worn until [such time as the existing protective clothing becomes unserviceable] **January 4, 1995.**

4. Volunteer firefighters wear foot, leg and body protective clothing that meet the previous OSHA standards that are superseded by this subchapter until either they become unserviceable or replaced.

12:100-10.8 Protective clothing; hand protection

(a) (No change.)

(b) The performance, construction, and testing of gloves for structural firefighters shall be at least equivalent to NFPA No. [1973-1987] **1973-1988,** Gloves for firefighters incorporated herein by reference.

12:100-10.12 Personal alert safety system

(a) The employer shall provide, at no cost to the employee, and assure the use of, a personal alert safety system [attached to every self contained breathing apparatus (SCBA)] which complies with this section.

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

(d) Approved personal alert safety systems shall be provided and worn by the firefighters as follows:

1. While engaged in interior structural firefighting;
2. While working in confined spaces;
3. During all phases of overhaul; **and**
4. [As an attachment to the SCBA device worn by the firefighter; and
5. In those limited situations where an SCBA device is not being worn by the firefighter, the placement of] **The** PASS device shall be [determined by the individual in charge at the fire scene] **attached to the exterior of the firefighter's turnout gear.**

12:100-10.15 Fire apparatus operations

(a) Whenever a fire apparatus leaves the fire station in response to [an] **a fire** alarm, [fire or other emergency] all firefighters, except the driver of the fire apparatus, shall have donned their protective clothing before the apparatus is in motion. [All firefighters shall be prohibited from donning protective clothing while the apparatus is in motion.] The term "fire apparatus" does not include an automobile.

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

12:100-17.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1.-13. (No change.)

14. NFPA No. [1973-1989] **1973-1988** Gloves for Structural Firefighters

15.-28. (No change.)

(a)

DIVISION OF WORKERS' COMPENSATION
Notice of Extension of Comment Period
Investigation of Discrimination Complaints
Appeal Procedures
Proposed Amendment: N.J.A.C. 12:235-9.4

Take notice that the Department of Labor is extending the deadline for public comments on the above-referenced proposed amendment, published in the April 18, 1994 New Jersey Register at 26 N.J.R. 1591(b), to July 10, 1994.

Submit comments, in duplicate, by July 10, 1994 to both:

Deirdre Webster, Regulatory Officer
Office of Regulatory Services
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

Paul Kapalko, Director and Chief Judge
Division of Workers' Compensation
Department of Labor
CN 381
Trenton, New Jersey 08625-0381

NOTES

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Closing of Branch Offices

Adopted Amendments: N.J.A.C. 3:1-2.17, 2.25 and 2.26

Proposed: February 22, 1994 at 26 N.J.R. 883(b).
Adopted: May 23, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: May 31, 1994 as R.1994 d.318, **without change**.

Authority: N.J.S.A. 17:1-8 and 8.1.

Effective Date: July 5, 1994.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received comments from the following person:

Robert A. Gunther, Senior Vice President and General Counsel, UJB Financial Corporation.

COMMENT: The Department's attempt to reduce the regulatory burden on New Jersey State chartered banking institutions by repealing that part of the regulation that requires publication should be applauded. However, the Department should repeal the entire regulation since the information that is required to be filed under Federal rules is sufficient.

RESPONSE: The Department may consider at a future time repealing all provisions of the State rule on branch closings. Since the total repeal has not been proposed, it may not be accomplished at this time. It is hoped that the amendments adopted herein will reduce the regulatory burden.

COMMENT: It should be made clear that the $100.00 fee covers both the filing of a notice of closing and the certificate of discontinuance that will ultimately be filed upon the closing for the branch office.

RESPONSE: The amendments as adopted provide for a $100.00 charge for filing a certificate of discontinuance and/or closing a branch office. The Department views the $100.00 fee as covering both the filing of the certificate and the branch closing, and will proceed administratively consistent with this interpretation.

Full text of the adoption follows:

3:1-2.17 Closing of branch offices

(a) (No change.)

(b) If a bank, savings bank or savings and loan association acquires a branch or deposits of a branch from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by merely filing a Certificate of Discontinuance with the Commissioner along with the required fee.

(c) A bank, savings bank or savings and loan association may submit to the Department a copy of the branch closing notice filed with its Federal regulator in lieu of the filings required by (a)1 through 4 above.

(d) Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in the notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution. A bank, savings bank or savings and loan association which notifies its customers of the branch closing in accordance with Federal law is exempt from this publication requirement. In addition, for at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution.

(c) to (e) recodified as (e) to (g) (No change in text.)

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. to 22. (No change.)

23. For filing a certificate of discontinuance and/or closing a branch office $100.00

(b) (No change.)

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

1. to 21. (No change.)

22. For filing a certificate of discontinuance and/or closing a branch office $100.00

(b) (No change.)

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Emergency Shelters for the Homeless

Adopted New Rules: N.J.A.C. 5:15

Proposed: April 4, 1994 at 26 N.J.R. 1421(a).
Adopted: May 31, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: June 3, 1994 as R.1994 d.324, **without change**.

Authority: N.J.S.A. 55:13C-5.

Effective Date: July 5, 1994.
Expiration Date: July 5, 1999.

Summary of Public Comments and Agency Responses:

No comments received. N.J.A.C. 5:15 expired May 1, 1994, in accordance with Executive Order No. 66(1978). Pursuant to N.J.A.C. 1:30-4.4(f), the expired rules are adopted herein as new rules.

Full text of the adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:15.

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Change
Uniform Construction Code
Definitions

N.J.A.C. 5:23-1.4

Take notice that the Department of Community Affairs has requested, and the Office of Administrative Law has agreed to permit, administrative changes to the definitions of "Class I structure," "Class II structure" and "Class III structure" in N.J.A.C. 5:23-1.4 to reflect the recodification, effective July 6, 1992, of N.J.A.C. 5:23-3.10 as 5:23-4.3A, with the addition of a new subsection (a) (see 24 N.J.R. 1446(a) and 2424(a)). This notice of administrative change is published in accordance with N.J.A.C. 1:30-2.7.

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

5:23-1.4 Definitions

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

...

"Class I structure" means a structure not listed in N.J.A.C. 5:23-[3.10(c)]**4.3A(d)**1i through v or 2ii through xx.

"Class II structure" means a structure listed in N.J.A.C. 5:23-[3.10(c)]**4.3A(d)**2ii through xx.

"Class III structure" means a structure listed in N.J.A.C. 5:23-[3.10(c)]**4.3A(d)**1i through v.

...

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Private Enforcing Agencies
Adopted Amendments: N.J.A.C. 5:23-4.4, 4.5, 4.5A, 4.14, 4.18 and 4.20

Proposed: June 7, 1993 at 25 N.J.R. 2162(a).

Adopted: June 2, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: June 3, 1994 as R.1994 d.323, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the proposed amendments to N.J.A.C. 5:23-4.12 not adopted.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: July 5, 1994.

Operative Date: January 1, 1995.

Expiration Date: February 3, 1998.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendments was held on June 22, 1993 at the William Ashby Department of Community Affairs Building, 101 South Broad Street, Trenton, New Jersey. Division Director William M. Connolly presided at the hearing and received testimony. He responded to certain statements made during the course of the testimony, but did not make any recommendations to the Commissioner based upon the hearing.

Persons wishing to review the transcript of the hearing may contact Michael L. Ticktin, Esq., Department of Community Affairs, CN 802, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

Oral and/or written comments were received from the following individuals and organizations: Charles A. Buckman, President of the On-Site Agency Association of N.J.; Glenn G. Beaver and Patricia M. Daub, Vice President/Controller and State Manager, respectively, of Middle Department Inspection Agency, Inc.; Russell B. McLaughlin, Jr. and Paul J. Carrafa, C.B.O., President and Vice President, respectively, of Building Inspection Underwriters, Inc.; Richard Alloway, Stephen J. Edelstein, Esq., Melvin Firth and Sam Grossman, the Vice President/General Manager, the legal counsel and two subcode official employees, respectively, of Garden State Electrical Inspection Services, Inc.; Mark Mellohusky, President of General Inspection Services, Inc.; John King and Russell Bauer, Technical Inspections Inc.; Joseph and Maureen Castellon, Elevator Inspection Corporation; Frank Marinello, Approved Elevator Inspections Agency, Inc.; Connie and Nancy Delgrosso, Jodi L. McGuire and Theresa Perkes, Municipal Inspection Corporation; Morris Azar, President of Amega Elevators; John McNamee, New Jersey General Manager of Code Inspections, Inc.; Joseph Riggs and Andrew Cattano, President and Director of Technical Services, respectively, of the New Jersey Builders Association; Roland E. Marr, President of Marr Consulting Service, Inc.; Peter Smithuysen, Vice President/Sales of Atlantic Elevator, Inc.; Assemblymen John V. Kelly and Steve Corodemus; Gene R. Marks, Construction Official of Neptune Township, on behalf of the Building Officials Association of New Jersey; Thomas F. Johnson, Secretary, Central Jersey Code Officials; Ronald Estepp, Construction Official of Hillsborough, Allentown and Upper Freehold; Thomas Millar, Construction Official of West Windsor; and Joseph Monteleone, Construction Official of Secaucus.

COMMENT: More time should be allowed for public testimony and written comments.

RESPONSE: In order to elicit additional comment and provide an opportunity for discussion, the Department conducted a public hearing on this proposal even though it was not required by law to do so. Both the range of participation at that hearing and the large volume of written comments received lead the Department to conclude that a sufficient opportunity for public comment was provided and that extension of the comment period beyond the 30 days required by statute would most likely not have resulted in any significant difference in the nature of the comments received or in any other interest group being heard from.

COMMENT: The New Jersey Builders Association supports the proposal and believes that competitive bidding is appropriate. It approves of the procedure whereby construction officials can determine whether or not private agencies are eligible to bid in light of the needs of the particular municipality. It is questionable how uniform rates can be set that will ensure profitability when the agencies are not identical in their operations. Healthy competition will provide relief from unnecessarily high construction permit fees. The intent of the statute is that the Department establish the procedure for setting private agency fees, not that it set specific dollar amounts.

COMMENT: Atlantic Elevator Co., Inc. also supports use of a competitive bidding process.

COMMENT: Marr Consulting Service, Inc. supports the proposed amendments because of the improved control features they contain with respect to monitoring on-site inspection agencies. The amendments will improve the quality of elevator inspections.

RESPONSE: The Department agrees with these commenters.

COMMENT: The On-Site Agency Association of New Jersey and the private agencies that it represents believe that the proposed amendments are contrary to the intention of the Legislature in that they do not establish uniform fees applicable to all private enforcing agencies. Price competition will undercut the quality of service provided and will drive some of the companies out of business. Fees should be set on the basis of discussions between industry representatives and the Department.

RESPONSE: The Department believes that the procedure for determining that bidders are qualified to do the work required by the municipality will prove a sufficient safeguard against inadequate work. The Department also believes that its statutory authority "to adopt, amend and repeal rules and regulations providing for ... the setting of the amounts of fees to be charged by a private agency for inspection and plan review services" is not necessarily to be construed as limited to a power to set uniform fees for all private agencies, although that is certainly one option that the Department would have. Indeed, comment was received from two legislators stating that the bill was meant to result in "healthy competition [that] could potentially lower costs in many instances." Since the Department has no basis for establishing uniform fees that would assure a fair and reasonable return to all private agencies, and has good reason to doubt that it is even possible to establish uniform standards that will not either unduly enrich some or make it impossible for others to operate profitably, and does not deem it appropriate to pick numbers arbitrarily, whether unilaterally or by negotiation, the Department has concluded that the way in which it can implement the statute that is most in the public interest is to allow competition, subject to appropriate controls necessary to ensure effective code enforcement.

COMMENT: The proposed amendments constitute undue interference in, and attempted "micro-management" of, the operations of private businesses.

RESPONSE: A private business that chooses to engage in an enterprise in which it discharges a public function must be subject to as much regulation as may be necessary to ensure that it discharges that public function properly. The prohibition on paying inspectors on a piecework basis, for example, is necessary in order to avoid giving inspectors an incentive to maximize the number of inspections at the expense of thoroughness.

COMMENT: The reporting requirements established by this proposal are burdensome and unnecessary.

RESPONSE: The operational reporting requirements proposed in amendments to N.J.A.C. 5:23-4.14 have been modified so as to make them less burdensome. The proposed amendments to N.J.A.C. 5:23-4.12, which contained financial reporting requirements, have not been included in this adoption. The Department does not need this financial information because it is not responsible for assuring the profitability of the on-site agencies. The competitive bidding process should provide a self-regulating mechanism that will protect against pricing of services below cost. The Department will, however, closely monitor the operation of the competitive bidding process and will hold a hearing within the next two years to consider the need for additional reporting requirements and controls.

COMMENT: The Department should not specify that the liability insurance that is required is **general** liability insurance. Errors and omissions insurance should be required in order to better protect the public.

RESPONSE: This rule amendment is intended to be a clarification, since it is the Department's understanding that the insurance that private agencies have been required to have up to now is general liability insurance. Several years ago, the Department published a pre-proposal to elicit comments concerning requiring errors and omissions insurance (see 23 N.J.R. 1985(a) and 2908(a)). What the Department found was that errors and omissions coverage is so costly that requiring it would severely restrict the ability of new firms to qualify as private enforcing agencies and that it is of little or no use since the only coverage found to be available does not apply to inspections made before the inception of the policy, even if the event giving rise to the claim occurred during the term of the policy. To make it even more clear that errors and omissions is **not** what is required, the words "arising out of the failure of its employees to properly discharge their duties and responsibilities" have been deleted from N.J.A.C. 5:23-4.14(e)5 on adoption.

COMMENT: Forbidding agencies to provide other goods or services to municipalities violates the agencies' constitutional rights.

RESPONSE: A municipality is unlikely to solicit goods and services other than code enforcement from a private enforcing agency unless those goods and services are either "thrown in" or offered at a discount. Yet, by offering goods and/or other services free or at a discount, a private agency is able to circumvent the very uniform fee schedule that the private agencies urge the Department to uphold. Selection of a private enforcing agency should be based upon ability to do the job and then, among those able to do the job properly, upon the price. It is unfair to allow some agencies to offer side benefits as an inducement to an agreement. Moreover, it has been implicit in the existing rules that such inducements violate uniform fee requirements. Indeed, such inducements were prohibited by the Appellate Division in the case entitled *In the Matter of Cherry Hill Township,* 217 *N.J. Super.* 140 (App. Div. 1987). The adopted amendments are meant to clarify the language to affirmatively express this prohibition.

COMMENT: The Department's real motive in proposing these rules is to drive private enforcing agencies out of business so that it will be able to take over their subcode enforcement responsibilities.

RESPONSE: The Department only assumes local construction code enforcement responsibility when a municipality chooses not to appoint a construction official and establish a local enforcing agency. If a municipality chooses, as is often the case, to enforce some subcodes but not others, it must contract with a private agency. (The only exception is that the Department will accept responsibility for enforcing the elevator safety subcode even if there is a local enforcing agency.) If the Department refused to amend its rules to allow the private agencies to charge fees lower than it charges, it might reasonably be suspected of trying to keep the agencies from being competitive with it. This proposal, however, should result in the private agencies doing the job for less than the Department can do it; it is, therefore, hardly indicative of an intention on the part of the Department to capture the private agencies' business, or even to keep the private agencies from attracting the business of municipalities now served by the Department. If municipalities that are now served by the Department prefer to establish local enforcing agencies, hire construction officials and contract with private agencies, or to contract with private agencies for elevator inspection services, thereby possibly reducing the fees that are charged, the Department will not object in any way. The Department's involvement in direct local code enforcement is by default only; the Department does not view itself as competing either for the business of private agencies or for the jobs of local subcode officials.

COMMENT: Selecting private agencies through competitive bidding may result in situations in which the construction official has to deal with an agency that does not do satisfactory subcode enforcement work.

RESPONSE: The rules have been amended at N.J.A.C. 5:23-4.5A(b), (c) and (f) to make it clear that the private agency must meet the performance standards of the local enforcing agency and that these standards may be made known when bids are solicited.

COMMENT: Construction officials should be able to set fees.

RESPONSE: Bidding among private agencies that have been screened by the construction official should result in fees being charged that are fair both to the contracting agency and to those paying the fees. There is no need for construction officials to assume the responsibility for setting fees.

COMMENT: Municipalities should not be forbidden to hire private agencies to provide subcode enforcement services on a temporary basis.

RESPONSE: The Department has amended the proposal at N.J.A.C. 5:23-4.4(a)6i to allow such temporary hirings provided that it is given notice within seven days of the appointment and such notice includes information as to the form and amount of payment being made to the agency, which may be, for example, an hourly or daily dollar amount.

COMMENT: It is unnecessary to require the construction official to file a copy of the contract between the municipality and the private enforcing agency with the Department when the agency has to file a copy of the same document.

RESPONSE: The Department's reason for proposing this dual filing was to make sure that it got the information one way or the other. However, as N.J.A.C. 5:23-4.5(h)1xxi is revised upon adoption, a notice filed by the construction official within 10 days after the execution of the contract, together with a single copy of the contract filed by the agency, will be sufficient for this purpose.

COMMENT: Municipalities should be required to contract with the private agency that submits the lowest bid, regardless of the preference of the construction official, since all licensed agencies should be considered equally qualified. This will eliminate favoritism.

RESPONSE: The current rules make the selection solely dependent upon non-price considerations. This commenter would require that those considerations be disregarded. The Department's position, as reflected in these rules, is that all agencies do not have equal ability to do all jobs properly and that price competition should be limited to those that first meet the quality of service criteria.

COMMENT: Fees for certificates of occupancy, approval and continued occupancy are for administrative services of the construction official and should therefore not be divided with private enforcing agencies.

RESPONSE: The Department agrees. However, this change was not included in the proposal, so it cannot be introduced on adoption. A new proposal would be required.

COMMENT: Reduced private agency charges may lead some municipalities to eliminate the positions of subcode officials and inspectors and contract with private agencies instead.

RESPONSE: As a result of private agencies' charges being linked to those charged by the Department, some municipalities may have chosen to establish subcode enforcement positions in order to keep fees lower than they would have been had private agencies been used. With private agencies now free to offer lower fees, it may well be the case that some of these municipalities will find it possible to charge lower fees if they contract with private agencies. The Department does not see itself as obligated to use its regulatory power to keep fees unnecessarily high.

COMMENT: Municipalities do not always receive bids at meetings of the governing body.

RESPONSE: N.J.A.C. 5:23-4.5A(f) has been amended to allow the bids to be received in accordance with the procedure generally followed when bids are received by the municipality.

Summary of Agency-Initiated Changes:

For purposes of clarification and more accurate description of the services being contracted for, "code enforcement services" has been changed to "subcode official services" in N.J.A.C. 5:23-4.5A(f) and (i). N.J.A.C. 5:23-4.14(b)1 is being amended to make it clear that "each executed contract and all amendments thereto" includes all attachments and subsequent amendments. At N.J.A.C. 5:23-4.14(b)1ii, the definition of "full-time equivalent (FTE)," has been corrected by changing "times the number of working days" to "divided by the number of working days."

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

5:23-4.4 Municipal enforcing agencies—organization

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1.-5. (No change.)

6. Acting appointments: A municipality shall appoint an acting construction official or subcode official any time the absence of such official would impede orderly administration of the Uniform Construction Code and other duties mandated by the municipality. Acting appointments shall be accomplished by any mechanism acceptable to the municipality; providing, however, that a written record shall be kept. Notice to the Department shall be provided within seven days any time an appointment is made for more than 30 days. Acting appointments may not be made for longer than 60 days, nor may they be extended or renewed beyond 60 days unless specific authority to do so is granted in writing by the Department.

i. Only an individual licensed as a construction official may be appointed as an acting construction official and only an individual licensed as a subcode official in a particular subcode may be appointed as an acting subcode official for that subcode. The technical license level of an acting construction or subcode official shall be superior or parallel to the enforcing agency classification of the municipality or such municipal classification shall be downgraded to the technical license level of the acting official for the period of time in the position. Employees of private on-site inspection agencies shall not serve as acting construction officials***.*** *[or]* ***Employees of private on-site inspection agencies may serve as acting subcode officials, provided that notice of any such appointment shall be given to the Department by the construction official within seven days of the making of the appointment and that such notice shall contain information as to the form and amount of the payment being made to the agency for the services of the*** acting subcode officials.

ii.-iv. (No change.)

7.-8. (No change.)

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

5:23-4.5 Municipal enforcing agencies; administration and enforcement

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

(h) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i.-xix. (No change.)

xx. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy; and

xxi. File with the Department *[any executed]* ***a notice of the execution of each*** contract with a private on-site inspection agency ***, which notice shall specify the subcode(s) covered by the contract,*** *[at least]* ***within*** 10 days *[prior to]* ***after*** the effective date of the contract.

2. (No change.)

(i)-(j) (No change.)

5:23-4.5A Selection of private on-site inspection and plan review agencies

(a) (No change.)

(b) Prior to the selection of an on-site inspection agency, the local enforcing agency shall notify each private on-site agency authorized by the Department to serve as a subcode official for the subcode(s) to be contracted. The notification, which shall specify the term of the proposed contract, shall be delivered by certified mail, return receipt requested. ***The notice shall specify any local procedural requirements, including, but not limited to, staffing and response time requirements exceeding the minimum standards set forth in the code, with which the construction official and/or the governing body would expect a private on-site agency to comply in order to effectively enforce a subcode in accordance with the performance standards of the local enforcing agency.*** No other notice shall be required.

1. The notice shall specify that a written, sealed bid is requested, together with a qualification statement containing the information set forth in N.J.A.C. 5:23-4.5A(d), shall identify the subcode(s) for which a bid is requested, shall state the date and time by which bids and accompanying qualification statements must be submitted, which shall not be less than 30 days following the date of mailing of the request for bids, and shall state the name and address of the person to whom bids and accompanying qualification statements shall be mailed or delivered.

2. All bids shall set forth the fees which the private on-site agency proposes to charge for work done by it in the municipality. Such fees shall be expressed as a uniform percentage, by subcode, which shall not exceed 100 percent, of the fees charged, as of the date on which the bids are opened, by the Department when it serves as an enforcing agency, which fees are set forth at N.J.A.C. 5:23-4.20.

3. The contract shall be awarded to the bidder that offers to charge the lowest percentage of the Department's fees and is determined by the governing body, after consultation with the construction official, to be able to effectively enforce the subcode(s) for which the bid was submitted.

4. The amounts to be charged by a private on-site agency awarded a contract pursuant to this section shall be the amounts set forth in N.J.A.C. 5:23-4.20 and/or 5:23-12.6(a) and (b) as of the date of the opening of the bids, multiplied by the percentage set forth in the bid. Such amounts shall be in effect for the entire contract period and shall not be affected by any subsequent increase in the fees set forth in N.J.A C. 5:23-4.20 or 5:23-12.6(a) and (b).

(c) Written, sealed bids, together with separately sealed qualification statements containing the information required by (d) below, shall be submitted to the municipal officer responsible for receiving bids at or before the date and time established in the original notice of request for proposals. The said municipal officer shall forward all such qualification statements received to the construction official, who shall evaluate each qualification statement and advise the governing body, in writing, as to whether, in the construction official's judgment, each private agency submitting a proposal would be able to effectively enforce the subcode(s) for which the proposal is being submitted in the municipality***, in accordance with the performance standards of the local enforcing agency***.

(d) All qualification statements submitted by private on-site inspection agencies to serve as subcode officials shall be in writing and shall contain all of the information required by this subsection. Any omission of required information shall allow the local governing body the option to automatically disqualify the proposal. No additional information shall be required. The required information is as follows:

1.-5. (No change.)

6. The manner in which the agency compensates each class of employees, which shall be one of the following only: full-time salaried, part-time salaried, full-time hourly or part-time hourly). Where employees of a given class are compensated in more than one way, a percentage breakdown shall be provided;

7.-13. (No change.)

(e) When considering qualification statements submitted by authorized on-site inspection agencies seeking to act as a subcode official, construction officials and governing bodies shall base their determination as to whether an authorized on-site inspection agency would be able to effectively enforce the subcode on the following criteria:

1.-6. (No change.)

(f) After the governing body, having consulted with the construction official, determines whether each private agency that has submitted a bid and qualification statement would be able to effectively enforce the subcode(s) for which *[code enforcement]* ***subcode official*** services are required in the municipality***, in accordance with the performance standards of the local enforcing agency***, it shall, *[at a regularly scheduled or special meeting,]* ***in accordance with the procedure generally followed when bids are received by the municipality,*** unseal and receive the bids of the private agencies that have been found to be able to effectively enforce such subcodes ***in accordance with the performance standards of the local enforcing agency*** and shall accept the bid among such bids that sets forth the lowest percentage of the fees charged by the Department.

(g) The governing body shall accept the successful low bid, or reject all bids, within 30 days of the bid opening and shall enter into a contract with any successful bidder not less than 30 days prior to the beginning of the contract period.

(h) The municipality shall have the option of entering into a contract for one year, two years or three years.

(i) The contract shall set forth the specific amounts to be paid by the municipality to the private enforcing agency for each *[code enforcement]* ***subcode official*** service. Such amounts shall, in all cases, be the amounts set forth in N.J.A.C. 5:23-4.20, as of the date of the opening of the bids, times the percentage bid by the private agency. Such amounts shall continue in effect, without any change, for the duration of the contract.

(j) The contract shall provide that amounts due to the private agency shall be paid as follows, if applicable, and shall be billed within 30 days of coming due and paid within 30 days of billing:

1. Twenty percent due upon issuance of the construction permit;
2. Sixty percent due *[within]* 30 days thereafter;
3. Twenty percent due upon completion, as evidenced by issuance of inspection sticker approval for the subcode;
4. Certificate of occupancy or certificate of approval charges due on issuance of the certificate; and
5. Elevator inspection charges due on issuance of certificate of compliance or notice of unsafe structure.

5:23-4.12 Private on-site inspection and plan review agencies; establishment

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

(f) Applications for reauthorization shall be filed with the Department at least 60 days prior to the scheduled expiration *[of]* ***for*** the current authorization from the Department. *[1.]* The on-site inspection agency shall make current the information previously submitted to the Department. *[2.]* The on-site inspection agency shall provide such additional information as the Department may request*[, and in such detail as the Department may require in order to have a complete understanding of the operations of the agency and any related companies, including, without limitation, an audited financial statement for the preceding fiscal year of the agency, prepared and attested to by a New Jersey-licensed certified public accountant, including the following:

i. A detailed income and expense statement, including, without limitation, a profit and loss statement, for all operations in New Jersey, with those operations subject to the Uniform Construction Code and those operations not so subject broken out separately;

ii. A detailed income and expense statement, including, without limitation, a profit and loss statement, for the entire operations of the company, both in and out of New Jersey;

iii. The same information as required in (f)2i and ii above for any subsidiary or parent company or any company in which an officer, partner or person with at least a 10 percent ownership interest in the agency is an officer, partner or holder of at least a 10 percent ownership interest;

iv. Detailed information on any distribution of profits, stock dividend or other removal of assets from the agency or from any subsidiary or parent company or any company in which an officer, partner or person with at least a 10 percent ownership interest in the agency is an officer, partner or holder of at least a 10 percent ownership interest;

v. Detailed information on any outstanding secured or unsecured debt of the agency or of any subsidiary or parent company or any company in which an officer, partner or person with at least a 10 percent ownership interest in the agency is an officer, partner or holder of at least a 10 percent ownership interest; and

vi. Detailed information on any outstanding loans or investments made by the agency or by any subsidiary or parent company or by any company in which an officer, partner or person with at least a 10 percent ownership interest in the agency is an officer, partner or holder of at least a 10 percent ownership interest.

3.]* The application shall be acccompanied by the fee established by *[N.J.A.C. 5:23-4.21]* ***this chapter***.

[4.] The Department may conduct such additional investigations of the applicant as it may deem necessary.

1. and 2. (No change in text.)

5:23-4.14 Private enforcing agencies—administration and enforcement

(a) (No change.)

(b) The on-site inspection agency shall provide the Department with the following:

1. A copy of each executed contract and all amendments thereto***, including any attachments containing any terms of the agreement***, to be submitted at least 10 days prior to their effective date***. Any subsequent amendments shall also be submitted***;

2. A list of the municipalities served, and a current list of names, addresses and telephone numbers of the agency's designated representatives actually serving as subcode officials in each municipality, who may be contacted in connection with routine matters during normal working hours and, in the event of emergency, during other than normal working hours;

3. A list of names, certification numbers, addresses and telephone numbers of all technical personnel employed; and

4. Monthly reports, due on the 15th of every month covering the period of the previous month, setting forth the following:

[i. The agency's median response time, defined as the elapsed time between the receipt of an inspection request by the construction official or subcode official, whichever occurs first, and the time at which the inspection is performed, expressed to the nearest whole hour. For purposes of this report, the 24 hour periods of Saturday, Sunday or any official holiday shall not be counted as elapsed time, but all other time shall be counted;]

*[ii.]****i.*** The number of inspections performed in each municipality***, other than routine and periodic elevator maintenance inspections***, and the number of inspections***, other than routine and periodic elevator maintenance inspections,*** performed in each municipality more than 72 hours after the receipt of an inspection request by the construction official or the subcode official, whichever occurs first;

*[iii.]****ii.*** The total number of inspections, broken down by subcode discipline, performed by the private agency during the reporting period and the total number of subcode officials and inspectors available during the reporting period, expressed as full-time equivalent (FTE). For purposes of this report, one FTE shall be the total number of subcode official and inspector hours worked during the reporting period divided by eight, *[times]* ***divided by*** the number of working days in the reporting period. All days other than Saturdays, Sundays and official holidays shall be considered working days;

*[iv.]****iii.*** The total payments received from each municipality during the reporting period; and

*[v.]****iv.*** The total amount billed to each municipality during the reporting period.

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

(e) Each on-site inspection agency shall have the following responsibilities:

1.-4. (No change.)

5. To carry general liability insurance, at least in the amount of $1,000,000 for each person and each occurrence, to satisfy claims or judgments for property damage and/or personal injury *[arising out of the failure of its employees to properly discharge their duties and responsibilities]*.

6.-15. (No change.)

(f) (No change.)

(g) The amount charged to a municipality by a private agency for work subject to a minimum fee under N.J.A.C. 5:23-4.20(c)2 or for certificates of occupancy, certificates of approval and certificates of continued occupancy shall be the percentage set forth in a contract entered into in accordance with N.J.A.C. 5:23-4.5A, times the amount of the minimum fee or fee for a certificate of occupancy or certificate of approval, times the amount determined in accordance with this subsection.

1. In the case of work requiring inspections by four subcode officials or their designees, the allocation of the fee revenue shall be as follows:
i. Building subcode: 40 percent;
ii. Fire protection subcode: 20 percent;
iii. Plumbing subcode: 20 percent; and
iv. Electrical subcode: 20 percent.
2. In the case of work requiring inspections by fewer than four subcode officials or their designees, the allocation shall be among or between the subcodes involved in the proportions set forth in (g)1 above. (Thus, for example, in work involving only the building and plumbing subcodes, two-thirds of the fee (40/60) would be allocated to the building subcode and one-third of the fee (20/60) to the plumbing subcode.)
(h) Where plan review is performed more than one month before the construction permit is issued, or where a project does not go forward after a private on-site agency has performed plan review, then the municipality shall pay to the private agency 20 percent of the amount that would otherwise be due, which amount shall be determined by multiplying the relevant fee set forth in N.J.A.C. 5:23-4.20 by the percentage set forth in the contract between the municipality and the private agency entered into in accordance with N.J.A.C. 5:23-4.5A.
(i) Private on-site agencies shall bill for their services at least once monthly. Each bill shall specify the billing period and the amount currently due, amounts already paid, and any remaining balances, identified by permit number and totalled for the billing period.
(j) The private agency shall be paid for work performed even if the municipality receives no inspection fee for such work.
(k) Private enforcing agencies shall charge no fees other than the fees set forth in N.J.A.C. 5:23-4.20 multiplied by the percentage set forth in the contract between the private agency and the municipality. Private enforcing agencies shall furnish no services other than subcode enforcement services to municipalities and shall not receive any payments from municipalities for any other goods or services whatsoever.

5:23-4.18 Standards for municipal fees
(a)-(j) (No change.)
(k) Fees to be charged by municipalities where private on-site inspection and plan review agencies carry out subcode official responsibilities shall not exceed the amounts to be paid to those private agencies for those services, pursuant to the contract between the private agency and the municipality, by more than 15 percent.

5:23-4.20 Departmental fees
(a)-(b) (No change.)
(c) Departmental (enforcing agency) fees shall be as follows:
1.-2. (No change.)
3. Fees for certificates and other permits are as follows:
i.-vi. (No change.)
vii. The fee for a certificate of approval or certificate of compliance certifying that the work done under a construction permit has been satisfactorily completed shall be $28.00, except that there shall be no separate fee charged for a certificate of compliance issued after a successful periodic inspection.
viii.-ix. (No change.)
4.-9. (No change.)
(d) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Organization of the Department of Education

Adopted Amendments: N.J.A.C. 6:5-2

Adopted Repeal and New Rule: N.J.A.C. 6:5 Appendix

Adopted: June 1, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: June 9, 1994 as R.1994 d.333.
Authority: N.J.S.A. 52:14B-3(1).
Effective Date: June 9, 1994.
Expiration Date: October 22, 1995.

The major changes adopted are that the number of Department divisions be reduced from six to four as follows:
1. Division of Information, Management and Financial Services
2. Division of Academic Programs and Standards
3. Division of Student Services
4. Division of Field Services
Further, the position of Deputy Commissioner is restored, and seven Assistant Commissioners are utilized as permitted by law, including the Deputy Commissioner.
The Deputy Commissioner, Assistant Commissioners for Academic Programs and Standards, Field Services and Students Services, and Director of Compliance report to the Commissioner. The Assistant Commissioners for Finance, Grants Management and Development, and the State Library will report to the Deputy Commissioner, along with other designated managers. As the Department's chief operating officer, the Deputy Commissioner has responsibility for coordinating the activities of the four divisions.
Note that only the four divisions and the units reporting directly to them in accordance with N.J.S.A. 18A:61-2 and the revised N.J.A.C. 6:5-2.4 appear on the adopted new organization chart.

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

6:5-2.2 Personnel: Method of Operations
(a) The Commissioner shall appoint, subject to the approval of the State Board, **The Deputy Commissioner of Education,** [each assistant commissioner,] the [senior manager] **assistant commissioner** for each division of the Department, **the chief officers reporting directly to the Deputy Commissioner of Education and assistant commissioners for each division**, each county and State district superintendent, the superintendent of the State School for the Deaf, **the director of compliance** and the managers of those offices that coordinate board meetings and process state board appeals.
(b)-(d) (No change.)

6:5-2.3 Basic composition of the Department
(a) The Department of Education consists of a State Board of Education, the Commissioner of Education and such divisions, **offices,** bureaus, branches, committees, other organizational units and officers and employees as allowed by law and as necessary to carry out the Department's statutory mandates.
(b) The basic organizational design of the Department is indicated in the Organizational Chart (see Appendix to this subchapter, incorporated herein by reference) with the executive functions as follows:
1. (No change.)
2. The **Deputy** Commissioner **of Education** [may designate an assistant commissioner to serve] **coordinates department-wide operations and serves** as Acting Commissioner during the Commissioner's absence.

6:5-2.4 Reporting responsibilities
(a) The following senior managers[, with corrresponding divisions,] report directly to the Commissioner:

[1. The Assistant Commissioner for Administration and Policy.]

1. The Deputy Commissioner of Education. The following organizational units and their chief officers report directly to the Deputy Commissioner of Education for the Division of Information, Management and Financial Services:

i. The Assistant Commissioner of Finance;

ii. The Assistant Commissioner of Grants Management and Development;

iii. The Assistant Commissioner of the State Library;

iv. The Director of Administration;

v. The Director of Executive Services; and

vi. The Director of Technology.

2. The Assistant Commissioner for [Urban Education and] Field Services. The following organizational units and their chief officers report directly to the Assistant Commissioner for [Urban Education and] Field Services:

i. The **coordinating** county superintendent **in each of the three regions and the remaining county superintendents** of schools in each of the 21 counties; [and]

ii. The State district superintendents for State-operated school districts;

iii. The Director of Urban Education and Policy; and

iv. The Director of Direct Servivces.

3. The Assistant Commissioner for Academic Programs and Standards. **The following organizational units and their chief officers report directly to the Assistant Commissioner for the Division of Academic Programs and Standards:**

i. The Director of Standards;

ii. The Director of Assessment;

iii. The Director of Innovative Programs;

iv. The Director of School-To-Work; and

v. The Director of Professional Development.

[4. The Assistant Commissioner for Financial Services.

5. The Assistant Commissioner for Professional Development and Licensing.

6. The Assistant Commissioner for the State Library.]

4. The Assistant Commissioner for Student Services. The following organizational units and their chief officers report directly to the Assistant Commissioner for the Division of Student Services:

i. The Director of Interagency Initiatives;

ii. The Director of Special Education;

iii. The Director of Drug Free and Safe Schools;

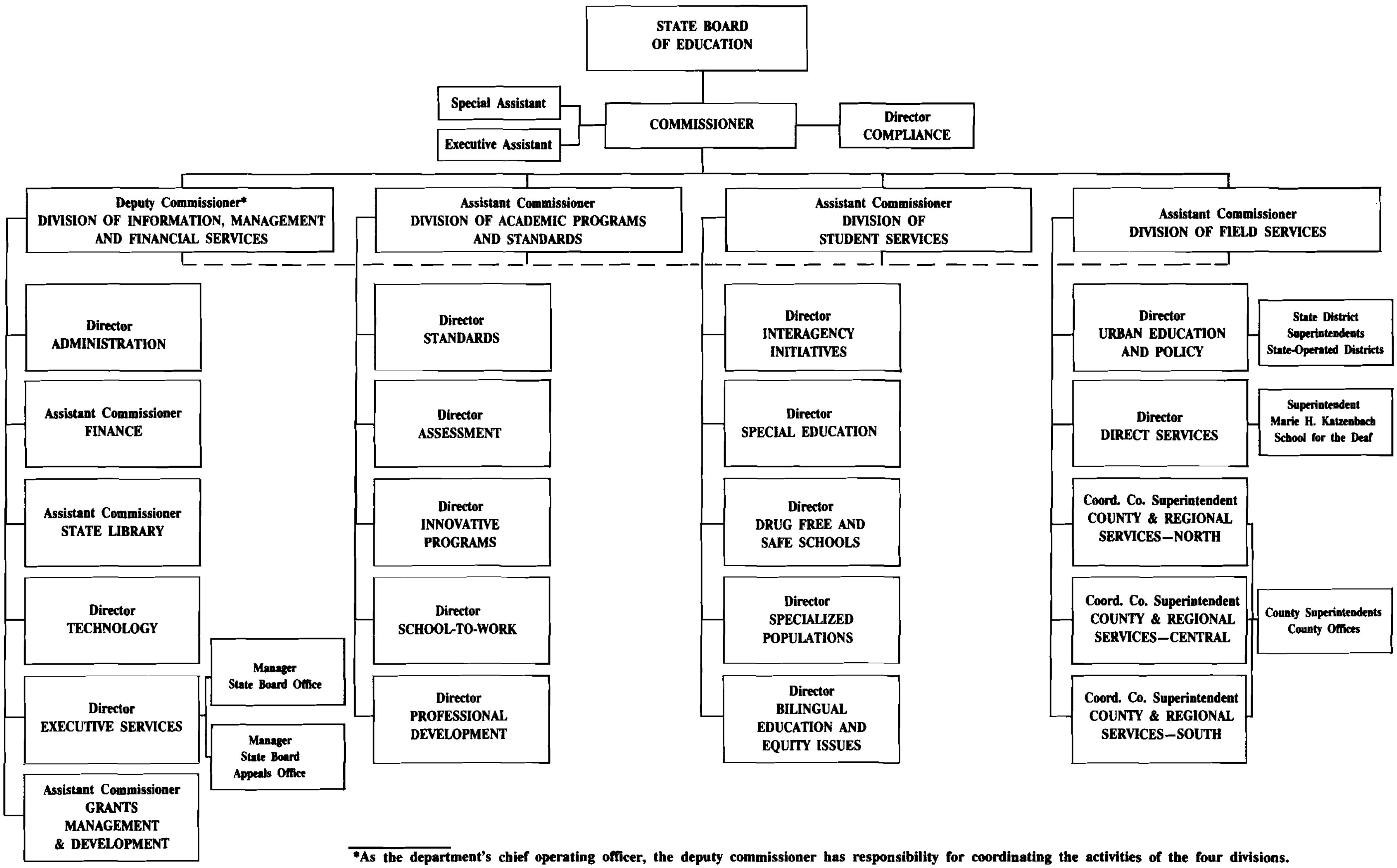
iv. The Director of Specialized Populations; and

v. The Director of Bilingual Education and Equity Issues.

5. The Director of Compliance.

(**Office of Administrative Law Note:** The following organization table replaces that currently in the N.J.A.C. 6:5-2 Appendix, which is deleted by this adoption.)

State of New Jersey
Department of Education
June 1994



*As the department's chief operating officer, the deputy commissioner has responsibility for coordinating the activities of the four divisions.

(a)

STATE BOARD OF EDUCATION

Special Education

Adopted Amendments: N.J.A.C. 6:28-2.10, 3.6 and 4.3

Proposed: April 4, 1994 at 26 N.J.R. 1422(a).

Adopted: June 1, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: June 9, 1994 as R.1994 d.334, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Effective Date: July 5, 1994.

Expiration Date: February 10, 1999.

Summary of Public Comments and Agency Responses:

The New Jersey State School Board of Education held a public testimony session on April 20, 1994 at the State Board Conference Room, Department of Education, 225 East State Street, Trenton, New Jersey, at which six individuals spoke regarding the proposed amendment of N.J.A.C. 6:28. The following is a list of those who spoke at the testimony session:

1. Fran Korman, New Jersey Education Association
2. Gaye Hasslinger, New Jersey Coalition for Inclusive Education
3. Diana Cuthbertson, Statewide Parent Advocacy Network
4. Richard Ebinger, Parent and Down Syndrome Support Group of South Jersey
5. Joan Nicoll, Parent
6. Arthur Bell, United Cerebral Palsy Association of New Jersey

The Department received written comments from 12 commenters during the proposal comment period ending May 4, 1994. The following is a list of people who made comments related to the proposed amendments:

Patricia Ciccone, Fort Lee; Patricia Paraskevacos, North Haledon; Sarah W. Mitchell, Director, Department of the Public Advocate; Lenore Pellegrino-Sino, Mount Laurel; Gayle W. Smith, Teacher, Ridgewood; Michelle Longo-Sace, Teacher, Jersey City; Sarah Brown, Glen Rock; Diane Schlegel, Glen Rock; Pamela R. Conk, Teacher, Cream Ridge; Nancy Van Horn, Teacher, Newton; Brenda Michaels, Teacher; Deborah Bain, Chairperson; Technology Assistive Resource Program Advisory Council.

The following are the comments received and the Department's responses thereto:

COMMENT 1: Eight commenters felt that the proposed amendment to reorder the statements in the section on least restrictive environment (LRE) should be adopted because the reordering reflects the Federal priorities and mandates.

RESPONSE 1: The Department agrees. The Department has determined that the previous order of the LRE statements at N.J.A.C. 6:28-2.10(a) could have had a negative effect on placement in the least restrictive environment. The reordering of the statements will conform to the order that is set forth in Federal regulation.

COMMENT 2: Eight commenters felt that consideration of the potentially harmful effects which a placement may have on the other pupils in the class should be removed from the Code. The statement misinterprets the intent of the *Oberti* decision regarding the justification for removing a child with disabilities from the regular classroom. The language is exclusionary and the concept difficult to operationalize. The statement places an undue burden that will discourage placement in the regular classroom.

RESPONSE 2: The proposed amendments currently before the State Board do not include proposals to amend the code at N.J.A.C. 6:28-2.10(a)6i regarding consideration of the potentially harmful effects. However, the Department reiterates its commitment to gather further information on this issue. Upon completion of this study the Department will provide the State Board with a report and recommendations for any future rulemaking.

COMMENT 3: Monitor the effect of the new wording regarding potentially harmful effect on the other pupils to determine whether districts are using this regulation to exclude classified students from regular class placement.

RESPONSE 3: The Department reiterates its commitment to gather additional information regarding this aspect of the issue related to N.J.A.C. 6:28-2.10(a)6i and provide the State Board with a report and recommendations for any future rulemaking.

COMMENT 4: Nine commenters felt that the Department should restore resource center to two subjects.

RESPONSE 4: The Department disagrees. The proposal to allow three subject areas to be taught in pull-out replacement resource centers at N.J.A.C. 6:28-4.3(b)8ii was made because districts have had difficulty in scheduling and, thereby, have had difficulty in meeting the needs of pupils with disabilities, particularly in small districts. The amendment was developed to give districts increased flexibility so that they can provide effective resource center programs to meet the needs of the pupils served.

COMMENT 5: Four commenters felt that the Department should not change pull-out replacement class size.

RESPONSE 5: The amendment to modify class size for pull-out replacement resource center at N.J.A.C. 6:28-4.3(b)8ii was adopted by the State Board on February 2, 1994 and became effective on April 4, 1994 (see 26 N.J.R. 1495(b)). The Department reiterates its position that the change in class size was developed to give districts increased flexibility so that they can provide effective resource center programs to meet the needs of the pupils served.

COMMENT 6: Teaching three content areas in pull-out replacement resource center is a burden on the teacher and students.

RESPONSE 6: The Department disagrees. As specified in N.J.A.C. 6:28-4.3(b)8ii, three subject areas are the maximum that can be taught. The need for resource center instruction must be individually determined and must meet the individual needs of the pupils. Based upon the individual needs of pupils, a school district could establish pull-out replacement resource center programs in which the number of subject areas taught is less than three.

COMMENT 7: In resource center, the reduction from four areas to three will result in improved services. Support the change.

RESPONSE 7: The Department appreciates the commenter's expression of support for the proposed amendment at N.J.A.C. 6:28-4.3(b)8ii and agrees that the changes will allow for more flexibility in scheduling and improved services for resource center students.

COMMENT 8: Five commenters felt that the Department should not eliminate the instructional guide.

RESPONSE 8: The amendment to remove the requirement for the instructional guide was adopted by the State Board on February 2, 1994 and became effective on April 4, 1994. Upon adoption of the proposed amendments currently before the State Board, the essential planning items of instructional strategies; techniques to improve social development; and specialized materials contained formerly in the instructional guide will be included in the IEP.

COMMENT 9: Support the adoption of the amendment to add items from the instructional guide to the IEP.

RESPONSE 9: The Department appreciates the commenter's expression of support for the proposed amendment to N.J.A.C. 6:28-3.6(d).

COMMENT 10: Three commenters support the inclusion of all items from instructional guide to IEP. These items include a schedule and a description of responsibilities.

RESPONSE 10: The proposed amendment to the IEP at N.J.A.C. 6:28-3.6 includes the essential planning items of instructional strategies; techniques to improve social development; and specialized materials contained formerly in the instructional guide. The Department feels that scheduling and the description of responsibilities are already addressed in the IEP. N.J.A.C. 6:28-3.6(d)5xi requires a statement of the frequency, duration and date when services will be initiated. Scheduling is an administrative responsibility of the district and should not be a requirement of the IEP. N.J.A.C. 6:28-3.6(d)5xii requires a statement describing the roles of specific school personnel and their responsibilities for implementing the various aspects of the IEP.

COMMENT 11: Two commenters want the Department to incorporate assistive technology, services and training into the IEP.

RESPONSE 11: The proposed amendment to the IEP at N.J.A.C. 6:28-3.6(d)xvii will modify specialized equipment to include specialized materials. The Department believes that assistive technology is included in specialized equipment and materials. In addition, assistive technology is referenced at N.J.A.C. 6:28-4.2(a)1v under program options. Therefore, the Department believes that the issue is addressed in regulation.

COMMENT 12: Four commenters felt that the Department should not eliminate State Department approval for waivers.

RESPONSE 12: The amendment to eliminate the requirement for waivers at N.J.A.C. 6:28-4.6 regarding classification/placement, or length of school day/year was adopted by the State Board on February 2, 1994 and became effective on April 4, 1994. The Department is conducting a study of waivers and will make a report to the State Board.

Summary of Agency-Initiated Change(s) Upon Adoption:

The Department of Education has changed N.J.A.C. 6:28-3.6(e) to clarify that the individualized education program (IEP) for pupils classified as eligible for speech-language services include those components in N.J.A.C. 6:28-3.6(d), specifically xv, xvi, and xvii as proposed April 4, 1994 at 26 N.J.R. 1422(a). The Department believes that within the normal planning and development of the IEP of any pupil classified pursuant to N.J.S.A. 18A:46 and N.J.A.C. 6:28, it is implicit that an assessment of the student's needs be conducted. Such assessment includes a review of any specialized equipment or materials; instructional strategies fitted to the pupil's learning style; and, when appropriate, techniques and activities designed to support the personal and social development of the pupil. These are the assessments required at N.J.A.C. 6:28-3.6(d)xv, xvi and xvii, and have been added to N.J.A.C. 6:28-3.6(e) to clarify that these basic and essential areas are reviewed in the planning and development of the IEPs of all classified pupils. These changes upon adoption are not perceived as substantive and thereby do not require additional public notice and comment pursuant to N.J.A.C. 6:30-4.3. The development of a speech language IEP would be incomplete and the intended benefit to the pupil would be diminished without consideration of these items.

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

6:28-2.10 Least restrictive environment

(a) Each public agency of education shall ensure that:

1. To the maximum extent appropriate, a pupil with an educational disability is educated with children who are not educationally disabled;

2. Special classes, separate schooling or other removal of a pupil with an educational disability from the pupil's regular class occurs only when the nature or severity of the educational disability is such that education in the pupil's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

3. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

4. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;

5.-8. (No change.)

6:28-3.6 Individualized education program

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

(d) With the exception of an individualized education program for a pupil classified as eligible for speech-language services, the individualized education program shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-xiii. (No change.)

xiv. Any exemptions from local disciplinary policies and/or procedures;

xv. Any specialized equipment or materials;

xvi. Instructional strategies fitted to the pupil's learning style; and

xvii. Techniques and activities designed to support the personal and social development of the pupil.

(e) The individualized education program for the pupil classified as eligible for speech-language services shall include (d)1, 2, 3, 4, and 5i, ii, iii, x, xi, *[and]* xiii, ***xv, and xvi*** above. When appropriate, (d)5vii, *[and]* xii***, and xvii*** shall be included. The statement of the current educational status in (d)2 above shall be a description of the pupil's status in speech-language performance. If related services other than speech-language services are required, the speech-language specialist shall identify the pupil with an educational disability to the child study team.

(f)-(j) (No change.)

6:28-4.3 Program criteria: supplementary instruction, speech-language services and resource center programs

(a) (No change.)

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1.-7. (No change.)

8. Group size for classified pupils who receive replacement instruction in an approved separate resource center shall be as follows:

i. (No change.)

ii. For multiple (not more than three) content areas—four pupils.

9.-13. (No change.)

(a)

STATE BOARD OF EDUCATION

Evaluation

Readoption with Amendments: N.J.A.C. 6:39

Proposed: April 4, 1994 at 26 N.J.R. 1423(a).

Adopted: June 1, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: June 9, 1994 as R.1994 d.335, **without change.**

Authority: N.J.S.A. 18A:4-15, 18:4-24 and 18A:7A-1 et seq.

Effective Date: June 9, 1994, Readoption;
July 5, 1994, Amendments.

Expiration Date: June 9, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

The New Jersey State Board of Education held a public testimony session on April 20, 1994 at which time the above captioned rule was on the agenda; however, no individuals reserved time to speak.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:39.

Full text of the adopted amendments follows:

6:39-1.3 Core course proficiencies assessment

(a) The specific methods and standards for annually assessing student mastery of course proficiencies, as mandated by N.J.A.C. 6:8-7.1(c), shall be the responsibility of each local school district.

(b) The Department of Education shall assist school districts in identifying and/or developing school district assessment techiques and instruments through curriculum panels, prepared assessment material, and regional training activities. The Department shall also identify those school districts that have effective assessment programs which can serve as models.

(c) A pupil with an educational disability must meet all State and local high school graduation requirements unless exempted in his or her individualized education program in order to receive a State-endorsed high school diploma pursuant to the provisions established under N.J.A.C. 6:28.

6:39-1.4 Dissemination of information

(a) Dissemination of information procedures relative to basic skills proficiency in reading, writing, and mathematics as measured by the High School Proficiency Test (HSPT) and the Early Warning Test (EWT) shall be as follows:

1.-8. (No change.)

(b) The Commissioner of Education may make exceptions to the dissemination of information requirements contained in (a) above when:

1. The need for a school district to make substantial revisions to the uninterpreted report described in (a)2 above requires an extension of the 30-day interpretation period specified in (a)3 above.

The extension may be up to but may not exceed an additional 30 days; and

2. The need for a school district to make substantial revisions to the summary report described in (a)7 above requires an extension of the 45 day period specified in (a)6 above. The extension may be up to but may not exceed an additional 45 days.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Ninety-Day Construction Permits; Fees

Adopted Amendments: N.J.A.C. 7:1C-1.1, 1.2 and 1.5

Proposed: February 7, 1994 at 26 N.J.R. 787(a).

Adopted: June 10, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Filed: June 10, 1994 as R.1994 d.337, **without change**.

Authority: N.J.S.A. 13:1D-9, 13:1D-29 et seq., specifically 13:1D-33.

DEPE Docket Number: 67-93-12/364.

Effective Date: July 5, 1994.

Expiration Date: June 15, 1995.

Summary of Hearing Officer's Recommendations and Agency Response:

On February 7, 1994, the Department of Environmental Protection and Energy (Department) proposed amendments to N.J.A.C. 7:1C-1.1, 1.2, and 1.5 governing fees for permit applications for development made under the 90-day construction permits law, N.J.S.A. 13:1D-29 et seq. The Department proposed to delete a rebate provision added to the rules in March 1993 and to cap certain fees at $30,000 in order to correct the practical and administrative difficulties it has experienced in implementing the rebate provision. Subsequently, on February 22, 1994, the Department published a second proposal which contained additional amendments to these sections reflecting the changes to the Coastal Area Facility Review Act (CAFRA) enacted by the Legislature in 1993 (P.L. 1993, c.190).

The amendments proposed on February 7, 1994, are the subject of this adoption. These amendments were proposed separately and in advance of the subsequent proposal of February 22, 1994 because it was necessary for the Department to expeditiously address problems resulting from the rebate provision adopted in March 1993. The Department is now adopting the amendments relating to the rebate and cap provision proposed on February 7, 1994. The subsequently proposed amendments remain under consideration.

The Department held a public hearing concerning the amendments proposed on February 7, 1994, on February 28, 1994 in Trenton, New Jersey. The Department accepted written comments through March 9, 1994.

Ernest P. Hahn, the Department's Land Use Regulation Program Administrator, served as the hearing officer at the public hearing. However, no one attended the hearing. The Department did receive written comments on the proposal from two persons. After considering these comments, Administrator Hahn recommended that the Department adopt the amendments as proposed. The Department agrees with the recommendation.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The following persons submitted written comments on the proposal of February 7, 1994:

1. Michael McGuinness, New Jersey Builders Association
2. Marilyn Booth, Atlantic Electric

The following is a summary of comments received on the Department's proposal and the Department's responses to the comments. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The Department should consolidate these proposed amendments with the proposed amendments to the fee schedule published in the February 22, 1994 New Jersey Register (1, 2)

RESPONSE: The Department has decided not to consolidate these amendments. Shortly after the Department adopted amendments to the fee rules in March 1993, it became clear that implementation of the rebate provision was problematic. For example, on several occasions the Department was forced to require very large fees through application of the formula contained in the rules, even though it was clear that the fee would be excessive in comparison to the costs of reviewing the permit application and of monitoring compliance with the permit. Moreover, once the fees were collected it was difficult to keep the money accessible so that rebates could later be issued in a timely manner. Permit application fees received by the Land Use Regulation Program are deposited with the Bureau of Revenue. Every rebate requires processing by three agencies: the Land Use Regulation Program, the Bureau of Revenue and the Department of Treasury. Based on this experience, the Department sought to amend the rebate provision as quickly as possible to address these problems, and so did not consolidate these limited-purpose amendments with the proposed fee amendments relating to the 1993 legislative amendments to CAFRA that were published on February 22, 1994. The Department has determined that the amendments relating to the rebate provision which were proposed on February 7, 1994 should be adopted independently of the amendments proposed on February 22, 1994 to immediately address the ongoing problems created by the rebate provision.

2. COMMENT: The commenter appreciates that the Department has placed a cap on the amount of fees that it can charge for the review of certain applications in the coastal zone, but believes that all permit application fees should be capped regardless of the location of the proposed activity. (1)

RESPONSE: The Department did not propose to cap fees for permit applications other than Waterfront Development permits on February 7, 1994 because the other fees needed to be amended to reflect the legislative amendments to the Coastal Area Facility Review Act (CAFRA) enacted in July 1993 (P.L. 1993 c.190), which will become operative on July 19, 1994. The rebate provision needed to be amended to independently address a specific on-going problem. The proposal included a cap for any non-residential waterfront development taking place waterward of the mean high water line and not qualifying as a CAFRA facility. This provision was included because these application fees are calculated as a percentage of construction costs, which has caused problems in a small number of cases. While the Department's experience shows that construction costs are an excellent way to generally predict the complexity of a project and the associated application review time, in a small number of instances construction costs for applications in this category reflect the types of materials and design used rather than the scope of the environmental issues to be addressed during the review period. Therefore, to address this problem, the Department proposed a cap on this category of permit fees. The Department did not concurrently propose a cap on fees for CAFRA permits because those fees are not calculated based on construction costs; the Department did not propose a cap on coastal wetlands permits fees because those fees never exceed the $7,000 threshold which entitled an applicant to seek a rebate. However, as part of its proposal of February 22, 1994, the Department has proposed to cap the application fees for any non-residential waterfront development taking place landward of the mean high water line. The February 22, 1994 proposal remains under consideration.

3. COMMENT: Since the Department retains the right to exceed the $30,000 cap in those instances where it deems it to be necessary, permit applicants should have the right to review the Department's figures to see how the costs are calculated. (1)

RESPONSE: The Department agrees. For this reason, N.J.A.C. 7:1C-1.5(a)1iv(2) as proposed and as adopted states that the Department "shall provide the applicant with documentation of such costs if a supplemental fee is charged." This documentation will show how the costs were calculated.

4. COMMENT: The proposed elimination of the rebate provision included in N.J.A.C. 7:1C-1.5(k) is objectionable because it raises questions regarding the Department's ability to be accountable to permit applicants. (1, 2)

RESPONSE: The Department has deleted the rebate provision at N.J.A.C. 7:1C-1.5(k) based on administrative practicalities, not to avoid accountability. The fees are intended to equitably allocate the Land Use Regulation Program's costs among all permittees and generally are not based on the specific costs associated with individual applications. Tracking every permit application through the Land Use Regulation Program to ascertain the specific costs associated with each application would take valuable time away from substantive permit review. In addition, many aspects of the Program's work are not associated with any specific permit application, but provide a service to all permittees and applicants in general. For example, the employees in the Land Use Regulation Program answer general telephone inquiries, hold pre-application meetings either at the Department or in the field, respond to general inquiries and constituent letters, attend inter-agency meetings, formulate and amend rules and regulations, and are continuously involved in formal and informal public information and education efforts. The Land Use Regulation Program handles an estimated 150,000 telephone calls annually, and in 1993 it conducted 450 pre-application meetings.

5. COMMENT: The Department should not delete the rebate provision. Further, the Department should allow for rebates of any amount regardless of whether or not certain conditions are met (for example, dollar amounts and percent thresholds). (1)

RESPONSE: The Department does not agree. At this time the Land Use Regulation Program is completely fee supported. Thus the Program must collect enough money for staff, equipment, overhead costs, public education efforts, program analysis and development, and application reviews through fees. Until such time as the Program receives a State appropriation, the Program must balance its permit fees with its operating costs. The adopted fee formula will enable the Program to adequately review specific permit applications as well as to perform tasks which are not generally associated with any specific permit application but which are intended to assist all permittees and applicants. As indicated in the response to Comment 4 above those tasks include answering general telephone inquiries, holding pre-application meetings, responding to general inquiries and constituent letters, attending inter-agency meetings, formulating and amending rules and regulations, and formal and informal public information and education efforts.

6. COMMENT: If the Department adopts the deletion of the rebate provision at N.J.A.C. 7:1C-1.5(k), the Department should provide an accounting of costs upon the permit applicant's request and the applicant should be given the ability to appeal permit fees. (1)

RESPONSE: For those fees which exceed the $30,000 cap, the Department will provide an accounting of costs as stated at N.J.A.C. 7:1C-1.5(a)1iv(2). However, in all other cases, the fee will be established solely on the basis of the fee formula in the rules rather than on a case-by-case basis to reflect the actual costs associated with processing any one permit application. This is because, as stated previously (see response to Comment 4 above), the Program's costs include the performance of many tasks not associated with the review of any specific permit application but with assistance to all applicants and permittees.

Since fees are not based solely on the specific costs to process and monitor compliance with any specific permit, a cost accounting method cannot be used as a basis to appeal fees. However, the Department will, as it has done in the past, provide an applicant with all data used to calculate a fee. This will enable an applicant to confirm that its fee has been accurately computed and, if the fee has been inaccurately computed, to obtain a recalculation.

7. COMMENT: The proposed amendments were published in the February 7, 1994 New Jersey Register with comments due by March 9, 1994, a period of 30 days. In the amendments to the fee schedule adopted February 2, 1993 and effective March 1, 1993, the Department agreed to incorporate a 45 day comment period into all future annual fee adjustment procedures. Therefore, the comment period for the proposed amendments should be extended an additional 15 days. (2)

RESPONSE: The Department did incorporate a 45-day comment period into the rules establishing the annual fee adjustment procedures, at N.J.A.C. 7:1C-1.5(i), as the commenter points out. However, the annual fee adjustment, which determines the factor by which each type of permit fee (that is, CAFRA, waterfront development, coastal wetlands and stream encroachment) is multiplied to yield a larger or smaller permit fee, was not the subject of this rule proposal. The proposed deletion of the rebate provision and the substitution of a fee cap for one specific type of application fee is a change to the rules themselves. The 30-day comment period is the basic period for public comment required under the Administrative Procedure Act and the Department believes it was sufficient and reasonable for this proposal, which amended a limited portion of the fee rules.

8. COMMENT: The commenter objects to the deletion of the rebate provision and the substitution of the $30,000 cap based on its experience with the Department for a specific permit application. Under the pre-existing rule, the commenter submitted an application and, based upon the construction cost of the project, $7 million, was required to submit a fee of $72,200. The commenter subsequently requested a rebate pursuant to N.J.A.C. 7:1C-2.5(k), and received a rebate of $65,200. Therefore, the commenter paid a fee for the application review of $7,000. Under the proposed amendments, the commenter would have been assessed a fee of $30,000 and paid an additional $22,800. Since the refund was based on the Department's actual costs incurred in processing and reviewing the application and in addressing any appeal of the permit decision, the Department would have charged, if the proposed rules had been in place, an additional $22,800 which is unjustifiable. (2)

RESPONSE: The commenter is correct that the Department rebated all but $7,000 of the $72,200 fee the commenter submitted for the above-described review. However, the $7,000 figure did not reflect the Department's actual costs associated with review and processing of the application or with anticipated compliance monitoring. Rather, that amount was charged in an effort to deal reasonably and expeditiously with the applicant's rebate request. The Department agreed that the $72,200 fee was excessive, and assessed the threshold fee of $7,000 set by the rebate provision to avoid the delay in responding to the rebate request that would have occurred if the Department had attempted to gather the information necessary to track its costs to process the particular permit application. Because this was one of the cases which motivated the Department to reassess the rebate provision and to propose this amendment, the Department does not agree that the fees that will result from the adopted amendment formula will be unjustified.

9. COMMENT: The proposed amendments should not be adopted because the employees of NJDEPE should be required to account for their time just as the employees of any business operating in the State must. (2)

RESPONSE: The employees of NJDEPE are required to account for their time. All employees of the Land Use Regulation Program sign in and out each day, and must complete timesheets biweekly indicating the activities which occupied each day. For example, employees must indicate the number of hours spent on various permit reviews such as CAFRA, stream encroachment, waterfront development, and freshwater wetlands. These categories are further divided into the specific types of activity conducted, such as appeals, enforcement actions, reviews of General permit applications, wetlands type A permit reviews, reviews of residential waterfront development permit applications, and reviews of major/minor stream encroachment permit applications. There are 34 different categories of activities to which time is attributed on employee time sheets. Employees also provide a prospective weekly schedule to their respective supervisors indicating which days they will be in the office, or out of the office on field visits or attending meetings. Before going in the field, employees must provide a list of sites which they intend to visit, in the order in which they will be visited.

The Department is a public agency and therefore differs in certain ways from a private business. Many of the responsibilities of employees in the Land Use Regulation Program are not associated with any specific permit application. These responsibilities include answering general telephone inquiries, holding pre-application meetings either at the Department or in the field, responding to general inquiries and constituent letters, attending inter-agency meetings, formulating and amending rules and regulations, and formal and informal public information and education efforts regarding the various permitting programs administered by the Program. The Department believes that these responsibilities are a vital part of its public function, that the responsibilities provide a needed service to all applicants and permittees, and that its staff should spend time on these activities as well as on substantive permit review, rather than focus on tracking the costs associated with individual permit applications.

10. COMMENT: The permit fees should accurately reflect the time expended by the NJDEPE in the processing and reviewing of the permit

application. The proposed amendments do not provide an accurate means of determining whether the assessed fee was fair; they will contribute to the existing distrust of the Department. (2)

RESPONSE: As stated previously, the Land Use Regulation Program performs many functions that cannot be associated with any specific permit application but are of benefit to all permittees and applicants. See the response to Comment 9 above. The Department's fees must cover these functions as well as the specific costs of processing permit applications and determining condition compliance. The fee formulas used are intended to allocate Program costs equitably among permittees by assessing higher fees for larger or more complex projects and for those projects which will have the greatest environmental impact.

11. COMMENT: The Department should maintain records of the actual time spent processing and reviewing an application and assessing compliance with administrative and performance conditions on approved permits. After completion of the project, any fee above that actually incurred by the Department should be refunded to the applicant. To continue to keep fee payments for work that in effect "was never done" is totally unjustified and unreasonable. (2)

RESPONSE: The functions of the Land Use Regulation Program are not limited to processing specific applications and the Program is currently funded entirely by fees. See the response to Comment 9 above. The Program's fees must therefore match its operating costs incurred both to handle specific applications and to handle tasks of assistance to all permittees and applicants in general. The fee formula is intended to equitably distribute these costs among applicants.

Full text of the adoption follows:

7:1C-1.1 Purpose

This chapter implements P.L. 1975, Chapter 232 (N.J.S.A. 13:1D-29 et seq.), to secure timely decisions by the Department of Environmental Protection and Energy on construction permit applications as defined therein, to assure adequate public notice of procedures thereunder, and to continue effective administration of the substantive provisions of other laws.

7:1C-1.2 Definitions

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

...

"Application" means DEPE Application Form CP-1 and the appropriate agency supplement.

"Appropriate agency" means:

1. The Land Use Regulation Program, CN 401, Trenton, New Jersey 08625 for:

i.-iv. (No change.)

2. The Division of Water Quality, CN 029, Trenton, New Jersey 08625 for:

i. (No change.)

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and Energy.

...

"Department" means the New Jersey Department of Environmental Protection and Energy.

"DEPE Bulletin" means the official publication of the Department of Environmental Protection and Energy required by N.J.S.A. 13:1D-34, listing the status of pending construction permit applications.

...

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. Waterfront development permits:

i.-iii. (No change.)

iv. The permit fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

(1) (No change.)

(2) The permit fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Costs—Fees

$0 to $50,000—$1,450 + 1/2 of one percent of construction costs

$50,001 to $100,000—$1,700 + one percent of construction costs above $50,000

$100,001 to $200,000—$2,200 + 1¼ percent of construction costs above $100,000

$200,001 to $350,000—$3,450 + 1½ percent of construction costs above $200,000

greater than $350,000—$5,700 + one percent of construction costs above $350,000. The fee payable at the time of the application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs if a supplemental fee is charged.

2.-5. (No change.)

(b)-(j) (No change.)

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Flood Hazard Area Control Rules

Readoption: N.J.A.C. 7:13

Proposed: February 22, 1994 at 26 N.J.R. 1036(a).

Adopted: June 10, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Filed: June 10, 1994 as R.1994 d.338, **without change**.

Authority: N.J.S.A. 58:16A-50 et seq., 58:10A-1 et seq. and 13:1D-1 et seq.

DEPE Docket Number: 07-94-01.

Effective Date: June 10, 1994.

Expiration Date: June 10, 1999.

Summary of Public Comments and Agency Responses:

On February 22, 1994, the Department of Environmental Protection and Energy ("Department") proposed to readopt without amendments the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. Notice was also published on February 22, 1994, in The Bergen Record, The Trenton Times, The Newark Star Ledger, The Asbury Park Press, The Bridgeton Evening News and The Atlantic City Press.

Time constraints dictate that the Department readopt the existing rules without change in order to prevent their expiration under Executive Order No. 66(1978), while the Department reviews comments received on its pending proposal to repeal and repromulgate N.J.A.C. 7:13, which appeared in the same February 22, 1994, New Jersey Register. Because of the limited purpose of this readoption, the Department requested that any comments be directed to the proposal to repeal and repromulgate the rules. **No comments on this proposed readoption were received.**

Full text of the readoption can be found in the New Jersey Adminstrative Code at N.J.A.C. 7:13.

(a)

DIVISION OF FISH, GAME AND WILDLIFE
Marine Fisheries
Summer Flounder Management
Adopted Concurrent Amendment: N.J.A.C. 7:25-18.1

Proposed: May 2, 1994 at 26 N.J.R. 1885(a).
Adopted: June 10, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Filed: June 10, 1994 as R.1994 d.339, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 23:2B-6, 23:2B-14.
DEPE Docket Number: 22-94-04/441.
Effective Date: June 10, 1994, Adopted concurrent amendment; July 5, 1994, change upon adoption.
Expiration Date: February 15, 1996.

The New Jersey Department of Environmental Protection and Energy is adopting the amendment of N.J.A.C. 7:25-18.1 proposed on May 2, 1994 at 26 N.J.R. 1885(a). The comment period closed on June 1, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
At N.J.A.C. 7:25-18.1(c), the rule has been modified to indicate that any revision in the possession limit and/or open season for summer flounder shall be published in the New Jersey Register in addition to the Fish and Wildlife Digest. This modification will ensure continuity of information to subscribers and users of the New Jersey Register and provide the Office of Administrative Law the basis for complete annotation of the rule.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

7:25-18.1 Size and possession limits
(a)-(b) (No change.)
(c) A person angling with a hand line or with rod and line or spearfishing shall not possess any summer flounder or summer flounder parts beginning October 31 through April 29 nor shall any person angling with a hand line or with rod and line or spearfishing possess more than eight summer flounder at any time during the period beginning April 30 through October 30, except as provided in N.J.A.C. 7:25-18.14. The Commissioner, after consultation with the Marine Fisheries Council, may modify the possession limit of summer flounder during the open season and/or set the open season. The possession limit of summer flounder shall be consistent with the possession limit established by the Northeast Regional Director of the National Marine Fisheries Service. The Department shall provide notice of any change by publishing in the New Jersey Fish and Wildlife Digest ***and the New Jersey Register***, and preparing a news release and submitting to individuals on the Division of Fish, Game and Wildlife's outdoor writers mailing list.
(d)-(q) (No change.)

HEALTH

(b)

NARCOTIC AND DRUG ABUSE CONTROL
Controlled Dangerous Substances
Adopted Amendments: N.J.A.C. 8:65-10.1 and 10.2

Proposed: April 18, 1994 at 26 N.J.R. 1630(a).
Adopted: June 2, 1994 by Leonard Fishman, Acting Commissioner, Department of Health.
Filed: June 3, 1994 as R.1994 d.325, **without change.**
Authority: N.J.S.A. 24:21-3.
Effective Date: July 5, 1994.
Expiration Date: June 17, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

8:65-10.1 Controlled dangerous substances; Schedule I
(a) (No change.)
(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code number.
1. Opiates: Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code);
Acetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM) 9603
...
2.-7. (No change.)

8:65-10.2 Controlled dangerous substances; Schedule II
(a) (No change.)
(b) The following is Schedule II listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code number.
1. (No change.)
2. Opiates: Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextorphan and levopropoxyphene excepted, (listed by generic/established or chemical name with CDS code);
...
Levo-alphacetylmethadol (Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM) 9648
...
3.-7. (No change.)

CORRECTIONS

(c)

THE COMMISSIONER
Community Release Programs
Transportation of Inmate; Contract Agency Rules, Regulations and Discipline; Urine Monitoring; Disciplinary Transfer
Adopted Amendments: N.J.A.C. 10A:20-4.20, 4.21, 4.22 and 4.45

Proposed: May 2, 1994 at 26 N.J.R. 1757(a) (see also 26 N.J.R. 1938(a)).
Adopted: June 2, 1994 by William H. Fauver, Commissioner, Department of Corrections.
Filed: June 10, 1994 as R.1994 d.340, **without change.**
Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 30:4-9.12.
Effective Date: July 5, 1994.
Expiration Date: February 18, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10A:20-4.20 Transportation of inmate
(a)-(b) (No change.)

(c) After an inmate has been assigned to, and is living at, a Residential Community Release Agreement Program, the inmate shall be transported to a correctional facility in accordance with internal management practices and procedures established to provide transportation between Residential Community Release Agreement Programs and other correctional facilities.

10A:20-4.21 Contract agency rules, regulations and discipline

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

(d) Major disciplinary violation charges shall result in the immediate transfer of the inmate to a correctional facility within the New Jersey Department of Corrections. Major disciplinary violations shall include, but are not limited to:

1.-8. (No change.)

(e) (No change.)

10A:20-4.22 Urine monitoring

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

(f) When the urine analysis is positive, the contract agency is responsible for:

1. (No change.)

2. Making arrangements for the inmate's return to a correctional facility within the New Jersey Department of Corrections in accordance with N.J.A.C. 10A:20-4.2 and 4.20(c); and

3. (No change.)

10A:20-4.45 Disciplinary transfer

(a) When an inmate violates a prohibited act(s) that is listed in N.J.A.C. 10A:20-4.21(d), the inmate shall be transferred to a Department of Corrections' correctional facility in accordance with N.J.A.C. 10A:20-4.2 and 4.20(c).

(b) (No change.)

(c) In accordance with N.J.A.C. 10A:9-6.5, the Inter-Institutional Classification Committee (I.I.C.C.) shall, at the next regularly scheduled meeting, review the disciplinary transfers of inmates from Residential Community Release Agreement Programs to correctional facilities within the New Jersey Department of Corrections.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service
Defensive Driving Courses
Adopted New Rules: N.J.A.C. 13:21-24

Proposed: April 18, 1994 at 26 N.J.R. 1592(a).

Adopted: June 1, 1994 by C. Richard Kamin, Acting Director, Division of Motor Vehicles.

Filed: June 13, 1994 as R.1994 d.347, **without change**.

Authority: N.J.S.A. 17:33B-45.

Effective Date: July 5, 1994.

Expiration Date: December 13, 1995.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in above-referenced edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows:

SUBCHAPTER 24. DEFENSIVE DRIVING COURSES

13:21-24.1 Definitions

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

"Approved motor vehicle defensive driving course" means a course of motor vehicle driver instruction predicated on defensive driving techniques that has been approved by the Director of the Division of Motor Vehicles, has been determined to meet or exceed the standards of the National Safety Council's defensive driving course, and has been determined to be effective in terms of either reducing moving violation convictions or accident involvement or both. This definition shall not be taken to include driver training courses offered by driving schools pursuant to N.J.S.A. 39:12-1 et seq., public, parochial or private school driving education courses, a Division of Motor Vehicles Driver Improvement Program required pursuant to N.J.S.A. 39:5-30.2 et seq., or a Division of Motor Vehicles Probationary Driver Program required pursuant to N.J.A.C. 13:19-10.3(d).

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Sponsoring agency" means an organization which has a motor vehicle defensive driving course approved by the Director of the Division of Motor Vehicles pursuant to N.J.S.A. 17:33B-45 and this subchapter.

13:21-24.2 Point reduction; computation; course completion

(a) Motor Vehicle violation points recorded against a licensee shall be reduced by two points when he or she attends and satisfactorily completes an approved motor vehicle defensive driving course, except that:

1. No licensee shall receive point reduction credits for completion of a motor vehicle defensive driving course more than once in any five year period;

2. No point totals shall be reduced below zero; and

3. No licensee shall receive point reduction credits for completion of a motor vehicle defensive driving course in which the licensee was the course instructor.

(b) Computation of the time periods used in granting point reduction credits, in all cases, will be based upon the respective dates of commission of the offenses for which the licensee was convicted and assessed points and completion date of the motor vehicle defensive driving course.

(c) Upon receipt by the Director of a certified student course completion record from a sponsoring agency, the licensee's record will be reviewed by the Division of Motor Vehicles and a reduction of motor vehicle violation points shall be awarded in accordance with this section. A sponsoring agency shall submit student course completion documentation and all other required information to the Director in the manner prescribed by the Director.

(d) Point reduction credits granted in accordance with this section shall not invalidate proposed suspension action by the Division against a licensee's driving privileges due to excessive point accumulation by the licensee.

13:21-24.3 Sponsoring agency qualifications

(a) In order to qualify as an approved sponsoring agency pursuant to this subchapter, an entity shall:

1. Request approval from the Director on official letterhead signed by the chief executive officer or designee of the entity;

2. Demonstrate that its motor vehicle defensive driving course meets or exceeds the standards of the National Safety Council's defensive driving course;

3. Demonstrate its course's effectiveness in terms of either reduced moving violation convictions or accident involvement or both by licensees who have satisfactorily completed its motor vehicle defensive driving course;

4. Provide the Director with the name and title of the official of the sponsoring agency designated as the liaison between the sponsoring agency and the Division of Motor Vehicles; and

5. Demonstrate by written operating procedures and/or on-site visitation by the Director or his or her designee that its instructors are qualified to conduct its motor vehicle defensive driving course.

13:21-24.4 Instructor qualification; training

(a) No person shall be permitted by a sponsoring agency to act as a motor vehicle defensive driving course instructor if such person has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

(b) The sponsoring agency shall submit the following information to the Division:

1. Instructor preparation course outline;
2. Instructor certification and re-certification procedures which insure course competency and continuity;
3. Instructor manuals; and
4. Instructor course curriculum and lesson plans.

13:21-24.5 Course curriculum; length; content; scope; class size

(a) The sponsoring agency's motor vehicle defensive driving course shall provide at least six hours of instruction of which a minimum of four hours shall be classroom instruction.

(b) Not more than three hours of the six hours of instruction shall be conducted by use of audiovisual aids, including, but not limited to:

1. Films and/or videotapes;
2. Filmstrips; and
3. Slides

(c) Not more than 30 students shall be scheduled in any given class; provided, however, that up to five additional students may attend a class if they have failed to attend a previously scheduled class.

(d) The use of visual aids such as magnetic boards, flip charts, and blackboards shall be incorporated into the curriculum.

(e) The curriculum content shall be predicated on defensive driving techniques, including, but not limited to:

1. Alcohol and drug usage as an accident factor;
2. The risk factors involved in improper driver attitude and behavior such as speeding, tailgating, reckless driving, inattentiveness, careless driving, and improper lane use;
3. Adjustment of driving patterns to compensate for adverse weather conditions;
4. Following distances;
5. Communication with other road users; and
6. Motor vehicle and traffic laws of New Jersey.

(f) The lesson plans shall utilize educational techniques which are designed to encourage interaction between students and instructor as a method of instruction.

13:21-24.6 Classroom facilities

(a) Classrooms shall be large enough to accommodate a minimum of 15 students with a minimum of 15 square feet of space per student.

(b) Classrooms shall be clean, adequately lighted, heated and ventilated and free from any visible and/or audible distractions.

(c) Restroom facilities shall be available to accommodate both sexes.

(d) If a classroom facility is not accessible to the handicapped the Director shall be notified prior to that facility being used as a classroom.

(e) Adequate parking shall be available in close proximity to the classroom.

13:21-24.7 Student records

(a) The sponsoring agency shall have written operating procedures approved by the Director regarding the preparation and maintenance of student records.

(b) Student records shall include:

1. The complete student name as it appears on the student's New Jersey driver license, and complete street address;
2. The full date of birth and eye color;
3. The complete New Jersey driver license number;
4. The student application and course registration forms;
5. Course attendance dates and course attendance locations; and
6. The date of student course completion.

(c) Student records shall be retained at the principal business location of the sponsoring agency for a period of five years from the date of a student's completion of the motor vehicle defensive driving course.

(d) Upon request by the Director or his or her designee, the sponsoring agency shall make available for inspection by the Director or his or her designee the student records required to be prepared and maintained in accordance with this section.

13:21-24.8 Certification of course completion

(a) Upon course completion, the sponsoring agency shall provide the Division of Motor Vehicles a list of the students who have satisfactorily completed the approved motor vehicle defensive driving course.

(b) The student list shall be certified by the chief executive officer of the sponsoring agency or his or her authorized agent.

(c) The student information must be submitted in the form and manner prescribed by the Director.

(d) The course completion certification list shall be submitted to the Division within 10 days of the completion of each course.

13:21-24.9 Suspension or revocation of sponsoring agency's approved status

(a) The Director may, in his or her discretion, upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1, suspend or revoke a sponsoring agency's status as an approved sponsoring agency if the entity:

1. Fails to comply with any of the provisions of this subchapter;
2. Fails to maintain qualification as an approved motor vehicle defensive driving course in accordance with the provisions of this subchapter;
3. Misstates a material fact to the Division of Motor Vehicles in its application for program approval;
4. Falsely authenticates a student course completion certification or an instructor certification or re-certification; or
5. For other good cause.

13:21-24.10 Voluntary nature of course; fees

(a) Entry into an approved motor vehicle defensive driving course is voluntary.

(b) An attendance fee may be charged for a motor vehicle defensive driving course.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ARCHITECTS

Depiction of Existing Conditions on a Site Plan
Adopted Amendment: N.J.A.C. 13:27-6.2

Proposed: March 7, 1994 at 26 N.J.R. 1221(a).

Adopted: April 14, 1994 by Charles A. Spitz, President, Board of Architects.

Filed: May 31, 1994 as R.1994 d.321, **without change.**

Authority: N.J.S.A. 45:3-3 and 7.

Effective Date: July 5, 1994.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

Ten letters expressing support for this joint proposal were received. One of the 10 commenters asked whether the rules pertain to New Jersey licensees and suggested amendments requiring the survey to be the product of a New Jersey licensee. In response, the Board states that it has authority only over New Jersey licensees and therefore this rule, as all other Board rules, pertains only to New Jersey licensees. The Board has no authority to require that the reviewing governmental body accept surveys only from New Jersey licensees.

Full text of the adoption follows:

13:27-6.2 Depiction of existing conditions on a site plan

(a) Survey: Showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. A signed

and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission.

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Examinations

Adopted Amendment: N.J.A.C. 13:31-1.3

Proposed: March 7, 1994 at 26 N.J.R. 1218(a).
Adopted: June 1, 1994 by the State Board of Examiners of Electrical Contractors, Edward O'Hara, President.
Filed: June 8, 1994 as R.1994 d.331, **without change.**

Authority: N.J.S.A. 45:5B-1.

Effective Date: July 5, 1994.
Expiration Date: November 20, 1996.

Summary of Public Comments and Agency Responses:
No public comments were received.

Full text of the adoption follows:

13:31-1.3 Examinations

(a) The Board examination shall be the National Electrical Contractor Licensing Examination developed by the National Assessment Institute of College Park, Maryland.

(b) An applicant must obtain a passing grade on the National Electrical Contractor Licensing Examination. Any applicant who fails to pass the Board examination shall not be eligible to retake the examination for six months from the date of such failure.

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Return of Pressure Seal

Adopted Amendment: N.J.A.C. 13:31-1.10

Proposed: April 18, 1994 at 26 N.J.R. 1594(a).
Adopted: June 1, 1994 by the State Board of Examiners of Electrical Contractors, Edward O'Hara, President.
Filed: June 8, 1994 as R.1994 d.332, **without change.**

Authority: N.J.S.A. 45:5B-1.

Effective Date: July 5, 1994.
Expiration Date: November 20, 1996.

Summary of Public Comments and Agency Responses:
No public comments were received.

Full text of the adoption follows:

13:31-1.10 Return of pressure seal

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

(c) A licensee whose license is suspended or revoked as a result of either a disciplinary order or a failure to pay licensing fees shall immediately return to the Board the previously issued official pressure seal.

(d) If the person whose license qualified a business entity to engage in electrical contracting is rendered incapable of fulfilling his or her professional duties due to death, illness or other condition, the licensee or such other individual who may lawfully act for the business entity may delay returning the official pressure seal for at least six months provided that:

1. The Board is immediately notified in writing of the name of a new electrical contractor licensed by the Board, or of such other person as the Board deems acceptable, who shall qualify the business entity during the interim period provided by this subsection; and

2. The business entity complies with all the provisions of the Electrical Contractors Licensing Act of 1962 and all regulations adopted thereafter.

(e) During this interim period, the business entity may complete work in progress and may contract for new work provided that all such electrical work is performed or supervised by a licensed electrical contractor.

(f) The Board may, for good cause shown, extend by six months the interim period during which electrical contracting may be performed provided that the conditions set forth in (d) above are satisfied.

(g) By the end of either the initial six-month period or the additional six-month extension period, the pressure seal issued by the Board to the individual licensee cited in (d) above shall be returned to the Board consistent with N.J.S.A. 45:5A-14.

(c)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Advertising—Testimonials

Adopted Amendments: N.J.A.C. 13:35-6.10

Proposed: March 7, 1994 at 26 N.J.R. 1219(b).
Adopted: May 11, 1994 by the Board of Medical Examiners, Fred Jacobs, M.D., President.
Filed: June 6, 1994 as R.1994 d.329, **without change.**

Authority: N.J.S.A. 45:9-2.

Effective Date: July 5, 1994.
Expiration Date: September 21, 1994.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:35-6.10 Advertising and solicitation practices

(a)-(m) (No change.)

(n) The requirements for testimonial advertisements are as follows:

1. All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the patient and shall include the following conspicuously displayed statements:

i. "This procedure may not be suitable for every patient. All patients must be evaluated by a physician as to the appropriateness of performing the procedure."

ii. "The above testimonial represents the individual's response and reaction to the procedure; however, no medical procedure is risk-free. Associated potential risks and complications should be discussed with the physician rendering this procedure."

2. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."

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

(o) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Depiction of Existing Conditions on a Site Plan

Adopted Amendment: N.J.A.C. 13:40-7.2

Proposed: March 7, 1994 at 26 N.J.R. 1221(a).
Adopted: April 7, 1994 by the Board of Professional Engineers and Land Surveyors, Lewis Conley, President.
Filed: May 31, 1994 as R.1994 d.322, **without change.**

Authority: N.J.S.A. 45:8-27 et seq.

Effective Date: July 5, 1994.
Expiration Date: August 3, 1995.

Summary of Public Comments and Agency Responses:

Ten letters expressing support for the proposed amendments were addressed to this Board. One of these 10 commenters asked whether the rules pertain to New Jersey licensees and suggested amendments requiring the survey to be the product of a New Jersey licensee. In response, the Board states that it has authority only over New Jersey licensees and therefore this rule, as all other Board rules, pertains only to New Jersey licensees. The Board has no authority to require that the reviewing governmental body accept surveys only from New Jersey licensees.

Full text of the adoption follows:

13:40-7.2 Depiction of existing conditions on a site plan

(a) Survey: Showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. A signed and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission.

(b) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF WEIGHTS AND MEASURES

General Commodities; Weights and Measures

Readoption with Amendments: N.J.A.C. 13:47C

Proposed: May 2, 1994 at 26 N.J.R. 1761(a).
Adopted: June 6, 1994 by William Wolfe, Superintendent, Office of Weights and Measures.
Filed: June 6, 1994 as R.1994 d.330, **without change.**

Authority: N.J.S.A. 51:1-61.

Effective Date: June 6, 1994, Readoption;
July 5, 1994, Amendments.
Expiration Date: June 6, 1999.

Summary of Public Comments and Agency Responses:
No public comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:47C.

Full text of the adopted amendments follows:

13:47C-2.5 Ready-to-eat food

(a) All articles of food shall be offered for sale or sold by net weight, measure or count, except as provided in (a)1 through 4 below:

1. Items sold for, or intended to be sold for, consumption on the premises of the seller;
2. Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit, for consumption elsewhere than on the premises where sold;
3. Ready-to-eat chicken parts cooked on the premises but not packaged in advance of the sale; and
4. Sandwiches when offered or exposed for sale on the premises where packed or produced and not intended for sale.

13:47C-2.7 Primal cuts of meats

(a) The sale of gross cuts or gross weight portions of meat such as hind quarters beef, half round, ground beef, sirloin beef, whole beef, beef lamb, fore quarter veal and hind quarter veal sold on a gross weight basis to freezer plans in home freezer units will be construed as meeting the requirements of this chapter, and the provisions of N.J.A.C. 13:47K-4 (Marking Requirements) implementing N.J.S.A. 51:1-29 will not apply except as specified.

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

(e) Substitutions or specific cuts not a part of the gross or wholesale cut shall be construed to be pre-packed food and must comply with N.J.A.C. 13:47K-4 (Marking Requirements).

(f) (No change.)

13:47C-3.3 Wiping materials

All wiping materials shall be sold by net weight, and when put up in bales, cartons or other containers, the net quantity of the contents in terms of avoirdupois net weight shall be plainly and conspicuously marked on the outside of the package together with the name and address of the packer or distributor.

13:47C-3.4 Advertising of building materials and paneling

(a) (No change.)

(b) No dealer, equipped or unequipped, shall offer, expose for sale or both offer and expose for sale, by the use of any advertising media or means, any building materials to consumers in the State of New Jersey unless the size, grade and species of each such untreated building material and the size, grade, species, the preservative used in treatment, the amount of preservative retention expressed as pound per cubic foot and maximum or worst exposure conditions to which the treated wood should be subjected is clearly contained in said advertising. All prefix and/or suffix adjectives about the grade and species of the building materials shall be limited to a statement of both the grade and species in accordance with the applicable commercial standards of the United States Department of Commerce, the grading rules of approved grading rules writing agency or other industry standards as are accepted by the Superintendent.

(c) (No change.)

13:47C-3.6 Standard for treated lumber

(a) All preservatives commodities, analysis methods, miscellaneous standards, conversion factors and correction tables for treated lumber so contained in the "Book of Standards" published by the American Wood Preservers Association (AWPA), P.O. Box 286, Woodstock, Maryland 21163, together with all amendments and supplements thereto, are hereby adopted by reference as the legal requirements for treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey.

(b) Treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey, except for lumber which has been treated for "Above ground use only" or which has not been treated in compliance with the "Book of Standards," published by the American Wood Preservers Association, together with all amendments and supplements thereto, or equivalent standards, as are accepted by the State Superintendent of Weights and Measures, shall in addition to being graded, measured and labeled in accordance with the requirements of N.J.S.A. 51:4-27 bear legible treatment marks that contain the following minimum information:

1. The year of treatment;
2. The treater's trademark, if any;
3. The preservative used in treatment;
4. The applicable AWPA or equivalent standard;
5. The maximum or worst exposure conditions to which the treated wood should be subjected;
6. Treating company name and plant location; and

7. The amount of retention of preservative in the treated lumber expressed as pound(s) per cubic foot.

(c) Hardwoods listed in the National Hardwood Lumber Association Rule Book which are treated in accordance with the provisions of (a) above need only carry treatment marks containing the information prescribed by (b) above.

(d) Any treated lumber product which has been treated for "Above Ground use only" or which has not been treated in compliance with the "Book of Standards," published by the American Wood Preservers Association, together with all amendments and supplements thereto, or equivalent standards, as are accepted by the State Superintendent of Weights and Measures, which is sold and delivered, offered or advertised for sale to consumers by use of any media exclusively for landscaping or gardening purposes [that for any reasons are not treated in complete accordance with the applicable AWPA standards for that treated lumber product] need not be grademarked but must be labeled with the following minimum information:

1. The year of treatment;
2. The treater's trademark, if any;
3. The preservative used in treatment;
4. The words "Non AWPA standard";
5. The words "Above ground use only"; and
6. The name and address of the treating company or plant.

(e) The exemption listed above in (c) and (d) above from the grademarking requirements pertain only to those treated lumber products specifically enumerated within the subsections. All other treated lumber products, and building materials as defined in N.J.S.A. 51:4-23, must fully comply with all provisions of law.

(f) (No change in text.)

SUBCHAPTER 4. (RESERVED)

TRANSPORTATION

(a)

COMMISSIONER

Administration, Organization and Management Readoption with Amendments: N.J.A.C. 16:1A

Adopted: June 13, 1994 by W. Dennis Keck, Acting Assistant Commissioner, Policy and Planning.
Filed: June 13, 1994 as R.1994 d.348.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-4(b) (exempt organizational rule).
Effective Date: June 13, 1994.
Expiration Date: June 13, 1999.

In accordance with N.J.S.A. 52:14B-4(b), these amendments to the organizational rules at N.J.A.C. 16:1A may be adopted without prior notice or hearing and are effective upon filing.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:1A.

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

16:1A-1.2 Organization of Department

(a) The Department of Transportation is organized as indicated in the Organizational Chart (see Appendix A) and the functions and responsibilities of its officers are as follows:

1. The Commissioner of Transportation is the Chief Executive officer of the Department and oversees all functions of the Department of Transportation.

2. The Deputy Commissioner reports to the Commissioner. The Deputy Commissioner oversees the general operations of the Department, as directed by the Commissioner. [The Deputy Commissioner is also designated as the "State Transportation Engineer."]

3. The Assistant Commissioner for Policy and Planning reports to the Commissioner with principal responsibilities in the following areas:

i. Transportation Assistance;
ii. [Research and Demonstration;] **Transportation Research and Data Technology;**
iii. [Transportation Policy;] **Policy and Capital Programming;**
iv. **Transportation** Systems Planning; [and]
v. Project Planning and Development; **and**
vi. Capital Management.

4. The Assistant Commissioner for Design and Right of Way reports to the Commissioner, **is designated the "State Transportation Engineer"**, with principal responsibilities in the following areas:

i. Regional Design;
ii. Bridge Design;
iii. Roadway Design;
iv. Traffic Engineering and Local Aid; **and**
v. Right of Way[; and]**.**
[vi. Engineering Support Services.]

[5. The Assistant Commissioner for Construction and Maintenance reports to the Commissioner with principal responsibilities in the following areas:

i. Operations Engineering;
ii. Construction and Maintenance Engineering Support;
iii. Construction and Maintenance Engineering, Region 1;
iv. Construction and Maintenance Engineering, Region 2;
v. Construction and Maintenance Engineering, Region 3;
vi. Construction and Maintenance Engineering Region 4.]

5. The "State Transportation Engineer" may designate such "Deputy State Transportation Engineers" as necessary.

6. There are five Executive Directors for Regional Operations. Each Regional Executive Director has a principal responsibility in the following areas:

i. Region I—Construction Operations, Maintenance Operations, Materials Operations, Electrical Operations, and Traffic Operations North;
ii. Region II—Construction Operations, Maintenance Operations, Materials Operations, and Electrical Operations;
iii. Region III—Construction Operations, Maintenance Operations, Materials Operations, and Electrical Operations;
iv. Region IV—Construction Operations, Maintenance Operations, Materials Operations, Electrical Operations, and Traffic Operations South; and
v. Region V—Outdoor Advertising Services, Construction, Materials, Equipment, Maintenance Engineering, and Project Support.

[6.]**7.** The Assistant Commissioner for Finance and Administration reports to the Commissioner with principal responsibilities in the following areas:

i. [Safety] **Accounting and Auditing;**
ii. [Facilities Planning] **Budget and Management Support**;
iii. [Affirmative Action and Hearings] **Support Services**;
iv. [Civil Rights] **Human Resources**;
v. [Accounting and Auditing] **Procurement**;
vi. [Budgeting;] **Civil Rights; and**
vii. [Support Services;] **Appeals and Hearings.**
[viii. Management Information Services;
ix. Human Resources; and
x. Procurement.]

[7. The Assistant Commissioner for Interagency Coorindation reports to the Commissioner with principal responsibilities for providing coordination with the following agencies.

i. New Jersey Expressway Authority;
ii. New Jersey Turnpike Authority;
iii. New Jersey Highway Authority;
iv. NJ Transit;
v. Port Authority of New York and New Jersey;
vi. Delaware River and Bay Authority;
vii. Delaware River Port Authority;
viii. Delaware River Joint Toll Bridge Commission;
ix. Burlington County Bridge Commission;

x. Palisades Interstate Park Commission;
xi. City of Salem Port Authority; and
xii. South Jersey Port Corporation.]
8. Other officials within the Department report to the Commissioner. These officials include the:
i. [Chief of Staff] **Director of External Affairs and Intergovernmental Relations;**
ii. [Legislative Liaison] **Director of Communications;**
iii. [Director of Communications;] **Inspector General; and**
iv. [Inspector General; and] **Director of Affirmative Action.**
[v. Director of Programming and Monitoring.]

APPENDIX A
ORGANIZATION CHART
DEPARTMENT OF TRANSPORTATION

OAL NOTE: As part of this readoption, a new Organization Chart, dated November, 1993, is added as Appendix A. The chart cannot be reproduced in the New Jersey Register or the New Jersey Administrative Code. Copies may be obtained from the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 049, Trenton, NJ 08625.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Autobuses

Readoption: N.J.A.C. 16:53

Proposed: April 18, 1994 at 26 N.J.R. 1606(a).
Adopted: May 20, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.
Filed: June 13, 1994 as R.1994 d.346, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-12, 48:4-2.1a and 52:14D-1.
Effective Date: June 13, 1994.
Expiration Date: February 14, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:53.

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL

Common Pension Fund A
Distribution of Realized Appreciation

Adopted Amendment: N.J.A.C. 17:16-62.11

Proposed: May 2, 1994 at 26 N.J.R. 1771(b).
Adopted: June 2, 1994 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: June 3, 1994 as R.1994 d.326, **without change.**
Authority: N.J.S.A. 52:18A-91.
Effective Date: July 5, 1994.
Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:16-62.11 Distribution of realized appreciation
(a) Subsequent to the receipt of audited financial statements for the prior fiscal year, the State Investment Council may consider the realized appreciation in the common fund per unit. The Council may, in its sole discretion, choose any or all of the following options:
1.-3. (No change.)

(c)

STATE INVESTMENT COUNCIL

Common Pension Fund B
Distribution of Realized Appreciation

Adopted Amendment: N.J.A.C. 17:16-63.11

Proposed: May 2, 1994 at 26 N.J.R. 1772(a).
Adopted: June 2, 1994 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: June 3, 1994 as R.1994 d.327, **without change.**
Authority: N.J.S.A. 52:18A-91.
Effective Date: July 5, 1994.
Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:16-63.11 Distribution of realized appreciation
(a) Subsequent to the receipt of audited financial statements for the proper fiscal year, the State Investment Council may consider the realized appreciation in the Common Fund per unit.
(b)-(c) (No change.)

(d)

STATE INVESTMENT COUNCIL

Common Pension Fund D
Distribution of Realized Appreciation

Adopted Amendment: N.J.A.C. 17:16-67.11

Proposed: May 2, 1994 at 26 N.J.R. 1772(b).
Adopted: June 2, 1994 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: June 3, 1994 as R.1994 d.328, **without change.**
Authority: N.J.S.A. 52:18A-91.
Effective Date: July 5, 1994.
Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:16-67.11 Distribution of realized appreciation
(a) Subsequent to the receipt of audited financial statements for the prior fiscal year, the State Investment Council may consider the realized appreciation in the Common Fund per unit. The Council may, in its sole discretion, choose any or all of the following options:
1.-3. (No change.)

OTHER AGENCIES

(e)

CASINO CONTROL COMMISSION

Hearings; Renewal of Casino License
Casino Licensees; Application Requirements; Renewal of Casino License

Adopted New Rules: N.J.A.C. 19:43-5 and 11.
Adopted Repeal: N.J.A.C. 19:42-3.6.

Proposed: April 18, 1994 at 26 N.J.R. 1615(a).
Adopted: June 8, 1994 by the Casino Control Commission, Joseph A. Papp, Executive Secretary.
Filed: June 13, 1994 as R.1994 d.341, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70b, 70h, 70l, 80, 81, 82, 83, 84, 85, 86, 87, 88 and 98.

Effective Date: July 5, 1994.

Expiration Date: December 21, 1997, N.J.A.C. 19:43.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division).

COMMENT: The Division noted that N.J.A.C. 19:43-11.3 should cross-reference N.J.A.C. 19:43-5.4 rather than N.J.A.C. 19:43-5.5.

RESPONSE: The citation has been corrected upon adoption.

COMMENT: The Division pointed out a typographical error in the Regulatory Flexibility Analysis that should have read "entity" qualifiers.

RESPONSE: Accepted.

COMMENT: Proposed N.J.A.C. 19:43-5.4 requires that a certification in support of a petition for waiver include a statement that the holding company will immediately notify the Commission and the Division as soon as it becomes aware that any person has beneficially acquired five percent or more of its equity securities or has acquired the ability to control it or elect one or more of its directors. The Division suggested that N.J.A.C. 19:43-5.4 should likewise require a statement that if the holding company is served with a Schedule 13D or 13G filing pursuant to the Securities Exchange Act of 1934 or any filing pursuant to Section 13f of the Securities Exchange Act of 1934, a copy thereof will be forwarded immediately to the Commission and the Division.

RESPONSE: The Commission agrees that both of these requirements should be referred to in the certification. Since both types of notice are already otherwise required by Commission rules, N.J.A.C. 19:43-2.5(a) and (b), the Commission has determined to simply cross-reference the applicable requirements. Since both requirements are already otherwise required, the inclusion of the additional reference in the certification does not result in any increased burden on the applicant, and need not be reproposed.

COMMENT: The Division suggested that N.J.A.C. 19:43-11.2(a) (Contents of a renewal application) should reference the information not only in N.J.A.C. 19:43-5.3(a)4 (information to demonstrate the financial stability, integrity and responsibility of the applicant, the integrity of its financial sources and adequacy of its financial resources, and sufficient business ability and likelihood of successful casino operations) but also in N.J.A.C. 19:43-5.3(a)3 (information required to establish the qualifications of financial sources).

RESPONSE: The Commission agrees, and has corrected the reference upon adoption. This modification does not require additional public notice and comment. As proposed, N.J.A.C. 19:43-11.2(a) already requires that a renewal application include the information in N.J.A.C. 19:43-5.3(a)4—among other things, such information as may be requested to demonstrate the integrity of the applicant's financial sources pursuant to N.J.S.A. 5:12-84b. Moreover, the information required by N.J.A.C. 19:43-5.3(a)3 is required by section 84b of the Act, which applies to all applicants for both initial and renewal casino licensure.

COMMENT: The Division commented that N.J.A.C. 19:43-5.6 and 11.4 (Prehearing conference; hearing) should reflect sections 87 and 88 of the Act, by adding two additional express provisions: first, the Commission shall request a Division investigation of the application; and second, that the Commission shall conduct a hearing regarding the application.

RESPONSE: The Commission does not agree that any useful purpose would be served by reiterating these statutory provisions. The purpose of proposed N.J.A.C. 19:43-5.6 and 11.4 is simply to reference the procedural rules in the Uniform Administrative Procedure Rules and the Commission's hearing rules at N.J.A.C. 19:42.

COMMENT: The Division suggests that N.J.A.C. 19:43-5.3(a)4 should also set forth the need for the applicant and its holding companies to submit information and documentation regarding the good character, honesty and integrity requirements of N.J.S.A. 5:12-84c.

RESPONSE: The Commission does not agree that such additional provision needs to be added to the proposed rules. The scope of N.J.A.C. 19:43-5.3 is limited to setting forth the contents of an application—that is, the types of information that must be submitted. The rule is not intended to provide a listing of the standards for licensure or qualification. The proposed rules require that the casino licensee and its holding and intermediary companies submit Business Entity Disclosure Forms as part of the application process. Such submissions would provide the types of information that would go to the licensure and qualification standards in subsection 84c as cited by the Division. As well, the proposal includes a provision at N.J.A.C. 19:43-5.3(a)8 which would require the submission of such other information as the Commission or the Division may deem material to the qualification of the applicant or of any person required to be licensed or qualified pursuant to the Act or Commission regulations.

COMMENT: N.J.A.C. 19:43-5.3(a)4 requires information and documentation to demonstrate the financial stability, integrity and responsibility and business ability of the casino license applicant. The Division commented that this provision should refer to the applicant's holding and intermediary companies as well.

RESPONSE: The Commission agrees. The Casino Control Act at N.J.S.A. 5:12-85d(1) requires that each holding and intermediary company comply with the qualification requirements of that section as if it were itself applying for a casino license. Upon adoption, the Commission has modified N.J.A.C. 19:43-5.3(a)4 to refer to the applicant's holding and intermediary companies as well as the applicant. This modification would not merit additional public notice and comment. As noted, holding and intermediary companies have always been required by statute to establish their qualifications. The proposal rules require the submission of any information or documentation which the Commission or the Division may deem material to the qualification of the applicant, or of any person required to be licensed or qualified, pursuant to the Act and the rules of the Commission. N.J.A.C. 19:43-5.3(a)8.

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

19:42-3.6 (Reserved)

SUBCHAPTER 5. APPLICATION REQUIREMENTS

19:43-5.1 General information requirements

No casino license shall be issued or renewed by the Commission unless the applicant, and each person required to be qualified as part of the application, provides all information, documentation and assurances required by N.J.S.A. 5:12-80, 82, 83, 84, 85, 86 and 87 or as otherwise may be required to establish its qualification pursuant to the Act and the rules of the Commission.

19:43-5.2 Duration of license; conditions

(a) In accordance with N.J.S.A. 5:12-87e and 88, a casino license shall be issued by the Commission for an initial period of one year, and shall be renewable thereafter for a period of up to one year for each of the first two renewal terms, and up to two years for successive renewal terms thereafter.

(b) A casino license may be issued or renewed subject to such conditions, restrictions, limitations or covenants as the Commission, in its discretion, deems necessary.

19:43-5.3 Contents of application for initial casino license

(a) An application for the initial issuance of a casino license shall include, without limitation, the following information, which shall be completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the application materials:

1. A Business Entity Disclosure Form-Corporate (BED-Corporate) as set forth in N.J.A.C. 19:41-5.6 or Business Entity Disclosure Form-Partnership (BED-Partnership) as set forth in N.J.A.C. 19:41-5.6A for each of the following:

i. The casino license applicant;

ii. Each holding company or intermediary company of the applicant required to be qualified pursuant to N.J.S.A. 5:12-85b, d or e; and

iii. Each entity required to be qualified pursuant to N.J.S.A. 5:12-85c;

2. The appropriate Personal History Disclosure Form (PHDF) for the following:

i. For each natural person required to be qualified pursuant to N.J.S.A. 5:12-85c or e by virtue of his or her relationship to the applicant, the PHDF required by N.J.A.C. 19:43-2.6; and

ii. For each natural person required to be qualified pursuant to N.J.S.A. 5:12-85c and d by virtue of his or her relationship to a holding company or intermediary company of the applicant, the PHDF required by N.J.A.C. 19:43-2.7;

3. Such information and documentation as may be required by the Commission or the Division to establish the qualification of any person required to be qualified as a financial source pursuant to N.J.S.A. 5:12-84b;

4. Such information and documentation as may be requested by the Commission or the Division to demonstrate the financial stability, integrity and responsibility of the casino license applicant ***and each holding company or intermediary company of the applicant required to be qualified*** pursuant to N.J.S.A. 5:12-84a ***and 85*** and N.J.A.C. 19:43-4, the integrity of its financial sources and adequacy of its financial resources pursuant to N.J.S.A. 5:12-84b, and sufficient business ability and the likelihood of successful and efficient casino operations pursuant to N.J.S.A. 5:12-84d;

5. Such information and documentation as may be required by the Commission or the Division to establish compliance with N.J.S.A. 5:12-83, 84e and all other relevant facilities requirements of the Act and the rules of the Commission including, without limitation, the following:

i. A description of the proposed casino hotel site, including site plans, total acreage, total square footage, frontages and elevation;

ii. A description of the proposed casino hotel, including floor plans; and the total number of qualifying and non-qualifying sleeping units pursuant to N.J.S.A. 5:12-27 and 83, the number of sleeping units on each floor, the square footage of each unit and the average size of all units;

iii. A description of the casino room and casino simulcasting facility, including floor plans;

iv. A description of each proposed casino hotel alcoholic beverage location, including type, location and square footage;

v. The construction program, including estimated construction time and anticipated date of opening; the status of all required governmental and regulatory approvals and any conditions thereto; the project budget; and the architect, general contractor, construction manager and primary subcontractors, environmental consultant and interior designer; and

vi. An impact statement and related material which establishes to the satisfaction of the Commission the suitability of the casino and related facilities in accordance with the standards set forth in N.J.S.A. 5:12-84e;

6. The information required in N.J.A.C. 19:53-2.4, 2.5, 2.6, 4.6 and 6.7 and such other information, documentation and assurances as may be requested by the Commission or the Division to ensure compliance with the equal employment and business opportunity and affirmative action requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53;

7. The initial license fee required by N.J.A.C. 19:41-9.4; and

8. Any other information or documentation which the Commission or the Division may deem material to the qualification of the applicant, or of any person required to be licensed or qualified, pursuant to the Act and the rules of the Commission.

(b) The applicant shall file an original and three copies of each Personal History Disclosure Form required by (a) above, and an original and four copies of all other information required by (a) above, with the Commission in accordance with N.J.A.C. 19:40-3.5(b).

19:43-5.4 Petitions for waiver

(a) Upon the petition of a casino license applicant, the Commission, with the concurrence of the Director, may waive compliance with the qualification requirements of N.J.S.A. 5:12-85d for an officer, director, lender, underwriter, agent, employee or security holder of a publicly traded holding or intermediary company of a casino licensee pursuant to N.J.S.A. 5:12-85d(1), or for an institutional investor thereof pursuant to N.J.S.A. 5:12-85f. Such petition shall be in writing and shall include the following:

1. A description of all outstanding securities of the applicant and its holding companies and intermediary companies and a list of all holders thereof; and

2. A certification in support of the petition, including the following:

i. Compliance with the criteria for such waivers as set forth in N.J.S.A. 5:12-85d(1) or f; and

ii. A statement *[that the holding company will immediately notify the Commission and the Division as soon as it becomes aware that any person has beneficially acquired five percent or more of its equity securities or has acquired the ability to control it or elect one or more of its directors]* ***of compliance with the notice requirements set forth in N.J.A.C. 19:43-2.5(a) and (b)***.

19:43-5.5 Statements of compliance; commitment to reserve a casino license

(a) A casino license applicant may, pursuant to N.J.S.A. 5:12-81, file a petition in accordance with N.J.A.C. 19:41-6 requesting that the Commission issue a statement of compliance that the applicant has established compliance with one or more of the eligibility criteria required by the Act or the rules of the Commission for a casino license.

(b) A statement of compliance certifying satisfaction of the requirements of N.J.S.A. 5:12-84e may be accompanied by a written commitment by the Commission to reserve a casino license in accordance with N.J.S.A. 5:12-81c and N.J.A.C. 19:41-6.4.

19:43-5.6 Prehearing conference; hearing

(a) All hearings and prehearing conferences regarding an application for a casino license shall be conducted in accordance with N.J.A.C. 19:42 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A party other than the applicant may on motion seek leave to intervene or to participate in a hearing regarding an application for a casino license in accordance with the standards and procedures set forth in N.J.A.C. 1:1-16.

SUBCHAPTER 11. RENEWAL OF CASINO LICENSE

19:43-11.1 Renewal; time for filing

(a) The Commission may, upon the written petition of the casino licensee, renew a casino license in accordance with N.J.S.A. 5:12-88 provided that:

1. The casino licensee files a completed application for renewal of a casino license with the Commission no later than 90 days prior to the expiration of the current license; and

2. All license fees and taxes as required by law and the rules of the Commission are paid by the casino licensee on or before the date of expiration of the current license.

19:43-11.2 Contents of renewal application

(a) An application for the renewal of a casino license shall include, without limitation, the following, which shall be completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the application materials:

1. The Business Entity Disclosure (BED) Forms required by N.J.A.C. 19:43-5.2(a)1;

2. The Personal History Disclosure Forms required by N.J.A.C. 19:43-5.2(a)2, in accordance with the qualifier renewal procedures set forth in N.J.A.C. 19:43-2.7A;

3. Copies of all New Jersey Consolidated Corporation Business Tax Returns, in accordance with N.J.S.A 5:12-148b;

4. The information required in N.J.A.C. 19:43-5.3*[(a)4]****(a)3 and 4***;

5. Such information as may be requested by the Commission or the Division to demonstrate the applicant's good faith efforts to comply with the equal employment and business opportunity and affirmative action requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 and any relevant conditions to the current casino license;

6. Such information as may be requested by the Commission or the Division to demonstrate compliance with all conditions, restrictions, limitations and convenants in the current casino license and certificate of operation;

7. The license renewal fee specified in N.J.A.C. 19:41-9.4; and

8. Any other information or documentation which the Commission or the Division may deem material to the qualification of the applicant, or of any person required to be licensed or qualified, pursuant to the Act and the rules of the Commission.

(b) The applicant shall file an original and three copies of each Personal History Disclosure Form required by (a) above, and an original and four copies of all other information required by (a) above, with the Commission in accordance with N.J.A.C. 19:40-3.5(b).

19:43-11.3 Petitions for waiver

Upon the petition of the casino license applicant in accordance with N.J.A.C. 19:43-*[5.5]**5.4*, the Commission, with the concurrence of the Director, may waive compliance with the qualification requirements of N.J.S.A. 5:12-85d for an officer, director, lender, underwriter, agent, employee or security holder of a publicly traded holding or intermediary company of a casino licensee pursuant to N.J.S.A. 5:12-85d(1), or for an institutional investor thereof pursuant to N.J.S.A. 5:12-85f.

19:43-11.4 Prehearing conference; hearing

(a) All hearings and prehearing conferences concerning an application for renewal of a casino license shall be conducted in accordance with N.J.A.C. 19:42 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A party other than the applicant may on motion seek leave to intervene or to participate in a hearing regarding an application for a casino license in accordance with the standards and procedures set forth in N.J.A.C. 1:1-16.

(a)

CASINO CONTROL COMMISSION

Casino Licensees

Casino Hotel Facility Requirements

Adopted New Rules: N.J.A.C. 19:43-6.1 and 6.4

Adopted Amendments: N.J.A.C. 19:43-6.2 and 6.3

Adopted Repeals: N.J.A.C. 19:43-6.1, 6.4 through 6.9

Proposed: March 7, 1994 at 26 N.J.R. 1206(a).

Adopted: June 8, 1994 by the Casino Control Commission, Joseph A. Papp, Executive Secretary.

Filed: June 13, 1994 as R.1994 d.342, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-1(b)(11), 27, 63c, 69a, 83, 84e, 98, 100 and 136.

Effective Date: July 5, 1994.

Expiration Date: December 21, 1997.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

Subsequent to the publication of this proposal, the Casino Control Commission approved the adoption of a separate proposal which among other things amends N.J.A.C. 19:43-6.2 (see the New Jersey Register, June 6, 1994 at 26 N.J.R. 2463(a)). Four new casino hotel facilities requirements were added at N.J.A.C. 19:43-6.2(a)12 through 15. In addition, new standards were added at N.J.A.C. 19:43-6.2(a)8 regarding slot machine repair rooms. In order to reflect these intervening amendments, several modifications are made to the adoption herein. The recently adopted paragraphs N.J.A.C. 19:43-6.2(a)12 through 15 are recodified as paragraphs N.J.A.C. 19:43-6.2(a)3 through 6. In addition, minor textual changes, with no substantive impact, are made in these paragraphs to conform to changes made by this adoption to the introductory language of N.J.A.C. 19:43-6.2(a).

In addition, the text of N.J.A.C. 19:43-6.4(d) is modified upon adoption. Pursuant to section 83 of the Casino Control Act, for the purposes of increasing casino space, an agreement approved by the Commission for the addition of qualifying sleeping units within two years after the commencement of gaming in the additional space shall be deemed an addition of those rooms. However, if the agreement is not fulfilled due to conditions within the control of the casino licensee, the casino licensee must close the additional casino space or any portion thereof as directed by the Commission. N.J.S.A. 5:12-83b. Proposed N.J.A.C. 19:43-6.4(d) makes permission to conduct gaming contingent upon the listed conditions, but fails to differentiate between preconditions of initial approval and conditions of continued gaming. Commission approval of the layout, design and content of the additional casino space is prerequisite to the commencement of gaming in that space, as is the requirement that the casino licensee obtain other governmental approvals regarding the casino space, including a certificate of occupancy. Upon adoption, N.J.A.C. 19:43-6.4 is modified so as to avoid any implication that the other listed requirements (for example, monthly reports) are preconditions for the commencement of gaming rather than conditions of continued gaming in the additional space. The latter is codified in a new subsection N.J.A.C. 19:43-6.4(e).

Finally, printing errors throughout proposed N.J.A.C. 19:43-6.4 are corrected to refer to a "QSU" (Qualifying Sleeping Unit).

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

SUBCHAPTER 6. CASINO HOTEL FACILITY REQUIREMENTS

19:43-6.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"Qualifying sleeping unit" ("QSU") means a hotel room which satisfies the standards set forth in section 27 and subsection 83b of the Act.

19:43-6.2 The casino hotel

(a) No casino license shall be issued or renewed unless the casino and, if applicable, the simulcasting facility, are located within an approved hotel as defined in sections 27 and 83 of the Act, and unless the proposed facilities conform to the facilities requirements in sections 1, 6, 27, 83, 84e, 98, 100, 103 and 136 of the Act and the rules of the Commission, including, without limitation, the following:

1. The casino hotel shall contain a closed circuit television (CCTV) system approved by the Commission; *[and]*

2. Secure areas shall be designated for the inspection, repair and storage of gaming equipment which, in the case of each slot machine repair room, shall include, at a minimum:

i. CCTV coverage of the room; and

ii. An alarm device, approved by the Commission, that is connected to each door to the room and that audibly signals, at a minimum, the security podium whenever a door to the room is opened;

*[12.]***3.* *[Has each]* ***Each*** emergency exit from the casino floor or, if applicable, from the casino simulcasting facility, ***shall be*** equipped with:

i. An audible alarm system, approved by the Commission, that produces a loud warning sound, discernible in the vicinity of the exit, whenever the emergency door is opened and that can only be deactivated and reset by a key maintained and controlled by the casino security department; and

ii. An electrical system, approved by the Commission, which audibly and visually notifies the Division at its offices in the approved hotel whenever each emergency door is opened;

*[13.]***4.* *[Contains]* ***The casino licensee shall maintain*** adequate enclosed facilities *[which the licensee shall maintain]* for the detention of individuals taken into custody by its security department, the Division or any authorized law enforcement agency, which facilities shall include, at a minimum, the following:

i. Separate detention areas for male and female detainees;

ii. A metal door with a one-way mirror;

iii. A bench or other sitting apparatus which is permanently affixed to the enclosed facility and to which the person in custody can be handcuffed with as little discomfort to that person as is reasonably possible under the circumstances;

iv. Adequate lighting and a fire extinguisher, each of which is inaccessible to the person in custody; and

v. A secured toilet facility that provides reasonable privacy and safety;

*[14.]**5.* *[Contains]* ***The casino licensee shall adequately maintain*** suitable space, equipment, partitions and supplies *[adequately maintained by the casino licensee]* to meet the Commission's continuing needs at the facility, including, at a minimum, the following:

i. A booth and interview room adjacent to the casino floor for the Commission's inspectors to perform their responsibilities effectively, which shall include monitors in the inspection booth that are capable of receiving the signal generated by each camera approved for use as part of the casino licensee's CCTV system;

ii. Adequate parking spaces in the approved hotel, or in lots or a parking garage ancillary thereto, which are clearly marked for Commission use only;

iii. Adequate computer equipment, both at the inspection booth and in the office of the Commission's principal inspector, to meet the Commission's continuing data-processing and related needs; and

iv. Such other facilities and office space elsewhere in the approved hotel as the Commission shall direct during the course of performing audit, compliance or other reviews at the approved hotel; and

*[15.]**6.* *[Contains]* ***The casino licensee shall adequately maintain*** suitable space, equipment, partitions and supplies*[, adequately maintained by the casino licensee]* to meet the Division's continuing needs at the approved hotel in order for the Division to perform its duties and responsibilities effectively, including, at a minimum, the following:

i. A direct telephone line between the Division's office in the approved hotel and the monitoring rooms required by N.J.A.C. 19:45-1.10 and the casino licensee's security podium;

ii. Adequate parking spaces in the approved hotel, or in lots or a parking garage ancillary thereto, which are clearly marked for Division use only; and

iii. Such other facilities and office space elsewhere in the approved hotel as the Division shall require during the course of performing audit, compliance or other reviews at the approved hotel.

19:43-6.3 Declaratory rulings as to proposed casino hotel facilities

Upon the petition of any person who owns, has a contract to purchase or construct, leases or has an agreement to lease any building or site located within the limits of Atlantic City and who intends to and is able to complete a proposed casino hotel facility therein or thereon, the Commission may in its discretion issue a declaratory ruling as to whether the conformance of the proposed casino hotel facility to any of the facilities requirements of the Act and the rules of the Commission has been established by clear and convincing evidence.

19:43-6.4 Casino facilities

(a) Each approved hotel shall contain a casino of not more than the amount of casino space permitted by subsection 83b of the Act.

(b) In accordance with subsection 83b of the Act, a casino licensee shall file a written petition with the Commission requesting permission for any increase in the amount of casino space in its approved hotel. Such petition shall include, without limitation, the following:

1. The current total square footage of its casino space;

2. The proposed increase in total square footage of its casino space;

3. The current total number of *[OSU's]* ***QSU's*** in the approved hotel;

4. A description of any proposed hotel addition, including, without limitation, the following:

i. The number of additional *[OSU's]* ***QSU's*** proposed;

ii. Identification of the site, including block and lot number as depicted on the Tax Map of the City of Atlantic City; and

iii. Evidence which establishes that the proposed hotel addition meets the standards for *[OSU's]* ***QSU's*** and for an approved hotel set forth in section 27 of the Act;

5. The construction schedule for the proposed casino expansion and proposed hotel addition, including:

i. The anticipated date for commencement of construction;

ii. The anticipated date for completion of construction; and

iii. The anticipated date on which the additional *[OSU's]* ***QSU's*** will be available for the regular lodging of guests;

6. The requested date for the commencement of gaming operations in the additional casino space;

7. Any approvals required from governmental and regulatory authorities which have been obtained to date; and

8. The estimated budget for the proposed hotel addition and the proposed casino expansion, including construction, furniture, fixtures and equipment, and the anticipated means of funding such costs.

(c) The Commission may approve a request for casino expansion pursuant to (b) above upon a finding that:

1. The proposed hotel addition meets the standards for *[OSU's]* ***QSU*s*** and for an approved hotel in section 27 of the Act;

2. The total number of *[OSU's]* ***QSU's*** and proposed *[OSU's]* ***QSU's*** permit the requested increase in casino space in accordance with the formula set forth in subsection 83b of the Act;

3. The proposed *[OSU's]* ***QSU's*** can be constructed on the schedule represented by the casino licensee in its petition, including a construction completion date no later than two years from the date of commencement of gaming operations in the additional casino space pursuant to (d) below;

4. Construction of the proposed hotel addition and the proposed casino expansion, for the cost and on the schedule represented by the casino licensee in its petition, will not deprive the casino licensee of its financial stability in accordance with N.J.S.A. 5:12-84a and N.J.A.C. 19:43-4; and

5. The casino licensee has demonstrated that it has site control over the location of the proposed hotel addition, by obtaining Commission approval of an executed and binding contract for any necessary purchase or lease of real property required for construction or such other agreement as approved by the Commission.

(d) The Commission may permit a casino licensee to *[conduct]* ***commence*** gaming in the additional casino space approved pursuant to (c) above, provided that:

1. The specific layout, design and contents of the additional casino space:

i. Comply with the requirements set forth in N.J.A.C. 19:46-1.27; and

ii. Are approved by the Commission for gaming operations; ***and***

2. All other governmental approvals regarding the casino space, including a certificate of occupancy, are obtained.

(e) Notwithstanding the provisions of (d) above, the Commission may at any time require a casino licensee to immediately cease gaming operations in the additional casino space if any of the following conditions have not been satisfied:*

*[2.]**1.* The casino licensee ***shall*** obtain*[s]* all necessary building permits and construction code plan releases *[and commences]***;***

2. The casino licensee shall commence construction of the proposed hotel addition by a date specified by the Commission;

[3. The casino licensee obtains all required governmental and regulatory approvals by a date specified by the Commission;]

*[4.]**3.* The casino licensee *[submits]* ***shall submit the following*** to the Commission and the Division, on a monthly basis [, a]***:***

i. A report of its compliance with the construction schedule and budget submitted pursuant to (b)5 and (b)8 above; ***and***

*[5.]***ii.*** *[The casino licensee submits to the Commission and the Division, on a monthly basis, a]* ***A*** report of the status of each application for *[approval pursuant to (d)3 above]* ***governmental or regulatory approval***, until such time as all ***required*** approvals are obtained;

*[6.]**4.* On or before two years from the date of commencement of gaming operations:

i. Construction of the hotel addition *[is]* ***shall be*** completed;

ii. All necessary furniture, fixtures and equipment *[is]* ***shall be*** installed; and

iii. The proposed additional *[OSU's]* ***QSU's*** are offered as available for the regular lodging of guests; and

*[7.]**5.* Any other condition which the Commission deems necessary and appropriate has been satisfied.

*[(e)]**(f)* The standards of (c) and (d) above shall not be construed to limit the authority of the Commission to determine the suitability of facilities as provided in the Act.

(a)

CASINO CONTROL COMMISSION

Gaming Schools

Application for Initial License and License Renewal; Establishment of Qualifications

Junkets

Applications for Initial Junket Enterprise License and License Renewal

Persons Doing Business with Casino Licensees

Standards for Qualification

Application for Initial Casino Service Industry License and License Renewal

Adopted New Rules: N.J.A.C. 19:44-2.6 and 2.7, 19:49-2.3 and 2.4

Adopted Amendments: N.J.A.C. 19:44-5.1 and 19:51-1.3 and 1.8

Proposed: April 18, 1994 at 26 N.J.R. 1617(a).
Adopted: June 8, 1994 by the Casino Control Commission, Joseph A. Papp, Executive Secretary.
Filed: June 13, 1994 as R.1994 d.343, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed new rules N.J.A.C. 19:51-1.3A and 1.3B not adopted.**

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 89b, 90b, 91b, 92, 102c.

Effective Date: July 5, 1994.

Expiration Dates: December 15, 1996, N.J.A.C. 19:44; September 18, 1997, N.J.A.C. 19:49; August 15, 1996, N.J.A.C. 19:51.

Agency Note: The Commission decided not to adopt new rules N.J.A.C. 19:51-1.3A and 1.3B. Instead, it voted to repropose them because it determined that significant revisions had to be made to the provisions regarding the initial application and renewal application required to be filed by nongaming-related enterprises required, pursuant to N.J.A.C. 19:51-1.2A(f), to obtain a license prior to conducting business with casino licensees or applicants. The reproposal will be published in the July 18, 1994 issue of the New Jersey Register.

Summary of Agency-Initiated Changes:

Reference to the fee required for initial and renewal license applications was moved into the lead paragraph in N.J.A.C. 19:44-2.6 and 2.7 and N.J.A.C. 19:49-2.3 and 2.4 to improve the logical flow of these regulations. At the same time, incorrect citations to the appropriate fee regulation in N.J.A.C. 19:49-2.3 and 2.4 were corrected. N.J.A.C. 19:49-2.4(a)3 was corrected to indicate that either a Business Entity Disclosure-Corporate (BED-Corporate) or a Business Entity Disclosure-Partnership (BED-Partnership), as appropriate, are required to be submitted by holding companies of a junket enterprise, not just a BED-Corporate, as indicated in the proposal. Minor typographical errors are also corrected in N.J.A.C. 19:44-2.7(a)1i and (a)4 and 5.1(b) and N.J.A.C. 19:49-2.3(a)4 and 2.4(a)1i.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino (the Sands).

COMMENT: The Sands has no objection to the adoption of the amendments to N.J.A.C. 19:44-2.3. However, the Sands objects to the adoption of the regulations regarding the renewal of gaming school licenses and junket enterprise licenses. It is the Sands position that the Commission renewal application process is unnecessarily repetitive and cumbersome and that the whole process should be re-examined and streamlined.

RESPONSE: The Commission believes that the information required for renewal applications is necessary for the Division to complete its investigations of gaming schools and junket enterprises. However, the Commission will continue to review those requirements with the Division to determine whether any of the information currently requested can be reduced or eliminated.

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

19:44-2.6 Application for initial license

(a) An application for initial issuance of a gaming school license pursuant to N.J.S.A. 5:12-92 a and b shall consist of ***the fee specified in N.J.A.C. 19:41-9.8 and*** a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. Both of the following in a format prescribed by the Commission;

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form in (a)1i or ii above for each holding company of the applicant; ***and***

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1*[; and

5. The fee specified in N.J.A.C. 19:41-9.8]*.

19:44-2.7 Renewal application

(a) An application for renewal of a gaming school license shall consist of ***the fee specified in N.J.A.C. 19:41-9.8 and*** a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii, and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein; ***and***

ii. For a partnership or sole propietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form as set forth in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1 who has not previously been found qualified; ***and***

5. An Employee License Renewal Application as set forth in N.J.A.C. 19:41-14.3 for each person required to be qualified pursuant

to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1 who has previously been found qualified*[; and

6. The fee specified in N.J.A.C. 19:41-9.8]*.

19:44-5.1 Establishment of qualifications

(a) (No change.)

(b) No natural person shall be employed as a resident director of a gaming school unless he or she shall first have established his or her qualifications in accordance ***with*** N.J.S.A. 5:12-86, 90 and 92b and the rules of the Commission *[and]* unless he or she holds a valid resident director gaming school license or a casino key employee license with a resident director endorsement.

Recodify existing (b) as (c) (No change in text.)

19:49-2.3 Application for initial junket enterprise license

(a) An application for initial issuance of a junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 shall consist of ***the fee specified in N.J.A.C. 19:41-9.9A and*** a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form as set forth in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1B *[(PHB-1B)]* ***(PHD-1B)*** as set forth in N.J.A.C. 19:41-5.3, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and 102 and N.J.A.C. 19:51-1.14(a)2 or (b); ***and***

5. Notice of a designated agent for service of process*[; and

6. The fee specified in N.J.A.C. 19:41-9.11A]*.

19:49-2.4 Application for renewal of junket enterprise license

(a) An application for renewal of a junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 shall consist of ***the fee specified in N.J.A.C. 19:41-9.9A and*** a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein; ***or***

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6a except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force in New Jersey;

3. *[A BED-Corporate form]* ***The appropriate BED form as set forth*** in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1B (PHD-1B) as set forth in N.J.A.C. 19:41-5.3, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and 102 and N.J.A.C. 19:51-1.14(a)2 or (b) who has not previously been found qualified;

5. An Employee License Renewal Application as set forth in N.J.A.C. 19:41-14.3 for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and 102 and N.J.A.C. 19:51-1.14(a)2 or (b) who has previously been found qualified; ***and***

6. Notice of a designated agent for service of process*[; and

7. The fee specified in N.J.A.C. 19:41-9.8]*.

19:51-1.3 Standards for qualification

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

(e) Any modifications of a casino service industry license application permitted pursuant to this section may be in any form deemed appropriate by the Commission except that every such application shall include the following:

1. The appropriate Personal History Disclosure Forms or Qualifier Disclosure Forms for all those individuals required to so file by the Commission pursuant to N.J.A.C. 19:51-1.14(a)2; and

2.-5. (No change.)

19:51-1.8 Duration of licenses; renewal

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for a term of one year for the initial license term and the first two successive renewals, and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c and 5:12-102 is granted for three years. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license.

(b)-(f) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Slot Drop Boxes

Adopted Amendments: N.J.A.C. 19:45-1.42 and 1.43

Proposed: April 18, 1994 at 26 N.J.R. 1621(a).

Adopted: June 8, 1994 by the Casino Control Commission, Joseph A. Papp, Executive Secretary.

Filed: June 13, 1994 as R.1994 d.344, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(l), 99(a)10-11 and 100(c).

Effective Date: July 5, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Response:

COMMENT: The Division of Gaming Enforcement indicated that it supports adoption of the proposal.

RESPONSE: Accepted.

Full text of the adoption follows (**Agency Note:** The adopted text of N.J.A.C. 19:45-1.42(c)3 below includes amendments adopted effective June 20, 1994 (see 26 N.J.R. 1440(a) and the June 20, 1994 New Jersey Register):

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings

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

(c) Procedures and requirements for removing slot drop buckets, slot drop boxes and slot cash storage boxes from the casino shall be as follows:

1.-2. (No change.)

3. Except for members of the casino accounting department participating in the emergency removal of a slot cash storage box

or slot drop box, casino security department employees and representatives of the Commission and Division, all persons participating in the removal of slot drop buckets, slot drop boxes and slot cash storage boxes shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the hands, feet and neck.

(d)-(q) (No change.)

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets and slot drop boxes

(a) The opening, counting and recording of the contents of slot drop buckets and slot drop boxes (the "hard count") shall be performed in the count room required pursuant to N.J.A.C. 19:45-1.32 by at least three employees of the casino licensee (the "count team"). Except as otherwise provided in (i) below, the hard count shall be performed in the presence of a Commission inspector. To gain entrance to the count room, a Commission inspector shall present an official identification card issued by the Commission which contains his or her photograph.

(b) The contents of slot drop buckets and slot drop boxes shall be counted and recorded immediately after removal from their slot machine compartments. Each casino licensee shall file with the Commission and the Division the specific times during which the contents of slot drop buckets and slot drop boxes shall be counted and recorded.

(c) All members of the count team present in the count room during the counting process shall be required to wear a full-length, one-piece, pocketless outer garment with no openings other than for the hands, feet and neck.

(d)-(h) (No change.)

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. Prior to the first slot drop bucket or slot drop box being emptied and counted, employees of the casino licensee shall:

i.-iii. (No change.)

2.-6. (No change.)

7. As the contents of each slot drop bucket or slot drop box are counted by the counting machine or weighed by the scale, one member of the count team shall record on the Slot Win Sheet or a supporting document, the asset number of the slot machine to which the slot drop bucket or slot drop box contents corresponds, if not preprinted thereon, and the number of coins or slot tokens, or the weight of the coins or slot tokens contained in the slot drop bucket or slot drop box. If the value of the coins or slot tokens is not converted into dollars and cents until after the counting process is completed, the conversion shall be calculated and the dollar value of the drop shall be entered by denomination on the Slot Win Sheet.

8.-13. (No change.)

(j) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Dealing Shoes

Adopted Amendments: N.J.A.C. 19:46-1.19

Proposed: April 18, 1994 at 26 N.J.R. 1622(a).

Adopted: June 8, 1994 by the Casino Control Commission, Joseph A. Papp, Executive Secretary.

Filed: June 13, 1994 as R.1994 d.345, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a) and 99(a).

Effective Date: July 5, 1994.

Expiration Date: April 15, 1998.

Summary of Public Comments and Agency Response:

COMMENT: The Division of Gaming Enforcement and the Sands Hotel and Casino indicated that they did not object to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows:

Agency Note: The adopted text of N.J.A.C. 19:45-1.42(d) below includes amendments adopted effective June 6, 1994 (see 25 N.J.R. 5893(a) and 26 N.J.R. 2463(a).

19:46-1.19 Dealing shoes

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

(d) Each manual or automated dealing shoe shall be designed and constructed with such features as the Commission may require to maintain the integrity of the game at which such shoe is used. Such features shall include, at a minimum, the following:

1. (No change.)

2. The sides of the shoe below the base plate shall be transparent or have a transparent sealed cutout unless the dealing shoe is otherwise constructed to prevent any object from being placed into or removed from the portion of the dealing shoe below the base plate and to permit the inspection of this portion of the shoe; and

3.-4. (No change.)

(e)-(g) (No change.)

LAW AND PUBLIC SAFETY

(b)

VIOLENT CRIMES COMPENSATION BOARD

Rules Relating to Practice and Procedure

Adopted New Rules: N.J.A.C. 13:75

Proposed: April 4, 1994 at 26 N.J.R. 1491(a).

Adopted: June 14, 1994 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Filed: June 17, 1994 as R.1994 d.364, **without change**.

Authority: N.J.S.A. 52:4B-9.

Effective Date: July 5, 1994.

Expiration Date: July 5, 1999.

Summary of Public Comments and Agency Responses:

No comments received. Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:75 expired June 5, 1994. The rules proposed for readoption with amendments are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the rules proposed for readoption adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:75.

Full text of the adopted amendments follows:

13:75-1.7 Compensable damages

(a) (No change.)

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq. and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death. The Board may also award payment for such allowable expenses which the Board determines to be reimbursble within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. (No change.)

2. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the depen-

dents. The Board, however, reserves the right to review its determination should be claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed as of April 6, 1992, the maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks. For a victim who has been rendered permanently disabled as defined by 42 U.S.C. 1381 et seq., loss of earnings may be awarded for a period of 260 weeks (five years). In either case the victim shall enroll in a retraining or rehabilitation program or establish that the victim's disability prevents participation in such program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.

(c)-(l) (No change.)

(m) The Board shall award compensation for expenses incurred as a result of the relocation of a victim and/or his or her family with the victim due to the incident forming the basis of the victim's claim before the Board where the Board determines there is a need to protect the health and safety of the victim and/or their family and that all other statutory requirements for eligibility are met.

1. In determining this need, the Board shall take into consideration:

i. The nature of the crime;

ii. The amount of danger the offender poses to the victim and/or his or her family;

iii. The degree of injury the victim sustained;

iv. The criminal case history of the offender and the offender's record while incarcerated;

v. Prior acts of the offender;

vi. What efforts the victim and/or his or her family have undertaken in order to protect themselves from further harm;

vii. The offender's sentence and period of incarceration whether for the crime forming the basis of the claim filed with the Board or through a plea bargain on related or unrelated charges; and

viii. Any other relevant factors.

2. Compensation for moving expenses shall be paid for relocation of victim's family solely where the victim resided with the family at the time of the incident and, except where the crime resulted in the death of the victim, the victim relocated to the new premises with the family.

3. Maximum reimbursement for moving expenses shall be $1,000. Related moving expenses may include truck rental, moving services, and rental and mortgage cost differential between vacated and new premises.

4. A victim or claimant may only seek compensation for moving expenses once for each claim filed with the Board.

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session July 20, 1994

Take notice that the following agenda items are currently under review before the State Board of Education. Pursuant to the policy of the New Jersey State Board of Education, a **public testimony session** will be held for the purpose of receiving public comment on Wednesday, July 20, 1994 from 3:00 P.M. to 6:00 P.M. in the 8th Floor Training Room, Department of Education, 225 East State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, July 15, 1994.

Rule proposal: N.J.A.C. 6:29, Health, Safety and Physical Education

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Public Meeting and Availability of the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey

Take notice that the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board and the Radioactive Waste Advisory Committee will hold a series of **public information open houses and hearings** to advise residents of and seek public input on the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey. The public comment period is June 6 through October 28, 1994. All comments must be submitted to the Siting Board by Friday, October 28, 1994.

Information open houses will be scheduled for June through September. Public hearings are planned for early Fall. The second information open house is scheduled as follows:

Tuesday, July 19, 4:30-6:00 P.M.
and 7:00-9:00 P.M.
South Jersey Environmental Information Center
West Deptford Public Library
West Deptford, New Jersey

Copies of the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey are available from the NJ Low-Level Radioactive Waste Disposal Facility Siting Board, Station Plaza III, 4th Floor, 44 South Clinton Avenue, CN-410, Trenton, New Jersey 08625, 609-777-4247. Interested persons may obtain directions to the information open house and confirm the date and location by contacting the Siting Board Office.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on August 27, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department of Environmental Protection and Energy (DEPE) subject to a number of conditions outlined below. This amendment adopts a Wastewater Management Plan (WMP) for Chatham Township. The WMP proposes the expansion of the Chatham Township Water Pollution Control Plant #1 (Chatham STP) from a design capacity of 0.75 million gallons per day (mgd) to 1.0 mgd, and delineates the expanded sewer service area for the Chatham STP. The WMP also delineates an expanded sewer service area for the Chatham Glen Sewage Treatment Plant (Chatham Glen STP) and specifies expansion of the Chatham Glen STP to 0.155 mgd. In addition, the Plan delineates an expanded sewer service area for the Madison-Chatham Joint Meeting STP located in Chatham Borough.

Notice of a public hearing on the amendment was published in the New Jersey Register on June 15, 1992 at 24 N.J.R. 2299(c). A public hearing on the amendment was held on July 23, 1992. In order to provide additional opportunity for public comment, notice of a second public hearing was published in the New Jersey Register on October 5, 1992 at 24 N.J.R. 3562(b). The second public hearing on the amendment was held on November 12, 1992. The public comment period on the amendment closed on November 27, 1992.

The DEPE received written comments from approximately 1,100 persons and 84 persons presented comments at the two public hearings. Approximately 45 persons fully supported the Plan, the other persons completely opposed the Plan or objected to one or more of its provisions. The Plan was endorsed, however, by the Mayor and Township Committee of Chatham Township. A summary of the comments received on the Plan and the DEPE's responses to these comments is included below.

In accordance with N.J.A.C. 7:15-5.18(a), the DEPE has determined that the proposed expansion of the Chatham Township STP from 750,000 gallons/day to 1.0 million gallons/day reasonably represents the projected 20-year need of the sewer service area served by the Chatham Township STP. To effectively control potential secondary impacts of development made possible by the plant expansion on the Great Swamp National Wildlife Refuge (GSNWR), however, the DEPE hereby phases and conditions its approval of this expansion, as follows:

1. The DEPE hereby grants final water quality management planning approval for the first phase of the expansion of the Chatham Township plant to a capacity of up to 900,000 gallons/day, contingent upon capacity assurance by Chatham Township, and subject to the following conditions:

a. Priority in allocating this first phase of an additional 150,000 gallons/day is to be given to (1) serving affordable housing under the terms of the Scarce Resource Order issued by the Hon. Stephen Skillman, J.S.C., on August 20, 1990, (2) remediating existing water quality problems, particularly in the Green Village section of Chatham Township, and (3) serving other immediately pending development. In the event that the August 20, 1990 Scarce Resource Order is modified or repealed, or the scale of the development covered by the Scarce Resource Order is reduced, the balance of the capacity covered by the Scarce Resource Order shall be held in reserve pending completion and DEPE approval of the additional planning steps outlined in Paragraphs 2(a) through (d), below. In addition, any capacity allocated for remediating water quality problems in Green Village shall be held in reserve pending completion and DEPE approval of the septic management plan required by Paragraph 2(b) below;

b. Consistent with the recommendations of the Great Swamp Advisory Committee Final Report regarding the evaluation of secondary impacts of development in the Great Swamp watershed and the establishment of a water quality management planning goal of "no net increase" with respect to both stormwater quantity and pollutant loadings affecting the Great Swamp watershed in general and the GSNWR in particular, Chatham Township shall take all steps necessary to require applicants for site plan and subdivision approval for disturbances of 5,000 square feet or more that qualify as "projects" under N.J.S.A. 4:24-39 et seq. to submit for DEPE approval a plan for achieving, to the extent practicable, a goal of "no net increase in storm water runoff or pollutants." At a minimum, such a plan shall evaluate: (1) the applicability of the DEPE's current Best Management Practices for nonpoint source control, (2) on-site and off-site opportunities for nonpoint source control, and (3) the economic cost and environmental effectiveness of these practices. The DEPE also strongly encourages Chatham Township to impose this requirement on those projects which have already received preliminary site plan or subdivision approval for disturbances of 5,000 square feet or more but which have not commenced construction as of the date of this wastewater management plan approval.

2. The DEPE hereby grants water quality management planning approval for the second phase of the expansion of the Chatham Township plant, to a capacity of up to a total of 1.0 million gallons/day, contingent upon capacity assurance by Chatham Township, and contingent upon the DEPE's written certification of the completion and compliance with the following conditions by the Township:

a. The development and implementation of a Township stormwater management plan approved by the DEPE. At minimum, the Township stormwater management plan must identify existing land uses and applicable land use regulations, must inventory, describe and quantify point and nonpoint sources of pollution and their relationship to existing land uses and land use regulations, and must identify and implement remedial measures to be implemented by the Township to address those sources of pollution;

b. The development and implementation of a Township septic system management plan approved by the DEPE. At minimum, the septic system management plan must identify septic system problems within the Township, including the Green Village area of the Township, identify remedial measures (including, but not limited to, regular septic maintenance) to address septic system problems, and contain a schedule for implementing regular septic system maintenance and other remedial measures;

c. The development and implementation of a Township water conservation plan approved by the DEPE. At a minimum, the water conservation plan will identify problems related to water loss and waste in the Township and identify and implement remedial measures to address those problems; and

d. The establishment, maintenance and operation of two monitoring stations on the Black Brook in accordance with a work plan to be approved by the DEPE. These stations should be strategically located, one upstream and one downstream of the Chatham Township Wastewater Treatment Plant, to enable the DEPE, the Township and the general public to effectively assess the impact of the effluent discharge of that Plant on the Black Brook and GSNWR. These stations must be equipped to monitor, at a minimum, for the following parameters: flow, nitrogen, and phosphorus. The data collected will be reported on a quarterly basis to the DEPE.

In addition, it appears based on the description of the number of units, persons per unit, and gpd per person to be served by the Chatham Glen STP that the present population for this STP specified in Table 2 of the Plan is incorrect. This figure should be revised to 1,268 persons, and the projected population figure should be revised accordingly. As part of the approval of this Plan the population figures for the Chatham Glen STP must be corrected. However, this does not affect the total flow specified in the Plan for the Chatham Glen STP.

Comments Regarding Great Swamp Ecology

COMMENTS: Numerous commenters objected to the Chatham Township WMP because of potential adverse impacts on the GSNWR and the watershed from the proposed increase in discharge from the Chatham Township STP and the increased development within the sewer service area (especially the Prudential Insurance Company's proposed Giralda Farms development). These potential adverse impacts include: (1) destruction of the ecological balance of the swamp and loss of existing wildlife habitat including endangered and threatened species habitat; (2) increased non-point source pollution loads adding pollution to the swamp and increasing flooding in and adjacent to the Refuge; (3) loss of vegetative cover from proposed development; (4) degradation of water quality within the swamp; (5) increased traffic due to further development within the watershed; (6) decreased ability of the Great Swamp to filter water supplies; (7) secondary impacts from proposed development on Green Acres parklands; and, (8) land use sprawl.

RESPONSE: The DEPE has approved the Chatham Township WMP in two phases, consisting of an initial phase of an increase in the permitted flow of the Chatham Township STP by 150,000 gallons per day (gpd) with a second phase of an additional 100,000 gpd only after the Township meets certain conditions. The purpose of the phasing and these condtiions is to protect the GSNWR, acknowledging its sensitivity to both point and nonpoint sources of pollution.

In addition, over the past three years the Great Swamp Watershed Advisory Committee (GSWAC) has been meeting to develop recommendations for the protection of the GSNWR as well as surrounding lands within the watershed. The Final Report of the GSWAC was presented to the DEPE on April 29, 1993. As indicated in the Office of Land and Water Planning's (OLWP) response to the GSWAC Report, released August 26, 1993, the DEPE intends to propose amendments to the Northeast WQMP to advance regional planning, improve the permitting process and acknowledges the importance and sensitivity of the Great Swamp. The amendments would acknowledge the GSNWR as an environmentally sensitive resource with specified goals within the Northeast WQMP. In addition, the OLWP has accepted the no net increase recommendation of the GSWAC. A combination of Best Management Practices and/or offsite mitigation designated to minimize impacts of pollutant loadings and stormwater runoff from development in the Great Swamp watershed may be accepted as evidence of meeting the goal of no net increase until such time as the concept is refined to include more precise performance measures.

Legal Comments

COMMENTS: Officials of Chatham Township persist in misrepresenting to the public Prudential's assumption that their *Mt. Laurel* obligation is conditional upon Prudential receiving a major share of the Township's increased sewage plant capacity. A contractual agreement between a developer and a municipality which provides the sale of a limited and scarce public resource as a condition of site plan approval is contrary to law and adverse to public welfare. The controlling Land Use Ordinance of Chatham Township, Ordinance 2-79 Amended does not contain the required regulations to authorize the Township to demand or receive contributions in any form from a developer for off tract sewage treatment approval.

RESPONSE: At this time, the sewer capacity of Chatham Township is subject to a Scarce Resource Order issued on August 20, 1990 by the Hon. Stephen Skillman, J.S.C. as part of the Township's *Mt. Laurel* proceedings. Under this Order, Chatham Township is obligated to grant priority to Prudential for all sewer capacity coming into existence now or in the future for the build-out of the Prudential project. This order is binding on Chatham Township until and unless modified by the Appellate Division.

COMMENTS: The law which established the DEPE (N.J.S.A. 13:1D-9) requires that the Department: "prepare, administer and supervise statewide, regional and local programs of conservation and environmental protection, giving due regard for the ecology of the varied areas of the state and relationship to the environment". This will not be the case if this amendment is approved.

RESPONSE: Contrary to the commenter's assertions, the DEPE believes that the phased approach and planning conditions outlined in this approval have been imposed on Chatham Township out of "due regard" for the ecology of the Great Swamp and its relationship to the environment.

Comments Relating to the State Development and Redevelopment Plan (SDRP)

COMMENTS: The WMP does not comply with the goals and policies of the SDRP which places high priority on protecting the state's natural resources and controlling urban sprawl by redirecting it to areas with already developed infrastructure (sewers, roads, etc.).

RESPONSE: Unless the policies of the SDRP become incorporated into the zoning ordinance of the Township, the DEPE can not require that the WMP be consistent with the SDRP. However, it is the DEPE's intention to cooperate with the Office of State Planning in an effort to foster consistency among municipal and county plans and regulations, areawide WQMPs, and the SDRP. This issue is also discussed in the OLWP's response to the GSWAC report dated August 26, 1993.

Comments on Regional Planning

COMMENTS: Currently there is no independent mechanism, such as the Hackensack Meadowlands Development Commission, with strict standards and a clear mandate, to protect the Great Swamp and other natural resources of this area such as the Buried Valley aquifer from which the Boroughs of Chatham and Madison draw their water. Such mechanism would be charged with the review of development applications in the region and with the enforcement of mitigation measures.

The proposed amendment must be analyzed in tandem with the STP being expanded on Loantaka Brook in Morris Township and proposed for construction on Primrose Brook in Harding Township. Both brooks flow into the Great Swamp. The public health problems and environmental hazards to the Great Swamp are not confined solely to those residents of Green Village in Chatham Township. It also extends to homes in neighboring Harding and Long Hill Townships.

Without a watershed master plan, fragmented permit decisions will continue to add to cumulative environmental degradation of the Great

Swamp and its feeder streams. An integrated regional plan for water management, greenways, recreation, environmental protection, and conservation of public trust lands should be initiated. This regional planning would place development in areas where infrastructure is already in place rather than adding new stress to the fragile suburban environment.

A Regional Environmental Planning Board composed of representatives of all political and geographical units making up the Great Swamp watershed should be created.

RESPONSE: It is the DEPE's intent to support the establishment of a new advisory body to replace the GSWAC. The purpose of the advisory body will be to make recommendations to the U.S. Fish and Wildlife Service, the DEPE, counties and municipalities, the soil conservation districts and area residents and businesses with respect to planning, monitoring, modeling and permitting activities affecting the Great Swamp watershed in general and the GSNWR in particular. The advisory body will also assist in the development and implementation of environmental education and pollution programming.

In addition, the DEPE intends to authorize and partially fund a Regional Stormwater Study of the Great Swamp Watershed. The study will build upon previous and continuing work in the watershed and will include the identification of outfalls, monitoring, and modeling.

It is also the DEPE's intent to establish and maintain an internal permit review process for the Great Swamp watershed to ensure the assessment of aggregate impacts of both General and Individual Permits.

These issues are all discussed in further detail in the OLWP's response to the GSWAC report dated August 26, 1993.

Comments Relating to the United States Fish and Wildlife Service

COMMENTS: Before the Department of the Interior took over the management of the Great Swamp, it functioned well and the water table level in Green Village and surrounding areas was lower. The United States Fish and Wildlife Service (USFWS) created detention ponds to attract migratory birds. The USFWS should be required to clean out the debris in the ditches that built up due to the dikes they built, or the dikes should be removed. Property owners of Chatham Township who paid for a sewer line but cannot connect to it, the senior citizens who are looking forward to affordable housing, and the residents of Green Village have more right to sewers than migratory birds have to a man-made lake in the swamp. Also, the USFWS tree removal policy contributes to the loss of all other environmental benefits trees naturally provide.

RESPONSE: The DEPE does not have jurisdiction over management of the GSNWR. However, it is the DEPE's understanding that the USFWS is limited in what they are able to do in regard to management within the GSNWR because part of the GSNWR is a designated federal Wilderness Area. A section of the GSWAC's Report contains recommendations for the USFWS including the review of the Station Management Plan. The regulated activities of the GSNWR are contained in the Station Management Plan. The USFWS participated on the GSWAC and agreed with the overall policy and goals.

COMMENTS: The USFWS indicates that "development in the Great Swamp watershed has diminished water level manipulation as a wetland habitat management tool causing uncontrollable fluctuations in rates of surface water runoff, and deposition of silt into refuge wetlands ... severity of nonpoint and point source contaminant discharges is increasing and further degrading Refuge water quality." USFWS has limited authority to control the development outside the Refuge, but must appeal to State, county, and local governments to assume a "shared responsibility" in regulating further watershed development, particularly in wetlands and other environmentally important areas.

RESPONSE: In consideration of the secondary impacts on the GSNWR associated with expansion of the Chatham Township STP, the DEPE has approved the Chatham Township WMP in two phases with conditions as described above. The purpose of the phasing and conditions is to evaluate the secondary impacts of the WMP and further the goal of no net increase with respect to both water quantity and pollutant loadings affecting the Great Swamp watershed in general and the GSNWR in particular. In addition, the DEPE is researching the creation of a regional entity working with the USFWS, National Park Service, State, county and municipal managers and the public to ensure that all management plans work together to achieve the public interest objectives of the Great Swamp basin.

Comments on the Wastewater Management Plan

COMMENTS: If the WMP is adopted, this municipality's zoning decisions shall govern the water quality management planning process for the region. The DEPE, however, has the legal authority to compel Chatham Township to conduct analysis of "critical economic, social, environmental or institutional factors" as part of an examination of specific wastewater management alternatives before making its determination (N.J.A.C. 7:15-5.18(a)2).

RESPONSE: The Statewide Water Quality Management Planning (SWQMP) rules, N.J.A.C. 7:15, specify that to the maximum extent practicable wastewater service areas shall be identified in a manner as to provide adequate wastewater service for land uses allowed in zoning ordinances or future land uses shown in municipal or county master plans. The Chatham WMP complies with this by using zoning as a basis for wastewater service areas.

Although a specific study of critical economic, social, environmental or institutional factors of wastewater management alternatives was not required as part of this WMP, as a result of the DEPE's disapproval of the previous Chatham Township WMP the Township was required to reanalyze the proposed wastewater service areas in regard to potential failure of individual subsurface sewage disposal systems in the Township, particularly in the Green Village area. As a result of this analysis, the Township submitted a WMP which more appropriately addressed these needs.

In addition and as described above, additional studies will be required in both phases of the Chatham Township STP expansion. For the expansion up to 900,000 gpd, Chatham Township will institute a process under which certain applicants for site plan or subdivision approval will be required to submit a plan for DEPE approval for achieving a goal of no net increase in stormwater runoff or pollutants. As part of this plan, an evaluation of the economic cost and environmental effectiveness of the practices used to achieve this goal will be required. For the expansion up to 1.0 mgd, additional studies and plans must be prepared to address certain environmental and social factors related to stormwater management, septic management and water conservation.

COMMENTS: Fred and Walker Kirby own property in Chatham Township, 78 acres on Shunpike Road, Lots 20 and 21, Block 144 which they request be included in the designated sewer service area to the Chatham Township STP as delineated in the WMP. In a 1989 suit against the Township, the Kirbys objected that they were not included in the WMP for sewering. This litigation was dismissed due to disapproval of the WMP. Plaintiffs contend that the failure to have included their property as part of the Plan is part of an overall scheme to insure that plaintiff's property will never be developed for any purpose, even under existing zoning.

RESPONSE: Based on the zoning for the area described above, R-1A, Residence District (one family—100,000 sq. ft., cluster option), which does not authorize development of a density that requires sewers under all circumstances, the DEPE does not require that this area be included in the future sewer service area of the Chatham Township STP.

COMMENTS: The Environmental Impact Statement (EIS) on the Upper Passaic River Basin 201 Facilities Plan released by the US Environmental Protection Agency in Sept. 1991 recommends that the discharge rate of the Chatham Township STP not be increased beyond current levels. The proposed Chatham Township Wastewater Management Plan is inconsistent with the findings of this Federal EIS.

RESPONSE: The EIS specified above, does recommend 0.75 mgd as the flow rate for the Chatham STP. However, it also recommends that certain issues should be considered in permitting a flow above 0.75 mgd (NJPDES permit parameters, hydraulic loading to the Great Swamp, increased non-point source pollution). These are some of the issues which were considered in the DEPE's decision on the WMP and which will be considered in the DEPE's review of the Discharge Allocation Certificate for this STP. Therefore, this approval is not inconsistent with the findings of the EIS.

COMMENT: The proposed expansion will increase sewage capacity regulated by NJPDES permits in Chatham Township to 1,154,600 gpd. How is this consistent with the Northeast Plan that set one million gpd as the limit for the Township with the caution that figure was arrived at without excluding environmentally sensitive areas from sewer service?

RESPONSE: The Northeast WQMP does not assign a wastewater flow limit of 1.0 mgd to the entire Township; the 1.0 mgd limitation applies specifically to wastewater flows discharged from the Chatham Township STP. The projected wastewater flows of 0.132 mgd to the Chatham Glen STP and 0.024 mgd to the Park Central STP are in addition to the flow from the Chatham Township STP. With approval of the WMP, the flows previously specified for the Chatham Township STP in the Northeast WQMP are now superseded to allow an additional 150,000 gpd above the current permitted flow of 750,000 gpd plus 100,000 gpd more only after the Township meets certain condtions, for a total of 1.0 mgd from the Chatham Township STP. The projected wastewater flow to the Chatham Township STP was figured based on exclusion of environmentally constrained areas from the service area.

COMMENTS: Flows of water entering the Refuge are in part a function of total flows from all STPs in the watershed. Going beyond imposing a cap on flows from each STP, the State could develop a cap for all STP's with a schedule to reduce that cap until total STP flows reach 1986 conditions. This arrangement would then authorize flow trading. Chatham STP could increase flows above 750,000 gpd only if it purchased allowable flow credits from another STP, the flows of which were measurably below the permitted level.

RESPONSE: Based on the technical information available at present, the DEPE is not prepared to require a cap on flows in the watershed based on 1986 conditions. Instead, the approved WMP allows for an immediate increase in flow from the Chatham Township STP up to 0.9 mgd, with an additional increase of 0.1 mgd (to a total of 1.0 mgd) based on specific conditions. In the future, the DEPE may establish a regional pollution credit bank to trade pollution credits or some other appropriate regional entity to implement point source and nonpoint source pollution prevention measures in the Great Swamp watershed based on meaningful performance standards. This issue is discussed in further detail in the OLWP's response to the GSWAC report dated August 26, 1993.

COMMENT: The proposed new sewage capacity is already totally allocated and is based on estimates of current population that are not at all certain. These allocations do not allow for any cushion for failing septic systems. We are giving half of the increased capacity to Prudential. What is going to happen if these projections are low? Will the future residents of our Township be told that they're going to be getting capacity and find that the capacity is not there?

RESPONSE: The population projections in the WMP are based on three persons per single family household and two persons per apartment, which is within a range that is acceptable to the DEPE based on the Statewide Water Quality Management Program Plan. In addition, the WMP addresses all of the existing single family units currently served by individual subsurface sewage disposal systems (ISSDS). Only 36 of the 247 existing single family units within the existing or proposed sewer service area of the Chatham Township STP are proposed to remain on ISSDS. In addition, Chatham Township has indicated on an informal basis that flow from Prudential's project will be less than anticipated. In that case, the additional flow would be available for Chatham Township to allocate as needed.

COMMENTS: Key data used for projections in the WMP include average residential occupancy of three individuals, condominium occupancy of two individuals, average individual water usage of 65 g/d for individual residency persons and 60 g/d for condominium residents. It seems that actual data are essential to verify the accuracy of the projections. There are some figures that allow some comparisons. Population currently served by STP #2 is 70 gpd v. 60 gpd used in the projections. Comparable figures for the Park Central plant result in an average daily usage of 64 gpd. The figures from the report which verify the data used for projections indicate that the projections are low when compared with actual current experience. In addition, the WMP specifies an annual average flow figure. However, the current permit for the Chatham Township STP specifies a monthly average flow which yields a more realistic result.

RESPONSE: The population per unit and gpd per person used as a basis for projected wastewater flows in the Chatham Township WMP are within a range that is acceptable to the DEPE based on N.J.A.C. 7:15, the Statewide Water Quality Management Program Plan, and the Northeast WQMP. However, it appears based on the description of the Chatham Glen STP that in regard to number of units, persons per unit and gpd per person, that the present population for this STP as specified in Table 2 is incorrect and should be revised to 1,268 persons. It appears that a change in the projected population is also required. A revision to the WMP in regard to these population figures is required as part of the adoption of this plan. Slight differences in flow calculations for the Park Central STP are due to rounding. In regard to the WMP specifying annual average flows, the DEPE requests this for the planning flow since a component for future infiltration and inflow (I/I) is not included in the total flow calculations (in accordance with the SWQMP rules). The New Jersey Pollutant Discharge Elimination System (NJPDES) permit could be issued, however, at a higher monthly flow which includes a component for future I/I.

COMMENTS: Instead of pumping the discharge into the Great Swamp, wastewater from the Chatham Township STP should be pumped over the hill directly into the Passaic River.

RESPONSE: If the Township finds that it cannot increase the permitted flow of the Chatham Township STP due to NJPDES permitting requirements or other reasons, the Township may petition the DEPE for an amendment to discharge directly to the Passaic River. The DEPE has no indication at this time, however, that this proposal would provide a viable option without creating additional problems. Approval of this WMP allows the Township to proceed with applying for a NJPDES permit for increased flow, with certain conditions attached to the additional flow.

COMMENTS: Dividing population served, according to the Chatham Township WMP, 7100—by gallons of sewage actually treated, less commercial usage of 28,000 gallons—the produced per capita per day figure of 101 gpd, not the 65 gpd cited by the Township is more believable. A figure of 101 gpd is more consistent with the Northeast WQMP which projected per capita usage of 100 gpd. Multiplying 101 gallons per capital daily by population projection of 8700 produces consumption within 20 years of 878,000 gallons, not 781,000. Add commercial projections of 188,000 gpd and the total is 1,066,000 gallons daily. It becomes absolutely impossible for the Township to provide for both Prudential and the Township's existing requirements without exceeding the sewage plant's rate of capacity by 66,000 gpd. The Township's omission of a hundred affordable housing units mandated by the Court Order compounds the problem. They will require an additional 30,000 gpd. Thus, under this WMP, we have a shortfall ranging from 33,000 gallons to 100,000 gallons daily.

RESPONSE: The use of 65 gpd per person as the basis for residential wastewater flow to the Chatham Township STP is consistent with both the SWQMP rules (which specify 65 gpd per person for domestic flow from new residences, exclusive of other flow such as industrial flow, commercial flow, and I/I), and the Northeast WQMP (the estimate of 100 gpd per person includes 60-80 gpd from residential sources and 20-40 gpd from I/I) and is subject to capacity assurance. The 65 gpd specified in the WMP represents wastewater flow, I/I is identified separately. As discussed in the WMP, the 100 units of affordable housing will be transferred to other municipalities pursuant to Regional Contribution Agreements. Therefore, this flow has not been included in the flow to the Chatham Township STP. In addition, Chatham Township has indicated on an informal basis that the flow from the Prudential project will be less than anticipated.

Comments on Water Quality and Quantity

COMMENTS: A hydrology study conducted in 1984-85 with the Morris County Soil Conservation District and the U.S. Soil Conservation Service indicated that increasing impervious cover in the watershed due to urbanization is sending increasing amounts of stormwater runoff into the refuge. The Environmental Commission has passed a resolution expressing serious concerns about the effects of storm water runoff on the swamp. It does not make sense for Chatham Township to add 250,000 gpd to the flooding problem until their present problem is under control.

RESPONSE: Although the addition of 250,000 gpd in a point source discharge does not equate to 250,000 gpd in flooding, the Township and DEPE plan to address the concerns regarding additional water from both point and nonpoint sources in a number of ways. The Township currently has an adopted Stormwater Management Plan and Ordinance. Additional capacity to the Chatham Township STP will be qualified by phasing with 150,000 gpd initially and an additional 100,000 gpd after certain conditions are met. One condition includes the development and implementation of an updated Township stormwater management plan which will at a minimum identify existing land uses, land use regulations, point and nonpoint sources of pollution, their relationship to existing land uses and land use regulations, and measures to address those sources of pollution. In addition, the DEPE intends to authorize and partially fund a Regional Study of the Great Swamp Watershed which will contribute to a Great Swamp Regional Stormwater Management Plan. This Plan will identify existing land uses, land use regulations, and their relationship to water quality and quantity, point sources and nonpoint sources of pollution, and remedial measures including stream corridor protection and best management practices techniques throughout the watershed. This issue is discussed in further detail in the DEPE's response to the GSWAC report dated August 26, 1993.

COMMENTS: All of the waters of the Great Swamp watershed must be classified as Category 1. The waters entering and within the Wildlife

Refuge are classified as Category 1 waters defined in N.J.A.C. 7:9-4.4 and are designated for protection from measurable change because of their exceptional attributes. Category 1 waters may include, but are not limited to: "1) waters originating wholly within Federal, ... parks, forests, fish and wildlife lands ... 5) other waters and their tributaries that flow through, or border Federal, State, ... parks, forests, fish and wildlife lands, and other special holdings." These provisions clearly require DEPE to designate all of the waters of the Great Swamp watershed as Category 1 waters.

RESPONSE: At this time, the DEPE does not intend to designate the waters of the GSNWR as Category 1 because it has accepted the no net increase recommendation of the GSWAC as a goal for development in the Great Swamp watershed and is planning to entertain the designation of the waters in the GSNWR as Outstanding National Resource Waters. The Outstanding National Resource Waters as designated in N.J.A.C. 7:9-4.15(i) currently include Fresh Water 1 waters and Pinelands waters. The Great Swamp waters would be added to this category. The DEPE believes that these measures will provide more protection than Category 1 standards.

COMMENTS: There are measures which will help reduce the effect of the increased volume of stormwater triggered by the expansion of the Chatham STP. These techniques should be required for any development in the watershed requiring major subdivision or site plan approval. They should be part of Chatham's Wastewater Management Plan and ordinance structure:

(a) all roof drains shall drain to dry wells for ground water recharge with at least 250 cu. ft. of storage volume for each 1000 sq. ft. of roofed area.

(b) All detention facilities shall be designed for all storms up to and including a 100-year 24-hour duration storm. Detention facilities shall be constructed to store the entire runoff volume from all impervious surfaces not discharging to drywells and for the incremental increase in runoff volume from pervious surfaces for a period of not less than 24 hours following the cessation of runoff from the design storm. After the 24 hour storage period, the stored runoff shall be released at a rate not to exceed 0.1 cu. ft. per acre of drainage area.

RESPONSE: The Chatham Township Stormwater Management Ordinance currently specifies that rooftop storage, tanks, infiltration pits, dry well, or gravel layers underneath paving may be used for the purposes of meeting the basic requirements of the ordinance. For flood and erosion control the ordinance currently requires that any proposed detention facility must accommodate site runoff generated from two-year, 10-year, and 100-year 24-hour storms considered individually. Detention must be provided such that after development, neither the peak rate of flow from the site, nor the total flow during the hour of maximum releases will exceed the corresponding flows which would have been created by similar storms prior to development.

Chatham Township will be required to update its Stormwater Management Plan as a condition of approval of the WMP. This updated plan will be required to include best management practices for water quantity control for stormwater runoff from any proposed development requiring major site plan or subdivision review. The two suggested techniques for controlling additional volume of stormwater runoff will be thoroughly explored. In addition, starting with the first phase of the expansion of the Chatham STP, Chatham Township must require applicants for site plan or subdivision approvals for sites of 5,000 square feet or more to submit for DEPE approval a plan for achieving a goal of no net increase in stormwater runoff or pollutants. Such a plan would incorporate at a minimum (1) appropriate current DEPE Best Management Practices for nonpoint source control, (2) either or both on-site and off-site opportunities for such controls, and (3) initial estimates of and then followed by an evaluation of the economic cost and environmental effectiveness of those practices.

COMMENTS: The Chatham Stormwater Management Ordinance does not address the increased volume of stormwater that will result from the Giralda Farms development and from area roads and bridges widened as a result of increased traffic.

RESPONSE: The Chatham Township Stormwater Management Ordinance does apply to the Giralda Farms development, however, it does not address the additional quantity of stormwater runoff from the widening of area roads and bridges as a result of increased traffic. In addition, the Giralda Farms development is addressing quantity of stormwater runoff in the following ways as quoted from the Supplemental Statement of The Prudential Insurance Company of America RE: Department of Environmental Protection and Energy Public Hearing on the Chatham Township Wastewater Management Plan, November 25, 1992:

"The stormwater controls at Giralda Farms have resulted in a substantial decrease in the rate of stormwater runoff when compared to pre-development levels. At full build-out of the Madison and Chatham portions of Giralda Farms, the peak rate of runoff will be approximately 25% below pre-development levels. Maintaining these levels of flow is accomplished through the on-site detention system at Giralda Farms.

The 25% reduction in peak rate actually lowers water surface levels in the Loantaka Brook which is downstream of Giralda Farms. The lower water surface elevation in the brook reduces the contact area of water and unprotected bank areas, thereby reducing erosion and conveyance of water-borne siltation into the Great Swamp.

The quantity of stormwater leaving Giralda Farms will increase over pre-development conditions by approximately seven (7) percent for the 100 year design storm. Because of the stormwater detention system at Giralda Farms, the runoff will not adversely affect the water-carrying capacity of downstream piping, streams and other stormwater conveyances."

COMMENTS: Fundamental to DEPE's efforts at regional water quality planning is the fact that all water quality management plans must be consistent with all other applicable rules and regulations and the most important of these are the State's surface water quality standards and antidegradation policies. The WMP for Chatham Township cannot possibly be in accordance with the following antidegradation policies (N.J.A.C. 7:9-4.5(d)):

(a) existing uses shall be maintained and protected. ie: the GSNWR must be protected and maintained. These existing uses of the GSNWR are being impinged upon now. They are being adversely affected by point and nonpoint source pollution from land development activities taking place outside of the GS Refuge.

(b) the designated uses shall be maintained or as soon as technically or economically feasible, attained

(c) no irreversible changes are permitted to occur to the existing water quality that would impare or preclude attainment of the designated uses.

RESPONSE: Although enforcement of antidegradation policies and surface water quality standards is not imposed through the WQMP amendment process, the proposed changes to the Chatham Township STP discharge are subject to compliance with the antidegradation policies identified in N.J.A.C. 7:9-4.5(d) and an antidegradation analysis must be prepared as part of the NJPDES permit process if Chatham Township proposes to increase the loading of pollutants. In addition, nonpoint source discharges are not exempt from complying with antidegradation requirements. Historically, however, the DEPE has not enforced compliance for nonpoint source discharges with antidegradation requirements as no procedures were in place for implementation. Currently, the DEPE is developing antidegradation implementation procedures for both point and nonpoint source discharges. The DEPE anticipates proposing the implementation procedures in late 1994.

In addition, the DEPE intends to propose an amendment to the Northeast WQMP in part to establish as an explicitly stated goal, compliance with the State's antidegradation regulations with respect to surface waters within and affecting the waters of the GSNWR.

Comments Regarding the Council on Affordable Housing

COMMENTS: The DEPE should petition the governor to examine a way to reconcile the seemingly conflicting directives of DEPE and the Council on Affordable Housing. Certainly conflicting governmental directives and objectives make this situation very difficult.

RESPONSE: Each State entity, including the DEPE and the Council on Affordable Housing, is required to follow its own legislative mandate; therefore, many times conflicts do arise. At this time, however, the DEPE does not believe that the intervention of the Governor is necessary to resolve such disputes, and will continue to solve these problems on a case-by-case basis.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on May 27, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment to the East Windsor Township Wastewater Management Plan (WMP) submitted on behalf of the East Windsor Township Municipal Utilities Authority (EWTMUA), expands the sewer service area of the EWTMUA to include the following parcels: Block 46, Lots 1-3, Block 47, Lots 13-29, and Block 50, Lots 1-5, portion of 6, 6.01, 7, 7.01, 8, 14, 15, 17, 18, and 18.01. This amendment is a result of East Windsor Township rezoning various parcels in December, 1992, either R-1/Residential Low Density or HC/Highway Commercial.

This amendment also amends the Washington Township WMP wherein Block 14, Lot 56, located on Hankins Road in Washington Township and experiencing septic system failure, is added to the EWTMUA sewer service area.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing

Proposed Lease of Land Comprising Part of Liberty State Park

Take notice that the Department of Environmental Protection will hold a public hearing to seek comment on the proposed lease of state-owned land.

Consistent with the Action Program for Liberty State Park and in cooperation with the Liberty State Park Development Corporation, and the New Jersey Economic Development Authority financing through the sale of certificates of participation in the amount of $20 million is sought to construct and implement projects at Liberty State Park. These projects include: construction and operation of an 18-hole public golf course; open space and recreation improvements around the golf course and the construction of playing fields at the intersection of Freedom Way and Morris Pesin Drive (a site referred to as the "Dog Show Field"). If funds permit, the renovation or partial renovation of the Camp Liberty/ Recreation Area will also be included.

In order to secure said financing, the Department of Environmental Protection proposes to lease for a period of thirty years to the State of New Jersey Economic Development Authority and simultaneously lease back from the Authority the following property at Liberty State Park:

(1) All that certain land containing approximately 40 acres of undeveloped land designated as all or a portion of Block 2145, Lots 52, 53, 55, 57, 60, 61, 62, 63, 64, 65, 66, 67 and Block 2154, Lot 3 on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey. The purpose of the lease of this property will be to secure financing to improve the area including picnic areas, playgrounds, a formal garden, walkways and passive open space for general public recreation and enjoyment.

(2) All that certain land containing approximately 10 acres designated as all or a portion of Block 2145, Lot 25 on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey. The purpose of the lease of this property will be to secure financing to construct playing fields to include baseball, football, soccer and other active recreational sports and amenities.

(3) All that certain land containing approximately 15 acres designated as all or a portion of Block 2154.2, Lot 6 on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey. The purpose of the lease of this property will be, if funds are available from the sale of certificates of participation after construction of the other park improvements contemplated herein, to renovate or partially renovate the existing Camp Liberty/Recreation Area, which includes the pool and summer day camp complex.

In order to secure financing, the Department of Environmental Protection proposes to lease for a period of 30 years to the Economic Development Authority and simultaneously lease back from the Authority and simultaneously sub-lease to the Liberty State Park Development Corporation, the following property:

(1) All that certain land containing approximately 150 acres of undeveloped land designated as all or a portion of Block 2145, Lots, 52, 53, 55, 57, 60, 61, 62, 63, 64, 65, 66, 67 and Block 2154, Lots 1, 2, 3, 4, 5, 6, 7, and 12 on the current tax map of the City of Jersey City, County of Hudson, State of New Jersey currently vacant. The purpose of the lease and sublease of this property will be to secure financing to construct, operate and maintain an 18-hole public golf course and club house facilities.

The public hearings are scheduled as follows:

Thursday, August 11, 1994 at 7:00 P.M.
Liberty State Park
CRRNJ Terminal
Audrey Zapp Drive
Jersey City, New Jersey

Thursday, Augusut 25, 1994 at 7:00 P.M.
City of Trenton
New Jersey Department of Environmental Protection
Public Hearing Room
First Floor
401 East State Street
Trenton, New Jersey

Persons wishing to make oral presentations are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing record will be kept open for the period of fourteen days following the date of the public hearing for additional written comments.

Interested persons may submit written comments until September 25, 1994 to and request information from:

Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection
CN-404
Trenton, NJ 08625

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS
BOARD OF OPTOMETRISTS

Notice of Receipt of Petition for Rulemaking and Action Thereon

N.J.A.C. 13:38-2.1 and 2.2

Petitioner: New Jersey Optometric Association.

Take notice that by letter dated May 16, 1994, the law firm of Schragger Lavine & Nagy, P.C., acting on behalf of the New Jersey Optometric Association (NJOA), petitioned the Board to amend N.J.A.C. 13:38-2.1 and 2.2 to clarify when a complete minimum examination is required and to exempt a clinical non-dispensing optometrist from the minimum equipment requirement. NJOA asserts that if an optometrist is not prescribing for or providing eyeglasses, but rather is conducting a clinical eye examination for ocular disease, a complete minimum examination is not required by N.J.S.A. 45:12-11(v). NJOA further asserts that if a complete minimum examination is not required, minimum equipment should not be required. NJOA has submitted suggested rule revisions in order to implement its recommendations.

Take further notice that, upon consideration of the petition at its May 18, 1994 meeting, the Board determined that additional time was needed to study and evaluate the petitioner's position. Accordingly, the Board referred the petition to a subcommittee for further analysis and consideration. The Board anticipates that the subcommittee will conclude its deliberations and make recommendations to the Board by November 16, 1994.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the First Quarter of 1994, Ending March 31, 1994

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the first quarter of 1994, accompanied by a Summary of the Quarterly Report.

At the conclusion of the first quarter of 1994, the Notices of Representation filed with this office reflect that 570 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the first calendar quarter of 1994, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, their business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the first calendar quarter of 1994:

No. 903-1	Keith Ebenholtz representing NJ Advisory Council on Safety & Health
No. 2-4	Patrick Killian representing Casino Association of NJ
No. 2-5	Thomas Ballezzi representing Casino Association of NJ
No. 583-9	Christine O'Brien representing Public Policy Advisors
No. 904-1	Ross Ain representing Van Ness, Feldman & Curtis, P.C.
No. 905-1	Andrew Weber representing Saul, Ewing, Remick & Saul
No. 906-1	Stephen Rosario representing American Plastics Council
No. 907-1	Thomas Considine representing MetLife Insurance Company
No. 551-15	Stephen Reid representing MWW/Strategic Communications
No. 908-1	R. William Potter representing Cogen Technologies
No. 92-2	Alan O'Shea representing Mechanical Contractors Association of NJ
No. 909-1	William Prentice representing NJ Dental Association
No. 173-11	Vincent Sharkey representing Riker, Danzig, Scherer, Hyland & Perretti
No. 688-2	Albert Dawson representing The American Council of Life Insurance
No. 818-2	John Hulick representing NJ Council On Alcoholism & Drug Abuse
No. 173-12	Mary Kathryn Palladino representing Riker, Danzig, Scherer, Hyland & Perretti
No. 910-1	Barbara McConnell representing The McConnell Group
No. 913-1	Peter Shuchter representing New Jersey Citizen Action
No. 911-1	Richard Coffee representing Statewide D.P.O. Inc.
No. 911-2	James Hedden representing Statewide D.P.O. Inc.
No. 912-1	John Watson representing Statewide D.P.O. Inc.
No. 75-7	Maryanne Campbell representing the Marcus Group Inc.
No. 653-3	Thomas Detweiler representing the Chemical Industry Council of NJ
No. 914-1	Peter G. Sheridan representing Cullen & Dykman
No. 915-1	Phyllis Salowe-Kaye representing the NJ Tenants Organization
No. 747-6	Amy Mansue representing HIP/Rutgers Health Plan
No. 916-1	Kenneth Sorrentino representing The Blue Ridge Group, Ltd.
No. 917-1	Richard Ott, Independent Agent
No. 22-9	Marc Rachman representing LeBoeuf, Lamb, Greene & MacRae
No. 365-6	Susan Doctorian representing Princeton Public Affairs Group, Inc.
No. 547-2	G. Oliver Papps representing Brill Public Affairs
No. 913-2	Judith Krebs representing NJ Citizen Action
No. 918-1	Carl Johnson representing Pfizer Pharmaceuticals
No. 914-2	Kenneth von Schaumburg representing Cullen & Dykman
No. 919-1	Glenn O. Steiger representing Jersey Central Power & Light Co.
No. 919-2	R. Timothy Friel representing Jersey Central Power & Light Co.
No. 583-10	Karen Kominsky representing Policy Management & Communications, Inc.
No. 583-11	Gena Ansell representing Policy Management & Communications, Inc.

Following is a listing of all Legislative Agents who have filed Notices of Termination during the first calendar quarter of 1994.

Legislative Agent	Registration Number
Steven Amick	823-1
Marlene Asselta	5-1
William Bareford	765-2
Kenneth Becker	10-2
Francis Block	731-1
Alice Cantwell	114-1
Jill Cappiello	700-1
Celeste Carpiano	21-11
Neil Carroll	643-1
Arthur Chalker	856-1
Michael Chazkel	123-1
Robert Cockren	744-1
Tom Collier	673-1
Jerome Coyne	603-1
Lloyd Curtiss	748-1
Richard Dunk	848-1
Raymond Durkin	862-1
Vincent Frammigen	333-1
Peter Furey	36-1
Charles Gardner	544-1
Joanna Gregory	769-2
William Hall	598-1
William Healey	19-2
John Heher	8-1
Gustav Heningburg	238-2
Susan Jacobson	802-1
Thomas Kelly	687-1
Robert Kline	25-1
Leigh Kline	848-2
Karen Kominsky	852-1
James Lamperes	593-1
Bruce Lubitz	784-4
Mark Musser	173-5
Emil Porfido	145-1
William Prentice	75-3
Jeffrey Pumilia	830-1
Peter Snyder	840-2
Maureen Stasi	579-1
Vincent Trivelli	268-1
Cheryl Wolf	747-4

For further information, contact the staff of the Commission at (609) 292-8700.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 2, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT APRIL 18, 1994

NEXT UPDATE: SUPPLEMENT MAY 16, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)		
1:12	Department of Labor hearings	26 N.J.R. 2174(a)		
1:12A	Department of Labor hearings	26 N.J.R. 2174(a)		
1:13A-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery	26 N.J.R. 2513(a)		

Most recent update to Title 1: TRANSMITTAL 1994-2 (supplement April 18, 1994)

AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importation	26 N.J.R. 1908(a)		
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)	R.1994 d.271	26 N.J.R. 2256(a)
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:69-1.11	Commercial values of primary plant nutrients	26 N.J.R. 1560(a)	R.1994 d.312	26 N.J.R. 2568(a)
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		

Most recent update to Title 2: TRANSMITTAL 1994-2 (supplement March 21, 1994)

BANKING—TITLE 3				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)	R.1994 d.318	26 N.J.R. 2779(a)
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-12.2	Multiple party deposit accounts: administrative correction	————	————	26 N.J.R. 2568(b)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11	Investments	26 N.J.R. 1909(a)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)		
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)	R.1993 d.295	25 N.J.R. 2687(a)
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		

Most recent update to Title 3: TRANSMITTAL 1994-2 (supplement March 21, 1994)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)	R.1994 d.285	26 N.J R. 2256(a)
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)		
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
	Most recent update to Title 4A: TRANSMITTAL 1994-2 (supplement March 21, 1994)			
COMMUNITY AFFAIRS—TITLE 5				
5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)	R.1994 d.324	26 N.J.R. 2779(b)
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-1.4	Uniform Construction Code: administrative change	————	————	26 N.J.R. 2779(c)
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)		
5:23-2.23, 4.20	UCC: testing of blackflow preventers	26 N.J.R. 1911(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)	R.1994 d.323	26 N.J.R. 2780(a)
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)		
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3	Fire-retardant treated plywood failure: notice of rule invalidation regarding definition of major structural defect	————	————	26 N.J.R. 1828(a)
5:60	Displaced Homemaker Programs: eligibility for grants-in-aid	26 N.J.R. 1622(b)	R.1994 d.311	26 N.J.R. 2568(c)
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)	R.1994 d.300	26 N.J.R. 2569(a)
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)	R.1994 d.301	26 N.J.R. 2570(a)
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)	R.1994 d.302	26 N.J.R. 2571(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)	R.1994 d.303	26 N.J.R. 2572(a)
5:91-1.3, 14	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:92-1.1, 1.3	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)		
	Most recent update to Title 5: TRANSMITTAL 1994-3 (supplement April 18, 1994)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)	R.1994 d.295	26 N.J.R. 2572(b)
	Most recent update to Title 5A: TRANSMITTAL 1993-1 (supplement December 20, 1993)			
EDUCATION—TITLE 6				
6:5-2, App.	Department of Education: organizational rule	Exempt	R.1994 d.333	26 N.J.R. 2784(a)
6:21	Pupil transportation	26 N.J.R. 1997(a)		
6:26	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:28-2.10, 3.6, 4.3	Special education	26 N.J.R. 1422(a)	R.1994 d.334	26 N.J.R. 2787(a)
6:29-1.7	Eye protection in public schools	26 N.J.R. 537(a)	R.1994 d.238	26 N.J.R. 2019(a)
6:29-9.1, 9.2	Reporting of allegations of child abuse	26 N.J.R. 538(a)	R.1994 d.237	26 N.J.R. 2019(b)
6:30	Adult education programs	26 N.J.R. 884(b)	R.1994 d.286	26 N.J.R. 2257(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)		
6:39	District evaluation	26 N.J.R. 1423(a)	R.1994 d.335	26 N.J.R. 2788(a)
6:70	Library network services	26 N.J.R. 2184(b)		

Most recent update to Title 6: TRANSMITTAL 1994-2 (supplement April 18, 1994)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)	R.1994 d.337	26 N.J.R. 2789(a)
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7	Coastal Permit Program	26 N.J.R. 917(a)	R.1994 d.276	26 N.J.R. 2413(a)
7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
7:7E-8.12	Coastal zone management: notice of clarification	26 N.J.R. 1561(c)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)	R.1994 d.306	26 N.J.R. 2595(a)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)	R.1994 d.307	26 N.J.R. 2598(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)	R.1994 d.338	26 N.J.R. 2791(a)
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)	R.1994 d.256	26 N.J.R. 2459(a)
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)	R.1994 d.277	26 N.J.R. 2461(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: waiver of Executive Order No. 66(1978) expiration date	————	————	26 N.J.R. 2462(a)
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)	R.1994 d.308	26 N.J.R. 2599(a)
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)	R.1994 d.234	26 N.J.R. 2021(a)
7:25-18.1	Flounder management	26 N.J.R. 1885(a)	R.1994 d.339	26 N.J.R. 2792(a)
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)	R.1994 d.248	26 N.J.R. 2021(b)
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1652(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)	R.1993 d.300	25 N.J.R. 2718(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16.1, 16.1A, 16.2–16.6, 16.8–16.11, 16.13, 16.16–16.22, 16.26, 16.27, 17.1, 17.3, 17.4, 23.1–23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-3.1, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)		

Most recent update to Title 7: TRANSMITTAL 1994-4 (supplement April 18, 1994)

HEALTH—TITLE 8

8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 1057(a)	R.1994 d.229	26 N.J.R. 2025(a)
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)	R.1994 d.279	26 N.J.R. 2266(a)
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)		
8:38-1–3	Health Maintenance Organizations	26 N.J.R. 1624(a)		
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:42A	Licensure of alcoholism treatment facilities	26 N.J.R. 1625(a)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:43H	Licensure of rehabilitation hospitals	26 N.J.R. 1628(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)	R.1994 d.275	26 N.J.R. 2270(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:65-10.1, 10.2	Controlled dangerous substances	26 N.J.R. 1630(a)	R.1993 d.325	26 N.J.R. 2792(b)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b), 6060(b))	25 N.J.R. 875(a)	R.1993 d.155	26 N.J.R. 1347(a)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a), 364(b))	25 N.J.R. 2802(b)	R.1994 d.245	26 N.J.R. 2094(c)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b))	25 N.J.R. 4844(a)	R.1994 d.246	26 N.J.R. 2095(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a))	26 N.J.R. 13(b)	R.1994 d.247	26 N.J.R. 2096(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products	26 N.J.R. 1190(b)	R.1994 d.242	26 N.J.R. 2025(a)
8:71	Interchangeable drug products	26 N.J.R. 1821(a)		
8:71	Interchangeable drug products	26 N.J.R. 1822(a)		
8:91	Health Access New Jersey	26 N.J.R. 2007(a)		
8:100	State Health Plan rules: notice of invalidation	———	———	26 N.J.R. 1828(b)

Most recent update to Title 8: TRANSMITTAL 1994-2 (supplement March 21, 1994)

HIGHER EDUCATION—TITLE 9

9:2-2	Minority Undergraduate Fellowship Program	26 N.J.R. 80(a)	R.1994 d.239	26 N.J.R. 2096(b)
9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)	R.1994 d.225	26 N.J.R. 1856(a)
9:9-1.23	NJHEAA reporting of loan status credit bureaus	26 N.J.R. 893(a)	R.1994 d.240	26 N.J.R. 2097(a)
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)		
9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
9:18	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 1486(a)	R.1994 d.304	26 N.J.R. 2579(a)

Most recent update to Title 9: TRANSMITTAL 1994-2 (supplement February 22, 1994)

HUMAN SERVICES—TITLE 10

10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	———	———	26 N.J.R. 2098(a)
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:31	Mental Health Screening and Screening Outreach Programs	26 N.J.R. 1424(a)	R.1994 d.291	26 N.J.R. 2271(a)
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)	R.1994 d.227	26 N.J.R. 1828(c)
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:40	Division of Developmental Disabilities: organizational rules	Exempt	R.1994 d.249	26 N.J.R. 2098(b)
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)		
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:49-17.5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)		
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Manual for Hospital Services: payments for beds for mentally ill and developmentally disabled clients	26 N.J.R. 2241(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:60-1.4	Covered home health services: administrative correction	________	________	26 N.J.R. 2285(a)
10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:63-3.21, 3.22, 3.23	Nursing facility relief	26 N.J.R. 894(a)	R.1994 d.213	26 N.J.R. 1840(a)
10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1, 2.2, App. H	Pediatric medical day care services	26 N.J.R. 1427(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	26 N.J.R. 1754(a)		
10:81	Public Assistance Manual	26 N.J.R. 1573(a)		
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-2.6, 3.4, 11.2, 11.3	Public Assistance Manual: client Social Security numbers	26 N.J.R. 324(a)	R.1994 d.233	26 N.J.R. 2099(a)
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	________	________	26 N.J.R. 2098(a)
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:86-10.6	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	________	________	26 N.J.R. 2098(a)
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)		
10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)	R.1994 d.209	26 N.J.R. 1841(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)	R.1994 d.231	26 N.J.R. 2100(a)
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		

Most recent update to Title 10: TRANSMITTAL 1994-4 (supplement April 18, 1994)

CORRECTIONS—TITLE 10A

10A:1-10.2	Request to conduct research projects: administrative correction	________	________	26 N.J.R. 2581(a)
10A:3-5.7	Strip search of inmates	26 N.J.R. 1937(b)		
10A:4-4.1	Inmate prohibitions: failure to keep scheduled appointment	26 N.J.R. 1287(a)	R.1994 d.264	26 N.J.R. 2285(b)
10A:4-4.1, 5.1, 5.2, 5.3	Inmate prohibitions: misuse of electronic equipment	26 N.J.R. 1286(a)	R.1994 d.254	26 N.J.R. 2129(a)
10A:6-2.2, 2.7	Inmate legal services: use of typewriters	26 N.J.R. 2188(a)		
10A:19	Public information	26 N.J.R. 1287(b)	R.1994 d.255	26 N.J.R. 2129(b)
10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1757(a)	R.1994 d.340	26 N.J.R. 2792(c)
10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1938(a)	R.1994 d.340	26 N.J.R. 2792(c)
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.51	State Parole Board: interstate corrections compact and serving time out-of-State cases	26 N.J.R. 1191(a)	R.1994 d.272	26 N.J.R. 2285(c)
10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)		
10A:71-8.2	State Parole Board: eligibility for Certificate of Good Conduct	26 N.J.R. 1193(a)	R.1994 d.273	26 N.J.R. 2287(a)

Most recent update to Title 10A: TRANSMITTAL 1994-3 (supplement April 18, 1994)

INSURANCE—TITLE 11

11:1-7	Medical malpractice reporting requirements	26 N.J.R. 1433(a)		
11:3-2A	Automobile Full Insurance Underwriting Association: deferral of payment of residual bodily injury claims	26 N.J.R. 898(a)	R.1994 d.274	26 N.J.R. 2287(b)
11:3-2B	Market Transition Facility of New Jersey: suspension of claims payments	26 N.J.R. 1393(a)	R.1994 d.261	26 N.J.R. 2283(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)	R.1994 d.210	26 N.J.R. 1869(a)
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-20.6	Private passenger automobile insurers: reporting financial disclosure and excess profits	26 N.J.R. 1938(b)		
11:3-28.2, 28.14–28.17	Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures	26 N.J.R. 2190(a)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-32	Automobile and motor vehicle insurers: certification of compliance with mandatory liability coverages	26 N.J.R. 1939(a)		
11:5-1.15, 1.23	Real Estate Commission: discriminatory conduct prohibitions	26 N.J.R. 729(a)	R.1994 d.266	26 N.J.R. 2581(a)
11:5-1.28	Real Estate Commission: requirements for prelicensure schools and instructors	26 N.J.R. 730(a)	R.1994 d.267	26 N.J.R. 2581(b)
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)	R.1994 d.268	26 N.J.R. 2585(a)
11:5-2.5	Real Estate Commission: access to commission records	26 N.J.R. 736(a)	R.1994 d.269	26 N.J.R. 2585(b)
11:5-4.9	Real Estate Commission: temporary suspension of license	26 N.J.R. 737(a)	R.1994 d.270	26 N.J.R. 2586(a)
11:15	Group self-insurance	26 N.J.R. 2518(a)		
11:17-3, 5.1–5.4, 5.6, 5.7	Professional qualifications of insurance producers	26 N.J.R. 1289(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:21-1.2, 8, 10, Exh. CC	Small Employer Health Benefits Program: carrier certification of non-member status; Market Share Report	26 N.J.R. 1588(a)	R.1994 d.228	26 N.J.R. 1873(a)
11:21-2.5	Small Employer Health Benefits Program Board: structure and meetings	26 N.J.R. 1940(a)	R.1994 d.319	26 N.J.R. 2587(a)

Most recent update to Title 11: TRANSMITTAL 1994-4 (supplement April 18, 1994)

LABOR—TITLE 12

12:18	Temporary Disability Benefits	26 N.J.R. 1326(a)	R.1994 d.241	26 N.J.R. 2131(a)
12:18-2.6, 2.38, 2.41–2.48	Temporary Disability Benefits appeal hearings	26 N.J.R. 2195(b)		
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review regarding unemployment benefits appeals	26 N.J.R. 2196(a)		
12:23-5.9	Workforce Development Partnership Program: overpayments of additional unemployment benefits	26 N.J.R. 2198(a)		
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
12:235-9.4	Workers' Compensation: appeals regarding discrimination complaints	26 N.J.R. 1591(b)		
12:235-14.7	Uninsured Employer's Fund: attorney fees	26 N.J.R. 2199(a)		

Most recent update to Title 12: TRANSMITTAL 1994-2 (supplement April 18, 1994)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)	Expired	
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		

Most recent update to Title 12A: TRANSMITTAL 1994-1 (supplement January 18, 1994)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
LAW AND PUBLIC SAFETY—TITLE 13				
13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-1.5–1.9, 1.12, 1.15	Division of Motor Vehicles: overweight oceanborne containers	26 N.J.R. 2521(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)	R.1994 d.252	26 N.J.R. 2135(a)
13:19-1.1	Division of Motor Vehicles: applicability of administrative hearings	26 N.J.R. 2522(a)		
13:20-34.2, 34.3	Division of Motor Vehicles: license plates' identifying marks	26 N.J.R. 1487(a)	R.1994 d.314	26 N.J.R. 2587(b)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:21-6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.4, 16	Division of Motor Vehicles: permits, licenses, nondriver IDs	26 N.J.R. 2522(a)		
13:21-24	Division of Motor Vehicles: defensive driving courses	26 N.J.R. 1592(a)	R.1994 d.347	26 N.J.R. 2793(a)
13:23	Division of Motor Vehicles: driving schools	26 N.J.R. 1299(a)	R.1994 d.294	26 N.J.R. 2588(a)
13:25-1.1, 2.1, 2.2, 3.1, 3.3	Division of Motor Vehicles: motorized bicycle permits and licenses	26 N.J.R. 2522(a)		
13:27-5.8, 8.15	Board of Architects: licensure examination fees	26 N.J.R. 1490(a)	R.1994 d.315	26 N.J.R. 2588(b)
13:27-6.2	Board of Architects: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.321	26 N.J.R. 2794(a)
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	26 N.J.R. 1947(a)		
13:29-1.6, 1.7	Board of Accountancy: applications for original examination and for reexamination	26 N.J.R. 1217(a)	R.1994 d.316	26 N.J.R. 2589(a)
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)	Expired	
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.3	Board of Examiners of Electrical Contractors: licensing examination	26 N.J.R. 1218(a)	R.1994 d.331	26 N.J.R. 2795(a)
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
13:31-1.10	Board of Examiners of Electrical Contractors: duty of licensee to return pressure seal	26 N.J.R. 1594(a)	R.1994 d.332	26 N.J.R. 2795(b)
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:34-1.1	Board of Marriage Counselor Examiners: examination fee	26 N.J.R. 1301(a)	R.1994 d.287	26 N.J.R. 2293(a)
13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)		
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.10	Board of Medical Examiners: licensee testimonial advertisements	26 N.J.R. 1219(b)	R.1994 d.329	26 N.J.R. 2795(c)
13:35-6.13	Board of Medical Examiners: administrative correction regarding fee schedule	________	________	26 N.J.R. 2589(b)
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:36	Board of Mortuary Science rules	26 N.J.R. 2536(a)		
13:36-7.1	Board of Mortuary Science: handling and embalming bodies dead of infectious or contagious disease	26 N.J.R. 1302(a)	R.1994 d.288	26 N.J.R. 2293(b)
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)	R.1994 d.212	26 N.J.R. 1876(a)
13:37-12.1	Board of Nursing: fees for certification of nurse practitioner	26 N.J.R. 1490(b)	R.1994 d.317	26 N.J.R. 2589(c)
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)	R.1994 d.289	26 N.J.R. 2293(c)
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39	Board of Pharmacy rules	26 N.J.R. 1596(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)		
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:40-7.2	Board of Professional Engineers and Land Surveyors: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.322	26 N.J.R. 2796(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:40A-4.1–4.9	Board of Real Estate Appraisers: licensee continuing education	26 N.J.R. 903(a)	R.1994 d.251	26 N.J.R. 2137(a)
13:41-4.2	Board of Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)		
13:44D	Board of Public Movers and Warehousemen: licensee standards	26 N.J.R. 1758(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:44E-2.14	Board of Chiropractic Examiners: administrative correction regarding referral of patients to physical therapists	———	———	26 N.J.R. 2590(a)
13:44G-5.1, 5.2, 5.3	Board of Social Work Examiners: licensure and certification	26 N.J.R. 1604(b)	R.1994 d.320	26 N.J.R. 2590(b)
13:45A-14.7	Office of Consumer Protection: unit price labeling	26 N.J.R. 1306(a)	R.1994 d.257	26 N.J.R. 2138(a)
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47C	Weights and measures: general commodities	26 N.J.R. 1761(a)	R.1994 d.330	26 N.J.R. 2796(b)
13:57	Uniform Crime Reporting (UCR) system	26 N.J.R. 905(a)	R.1994 d.250	26 N.J.R. 2139(a)
13:60	Motor carrier safety	26 N.J.R. 1307(a)	R.1994 d.253	26 N.J.R. 2140(a)
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)		
13:75	Violent Crimes Compensation Board: practice and procedure	26 N.J.R. 1491(a)	R.1994 d.364	26 N.J.R. 2805(b)

Most recent update to Title 13: TRANSMITTAL 1994-4 (supplement April 18, 1994)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		
14:18-10.5	Cable television: monitor point tests	26 N.J.R. 104(a)	R.1994 d.236	26 N.J.R. 2146(a)

Most recent update to Title 14: TRANSMITTAL 1994-2 (supplement April 18, 1994)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

STATE—TITLE 15

15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1A	Administration, organization and management of the Department of Transportation	Exempt	R.1994 d.348	26 N.J.R. 2797(a)
16:6	Relocation assistance and right-of-way acquisition	26 N.J.R. 1958(a)		
16:26	Bureau of Electrical Engineering	26 N.J.R. 1764(a)		
16:28-1.5	Speed limit zones along Route 37 in Ocean County	26 N.J.R. 1958(b)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Dover	26 N.J.R. 1960(a)		
16:28-1.18	Speed limit zones along Route 34 in Aberdeen and Matawan	26 N.J.R. 1765(a)		
16:28-1.41	School zone along U.S. 9 in Lower Township, Cape May County	26 N.J.R. 1765(b)		
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)		
16:28-1.67	Speed limit zones along U.S. 202 in Somerset County	26 N.J.R. 1316(b)	R.1994 d.262	26 N.J.R. 2299(a)
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206 in Salem County	26 N.J.R. 1766(a)		
16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)		
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)		
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)		
16:28-1.132	Speed limit zones along Route 47 in Middle Township	26 N.J.R. 1767(a)		
16:28-1.182	Speed limits along Wyckoff Mills Road in Howell Township	26 N.J.R. 1767(b)		
16:28-1.183	Speed limits along Frontage Road in Union Township, Hunterdon County	26 N.J.R. 1768(a)		
16:28A-1.22	No stopping or standing zones along Route 31 in East Amwell Township	26 N.J.R. 1768(b)		
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)		
16:28A-1.28	Restricted parking and stopping along Route 40 in Hamilton Township, Atlantic County	26 N.J.R. 1769(a)		
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.57	No stopping or standing along U.S. 206 in Mount Olive	26 N.J.R. 2200(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)	R.1994 d.263	26 N.J.R. 2299(b)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.3	Limited access prohibition along Route 55 Freeway in Cumberland, Salem, and Gloucester counties	26 N.J.R. 1769(b)		
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)		
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)		
16:31-1.1	Left turn prohibition on U.S. 206 at Valley Road in Hillsborough Township	26 N.J.R. 2547(a)		
16:31-1.3	Turn prohibitions on Route 46 in Mount Olive Township, Morris County	26 N.J.R. 1771(a)		
16:31-1.8	Turn prohibitions on Route 47 in the City of Vineland, Cumberland County	26 N.J.R. 1770(a)		
16:45	Construction control	26 N.J.R. 2547(b)		
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		
16:47-4.13	State Highway Access Management Code: administrative correction	————	————	26 N.J.R. 2299(c)
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reductiion Program tax credit	26 N.J.R. 756(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Autobuses	26 N.J.R. 1606(a)	R.1994 d.346	26 N.J.R. 2798(a)
16:53B	Jurisdictional assignments for railroad overhead bridges	26 N.J.R. 1203(a)	R.1994 d.232	26 N.J.R. 2146(b)
16:53D	Autobus carrier Zone of Rate Freedom	26 N.J.R. 1205(a)	R.1994 d.214	26 N.J.R. 1841(b)
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:56	Airport safety improvement aid	26 N.J.R. 1607(a)		
16:72-1.1, 1.2, 1.5, 2.2, 2.4	NJ TRANSIT: procurement policies and procedures	26 N.J.R. 908(b)	R.1994 d.211	26 N.J.R. 1842(a)

Most recent update to Title 16: TRANSMITTAL 1994-4 (supplement April 18, 1994)

TREASURY-GENERAL—TITLE 17

17:1-1.16	State-administered retirement systems: lost pension checks	26 N.J.R. 2200(b)		
17:1-4.32	Workers' Compensation: reduction of retirement allowance	26 N.J.R. 2201(a)		
17:2-1.4	Public Employees' Retirement System: replacement of member-trustee who declines to serve	25 N.J.R. 5113(a)	R.1994 d.259	26 N.J.R. 2299(d)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-62.11	State Investment Council: Common Pension Fund A realized appreciation	26 N.J.R. 1771(b)	R.1994 d.326	26 N.J.R. 2798(b)
17:16-63.11	State Investment Council: Common Pension Fund B realized appreciation	26 N.J.R. 1772(a)	R.1994 d.327	26 N.J.R. 2798(c)
17:16-67.11	State Investment Council: Common Pension Fund D realized appreciation	26 N.J.R. 1772(b)	R.1994 d.328	26 N.J.R. 2798(d)

Most recent update to Title 17: TRANSMITTAL 1994-2 (supplement April 18, 1994)

TREASURY-TAXATION—TITLE 18

18:2-3.9	Payment of taxes by Electronic Funds Transfer	26 N.J.R. 1612(a)	R.1994 d.305	26 N.J.R. 2591(a)
18:7-15.1–15.5	Corporation Business Tax: urban enterprise zone credits	26 N.J.R. 2203(a)		

Most recent update to Title 18: TRANSMITTAL 1994-3 (supplement April 18, 1994)

TITLE 19—OTHER AGENCIES

19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)		
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:8-2.11	Garden State Arts Center: sale of merchandise on property	26 N.J.R. 1318(a)	R.1994 d.235	26 N.J.R. 2146(c)
19:9-1	Turnpike Authority: traffic control	26 N.J.R. 337(a)		
19:10	Public Employment Relations Commission: definitions, service, construction	26 N.J.R. 2205(a)		
19:31-8.2, 8.3	Hazardous Discharge Site Remediation Fund	26 N.J.R. 1612(b)		
19:31-8.7, 8.9	Hazardous Discharge Site Remediation Fund: administrative correction	________	________	26 N.J.R. 2462(b)
19:31-9	New Jersey Boat Industry Loan Guarantee Fund	26 N.J.R. 1613(a)		

Most recent update to Title 19: TRANSMITTAL 1994-4 (supplement April 18, 1994)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40	General provisions	26 N.J.R. 2564(a)		
19:40-1.2	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:40-1.2	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)		
19:40-3.3	Establishment of qualification by required individuals	26 N.J.R. 782(a)	R.1994 d.218	26 N.J.R. 1842(b)
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.4	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:41-1.5, 1.6, 1.7	Casino employment requirements	26 N.J.R. 779(a)	R.1994 d.215	26 N.J.R. 1845(a)
19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.6, 5.6A	Business entity disclosure forms	26 N.J.R. 1437(a)	R.1994 d.296	26 N.J.R. 2591(b)
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:41-7.1A, 7.1B, 7.7	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)	R.1994 d.280	26 N.J.R. 2474(a)
19:41-7.2A	Applicant identification for license or registration	26 N.J.R. 2565(a)		
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:41-9.4	Division of Gaming Enforcement: hourly fee for efforts associated with sports events matters	———	———	26 N.J.R. 2476(a)
19:41-9.8, 9.9, 9.9A, 9.11A, 9.12, 9.13, 9.14, 14.6	License periods and fees	26 N.J.R. 780(a)	R.1994 d.216	26 N.J.R. 1846(a)
19:41-9.16	Listing of endorsements on casino employee licenses	26 N.J.R. 911(a)	R.1994 d.217	26 N.J.R. 1847(a)
19:41-11.1–11.4	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)	R.1994 d.220	26 N.J.R. 1847(b)
19:42-3.6	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)	R.1994 d.341	26 N.J.R. 2798(e)
19:43-2.2–2.7A	Establishment of qualification by required individuals	26 N.J.R. 782(a)	R.1994 d.218	26 N.J.R. 1842(b)
19:43-5, 11	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)	R.1994 d.341	26 N.J.R. 2798(e)
19:43-6.1–6.9	Casino hotel facility requirements	26 N.J.R. 1206(a)	R.1994 d.342	26 N.J.R. 2801(a)
19:43-6.2, 7, 9.1, 10.1, 14.1	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:43-9.4	Employee experiential hours	26 N.J.R. 783(a)	R.1994 d.219	26 N.J.R. 1851(a)
19:43-9.5	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)	R.1994 d.280	26 N.J.R. 2474(a)
19:43-10.4, 10.6	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)	R.1994 d.220	26 N.J.R. 1847(b)
19:43-14.2	Casino simulcasting facility: advertising prohibitions	26 N.J.R. 1209(a)	R.1994 d.281	26 N.J.R. 2476(b)
19:44-2.6, 2.7, 5.1	Gaming schools	26 N.J.R. 1617(a)	R.1994 d.343	26 N.J.R. 2803(a)
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:44-6.1	License periods and fees	26 N.J.R. 780(a)	R.1994 d.216	26 N.J.R. 1846(a)
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.9B, 1.24, 1.26, 1.27, 1.29	Use of cash complimentary gifts	26 N.J.R. 2212(a)		
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.37A	Electronic transfer credit system: temporary adoption of new rule and amendments	———	———	26 N.J.R. 2478(b)
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.1, 1.41A	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)		
19:45-1.3, 1.10, 1.11, 1.14, 1.32, 1.34	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:45-1.11	Casino licensee's organization	26 N.J.R. 784(a)	R.1994 d.221	26 N.J.R. 1852(a)
19:45-1.17, 1.42	Transportation of slot cash storage boxes, slot drop buckets and drop boxes	26 N.J.R. 1440(a)	R.1994 d.297	26 N.J.R. 2594(a)
19:45-1.17, 1.42	Temporary storage of slot cash storage boxes and slot drop boxes	26 N.J.R. 2213(a)		
19:45-1.18, 1.46	Use of match play coupons in craps	26 N.J.R. 1441(a)	R.1994 d.298	26 N.J.R. 2594(b)
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)	Expired	
19:45-1.24A	Wire transfer fees	26 N.J.R. 2215(a)		
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)		
19:45-1.25	Repurchase of cash equivalents by patrons	26 N.J.R. 2216(a)		
19:45-1.27	Approval of patron credit limits	26 N.J.R. 912(a)	R.1994 d.222	26 N.J.R. 1852(b)
19:45-1.36	Recording of bill changer entries	26 N.J.R. 2217(a)		
19:45-1.40B	Temporary investment of annuity jackpot trust funds	26 N.J.R. 1966(a)		
19:45-1.42, 1.43	Slot drop procedures	26 N.J.R. 1621(a)	R.1994 d.344	26 N.J.R. 2804(a)
19:45-1.43	Count room procedure	26 N.J.R. 1209(b)	R.1994 d.282	26 N.J.R. 2476(c)
19:45-1.45	Maintenance of signature cards	26 N.J.R. 912(b)	R.1994 d.223	26 N.J.R. 1853(a)
19:45-1.46	Inventory of coin coupons	26 N.J.R. 1322(a)		
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:46-1.1, 1.8, 1.9, 1.13F, 1.20	Card-o-lette	25 N.J.R. 2230(a)	Expired	
19:46-1.5, 1.6, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)		
19:46-1.10, 1.16, 1.19, 1.20	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:46-1.19	Dealing shoes	26 N.J.R. 1622(a)	R.1994 d.345	26 N.J.R. 2805(a)
19:47-1.3, 1.9	Use of match play coupons in craps	26 N.J.R. 1441(a)	R.1994 d.298	26 N.J.R. 2594(b)
19:47-2.5, 2.6, 5.2, 8.5	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:47-3.5, 4.4, 7.5	Shuffle and cut of the cards in baccarat-punto banco, baccarat-chemin de fer, minibaccarat	26 N.J.R. 1210(a)	R.1994 d.283	26 N.J.R. 2477(a)
19:47-8.2, 15	Card-o-lette	25 N.J.R. 2230(a)	Expired	
19:47-11.2, 11.4–11.8, 11.8A, 11.8B, 11.8C, 11.10, 11.11	Pai gow poker: automated shuffling devices and dealing shoes	26 N.J.R. 344(a)	R.1994 d.224	26 N.J.R. 1853(b)
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-17	Double Down Stud	26 N.J.R. 1323(a)		
19:49-2.3, 2.4	Gaming schools	26 N.J.R. 1617(a)	R.1994 d.343	26 N.J.R. 2803(a)
19:50-1.4, 1.5, 2.2, 3.1, 3.6	Casino simulcasting facility: alcoholic beverage control	26 N.J.R. 1211(a)	R.1994 d.284	26 N.J.R. 2477(b)
19:51	Persons doing business with casino licensees	26 N.J.R. 1212(a)	R.1994 d.258	26 N.J.R. 2478(a)
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:51-1.2, 1.2A, 1.2B	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)	R.1994 d.220	26 N.J.R. 1847(b)
19:51-1.3, 1.3A, 1.3B, 1.8	Gaming schools	26 N.J.R. 1617(a)	R.1994 d.343	26 N.J.R 2803(a)
19:51-1.8	License periods and fees	26 N.J.R. 780(a)	R.1994 d.216	26 N.J.R. 1846(a)
19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers	26 N.J.R. 785(a)		
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions	26 N.J.R. 1994(a)		
19:55-2.11, 4.10	Simulcasting of horse races: cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2566(a)		
19:65-1.2, 2.2, 2.4–2.11, 6.1, 6.2	Hotel development and corridor region projects	25 N.J.R. 4476(a)		
19:65-2.5	Approval criteria for hotel development projects	25 N.J.R. 5455(a)		

Most recent update to Title 19K: TRANSMITTAL 1994-4 (supplement April 18, 1994)

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