



RULEMAKING MANUAL

REFERENCE



State of New Jersey
Office of Administrative Law

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FILING INSTRUCTIONS

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Please keep this sheet in the front of the Rulemaking Manual as a record of replaced pages.

Remove the following pages:

Table of Contents
Flow-Charts
1 through 59
Appendix Example List
Examples A through W
New Jersey Register Schedule

Insert the following pages:

Table of Contents
(Discard Flow-Charts)
1 through 86
Appendix Table of Contents
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Example HH

**STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
RULEMAKING MANUAL**

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Introduction

Since the inception of the Office of Administrative Law (OAL) in 1979, it has been a primary task of the Division of Administrative Rules to encourage the formulation of well-made rules that can be understood by all interested and affected persons, and to insure that the formulation of rules includes adequate opportunity for input by all interested and affected persons. The Office of Administrative Law has relied primarily on the Rules for Agency Rulemaking, N.J.A.C. 1:30, and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to guide State agencies and rulemaking parties in the rulemaking process. In response to requests by State agencies and in recognition of an ongoing need, this Rulemaking Manual has been developed to provide clear and coherent assistance to individuals involved with rule drafting and to those who are generally familiar with the process but who have expressed a desire for a comprehensive guide to the rule promulgation process.

This 2002 edition of the Rulemaking Manual incorporates the changes to the rulemaking process enacted by P.L. 2001, c. 5, which substantially revised the Administrative Procedure Act; P.L. 1998, c. 48, which added the Agriculture Industry Impact statement requirement; and Executive Order No. 4 (2002), which added the Smart Growth Impact statement requirement. This edition also clarifies the prior edition, provides additional guidance, and updates and adds to the Appendix.

This Rulemaking Manual is in looseleaf format so that it can and will be periodically updated. It is used as a rulemaking reference and, as such, interprets the Rules for Agency Rulemaking, N.J.A.C. 1:30.

The State agencies, particularly rule drafting personnel, are encouraged

to contact the Division of Administrative Rules at the Office of Administrative Law with any questions or concerns they have regarding the rulemaking process. The staff of the Division of Administrative Rules is available as a resource to State agencies for the proper promulgation of rules. Individual questions or problems may be addressed to the rulemaking staff. The questions and problems will guide that staff in the periodic updating of the Rulemaking Manual and assist Division staff in the development of training and in-service programs for agency personnel.

Comments on the Rulemaking Manual or requests for training should be directed to:

Office of Administrative Law
Division of Administrative Rules
9 Quakerbridge Plaza
PO Box 049
Trenton, NJ 08625-0049
Phone: (609) 588-6614

The New Jersey Register (N.J.R.) is the semi-monthly official publication of the Office of Administrative Law which contains all proposals and adoptions of rules promulgated pursuant to the Administrative Procedure Act. The Register also contains agency public notices, Executive Orders, Reorganization Plans and Rulemaking Calendars. The Register is divided into two main sections: Rule Proposals which includes the text of all proposals, arranged by agency and Administrative Code citation; and Rule Adoptions which includes the full text of all adoptions, likewise arranged by agency and Code citation. Each individual Register includes a Table of Rulemaking in that issue.

The Register also contains a cumulative Index of Rule Proposals and Adoptions which lists all rule proposals from the preceding 12 months which have not been adopted by the agency and all adoptions which have not yet been integrated into the New Jersey Administrative Code. The listing is arranged by agency, and therein by citation order. The listing includes a brief description of the rule, the volumes and pages of the Registers in which the proposal and adoption were published, and an OAL Registry document number.

The New Jersey Administrative Code (N.J.A.C) is the official publication of the Office of Administrative Law and contains all effective rules adopted by State agencies. Each agency's body of rules is codified in a title of the Code. Each title contains a chapter table of contents and an index. Each individual chapter likewise contains a table of contents. The Code is annotated to provide the reader with a complete context in which to analyze the rules. (See Examples FF and GG in Appendix.) Annotations include:

1. Legislative authority for the rulemaking;
2. Source and effective date of the rules;
3. Historical notes which discuss prior regulatory activity;
4. Chapter expiration dates;
5. Case notes (listings of salient court and OAL decisions and Formal Attorney General Opinions); and
6. Law review commentary notes.

All State agency rulemaking activities, unless specifically exempted by the Administrative Procedure Act, must be submitted to the Office of Administrative Law for review of technical, substantive and legal conformance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking,

N.J.A.C. 1:30. Thus, notices pertaining to rulemaking activities such as petitions for a rule and pre-proposals for a rule, and to all rulemaking proceedings to promulgate a rule are submitted to the Office of Administrative Law for review and approval for publication in the New Jersey Register.

In accordance with the State contract with West Group for the publication of the New Jersey Register and the New Jersey Administrative Code, both may be accessed on-line, on a transactional and subscription fee basis, in a searchable and downloadable format, at www.westlaw.com. Register notices and Code sections can also be accessed on line for a per document fee at www.westdoc.com. New Jersey Register material available on-line is limited to that published since mid-1995.

I. Rules and rulemaking

A. What is a rule?

1. In common usage, a rule is a “prescribed guide for conduct or action” (Webster’s New Collegiate Dictionary, Internet Edition, 2002).

2. The Administrative Procedure Act (at N.J.S.A. 52:14B-2(e)) defines the term “administrative rule” or “rule” as follows:

(e) “Administrative rule” or “rule,” when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include:

- (1) statements concerning the internal management or discipline of any agency;
- (2) intra-agency and inter-agency statements; and
- (3) agency decisions and findings in contested cases.

3. N.J.A.C. 1:30-1.2 incorporates by reference the definition provided in N.J.S.A. 52:14B-2(e).

4. In *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984), the New Jersey Supreme Court held “that an agency determination must be considered an administrative rule when all or most of the relevant features of administrative rules are present and preponderate in favor of the rule-making process. Such a conclusion would be warranted if it appears that the agency determination, in many or most of the following circumstances:

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

(2) is intended to be applied generally and uniformly to all similarly situated persons;

(3) is designed to operate only in future cases, that is, prospectively;

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

(5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and

(6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy." *Id.* at 331.

5. For additional New Jersey Supreme Court interpretations on "what is a rule?", see *Department of Environmental Protection v Stavola T/A Driftwood Cabana*, 103 N.J. 425 (1986) and *In the Matter of the Request for Solid Waste Utility Customer Lists*, 106 N.J. 508 (1987).

6. In *Woodland Private Study Group v. State of New Jersey, Department of Environmental Protection*, 109 N.J. 62 (1987), the New Jersey Supreme Court examined the meaning of the intra-agency exception to the Administrative Procedure Act definition of a rule. The Court defined an intra-agency

statement as a "communication between agency members that does not substantially impact upon the rights or legitimate interests of the regulated public." *Id.* at 62. The court found that these internal agency statements which substantially impact upon the rights or legitimate interests of the regulated public must be promulgated pursuant to the Administrative Procedure Act.

7. The Division of Administrative Rules is available to assist agencies in determining whether *Metromedia* and/or *Woodland* require information which is contained in manuals, directives, circular letters, guidelines, specifications, etc. to be promulgated as a rule.

B. What initiates rulemaking?

1. Implementation of a statute, including new legislation or amendments to existing legislation, may necessitate that an agency undertake a rulemaking activity. As stated in *General Assembly v. Byrne*, 90 N.J. 376, 386 (1982), "the chief function of executive agencies is to implement statutes through the adoption of coherent regulatory schemes." The court additionally emphasized that:

"The function of promulgating administrative rules and regulations lies at the very heart of the administrative process. *Cammarata v. Essex County Parks Commission*, 26 N.J. 404, 410 (1958). See also, *Albelson's Inc. v. N.J. State Board of Optometrists*, 5 N.J. 412, 423 (1950). Rulemaking allows the agency to further the policy goals of legislation by developing coherent and rational codes of conduct, 'so those concerned may know in advance all the rules of the game, so to speak, and may act with reasonable assurance.' *Boller Beverages, Inc. v. Davis*, 38 N.J. 138, 152 (1962). We have recognized that the

administrative agencies are the arms of the branch of government through which it executes the law passed by the Legislature. Agencies regulate through their delegated power to promulgate rules and regulations." *Id.* at 385.

2. A change in agency or governmental policy may trigger the rulemaking process.

a. In order to meet changing social or economic needs, an agency may find new or amended rules necessary.

b. An Executive Order issued by the Governor may result in the need for rules.

3. A court decision may trigger the rulemaking process.

a. A court decision may mandate a rule or make amendments appropriate. (See *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984).)

b. A court decision may render a rule invalid, thereby triggering the need for amendment, repeal or new rule.

4. An agency may receive a petition from an interested person to promulgate, amend or repeal a rule (N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4). (See IX.C, page 69.)

5. An imminent danger or peril in the State may create the need for a rule. (See IX.A, page 65.)

6. A rule that is required by Federal law may trigger the

rulemaking process.

II. Definitions

The following words and terms, when used in this manual, shall have the following meanings, unless the context clearly indicates otherwise. (See N.J.A.C. 1:30-1.2)

“Adopt” means the action whereby a rule is officially approved and authorized for promulgation by an adopting agency.

“Amend” means to modify, alter, revise or suspend the operative effect of a previously promulgated rule.

“Appendix” means any collateral material, which can be regulatory or non-regulatory, which serves to clarify, illustrate or explain a rule.

“Codify” means to devise, pursuant to N.J.S.A. 52:14B-7(f), the form in which rules are published to achieve a logical and consistent arrangement of their provisions.

“Director” means the Director of the Office of Administrative Law.

“Effective” means that a rule, pursuant to the New Jersey Constitution, the Administrative Procedure Act and the OAL Rulemaking Rules, has been duly adopted, filed with the Office of Administrative Law, and in the case of a new rule, amendment, or repeal, promulgated in the New Jersey Register. A readoption is effective upon timely filing with the OAL.

“File” means the action whereby a document is received by the Division of Administrative Rules; stamped with the date and time of receipt, entered into the registry; and thereafter accepted for publication by the Director. All documents

accepted for publication shall be considered filed as of the date of receipt.

“Joint proposal and joint adoption” is the process by which two or more agencies, with concurrent or complimentary jurisdiction, jointly propose and adopt identical rules, at the same time. The process may be mandated by legislation or voluntarily initiated, where appropriate.

“Negotiating a rule” means the process whereby an agency requests, and the OAL provides, a representative to conduct a preliminary, non-adversarial proceeding with respect to a contemplated rulemaking proceeding and which results in a rule presented to the adopting agency head in the form required by N.J.A.C. 1:30-5.1.

“New rule” means a rule which contains subject matter not previously promulgated or which contains subject matter previously repealed or expired which is reestablished by the rulemaking process.

“Notice of petition for rulemaking” means that document described in N.J.A.C. 1:30-4.1 which must be submitted to the Office of Administrative Law for publication in the New Jersey Register when a request for agency rulemaking action is made by an interested person, pursuant to N.J.S.A. 52:14B-4(f).

“Notice of pre-proposal” means that document described in N.J.A.C. 1:30-5.3 which must be submitted to the Office of Administrative Law for publication in the New Jersey Register, when an agency determines to conduct, pursuant to N.J.S.A. 52:14B-4(e), a preliminary deliberative proceeding with respect to a contemplated rulemaking proceeding; or when, pursuant to N.J.A.C. 1:30-5.3, a pre-proposal shall be submitted.

“Notice of proposal” means that document described in N.J.A.C. 1:30-5.1 which must be submitted to the Office of Administrative Law for filing and then publication in the New Jersey Register and distribution to the Legislature and

interested persons.

"OAL" means the Office of Administrative Law.

"Operative" means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule. Unless otherwise specified in the rule, a rule becomes operative when effective.

"Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-5.3(b). This preliminary proceeding, conducted at an agency's discretion, precedes the filing of a formal rule proposal.

"Promulgate" means to proclaim officially in the New Jersey Register and thereby render effective a new rule, amendment or repeal which was duly adopted by an agency and filed with the Office of Administrative Law.

"Propose" means the action whereby an adopting agency submits a notice of proposed rule to the Office of Administrative Law for filing and publication by the Director.

"Readopt" means to conduct a rulemaking proceeding for the purpose of continuing in effect:

1. The provisions of an emergency rule which would otherwise expire pursuant to N.J.S.A. 52:14B-4(c) (see N.J.A.C. 1:30-6.5). (This is accomplished through the adoption of a concurrent proposal.); or

2. A rule which expires pursuant to N.J.S.A. 52:14B-5.1. (See N.J.A.C. 1:30-6.4.)

"Repeal" means to conduct a rulemaking proceeding to declare void a rule,

the effect of which is to terminate the legal effect of such rule prospectively only. Any rule so terminated shall continue thereafter to be enforced in and applied to all proceedings, formal or otherwise, initiated prior to the effective date of such repeal.

III. Pre-proposal process (N.J.S.A. 52:14B-4(e))

A. Rationale and preparation of notice: Pursuant to N.J.S.A. 52:14B-4(e), an agency may conduct a deliberate preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking. This preliminary action prior to the filing of a formal rule proposal is called a pre-proposal. If an agency wishes to begin a pre-proposal preliminary proceeding, the agency must submit a notice of pre-proposal to the Office of Administrative Law for publication in the New Jersey Register and provide at least a 30-day comment period prior to submitting a formal notice of proposed rule on the same subject. The agency's notice of pre-proposal can take various forms. For instance, the agency can simply state the subject matter of the intended rulemaking without proposing the text of a rule and request the public's viewpoint on the particular area sought to be regulated and the particular provisions which should be included in the proposed rule. This process may be appropriate when an agency is concerned with developing or changing rules which cover broad or general subject matter. (See Example A in Appendix.) On the other hand, if specific rule changes are contemplated, the agency may publish a pre-proposal notice with the pre-proposed text of a rule, elicit the public's comments and amend the rule if necessary upon submitting the formal rule proposal. (See Example B in Appendix.)

The procedure of pre-proposing rule activity is a tool for agencies to "test the waters," address possible difficulties prior to the actual formal proposal of rules and insure that the interested parties' input has been considered. By pre-proposing, considerable time and difficulty can be spared. It is recommended that a pre-proposal be utilized for all rulemakings which involve the joint or concurrent promulgation of two or more agencies which share jurisdiction. Agencies may pre-

propose different language in their respective notices to assess the preferred text. After receiving comments, the agency may then synthesize the language from the respective pre-proposals in order to prepare a formal proposal. Joint or concurrent proposals and adoptions shall contain identical language in those areas in which the agencies share jurisdiction.

A pre-proposal is also appropriate when an agency seeks to rulemake pursuant to legal authority based upon proposed legislation (any bill that has been filed but has not been sent to the Governor for approval or veto). A pre-proposal based upon proposed legislation is appropriate because the agency is not committing itself to any particular rule text but is simply preparing itself to propose rules on legislation not yet finalized. Pending legislation which has passed both houses of the Legislature and has been sent to the Governor may be the basis for a proposal, rather than a pre-proposal. (See V.C.1.f, page 20.)

In either of the situations mentioned above, the notice of pre-proposal must include:

1. The name of the agency and agency head;
2. A citation to the legal authority authorizing the rulemaking action;
3. A discussion of the subject matter of the rule and/or the problem or purpose the agency wishes to address; and, if available, a draft copy of the contemplated rules; and
4. Where and when interested persons may submit their comments or attend any hearings or conferences for the contemplated rulemaking.

B. N.J.A.C. requirements: For a complete breakdown of the steps and documentation required in the pre-proposal procedure, see the Rules for Agency

Rulemaking in the New Jersey Administrative Code, specifically N.J.A.C. 1:30-5.3, 5.4 and 5.5. It is suggested that these rules be used by rule drafting personnel as a checklist in submitting pre-proposal notices to the OAL.

C. Submission of pre-proposal notice: In addition to the rulemaking requirements of N.J.A.C. 1:30-5.3, 5.4 and 5.5, the pre-proposal notice must be submitted in the following manner:

1. By the proposal deadline for Register publication;
2. In the original, with two copies (agencies are encouraged to submit computer disks with print copies, especially when a document is 50 pages or more; Word is the preferred PC format; mainframe files should be converted to ASCII);
3. On one side of 8 ½ by 11-inch paper;
4. Double spaced;
5. Signed by the agency head; and
6. Using the format in Examples A and B of the Appendix.

Please Note: For amended rules, deletions must be bracketed and additions must be underlined.

D. Role of OAL: The staff of the Division of Administrative Rules will check for compliance with all the above requirements and for spelling or typing errors. If there are any non-technical changes to be made to the pre-proposal notice prior to publication, the staff will contact the agency to confer. Otherwise, the notice as submitted will be published in the Rule Proposals section of the New Jersey Register under the agency title.

E. Agency action following pre-proposal: Once the agency has conducted and completed the pre-proposal rulemaking activities mentioned above, and has gathered all the relevant comments, views and expertise which it considers necessary to proceed with a proposed rule, any further rulemaking action must also be conducted in compliance with the Administrative Procedure Act and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30. The proposal and adoption process requirements must be adhered to, but by use of the pre-proposal procedure, fewer negative comments may be received and the need for additional changes or reproposal may be diminished.

F. Informal public input: Under N.J.A.C. 1:30-5.3(a), agencies may also seek informal public input on a preliminary rule draft or in formulating a rule, by using any reasonable informal procedure and means of notice to solicit public participation.

G. Rulemaking calendar exception: Where an agency has published a notice of pre-proposal of a rule in accordance with N.J.A.C. 1:30-5.3(b) and (c), the rulemaking calendar requirements of N.J.S.A. 52:14B-3(4) and N.J.A.C. 1:30-3.1 and 3.2 shall not apply. (See N.J.S.A. 52:14B-3(4)(d) and N.J.A.C. 1:30-3.3(a)4.)

IV. Rulemaking calendar (N.J.S.A. 52:14B-3(4))

A. Calendar requirement (see N.J.A.C. 1:30-3): Each agency shall publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rulemaking notice of proposal activities for the next six months. The calendars shall be published in the first New Jersey Register for the months of January, April, July and October and shall be filed with OAL in accordance with the OAL publication schedule (see V.E.1, page 39) on or before the filing deadline for notices of proposal. (See Example C in Appendix.)

B. Calendar content: The calendar shall include:

1. The name of the agency;
2. The name of the agency head;
3. Specific citation to the rules to be affected;
4. Citation to the legal authority authorizing the rulemaking action;
5. A synopsis of the rulemaking and its objective or purpose; and
6. The month and year in which publication of the notice of proposal in the New Jersey Register is anticipated.

C. Calendar amendment:

1. An agency shall notify the Office of Administrative Law, Division of Administrative Rules when it wishes to amend its calendar of rulemaking activities. Such notice shall be in the form of a revised version of the rulemaking calendar published most recently prior to the amendment, and shall highlight the amendment, both in an explanatory statement and the appearance of the amendment text (additions in boldface, deletions in brackets) within the calendar. (See Example D in Appendix.) Notices of calendar amendment shall be filed with the OAL in accordance with the deadlines for filing notices of proposal set forth in the OAL publication schedule. An agency shall take no action on an amended rulemaking activity until at least 45 days following the first publication of the amended calendar in which the announcement of that amended rulemaking activity appears, if an amendment:

- a. Involves the addition of any rulemaking activity to an agency's calendar;

b. Changes the anticipated month of proposal publication to an earlier month; or

c. Alters the objective, purpose or subject matter synopsis of the rulemaking so as to change who or what shall be affected by the rulemaking and/or how they shall be affected.

2. If a calendar amendment as described under IV.C.1.a through c above appears initially in an agency's quarterly rulemaking calendar (that is, is a revision to a rulemaking item that was included, or, by its anticipated date of publication, should have been included, in a prior calendar), an agency shall take no action on that amended rulemaking activity until at least 45 days following the publication of the quarterly calendar. (See Example C in Appendix.)

D. Calendar exceptions:

1. The requirements for inclusion in a rulemaking calendar do not apply to rulemaking:

a. Required or authorized by Federal law, when failure to adopt rules in a timely manner will prejudice the State;

b. Subject to a specific statutory authorization requiring promulgation in a lesser time period than addition to a calendar would permit;

c. Involving an imminent peril subject to provisions of N.J.S.A. 52:14B-4(c) (that is, the emergency rulemaking process);

d. For which the agency has published a notice of pre-proposal of the rule in accordance with N.J.A.C. 1:30-5.3(b) and (c) (See III, page 12.); or

e. For which a comment period of at least 60 days is provided.

2. A proposed rulemaking falling within any of these exceptions shall so indicate in the Summary of notice of proposal. If the rule falls under the exception in described in IV.D.1.a above, the Summary shall include the specific citation of the Federal law requiring or authorizing the rule, and an explanation as to how failure to adopt the rule in a timely manner will prejudice the State.

E. Calendar notice: Each agency shall include, in that portion of its Internet web site concerned with rulemaking, either its rulemaking calendar or a notice of the availability of its rulemaking calendar for the fee established under N.J.A.C. 1:30-1.9(a). If an agency's web site does not feature a portion devoted to rulemaking, the calendar or notice of the availability of the rulemaking calendar shall be included in that portion of the web site otherwise used for public notices and/or information. In addition to the web site notice, an agency shall provide notice of the availability of its rulemaking calendar for the established fee in the same manner as it publicizes its proposed rulemakings under N.J.A.C. 1:30-5.2(a)6. (See V.E.4.d, page 40.)

V. Proposal process (N.J.S.A. 52:14B-4)

A. Defined: Rule proposal is the rulemaking proceeding in which an agency submits a notice of proposal to the Office of Administrative Law for publication in the New Jersey Register. The rule activity may consist of a proposed new rule, a proposed amendment to modify, alter, or revise an existing rule, a proposed repeal of a rule or a proposed readoption. In all instances, the proposal procedure is necessary. It is through the proposal process that those affected by a possible rule and the public in general are given the opportunity to comment on the rules and their effects. (See N.J.S.A. 52:14B-4.)

B. Adherence to procedures: Certain requirements must be met in the preparation of the notice of proposal for submission to the Office of Administrative Law. (See Examples E through J in Appendix.) Please note that all rule text proposed for deletion must be bracketed and all rule text proposed for addition must be underlined. (The underlined proposed additions will be published in boldface, rather than underlined, in the New Jersey Register.) Proposals must be submitted:

1. By 12:00 noon on the proposal deadline established by the OAL;

2. In the original, with two copies (agencies are encouraged to submit computer disks with the print copies of the proposal, especially when a document is 50 or more pages long; Word is the preferred PC Format; mainframe files should be converted to ASCII);

3. Double-spaced, with 1 ½ inch margins, justified left; and

4. On one side of 8 ½ by 11-inch paper.

C. The notice of proposal must include (see N.J.A.C. 1:30-5.1):

1. A heading that shall include, in the following order:

a. The heading of the Administrative Code Title affected;

b. The element within the proposing agency (for example, the Division or Bureau) originating the notice;

c. A caption describing the subject matter of what is proposed;

d. A suggested N.J.A.C. citation for any new rule and the existing citation for any rule(s) proposed for amendment, repeal or

readoption;

e. After "Authority," the name and title of the agency head or an agency employee duly authorized by the agency head, or other person authorized by statute to propose a rule (see N.J.A.C. 1:30-2.4), and the signature of such person. If an entity, such as a commission or board, possesses rulemaking authority, after "Authorized By:" would appear the entity's name followed by the name and title of the entity's presiding officer (such as the Chair or President) or its Executive Director, and the signature of such person (signifying that the entity has formally approved the proposal).

(1) The above signature location is preferred; however, location of the authorizing signature elsewhere in the notice or in a cover document will be accepted.

(2) When someone other than the agency head has been designated to sign rulemakings, the signatory delegation must be on file at the Office of Administrative Law;

f. After "Authority:", a citation to the specific legal authority authorizing the proposed rulemaking activity.

(1) The citation must identify the source of the rulemaking authority of the adopting officer. (The citation shall not merely be the agency's enabling statute, unless the agency is relying upon its residual or other general powers, and so states in the Summary).

(2) The legal authority citation should also identify any other relevant statutes. Pending legislation which has passed both houses of the Legislature and has been sent to the Governor for approval or veto may serve as the basis for a proposal. However, a proposed rule cannot be adopted until the bill has been signed into law. If the bill is not signed into

law, the proposed provision dependent upon the bill cannot be adopted. If the bill is conditionally vetoed, a reproposal is required to reflect any changes made as a result of the veto. If a bill has not passed both houses and has not been sent to the Governor for approval, a pre-proposal rather than a proposal may be initiated. (See III.A, page 12.)

g. After "Calendar Reference:", the New Jersey Register publication date and citation of the rulemaking calendar most recently prior to the anticipated publication date of the notice of proposal.

(1) If the rulemaking is excepted from the prior calendar listing requirement under N.J.A.C. 1:30-3.3(a), this heading item shall reference the notice Summary. The Summary shall contain the explanation of the exception required under N.J.A.C. 1:30-3.3(b). For example, the heading item may read, "Calendar Reference: See Summary below for explanation of exception to calendar requirement.";

h. An item headed "Proposal Number:" which shall be completed by the OAL;

i. An announcement of the public's opportunity to be heard which shall include:

(1) When, where, how and to whom persons may present their views;

(2) Whether comments and inquiries will be accepted only in writing or orally as well. If written comments will be accepted electronically, the agency must include a fax number and/or e-mail address;

(3) Where, when and how persons may attend public hearings, if any (15 days notice of public hearing must be provided); and

(4) The notice must provide a comment period of at least 30 days from the date of publication but the agency may provide a longer comment period, if it wishes;

2. A statement of the proposed rulemaking, which shall include, in the following order:

a. A Summary statement that includes:

(1) A clear and concise explanation of its purpose and effect. The Summary shall describe, detail and identify:

i. Who and what will be affected by the proposal;

ii. How, when and where the effect will occur;

iii. What the proposal prescribes, proscribes or otherwise mandates;

iv. What enforcement mechanisms and sanctions may be involved;

v. Additional information regarding the regulatory history of the proposal. For example, the proposal may be the second or third version of a previously published rule, and may incorporate public comment from hearings or other sources. If a prior proposal is being repropose or superseded, this should also be noted along with discussion of issues raised by commenters on the initial proposal and how the reproposal is responsive to those comments. Such information regarding the proposed rulemaking must be included in the Summary. A proposal Summary should serve as a regulatory history, which may be used as a research source in the future; and

vi. Any other relevant or pertinent information;

Note: In *In the Matter of the Adoption of Amendments of N.J.A.C. 13:30-8.6* (Dkt. No. A-3464-93T5, Appellate Division, decided August 10, 1995, unpublished), an agency rulemaking was reversed for failure to disclose information and communications which were the agency's motivation for proposing the amendments.

b. A Social Impact statement that includes:

(1) An explanation of the social effect of the proposal (that is, those effects not economic in nature, such as improved health and safety or access to education);

(2) Who is affected (public, agency, specific population);

(3) How large a group (all MDs in New Jersey, all those over 55);

(4) The nature of the social impact;

(5) The projected reaction to the rule;

(6) An explanation of the positive or negative consequences to various parties affected; and

(7) The social conditions which may have precipitated the rule;

c. An Economic Impact statement that includes:

(1) An explanation of who the proposal will affect economically;

(2) Statistical Information wherever possible;

(3) How the proposal may affect funding sources;

(4) The economic effect on the public, if any;

(5) The economic effect on implementing agencies or other agencies, such as any administrative, enforcement or oversight costs; and

(6) Any social or monetary savings;

REMINDER: When drafting rules, please keep in mind the provisions of P.L. 1996, c. 24 (N.J.S.A. 52:13H-1 et seq.), commonly referred to as the State Mandate/State Pay law. Section 2 of the law provides that any rule originally adopted after July 1, 1996, which is determined in accordance with the law to be an unfounded mandate upon boards of education, counties or municipalities because the rule does not provide funding to offset the cost for implementing the rule, shall not be mandatory and shall expire. Section 3 sets forth categories of rules that are not unfounded mandates. The OAL suggests that the proposing agency consider during the development of the rule whether the rule will trigger a State mandate/State pay issue.

d. A Federal Standards Statement or Analysis (see N.J.A.C. :30-5.1(c)4): Executive Order No. 27 (1994) and P.L. 1995, c.65 (N.J.S.A 52:14B-22 through 24) require that, rather than imposing unnecessary State standards, agencies should consider whether any applicable Federal standards adequately protect the public health, safety and welfare. The intent of the Executive Order and the amendments to the Administrative Procedure

Act is to reduce multiple Federal and State regulation of the same subject matter unless the increased State regulation is warranted and the proposing agency justifies the additional requirements. Rules which exceed Federal standards shall include an analysis that explains the agency's reason for imposing standards beyond those required by Federal law. (See Example G in Appendix for a notice of proposal with a Federal Standards Analysis.)

(1) For purposes of determining whether Federal law is involved which triggers that need to prepare a Federal standards analysis, Federal law means statutes, rules, regulations, orders, directives or guidelines issued by the Federal government and its agencies.

(2) A Federal standards analysis is required for any new rules, amended rule or readopted rule which contains standards that exceed those established by Federal law.

(3) If a proposed rule is not subject to any Federal standards, the notice shall include a statement that a Federal standards analysis is not applicable to the rulemaking.

(4) If a proposed rule is subject to, but does not exceed, any Federal standards, the notice shall include a statement that the requirements of the proposed rule are the same as those imposed by Federal law, with citations to the applicable Federal statutes and/or regulations.

(5) If a proposed rule exceeds Federal standards, the notice shall include an analysis which:

i. Discusses the agency's policy reasons for imposing standards that exceed those required by Federal law;

ii. Contains a cost benefit analysis that supports the decision to impose standards that exceed those required by Federal law; and

iii. Discusses whether the standards to be imposed by the agency are achievable under the current technology.

(6) The head of the agency must certify that the Federal standards analysis accurately and plainly explains to the public the purposes and expected consequences of the proposed rule;

e. A Jobs Impact statement: P.L. 1995, c. 166, §1 amended N.J.S.A. 52:14B-4(a)(2) to require that the notice of proposal contain a Jobs Impact statement which discusses the number of jobs that are expected to be generated or the number of jobs expected to be lost if the proposed rule takes effect;

f. An Agriculture Industry Impact statement: P.L. 1998, c. 48, §4 amended N.J.S.A. 52:14B-4(a)(2) to require that the notice of proposal contain an Agriculture Industry Impact statement as provided in N.J.S.A. 4:1C-10.3, which requires such statement to set forth the nature and extent of the impact of the proposed rule on the agriculture industry;

g. A Regulatory Flexibility Analysis or Statement (see N.J.A.C. 1:30-5.1(c)7): Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which describes the methods used to minimize any adverse economic impact on small businesses. A small business is one which employs fewer than 100 full-time employees.

(1) The analysis shall describe with as much quantification as is practical or reliable, each of the following:

i. The types and an estimate of the number of small businesses to which the rule will apply;

ii. The reporting, recordkeeping and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements;

iii. An estimate of the initial compliance costs, and an estimate of the annual compliance costs, with an indication of any likely variation on small businesses of differing types and sizes; and

iv. How the rule is designed to minimize any adverse economic impact on small businesses.

(2) An analysis must specifically disclose how the rule was designed to minimize any adverse economic impact on small businesses by revealing why the agency utilized or rejected each of the following approaches:

i. Differing compliance or reporting requirements or timetables that take into account resources available to small businesses;

ii. Performance rather than design standards; and

iii. Exemption from all or part of the rule, provided that the public health, safety or welfare is not endangered. (A finding of endangerment, however, shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare that must be maintained.)

(3) Rules which do not impose compliance requirements

on small businesses shall be accompanied by a statement that a regulatory flexibility analysis is not required because the proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. The basis for concluding that the rulemaking does not impact on small businesses must be explained in the statement.

(4) Agencies are encouraged to prepare their analyses or statements by using the following as a guide:

Questions to be Answered by Agencies Preparing
Regulatory Flexibility Analyses or Statements

PART I

1. Does the proposed rule impose reporting, recordkeeping or other compliance requirements on small businesses?

If YES, consideration of the answers to the questions in Part II will assist in [your] preparation of the analysis

If NO, see PART III.

PART II (Preparing the Regulatory Flexibility Analysis)

A. Analyze each factor with as much quantification as is practical or reliable.

1. Describe the types of small businesses to which the rule will apply.
2. Describe the number of small businesses to which the rule will apply.

3. Describe the reporting, recordkeeping and other compliance requirements.

4. Describe the kinds of professional services likely to be needed to comply with the rule.

5. Estimate the initial capital costs for compliance, and indicate any likely variation on differing types and sizes of small businesses.

6. Estimate annual compliance cost, and indicate any likely variation on differing types and sizes of small businesses.

7. Indicate how the rule is designed to minimize any adverse economic impact on small businesses.

B. Answer each question and explain the reasons for including or excluding the method:

1. Does the rule establish differing compliance or reporting requirements or timetables that take into account resources available to small businesses?

2. Does the rule use performance rather than design standards?

3. Does the rule exempt small businesses from all or part of its reporting, recordkeeping or other compliance requirements? (If non-exemption is based on endangerment to public health, safety and welfare, explain the relationship between the non-exempted requirement and the public health, safety and welfare sought to be preserved.)

4. Does the rule utilize any other methods to minimize any adverse economic impact on small businesses?

PART III

Proposed rules which do not impose recordkeeping or other compliance requirements on small businesses must be accompanied by a statement that "a Regulatory Flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses." Following this sentence, explain the basis for concluding that the rulemaking does not impact on small businesses; and

h. A Smart Growth Impact statement: Pursuant to Executive Order No. 4 (2002), a notice of proposal must contain a Smart Growth Impact statement describing the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. The ninth paragraph of the Executive Order relates that "the principles of smart growth would focus new growth into the redevelopment of our older urban and suburban areas, protect existing open space, conserve natural resources, increase transportation options and transit availability and reduce automobile traffic and dependency, stabilize property taxes, and provide affordable housing."

NOTE: P.L. 2001, c. 342 requires an agency proposing a rule to "utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small municipalities." Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;

(2) The use of performance rather than design standards; and

(3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule. Each State mandate flexibility analysis shall contain:

(1) An estimate of the number of small municipalities to which the proposed rule will apply;

(2) A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;

(3) An estimate of the annual cost to a small municipality of complying with the rule; and

(4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

The analysis requirement shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule.

In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

In complying with the provisions the statute, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable."

Section 15 of the Act provides that it shall take effect immediately, that is, January 5, 2002. **However**, until the Director of the Division of Local Government Services in the Department of Community Affairs promulgates the criteria for a municipality having a limited population or geographic area so as to be considered a "small municipality" under the Act (see subsection 13a), agencies will be unable to provide in their notices of proposal the required State mandate flexibility analysis under subsection 13c or State mandate flexibility statement under subsection 13d. The Office of Administrative Law, through its review of agency rulemakings, will monitor the rulemakings of the Division of Local Government Services, and advise

rulemaking agencies, through their Administrative Practice Officers, as to when compliance with this act's revision of the rulemaking process is required.

Please Note: A notice of proposal is not acceptable for publication without an adequate Summary and accompanying statements. The Summary and statements are not part of the rule and are not published in the Code but are integral parts of the proposal and as such may be used in interpreting the rule. (See N.J.A.C. 1:30-2.5.)

The use of "boilerplate" language (that is, general statements routinely included in proposals by an agency) in the above statements does not fulfill the requirement that the public receive adequate notice of the proposed rulemaking so that meaningful comments may be submitted. In addition, the use of technical jargon which prevents non-subject matter experts from understanding the proposal or statements which are so vague and sketchy that only a person with "inside" information could understand them, may not be considered acceptable, since they are likewise inconsistent with the spirit and purpose of the APA's notice provisions; and

3. The properly prepared text of the proposed rule. (See V.D, page 36, for text format.)

a. The text of a rule must be coherent, understandable, detailed, and specific enough to identify who or what will be affected; how or when the effect will occur; what is being prescribed or mandated; and what, if any, enforcement mechanisms and/or sanctions may be involved. The text of any existing rule that is being amended must specifically indicate what provisions are being added or deleted and must identify any rule being repealed or renumbered. (N.J.A.C. 1:30-2.1 and 2.3) Generally, the rule text in a notice of proposal is preceded by this introduction: "Full text of the

proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):"

b. The text of the rule must contain either the current New Jersey Administrative Code (N.J.A.C.) citation or a proposed code citation. The citation "N.J.A.C. 1:30-2.2(a)8" represents the following information:

Title 1, chapter 30, subchapter 2, section 2, subsection (a), paragraph 8. (See XI, Editorial Specifications, page 76, for further information)

c. The text must be double spaced.

d. If charts, maps, diagrams, forms, graphs or technical/chemical listings are to be published as a part of the proposal, these items must be submitted camera-ready or in digital form on a 3.5 inch disk or a CD-ROM. A clean, sharp, printed copy is the preferred format for each item to be published. Letter-quality computer copies or Mylars are also acceptable; however, unless of exceptional quality, photocopies of such items are not acceptable for publication.

e. Appendices shall include only material which clarifies, illustrates or explains a rule. (See N.J.A.C. 1:30-2.8.) For example:

(1) Technical requirements or specifications;

(2) Instructions;

(3) Formulae;

(4) Forms;

(5) Examples of hypothetical cases;

(6) Reprints of regulations, statutes, forms or other matter which originates elsewhere;

(7) Lists of offices, their addresses, and hours of business; and

(8) Analyses or explanatory material regarding a rule, which may contain a rationale or derivation of the rule.

Appendices can be regulatory or non-regulatory. If the appendix is intended to be regulatory, it must be incorporated by reference into the text of the rule. For example, "Appendix A located at the end of this subchapter is incorporated herein by reference." Any changes to the regulatory appendix must be promulgated as a rulemaking. If the appendix is non-regulatory, the appendix can simply be cross-referenced in the text of the rule. For example, "See Appendix B located at the end of this subchapter."

f. Definitions: Definitions should describe the words or terms used in the rules. Regulatory directives cannot be used in definitions, but should be placed in the appropriate section of the rules. For example, a definition might include a description of a social worker; however, the tasks required of the social worker, with degree and experience requirements, must be delineated in the substantive section of the rules. Definitions shall be arranged in alphabetical order.

g. Incorporation by reference: Agencies may adopt

standards or requirements originating outside the agency by specifically citing to such standards or requirements and incorporating them by reference into their rules. See N.J.A.C. 1:30-2.2. The incorporation by reference shall include a specific reference to the material being incorporated, including the specific date or issue of what is incorporated and, as appropriate, a statement indicating whether the section incorporated includes future supplements and amendments, and where and how a copy of what is incorporated may be obtained. An agency proposing to incorporate by reference a regulatory measure shall include in the proposal Summary a description of what is proposed for incorporation by reference (see N.J.A.C. 1:30-2.1(c)). As agency rules are to be expressly set forth in the Administrative Code, an agency cannot incorporate by reference its own documents or material, and thereby provide it regulatory effect, unless such document or material already possesses lawful effect of a regulatory nature pursuant to statute.

D. Additional format requirements for particular rulemakings

1. Amendments:

a. The text for publication must include the entire section of the rule proposed for amendment; however, section elements (such as subsections, paragraphs or subparagraphs) not affected by the amendment are shown as the element's codification followed by "(No change.)" The text of a section proposed for amendment must include the text of each section element showing the amendments as indicated below, as well as the text of any preceding element of superior codification. The proposal rule text introduction is as in V.C.3.a, page 33.

b. Show deletions of current text in brackets [thus]. (See

Examples E and J in Appendix.)

c. Show new text underlined thus, indicating boldface in the New Jersey Register publication **thus**. (See Examples E and J in Appendix.)

EXAMPLE

10:69B-3.3 Responsibilities in the application process

(a) (No change.)

(b) The Bureau of Life Line Programs has responsibility in the application process to:

1.- 4. (No change.)

5. Microfilm eligibility applications and supporting documents and retain microfilm for audit purposes for a period of [six] five years.

(c) The applicant has the responsibility to:

1. Complete the Lifeline eligibility application form truthfully, legibly, and accurately so that:

i. (No change.)

ii. All necessary documentation of eligibility [must be] is submitted to the Lifeline Program.

d. Changes in a definitions section shall be made using and ellipsis (. . .) above and below the definition which is being amended, to represent the presence in the Code of definitions not proposed for amendment. (See example below.)

EXAMPLE

7.11-1.6 Definitions

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

...

"Person" means, but is not limited to, corporations, companies, associations, societies, including non-profit organizations, firms, partnerships, joint stock companies, individuals and government entities.

...

2. New rule:

a. If no amendments are proposed in a notice of proposal, submit the proposed new rule(s) (including a whole subchapter(s) or chapter(s)) without underlining. (See Examples F and G in Appendix.) The text introduction is "Full text of the proposed new rule [or rules] follows:".

b. Otherwise, submit all proposed new text, including sections, subchapters and chapters, with underlining thus, indicating boldface publication. (See Examples E and F in Appendix.) The text introduction is as in V.C.3.a, page 33.

3. Repeal: Sections, subchapters and chapters may be proposed for repeal; the deletion of section elements (subsections, paragraphs, etc.) is a proposed amendment. If all the text proposed for repeal totals one Code page in length or less, the text of the sections proposed for repeal shall be included in brackets in the notice of proposal. If

all the text proposed for repeal totals more than one Code page in length, the text of the proposed repeals shall not be included in the notice of proposal; instead, before the rule text portion of the proposal, indicate, "Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. (specific cite)."

4. Readoption:

a. For a proposed readoption without amendments pursuant to N.J.S.A. 52:14B-5.1/Executive Order No. 66 (1978), do not include the chapter text in the notice of proposal; reference the chapter where the existing rules in the New Jersey Administrative Code are located, as "Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. (specific cite)." (See Example I in Appendix.)

b. For a proposed readoption with amendments, include the text introductory statement in V.D.4.a above, followed by the text of the proposed amendments in accordance with V.D.1 above (See Example J in Appendix.)

E. Procedural requirements for the proposal process

1. Proposal deadlines: The publication deadlines schedule is published annually, in October, by the OAL and sent to agency Administrative Practice Officers. (See Example HH in Appendix.) The schedule is available upon request from the Division of Administrative Rules and can be found on the OAL web site www.state.nj.us/oal under "Rules." The deadlines correspond to New Jersey Register publication dates so an agency can find the proposal deadline for the specific Register in which it wishes the proposal to appear. Also, a schedule of deadlines for the four subsequent issues may be found at the end of the table of contents in each

issue of the New Jersey Register.

2. Timely filing: A proposal must be submitted to the OAL, Division of Administrative Rules, by 12:00 noon of the proposal deadline for publication in the intended issue of the New Jersey Register. Publication of untimely submissions in a particular Register is at the discretion of the OAL. An agency may request an extension of the deadline by contacting the Division of Administrative Rules at (609) 588-6614 prior to the deadline. Such request will be considered in accordance with N.J.A.C. 1:30-1.14.

3. An original and two copies of the notice of proposal must be submitted.

4. In addition to publication in the New Jersey Register (N.J.S.A 52:14B-4(a)(1)), **a notice of proposal must be publicized by the proposing agency as follows:**

a. The agency shall mail either the notice of proposal, as filed, or a statement of the substance of the proposed action to those persons who have made timely request of the agency for notice of its rulemaking actions;

b. The agency shall distribute either the notice of proposal, as filed, or a statement of the substance of the proposed action to the news media maintaining a press office in the State House Complex;

c. The agency shall make available electronically on its web site, through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action; and

d. The notice of proposal must be publicized in some other manner the agency deems most appropriate in order to inform

those persons most likely to be affected by or interested in the intended action. This form of additional notice may be provided by means of:

(1) Public notice in a newspaper of general circulation;

(2) Trade, industry, government, or professional publication (see Example DD in Appendix);

(3) Distribution of a press release to the news media;

(4) Posting of a notice in an appropriate location;

(5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by the proposed rulemaking.

NOTE: N.J.S.A. 52:14B-4(a)(1) requires that agencies prescribe by rule the circumstances under which each additional method of notice an agency will employ, required as related under V.E.4.d above, will be used.

A minimum comment period of 30 days must also be provided in the additional forms of notice given by the proposing agency. It is suggested that the additional notice be distributed after the notice of proposal is approved for publication by the Office of Administrative Law but before the proposal is published in the New Jersey Register so that persons receiving the additional notice will be accorded at least the full 30-day comment period. The additional notice must include the time, place, and manner in

which interested persons may present comments and either: the full text of the proposed rule; a statement of the substance of the proposed rulemaking; or a description of the subject and issues involved.

5. Proposal expiration: A proposal must be adopted and filed with the Office of Administrative Law within one year of the proposal publication in the New Jersey Register (N.J.A.C. 1:30-6.2(c)). If the proposal is not adopted and filed with the Office of Administrative Law within the one-year period, the proposal expires. If the agency seeks to pursue rulemaking activity on the subject after the one-year period, it must resubmit the proposed rule and comply again with Administrative Procedure Act notice and opportunity to be heard requirements.

6. Record of public comment: The agency shall retain the record of comments or other materials received in response to the proposal for one year from the date of proposal publication. (N.J.A.C. 1:30-5.6(a)).

F. Notices relating to a published proposal

Notices of corrections to a proposal, withdrawal of a proposal, formal extensions of a comment period for a proposal and pre-proposal, and public hearings on a proposal and pre-proposal are all published in the proposal section of the New Jersey Register, and, therefore, must be received by the proposal deadline.

G. Responsibilities of the OAL in the proposal process

1. Once a proposal is submitted, OAL personnel will:
 - a. Check for an original and two copies;
 - b. Check for authorized signature;

c. Stamp document with the date received;

d. Assign a proposal number to the document (PRN Number (year of filing and document number));

e. Log the proposal in a central registry and database;

and

f. Send a copy to the Legislature (N.J.S.A. 52:14B-4(a)).

2. An OAL Rules Analyst will review the proposal for the following:

a. Statutory authority;

b. Codification;

c. Rule text;

d. Full compliance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the OAL Rules for Agency Rulemaking (N.J.A.C. 1:30);

e. Format;

f. Proper bracketing and underlining; and

g. Grammar, spelling and typing errors.

3. Problems, errors and technical/editorial changes.

a. If the OAL Rules Analyst identifies an error or has questions concerning a proposal, the analyst will contact the agency Administrative Practice Officer or other designated individual to discuss any changes that may be necessary. Most often, simple technical changes are made with little difficulty. Matters of a more substantial nature may require further interagency discussion or meeting. In all instances, swift resolution is sought, thereby insuring prompt publication of the proposal. Agencies are encouraged to utilize the OAL rules staff as a resource early in the rule drafting process to avoid any technical, procedural or substantive problems which may impede the rulemaking process. The processing of a proposal is temporarily suspended until matters of rulemaking compliance are resolved. (See N.J.A.C. 1:30-1.12)

b. In the event of a legal dispute, the OAL may seek the advice of the Attorney General. (See N.J.A.C. 1:30-1.12(c))

4. Publication of proposal in the New Jersey Register.

a. The OAL, after making any corrections and editorial changes, sends a "worked up" copy of the proposal to the publisher for publication in the New Jersey Register.

b. After the document review period for an issue of the New Jersey Register has concluded, the OAL sends a "worked up" copy of the proposal to the proposing agency, which should review the copy and note any changes made by the OAL. A cover memo is also sent indicating when the proposal may be adopted.

c. When the proposal appears in the New Jersey Register, the agency should compare the published text with the "worked up"

copy, contact the Office of Administrative Law regarding any inconsistencies or errors, and, if it has been determined that reproposal or other action to correct those errors is not necessary, correct the text upon adoption.

5. Certification of Proposal, Adoption and Promulgation.

After the Notice of Proposed Rule is published in the New Jersey Register, the OAL sends a Certificate of Proposal, Adoption and Promulgation to the agency with Part I completed. (See Example R in Appendix)

H. "Sufficient public interest" 30-day comment period extension

Pursuant to N.J.S.A. 52:14B-4(a)(3) and N.J.A.C. 1:30-5.4(a)1, if within 30 days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of the time for submission of comments, the agency shall provide an additional 30-day period for the receipt of comments by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension. "Sufficient public interest" for granting an extension of the comment period shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2). If an agency provided a 60-day or longer comment period for the proposal, it need not provide a 30-day comment period extension if sufficient public interest is shown.

I. Reproposal (See Example J in Appendix.)

1. For various reasons, such as in response to issues raised by commenters or during further staff review, an agency may decide to revise and replace a pending notice of proposal by means of a notice of reproposal. A notice of reproposal must include the content of a notice of proposal specified in N.J.A.C. 1:30-5.1 (see V.C, page 19) and, to a significant degree, may duplicate the original

proposal. In addition:

a. The notice Summary must begin by explaining the nature of the proposal as a reproposal, and, in addition to a discussion of what is proposed similar to that in the original proposal, include a discussion of the significant issues raised by the commenters on the original proposal and how the reproposal does or does not address them. The Summary also must describe and explain the substantive differences between the rule text originally proposed and that repropose; and

b. The several impact and other statements and/or analyses must be revised to reflect the changes between the proposal, if necessary.

2. In the heading of the notice of reproposal, the references to "Proposed Amendments, etc." in the original proposal are replaced with "Reproposed Amendments, etc." The rule text of the reproposal is based on showing additions to and deletions from the current Code text; no special symbolism is used to denote text changes from the original proposal, which are to be described and explained in the Summary. While some agencies have opted to include in the reproposal Summary a Summary of Public Comments and Agency Responses as would be found in a notice of adoption, and such does provide an excellent rulemaking record, the necessary discussion of commenters' issues need not be in such form or detail. If a public hearing was conducted on the original proposal, a Summary of Hearing Officer Recommendations and Agency Responses (see N.J.A.C. 1:30-5.5(g)) shall be included in the reproposal.

VI. Public hearings

A. Need for hearing: Pursuant to N.J.S.A. 52:14B-4(a)(3), an agency must conduct a public hearing on a proposed rule if such hearing is requested by a committee of the Legislature or a governmental agency or

subdivision, provided the request for a public hearing is made to the agency within 30 days after the notice of proposal is published in the New Jersey Register. In addition, the proposing agency must conduct a public hearing if "sufficient public interest" for conducting a public hearing is demonstrated, and the proposing agency has not already conducted or scheduled a public hearing on the proposal. "Sufficient public interest" for granting a public hearing shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2). The agency must provide at least 15 days notice of the hearing. Announcement of the public hearing may be disseminated as a public notice published in the New Jersey Register. An agency may also disseminate notice of the public hearing in any other manner which is reasonably assured to reach those that may be interested in the proposed rulemaking.

B. When hearing is not required: Except upon the request of the legislature or a governmental agency or subdivision, upon demonstration of "sufficient public interest," or as required by other statutory authorities, agencies are not required to provide for public hearings as part of the rulemaking process unless required to do so by other statutory authorities. However, many agencies elect to conduct public hearings in an attempt to solicit broad comment on pre-proposals or proposals which have potentially wide ranging effect. When an agency intends to conduct a public hearing as part of a proposed rulemaking, notice of the public hearing must be published as part of the proposal notice. Where notice of a public hearing is included in the notice of proposal, 15 days notice of the hearing must be provided (that is, the hearing must occur no sooner than 15 days after publication of the notice of proposal in the New Jersey Register.)

C. Conduct of public hearings: All public hearings must be conducted in accordance with the provisions of N.J.S.A. 52:14B-4(g).

1. The hearings must be conducted by:

- a. An official of the agency;
- b. A member of the agency staff;
- c. A person on assignment from another agency;
- d. A person from the Office of Administrative Law assigned by the OAL Director, if so requested by the head of the agency (N.J.S.A. 52:14F-5(o)); or
- e. An independent contractor.

2. The hearing officer has the responsibility to make recommendations to the agency regarding the proposed rule. These recommendations must be made public (see N.J.A.C. 1:30-5.5A).

3. At the beginning of each hearing, the agency must present a summary of the information on which the proposal is based and respond to questions posed by interested parties.

4. Hearings must be conducted at times and places that make it possible for interested parties to attend.

5. The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes or other untranscribed record of the proceeding shall be maintained by the agency. If a copy of the record is requested by any interested person, the agency shall arrange for the production of a copy of the record. After the requester pays the agency's actual cost for the copy, the copy shall be delivered to the requester.

VI. Adoption process (N.J.S.A. 52:14B-4)

A. Defined: The adoption of a rule is the final agency action on the proposed rule whereby the rule is officially approved and authorized for promulgation by the agency. To “promulgate” means to proclaim officially and thereby render effective a new rule, amendment or repeal which has been duly adopted by an agency and filed with the Office of Administrative Law. The promulgation date of a rule is its effective date, which is the date of publication of the notice of adoption in the New Jersey Register; readoptions, emergency adoptions and special adoptions, however, are effective upon filing with the OAL.

B. Comment period: A proposed rule cannot be adopted by an agency and shall not be filed with the Office of Administrative Law until the end of the comment period provided by the Administrative Procedure Act, or 60 days after the submission of the proposed rule by the OAL to the Senate and Assembly, whichever is later. (N.J.A.C. 1:30-6.2(a)).

The signature of the adopting officer on the Certificate of Proposal, Adoption and Promulgation (OAL APF-[year/version]) must reflect adherence to the comment period requirement, and must be dated after the end of the comment period or the Senate and Assembly review period, whichever is later.

However, to continue in effect the provisions of an emergency adoption, the Certificate of Proposal, Adoption and Promulgation (OAL/ARP-[year/version]) for the concurrent proposal must be signed and filed with OAL after the close of the comment period and before the expiration of the emergency adoption. (See IX.A, Emergency adoptions, page 65.)

C. “Adopting officer” means:

1. A person designated by statute as authorized to promulgate and adopt rules;

2. The principal executive officer of an authorized adopting agency; or

3. A subordinate officer or employee in the agency who is statutorily empowered to adopt rules or to whom the authority to adopt rules has been delegated. (In the former case, the statutory empowerment of a subordinate needs to be explained in a cover letter/memorandum accompanying the adoption notice submission. In the latter case, a letter/memorandum indicating that such power has been delegated must be filed with the Office of Administrative Law.)

D. Adoption deadlines: The list of deadlines is published annually by the OAL sent to agency Administrative Practice Officers. The list is available on the OAL web site at www.state.nj.us/oal under "Rules" and upon request from the Division of Administrative Rules.

E. Timely filing: An adoption must be submitted to the Division of Administrative Rules by 12:00 noon on the adoption deadline date. Publication of untimely submissions in a particular Register is at the discretion of the OAL. An agency may request an extension of the deadline by contacting the Division of Administrative Rules at (609) 588-6614 prior to the deadline. Such request will be considered in accordance with N.J.A.C. 1:30-1.14.

F. Notice of adoption: For each adopted rule, the agency shall submit an original and two copies of a "notice of adoption" (See Examples K through Q in Appendix) which includes the following:

1. The Code Title affected;

2. The name of the agency or agency element originating the rulemaking;

3. The subject of the rulemaking;

4. After "Adopted [Amendments, New Rules, Repeals]:", the N.J.A.C. citation;

5. After "Proposed:", the date and New Jersey Register cite of the proposal;

6. After "Adopted:", the date the agency head or entity adopted the proposed rule and the name, title and agency of the adopting individual or the adopting entity and the signatory's name and title. (When anyone other than the statutory authority has been designated to sign on behalf of the agency head, a letter or memorandum authorizing such signatory must be included in the adoption material submitted or on record at the Office of Administrative Law.);

7. After "Filed:", the filing date, the "R.[year] d.[number]" document identifier (added by the OAL), and whether or not the proposal has been filed without change or with changes upon adoption;

8. After "Authority:", the statutory authority for the rulemaking;

9. After "Effective Date:", the effective date(s) for what is adopted;

a. For amendments, new rules or repeals, the effective date is the date of publication in the New Jersey Register.

b. For readoptions which have been filed on or prior to their expiration date, the effective date is upon filing.

c. For readoptions which have been filed after their expiration, the effective date is the date of publication.

10. After "Operative Date:", the operative date of the rule, if later than the date of promulgation in the Register. If the operative date is the effective date, this heading item is omitted;

11. After "Expiration Date:", the expiration date for each chapter added or amended by the adoption (see VIII, page 60);

12. A "Summary of Public Comments and Agency Responses";

a. Include the names of the commenters and describe the issues, questions, and points of controversy raised by the commenters during the public comment period.

b. Summarize each comment and the agency's response, that is, whether the agency did or did not make a change in the rule as a result of the comment, and the reasons for doing so. If a number of commenters make the same suggestion or raise the same issue, such suggestion or issue would be summarized as one comment. (See Examples K, L, N, O, P and Q in Appendix.)

c. The agency may, but is not required to, send a response letter to those individuals who have submitted comments.

d. Where there are a large number of comments, it is

helpful to number the comments as summarized in the notice of adoption;

13. If changes to the proposed rules are made upon adoption, a "Summary of Changes Upon Adoption" if the changes are not otherwise discussed in the responses to the comments, and/or a "Summary of Agency-Initiated Changes";

a. Describe the changes and indicate the reasons for the changes; and

b. Explain why the changes are not so substantive as to require reproposal (see N.J.A.C. 1:30-6.3);

14. A Federal Standards Statement or Analysis and, if an Analysis, the required agency head certification (see V.C.2.d, page 24).

a. If there are no changes to the rules between proposal and adoption, the statement or analysis published in the notice of proposal should be repeated, with text changes to reflect adopted rather than proposed rules.

b. If changes to the rules are being made upon adoption, the changes must be analyzed pursuant to the Federal standards requirements and a new statement or analysis must be prepared, if necessary; and

15. The text of the rules showing changes upon adoption, if any;

a. Preface the rule text with "Full text of the adoption follows (additions to proposal indicated in boldface with asterisks

thus; deletions from proposal indicated in brackets with asterisks *[thus]*". (See Examples L, N and Q in Appendix.)

b. Reproduce only the section elements (subsections, paragraphs, etc.) being changed upon adoption plus any superior codified elements, including the original proposed changes as adopted, deleting the text bracketed in the proposal and eliminating the original underlining. Elements of a section not being changed upon adoption would appear as the codification letter/number (or series thereof) followed by "(No change from proposal.)" Section elements noted as "(No change.)" in the proposal unchanged in the adoption would continue to appear as "(No change.)" Only the changes being made upon adoption must be bracketed with asterisks and underlined with asterisks, where applicable. For example, the adoption notice rule text for amendments to hypothetical N.J.A.C. 1:30-7.1(a)1, 2 and 4i, including a change upon adoption to subparagraph (a)4i, would be as follows:

1:30-7.1 Application

(a) Individuals seeking certification shall submit applications to the OAL annually by September 1. An application shall include:

1. - 2. (No change from proposal.)
3. (No change.)
4. Contact information, as follows:
 - i. The applicant's *daytime* telephone number;
 - ii. - iii. (No change.)

and

16. The signature of the adopting officer.

G. The Certificate of Proposal, Adoption and Promulgation must also be filed with the adoption notice. (See Example R in Appendix.)

1. Part II of the Certificate is to be completed by the agency, as follows:

a. Section (a) of the certificate: The listed four types of notice of the proposal are mandatory, and, if provided, must be checked. In addition, the manner of "other secondary notice" in item 4 must be specified. **Note:** If one or more of these forms of notice was not provided, the notice of adoption cannot be processed. A new certificate and notice of adoption would have to be submitted to the OAL after the lacking notice was provided by the agency. Such notice would have to include at least a 30-day comment period, after the completion of which the agency can take adoptive action and submit a completed certificate and a notice of adoption to the OAL for publication.

b. Section (b) of the certificate: Indicate the type(s) of comment permitted. Whatever the type of comment, written documentation of the comment must be maintained by the agency.

c. Sections (c) and (d) of the certificate: Check any of the categories in each section which apply.

d. Sections (e) and (f) of the certificate: At least one of the categories in each section must be checked. In section (e), if comment was received, indicate the number of commenters in item 6.

e. Section (g) of the certificate: Check the appropriate section, filling in the date and citation lines, as applicable (see N.J.A.C. 1:30-6.4 on how to calculate an expiration date). Expiration dates for existing Code chapters are set forth in the chapter head notes in the Code.

f. Section (h) of the certificate: Check only one.

g. Section (i) of the certificate: Check when the rule is to be operative. Fill in the date if the operative date will be after promulgation (that is, the effective date). For emergency or readopted rules, no date is necessary for the rules to be operative upon promulgation or upon filing.

h. Section (j) of the certificate: Fill in the statutory authority and name of the agency.

2. The certificate must be signed and dated by the adopting officer, thereby certifying that the rule was duly adopted according to law and in compliance with the Administrative Procedure Act and N.J.A.C. 1:30.

3. Only the original Certificate of Proposal, Adoption and Promulgation need be filed; no copies of the Certificate are required.

H. Timely action: Any adopted rule submitted for filing to the OAL by an agency shall be acted upon in a timely manner. (See N.J.A.C. 1:30-6.2(b).)

I. File stamping of documents: Upon receipt of the notice of adoption and the Certificate of Proposal, Adoption and Promulgation, the OAL, Division of Administrative Rules will affix official stamps to the documents which contain:

1. The date and time received; and

2. An official registry number for the adoption, designated by R.(the year) and d.(a document number).

Once a notice of adoption is approved for publication, the notice is considered officially filed as of the date and time it was originally received by the OAL.

J. Review of adopted rules: The notice of adoption is checked for:

1. Consistency with the proposal;
2. Correspondence of the comments and responses;
3. Changes upon adoption;
4. Timeliness of filing;
5. Signature of the adopting officer; and
6. Format and other editorial specifications.

The OAL may temporarily suspend the processing of a notice of adoption until matters of rulemaking compliance are resolved. (N.J.A.C. 1:30-1.12)

K. Technical changes upon adoption are changes of a minor nature which do not change the nature, scope or impact of a proposed rule. They can be effected by simple administrative procedures. They include such things as:

1. Spelling corrections;
2. Codification corrections;

3. Change in use of synonymous terms;
4. Punctuation; and
5. Printing error corrections which do not result in substantive changes.

L. Substantive changes upon adoption: In those situations in which the agency's contemplated changes to the proposed rule are so substantial that they would effectively destroy the value of the original notice, the agency must repropose the rule. This provides the public with a new notice and opportunity to be heard. The following consequences of changes upon adoption are considered in determining whether reproposal is necessary:

1. Changes which enlarge or curtail who or what will be affected;
2. Changes that affect what is being prescribed, proscribed or mandated; or
3. Changes which enlarge or curtail the scope of the proposed rule and the burden it imposes on those affected. (See N.J.A.C. 1:30-6.3)

M. Retention of rulemaking records: The agency shall, for each rule adopted, retain the record of the public comment and rulemaking activity or a period of not less than three years from the effective date of the rule. (N.J.A.C. 1:30-5.6(c))

N. Review of adopted text: After the adopted rule is published in the New Jersey Register, the agency should compare the published text with

the adopted text and consult with the OAL, Division of Administrative Rules regarding the correction of any errors found. The agency should also proofread the Code updates and advise the Division of any errors.

O. Adoption of part of a rule proposal with portions pending: On occasion, an agency may wish to partially adopt a proposal. The OAL, Division of Administrative Rules should be consulted on such partial adoptions. If the agency wished to adopt part of a proposal and leave part of the proposal still pending, it is necessary to cite all sections that are being adopted with those sections which are not adopted but still pending. The adoption with parts pending must be explained in the Summary of Public Comments and Agency Responses or elsewhere in the notice's narrative text and the pending portions cited in the notice heading in the "Filed" line.

P. Non-adoption of part of a rule proposal: If the agency has decided to not adopt part of proposal, this must be explained in the Summary of Public Comments and Agency Responses or elsewhere in the notice's narrative text and the not adopted portions cited in the notice heading in the "Filed" line.

Q. Adoptions and proposals to the same text: When an agency has, within a short period of time, adopted one or more proposals dealing with the same specific matter or affecting the same provisions as a new proposal, the agency must identify in the proposal narrative text the New Jersey Register issue and citation to the previous adoption(s). The information is critical when an agency adopts a rule and concurrently proposes amendments to the rule.

R. Other noteworthy activity: In order to ensure that all rulemaking activity is included in the notice of adoption, the agency must note in the notice any extensions of comment periods, public hearings, corrections to the proposed rulemaking in the New Jersey Register prior to adoption, pre-

proposal notices, and gubernatorial waivers of chapter expiration dates. All of these activities are part of the rulemaking record and will be annotated in the New Jersey Administrative Code. Citations to notices of comment period extensions, public hearings and corrections are added to the notice heading in the "Proposed" line after the citation to the notice of proposal, as "(see ___ N.J.R. ___)."

VIII. Sunset or expiration of rules

A. Executive Order No. 66 (1978): Executive Order No. 66 (1978) provides that all rules adopted after May 15, 1978 shall include an expiration date (sunset date) which is no later than five years from the effective date of the rule. The Executive Order was issued to discourage excessive agency rulemaking by requiring a reflective rulemaking review to eliminate unnecessary, redundant, confusing or unreasonable rules.

B. N.J.S.A. 52:14B-5.1: Effective July 1, 2001, N.J.S.A. 52:14B-5.1 provides that all rules in effect as of January 16, 2001 shall expire on July 1, 2006, unless a different expiration date for the rules had already been established or no expiration date is required (see VIII.D below). Rules adopted after July 1, 2001 shall expire five years after the rules' effective date, unless a sooner expiration date is established or no expiration date is established. (See N.J.A.C. 1:30-6.4.)

C. Assignment of expiration date: Pursuant to N.J.A.C. 1:30-6.4(b), expiration dates are affixed at the chapter level. Subsequent amendments to the rules or the addition of new rules to a chapter do not change the established expiration date.

D. Instances in which the provisions of N.J.S.A. 52:14B-5.1 do not apply:

1. No expiration date is required where the provisions of the chapter are prescribed by Federal law, so that the agency exercises no discretion whether to promulgate the chapter and as to what is prescribed, in which case the Federal law shall be cited in the chapter notice of adoption; or

2. The expiration of the chapter would violate any other Federal or State law, in which case the Federal or State law shall be cited in the chapter notice of adoption.

E. The Governor may, upon the request of an agency head, and prior to the expiration date of a rule, continue in effect an expiring rule for a period to be specified by the Governor.

F. Expiration date reports: On at least a quarterly basis, the OAL will inform agencies of those rules which will expire within the next 12 months.

1. Expired rules will be deleted from the Code. An annotation will be included in the Code to reflect that the rules expired pursuant to N.J.S.A. 52:14B-5.1. Expiration dates may be found in the New Jersey Administrative Code in the chapter heading.

G. Readoption process: To maintain the effectiveness of a chapter, it must be properly proposed, adopted and filed with the Office of Administrative Law prior to or on its expiration date. This process is called readoption. Pursuant to N.J.S.A. 52:14B-5.1c and N.J.A.C. 1:30-6.4(f) and 6.7, if a notice of proposal to readopt a chapter is submitted to the OAL on or before the chapter expiration date, that expiration date is extended 180 days. The readoption process is the same as regular rulemaking with the following exceptions:

1. Where there are no changes in the text of the rules to be readopted, the notice of proposal is captioned, in the heading citation line, a "Proposed Readoption." (See Example H in Appendix.) Upon adoption, the notice of adoption is captioned a "Readoption." (See Example O in Appendix.)

a. The text of the rules proposed for readoption shall not be submitted to the Office of Administrative Law and is not printed in the New Jersey Register. In lieu of the text, the notice of proposal will indicate in its last paragraph, "Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C._____."

2. Where amendments are proposed to the text of the chapter, the notice of proposal is captioned a "Proposed Readoption with Amendments." (See Example I in Appendix.) Upon adoption, the notice of adoption is captioned a "Readoption with Amendments." (See Examples P and Q in Appendix.) Only the text of the proposed amendments is included in the notice of proposal.

3. The readopted chapter is effective upon filing the notice of adoption with the OAL, if the rules have not expired prior to the filing. Since the rules are already in effect, there is no need to further alert the public about the imminence of their taking effect. It is strongly recommended that a readoption in which is about to expire be hand delivered to the Office of Administrative Law. Any amendments to the readopted rules are effective upon publication in the New Jersey Register.

4. If the rules have expired prior to initiating the proposal process, the rules must be proposed as new rules and will become effective again upon publication of the notice of adoption in the New Jersey Register.

5. If the chapter the agency is readopting expires between proposal publication and filing of the notice of adoption, the OAL will treat the re adoption as new rules which are effective upon publication of the notice of adoption in the New Jersey Register. Since the expiration of a chapter brings into question the legal effect of the rules, agencies are urged to re adopt the chapter prior to expiration.

6. The Summary statement for the proposed re adoption must include the following:

a. A brief evolutionary history of the chapter explaining why the rules were promulgated. If the chapter came into being because of a specific issue or controversy, indicate what the problem was how it was addressed.

b. An explanation of what process has taken place in compliance with Executive Order No. 66 (1978). If special review committees were established, these should be discussed.

c. A description of the past effectiveness of the chapter and what has been accomplished. Address whether the rules are necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were promulgated, and explain why.

7. The Social Impact statement for the proposed re adoption must include the following:

a. An explanation of the past social effect of the rules and how they have affected the public. Discuss whether the social conditions which existed at the time of the original adoption of the

rules still exist. If the social conditions have changed, how will the changes affect the necessity and operation of the rules.

b. A discussion of the public and any other entity which may be affected by the chapter, how they are affected and why and what is the impact. Explain how this has been assessed.

c. A discussion of the range and scope of the rules on the public, explaining the number of people and/or agencies involved.

d. What the interested or affected public's reaction to the rules has been.

e. A discussion of what would happen if the chapter is not readopted.

8. The Economic Impact statement for the proposed readoption must include the following.

a. An explanation of the economic impact of the rules. What methods have been used to assess the economic impact? Upon whom do the rules impact economically? Provide figures, if possible.

b. An explanation of the past economic impact of the rules and whether economic conditions of the past still prevail. If there have been changes, have these changes necessitated changes in the rules and have further economic conditions resulted?

c. If there is a source of funding related to the rules, a citation and discussion of how readoption of the rules is necessary to the continued economic viability.

d. A discussion of what would happen if the chapter is not readopted.

9. The Federal Standard Statement or Analysis must address the rules proposed for readoption and any amendments proposed (see V.C.2.d, page 24).

10. The Jobs Impact statement must address the rules proposed for readoption and any amendments proposed (see V.C.2.e, page 26).

11. The Agriculture Industry Impact statement must address the rules proposed for readoption and any amendments proposed (see V.C.2.f, page 26).

12. The Regulatory Flexibility Statement or Analysis must address the rules proposed for readoption and any amendments proposed (see V.C.2.g, page 26).

13. The Smart Growth Impact statement must address the rules proposed for readoption and any amendments proposed (see V.C.2.h, page 30).

IX. Special situations and rulemaking procedures

A. Emergency adoptions (N.J.S.A. 52:14B-4(c))

1. An emergency adoption departs from the normal rulemaking requirements of the Administrative Procedure Act in that the 30-day public comment period is suspended and an agency may adopt the rules without prior notice if the agency finds that an imminent peril to the public

health, safety or welfare exists which warrants suspension of prior notice. (See N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-6.5.)

2. An emergency adoption is effective for 60 days upon filing with the Office of Administrative Law. This period may be extended if each house of the Legislature passes a resolution concurring its extension for a period of not more than 60 days. The adoption cannot be effective for more than 120 days unless repromulgated in accordance with normal rulemaking procedures. (See N.J.S.A. 52:14B-4(c).)

3. If the agency wishes to continue the provisions of the emergency rule effective beyond the 60-day period, it may concurrently propose the rule at the time the emergency adoption is filed. This procedure conforms to the normal rulemaking process, and thereby triggers the "opportunity to be heard" feature of the Administrative Procedure Act. If the agency intends to retain the rule beyond the 60-day emergency period, the notice of emergency adoption must state that the rule is being proposed concurrently. Most emergency rule adoptions are submitted with a concurrent proposal. (See Example S in Appendix.)

a. The concurrent proposal must be readopted and its notice of re adoption filed with the OAL no later than the 60th day of the emergency period, in order to continue in effect the provisions of the emergency rule(s). If an agency decides not to adopt the concurrent proposal prior to the expiration of the emergency rule, the "pre-emergency" text of the rule(s), if any, automatically revives, provided that the pre-emergency text has not expired. (See Example T in Appendix.)

b. The adoption of the concurrent proposal is effective upon filing with the OAL, unless it is filed after the expiration date of the emergency adoption, in which case, the re adoption is effective upon publication of the adoption notice in the New Jersey Register. It

is important that the readoption be filed with the Office of Administrative Law before the expiration of the emergency rule, to eliminate the possibility of a gap in the effectiveness of the rule. It is strongly advised that adoption of a concurrent proposal be hand delivered to the Office of Administrative Law. No court has as yet determined the legal effect of a rule that has "gapped" between the expiration of the emergency adoption and the adoption of the concurrent proposal. Any changes upon adoption to the readopted concurrent rules are effective upon publication.

4. As with proposal and adoption notices, an emergency adoption and concurrent proposal takes the form of a notice and includes an informational heading, comment deadline and recipient information, an introductory paragraph explaining the nature of the emergency adoption and concurrent proposal, a Summary, a Social Impact, an Economic Impact, a Federal Standards Statement or Analysis, a Jobs Impact, an Agriculture Industry Impact, a Regulatory Flexibility Statement or Analysis, a Smart Growth Impact and the rule text. The Certificate of Proposal, Adoption and Promulgation must also be filed, with Section II, parts (c) (if appropriate), (g), (h), (i) and (j) completed. (See Examples R and S in Appendix.)

5. An emergency adoption must comply with the requirements of the normal adoption procedure. The documents which must be filed for an emergency adoption are:

a. A Certificate of Proposal, Adoption and Promulgation signed by the agency head.

b. A written statement specifically describing the reasons for the agency head's finding that there is an imminent peril and that the peril necessitates emergency proceedings. The specific reasons must contain facts upon which a reasonable person could conclude

the existence and nature or the harm to the public which necessitates immediate rulemaking action or which would result if normal rulemaking requirements were complied with. The justification for the emergency adoption must not be merely conclusionary statements or repetition of statutory language. Specific reasons may include the immediate need to conform rules to the requirements of Federal or State statutes, Federal regulations, or court orders (N.J.A.C. 1:30-6.5). (See Example S1 in Appendix.);

c. A signed statement from the Governor concurring with the existence of an imminent peril justifying emergency rulemaking. (See Example S2 in Appendix.);

d. The text of the emergency rule(s) (and, if appropriate, the text necessary for a concurrent proposal); and

e. The expiration date of the rule(s).

6. The emergency rule(s) may not be readopted as an emergency adoption. (See IX.A.2 above, page 66)

7. Upon filing with the Office of Administrative Law, the Division of Administrative Rules will transmit a copy of the Certificate of Proposal, Adoption and Promulgation, the Governor's signed statement, and a copy of the emergency adoption to the Office of Legislative Services.

B. Special adoptions

From time to time in enabling legislation, the Legislature has authorized an agency head or promulgating entity to adopt rules to effect the purposes of the legislation, which rules are to be effective, without being

proposed, immediately upon filing of the notice of adoption with the OAL. See, for example, P.L. 2000, c. 116, §2. The OAL has designated such rulemakings "special adoptions."

In some cases, the special adopted rules continue as an effective part of the chapter(s) of which they are a part without further agency action. (See Example U in Appendix.) In other cases, the enabling legislation establishes a specific duration for the special adopted rules, typically six months or one year, thus requiring them to be proposed and adopted in the normal course of rulemaking for the rules to be permanently effective, subject only to the chapter "sunset" requirements (see VIII, p. 60). Agencies may accomplish this proposal and permanent adoption of the special adopted rules by utilizing a separate notice of proposal to be followed by a notice of adoption, or by concurrently proposing the permanent adoption of the special adopted rules in the notice of special adoption. (See Example V in the Appendix.) As with the concurrent proposal of emergency adopted rules (see IX.A, p. 65), if the notice of adoption for the proposed "special" rules is submitted to the OAL on or before the expiration date of the special adopted rules, the adopted rules are effective upon filing and the rules continue uninterrupted in effect. If the notice of adoption for the proposed "special" rules is submitted to the OAL after the expiration of the special adopted rules, a "gap" in the rules' effectiveness occurs between that expiration date and the effective date of the adopted proposed rules, which is the New Jersey Register publication date of the notice of adoption of the proposal. No court has as yet determined the legal effect of a rule that has "gapped" between the expiration of the special adoption and the adoption of the rules' permanent proposal. Any changes upon adoption to the rules are effective upon publication of the notice of adoption.

C. Petition for rulemaking (N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4)

1. N.J.S.A. 52:14B-4(f) provides that an interested person may petition an agency to promulgate, amend or repeal a rule. When a person petitions an agency to begin a rulemaking proceeding, the agency must file a notice of receipt of petition for rulemaking with the Office of Administrative Law for publication in the New Jersey Register within 15 days of receipt of the petition. (See Example W in Appendix.) The notice of receipt of petition must include the following:

- a. The date the petition was received by the agency;
- b. The name of the petitioner;
- c. The substance or nature of the rulemaking action which is requested;
- d. The problem or purpose behind the request; and
- e. The date the petition was received.

2. Within 60 days of receipt of the petition, the agency shall mail to the petitioner and file with the Office of Administrative Law for publication, a notice of action on the petition which includes:

- a. The name of the petitioner;
- b. The New Jersey Register citation for the notice of receipt of petition;
- c. The signature of the agency head, signifying that the petition was considered pursuant to law;
- d. The nature or substance of the agency action on the

petition; and

e. Briefly, the reasons for the agency action.

3. Agency action on a petition may include:

a. Denial, in which case the agency shall provide a written statement of its reasons to the petitioner and include such reasons in its notice of action. (See Example X in Appendix.);

b. Granting of the petition and initiation of a rulemaking proceeding within 90 days. (See Example Y in Appendix.); or

c. Referral of the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action, and which shall conclude within 90 days of the referral. Upon conclusion of such further deliberations, the agency shall either deny or grant the petition. If the petition is granted, the agency shall initiate a rulemaking proceeding within 90 days. The agency shall inform the petitioner of the results of any such deliberations and those results must be submitted to the Office of Administrative Law for publication in the New Jersey Register. (See Example Z in Appendix.)

4. If an agency fails to act in accordance with the time frames set forth in IX.B.2 and 3 above (see N.J.A.C. 1:30-4.2(a)), the petitioner may request, in writing, a public hearing on the petition by submitting a request to the Director of the Office of Administrative Law.

a. Upon receipt of a request for a hearing, the Director shall order a public hearing on the rulemaking petition. The Director shall provide the agency with a notice of the Director's intent to hold the public hearing if the agency does not.

b. If the agency does not provide notice of a public hearing within 15 days of issuance of the Director's notice, the Director shall schedule a public hearing to be conducted by the Office of Administrative Law. Notice of that hearing shall be provided to the petitioner and the public at least 15 days prior to the hearing.

c. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to N.J.S.A. 52:14F-5, or an independent contractor assigned by the Director.

d. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition and a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in N.J.A.C. 1:30-5.5(d), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition.

e. The report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rulemaking.

5. Each agency is required to prescribe by rule the form in which a petition must be submitted and the procedures which a petitioner must follow for submitting a petition to the agency.

a. In *Town of Secaucus v. Hackensack Meadowlands*

Development Commission et al, (Dkt. Nos. A-1395-85TI and A-962-85TI), decided December 2, 1986, the Appellate Division held that a request for zoning change, submitted in the form of a letter from a town clerk to the Hackensack Meadowlands Development Commission (HMDC), constituted a petition for the rule change. The court noted that HMDC's failure to promulgate a rule on petitions did not relieve the agency of its duty to comply with N.J.S.A. 52:14B-4(f).

D. Organizational rules (N.J.S.A. 52:14B-4(b))

1. Each agency is required to adopt a rule which describes its organization and structure. The rule must state the agency's method of operation and the manner in which the public may obtain information, applications or forms.

2. Organizational rules may be adopted by an agency without prior notice or hearing and are effective upon filing with the Office of Administrative Law. (See Example AA in Appendix)

E. Public notices

1. State agencies may use the New Jersey Register as a means to disseminate information and notices to the public. (See Example BB in Appendix.)

2. Public notices must be submitted by the deadline for adoption notices, unless they are related to an outstanding proposal, in which case, they must be submitted by the proposal deadline. An original and two copies of the public notice are required, signed by the agency head or other individual authorized to sign.

3. If the notice contains a deadline or time frame for public

comment or action, the publication date of and deadline dates for the New Jersey Register should be carefully considered to ensure that the notice to the public will be timely.

4. Grant programs: P.L. 1987, c. 7 (N.J.S.A. 52:14-34.4 et seq.) requires each agency which awards Federal or State grant funds to publish notice regarding the availability of these funds in the Register or an appropriate publication of the agency. This grant notice is published in the Public Notice section of the New Jersey Register and shall include:

- a. The name of the grant program;
- b. The purpose of the program;
- c. The amount of money in the program;
- d. Groups or entities which may apply for funding under the program;
- e. Qualifications of an applicant to be considered for the program;
- f. The procedure for eligible entities to apply for grant funds;
- g. The address of the division, office or official receiving the application;
- h. The deadlines by which applications must be submitted; and
- i. The date by which applicants shall be notified. (See

Example CC in Appendix.)

Agencies which utilize a publication other than the New Jersey Register to provide notice of grants shall publish in the New Jersey Register, at least semi-annually, the name of the other publication; the volume and issue; catalogue number, series and number, or other identification or the specific publication; and address of the distributor of the publication.

X. Standard of clarity

A. Standard of clarity (see N.J.S.A. 52:14B-4.1a.b through d and N.J.A.C. 1:30-2.1): In order to be accepted for filing, a document shall be written in a reasonably simple and understandable manner which is easily readable.

1. The document shall be drafted to provide adequate notice to:
 - a. Affected persons; and
 - b. Interested persons with some subject matter expertise.
2. The document shall conform to commonly accepted principles of grammar.
3. The document shall contain sentences that are as short as practical, and be organized in a sensible manner.
4. The document shall not contain double negatives, confusing cross-references, convoluted phrasing or unreasonably complex language.
5. Terms of art and words with multiple meanings that may be misinterpreted shall be defined.

6. The document shall be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule.

B. Any rule activity or notice which does not comply with the standard of clarity set forth in X.A above (N.J.A.C. 1:30-2.1(a)) shall be subject to the provisions of N.J.A.C. 1:30-1.12.

C. The provisions of X.A above (N.J.A.C. 1:30-2.1(a)) shall not apply to any rule that a State agency adopts to conform to a model code, Federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into a rule. The State agency shall include in the Summary of the notice of proposal for such rule a description of the rule which complies with X.A above (N.J.A.C. 1:30-2.1(a)). For a regulatory measure incorporated by reference, as amended and supplemented, into a rule, in accordance with N.J.A.C. 1:30-2.2(c)1ii (see V.C.3.g, page 35), the requirement for a notice of proposal Summary description in compliance with X.A above (N.J.A.C. 1:30-2.1(a)) shall apply only to the notice of proposal in which the initial incorporation by reference was proposed.

D. The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the readoption, without amendment, of any rule or provision of a rule.

XI. Editorial specifications

A. Codification of rules: As an integral element of rule drafting, the codifying process is often an overlooked element. Consideration of the flow of rules should be the starting point of rule drafting and not simply an

afterthought since a rule structure can have considerable impact upon the way in which rules are applied – either uniformly or haphazardly – and how they are referenced and indexed. By statute, the OAL has the authority to determine the codification of rules (N.J.S.A. 52:14B-7(f)).

1. The New Jersey Administrative Code is divided and cited by title, chapter, subchapter, section, subsection, paragraph and subparagraph. As an example, N.J.A.C. 1:1-1.1(a)1i denotes title 1, chapter 1, subchapter 1, section 1, subsection (a), paragraph 1, subparagraph i. Rules should not be codified below the level of the subparagraph. Ideally, the section (N.J.A.C. 1:1-1.1) is the basic unit of a rule and addresses a single regulatory concern. One or more sections constitute a subchapter (N.J.A.C. 1:1-1). The subchapter addresses a broader area of regulation and is generally a major subdivision of a particular agency program or statutorily-designated power. If carefully organized, subchapters aid the rule user by leading from rules of general applicability to more specific areas of regulation, and by setting the order of compliance to a body of rules – what should be done first, and when. Finally, the chapter (N.J.A.C. 1:1) is the unit of authority for all the rules promulgated for a specific agency program or regulatory area. (See Example EE in Appendix.)

2. Internal citations to N.J.A.C.: New Jersey Administrative Code citations should be specific, since an exact citation is always preferable to “these rules.” Use the following examples as a guide to internal citing.

a. When referring from one section to another, use the referenced section’s full Administrative Code citation. Be as specific as necessary. For example, “. . . according to the requirements of N.J.A.C. 1:30-2.4(b)2.”

b. When referring to an element within the same section,

use the following format:

(d) below (or above)

(a) above

(c)2i below (or above)

c. Do not precede a citation with the term "subsection," "paragraph" or "subparagraph," unless the citation begins a sentence:

Subsection (e) below applies when . . .

Subparagraph (d)3iv above refers to . . .

d. In referring to an Administrative Code chapter, subchapter or consecutive series of sections in the Administrative Code or New Jersey Register, the "et seq." form is not used; instead, the chapter, subchapter or series is cited directly, for example, N.J.A.C. 1:30, N.J.A.C. 1:30-3, and N.J.A.C. 1:30-5.3 through 5.7.

3. Cross-reference tables in large-scale recodification:

a. In the event an agency seeks to recodify a large body of rules, for example, recodifying an entire chapter to a new cite in the New Jersey Administrative Code, the agency must submit a cross-reference table along with the proposal notice. The table must show the current citation of the rule(s) and the new recodified citation. The OAL will publish the table as part of the proposal notice and keep a copy on file for public reference. By providing this table, the agency helps to insure the rules are readily located in their new location in the Code.

Example of a cross-reference table:

Old Citation	New Citation
5:23-4.6(a)	5:23-4.12
5:23-4.6(b)	5:23-4.13
....	
5:23-4.7	5:23-4.16
5:23-4.8(a)	5:23-4.17

b. An agency which seeks simply to recodify rules may submit a notice of administrative changes regarding the recodification for publication in the New Jersey Register. It is recommended that an agency consult with the Division of Administrative Rules prior to undertaking a recodification through a notice of administrative changes.

c. If an agency is also amending rules (beyond cross-reference changes necessitated by the recodification or other revisions that could be made as administrative changes (see N.J.A.C. 1:30-2.7)), then the recodification becomes part of a notice of proposal rather than a notice of administrative changes. In both instances, an agency must submit a cross-reference table of old and new citations for publication in the Register.

B. Section format and style

1. Purpose, scope, and definitions: A series of rules will constitute a chapter or a subchapter should begin with sections covering purpose, scope, and definitions.

a. Purpose: This section should state the reason the rules are promulgated, for example:

“The rules are designed to promote the preservation and restoration of health, the prevention of disease and disability, and the provision of therapeutic care and rehabilitation of the general public by home health agencies.”

“The rules are designed to promote the provision of mental health services to clients who cannot or will not effectively access the traditional mental health programs.”

b. Scope: This section should state what is covered and who is regulated by the rules, for example:

“This subchapter establishes reporting and notice procedures concerning the discharge of hazardous substances to be followed by industrial establishments, the governing bodies of municipalities, local boards of health, and the Department pursuant to N.J.S.A. 13K:1-15 et seq.”

“This subchapter establishes reporting requirements for all agencies receiving financial assistance through the Department.”

“This subchapter covers the licensure of voluntary, governmental, hospital-based, proprietary and combination home health agencies, and provide quantifiable minimal requirements for the organization, staffing, and operation of home health agencies.”

c. Definitions: Definitions should be provided for the important words or terms used in the rules. Regulatory directives cannot be used in definitions, but should be placed in the appropriate

section of the rules. For example, a definition might include a description of a social worker; however, the tasks required of the social worker, with degree and experience requirements, must be delineated in another section of the rules. Definitions shall be arranged in alphabetical order and follow the form found in the definitions for this manual (see II, page 9).

2. A section heading is not rule text: The subject of a rule must be repeated in the text.

Avoid: 1:1-1.1 Due dates for taxes

(a) They are due . . .

Use: 1:1-1.1 Due dates for taxes

(a) Taxes are due . . .

3. "Tag lines," that is a descriptive phrase followed by a period or colon appearing at the beginning of a section element, are not used in the Code. The form of a "tag line" is also not appropriate for use as a section element by itself (for example, "(d) Application requirements."; instead use the narrative "(d) Application requirements are as follows:".)

4. A section should be a specific rule that accomplishes a specific purpose. Each subsection of a section should contain a single idea, obligation or directive, and should make sense when read individually. Therefore, do not use pronouns which refer to other subsections.

Avoid: (a) The license renewal fee is \$30.00 annually.

(b) It is payable upon application for license renewal.

Use: (a) The license renewal fee is \$30.00 annually.

(b) The license renewal fee is payable upon application of license renewal.

5. Use of "shall": The use of "shall" with an inappropriate subject creates a false imperative; only a person or entity can be obligated to act.

Avoid: The authorized manual shall include rules on fund raising.

Use: The director shall compile a manual that includes rules on fund raising.

Or, if the manual already exists: The authorized manual includes rules on fund raising.

6. Use of "should": As it only indicates a recommendation, "should" is not to be used to impose a requirement or obligation; use "shall" instead.

7. Present tense: Generally, use the present tense since a rule of continuing effect speaks at the time it is applied, not when drafted or promulgated.

Avoid: The fees will be payable on the first of the year.

Use: The fees are payable on the first of the year.

8. Active voice: Use the active voice.

Avoid: An annual renewal fee of \$30.00 shall be paid by each licensee.

Use: Each licensee shall pay an annual renewal fee of \$30.00.

9. The affirmative: Express an obligation in the affirmative.

Avoid: The director shall not allow smoking in the storerooms.

Use: The director shall prohibit smoking in the storerooms.

10. The singular: To avoid ambiguity, use the singular form of a noun.

Avoid: Employees are responsible to their immediate supervisors.

Use: Each employee is responsible to his or her immediate supervisor.

11. Key words: Do not use different words to express the same idea or thing.

Do not use about "bug spray" or "vegetable dust" when the subject of regulation is "insecticide," unless the term is being defined.

Do not use the same word to express different ideas or things.

12. Footnotes: Footnotes may only be used to notate tabular regulatory material. In narrative rule text, explanatory or ancillary material is to be included in the rule text itself, possibly codified at an inferior level.

13. Time context: Do not use terms subject to more than one meaning in placing an authority in time, such as "current" or "most recent."

Avoid: Construction shall be in accordance with the

current BOCA Code.

Use: Construction shall be in accordance with the BOCA Code in affect at the time of construction.

For a fuller discussion of rule drafting principles, see the Federal Register, Legal Drafting Style Manual.

C. General style notes

1. Abbreviations: Generally, abbreviations are not used in text. However, agency initials or acronyms are permissible if previously defined, preferably within each subchapter where used. Abbreviations in quoted material should be explained.

2. Symbols: Except for the dollar sign and commonly used scientific and technical designations, symbols are not used in text. For clarity and brevity, symbols are acceptable in charts and graphs.

3. Numbers in text: Generally, whole numbers from one through nine are expressed in alphabetic form, and numbers 10 and above in numerical form. If a number is the first word of a sentence, the alphabetic form is always used.

a. Fractions are numerical for measurements, percentages and weights ($\frac{3}{4}$ percent, $\frac{1}{2}$ pound), but alphabetic for general, non-specific references (one-half day, one-third full).

b. Mixed numbers ($2\frac{3}{8}$) and decimals (0.333) are always numerical.

c. Sums of money are expressed numerically, preceded by a dollar sign (\$10.00, \$0.50); the "cents" decimal (.00) is included only

in whole dollar amounts below \$1,000. Whole amounts of one million dollars or more may be expressed either numerically (\$1,500,000) or by a combination of numbers and words (\$1.5 million).

d. Percentages, depending on the amount, can be either numerical or alphabetic (three percent, 3 1/2 percent, 10 percent); the percent symbol (%) is not used.

e. Time and dates are expressed numerically: 9:45 A.M., 10:00 P.M.; May 1, 1985. If a date is nonspecific, the following form is used:

License renewals are due by the 15th day of each month.

But: License renewals are due by June 15 of each year.

f. Time spans are expressed in words (Monday through Friday, July 1 through December 31), as opposed to using hyphens (Monday – Friday, July 1 through December 31).

4. Capitalization: Do not capitalize solely for emphasis. Generally, only the exact title of an agency, program or official is capitalized.

5. Spelling: Use the preferred forms given in either Webster's New Collegiate Dictionary or the American Heritage Dictionary of the English Language (this dictionary has grammar usage notes).

6. Citations should be in accepted legal form such N.J.S.A., N.J.A.C., CFR, or U.S.C., and must be complete. The reader should be able to find the cited text easily. Reference to the names of acts, departmental publications, or other documents which are not readily accessible, is unacceptable. Commonly used names of acts or laws, with the appropriate N.J.S.A., CFR, or U.S.C. citations, may be used where this practice will aid the reader in understanding the text of the rule(s). If the legislation being

discussed cannot readily be cited in a codified form due to its affecting numerous, diverse provisions, the legislation may be referenced by the "P.L. [year], c. [number]" form for New Jersey acts and the "Pub. L. [Congress]-[number]" for Federal acts.

D. Publication deadlines

Proposal and adoption deadlines are established annually for the New Jersey Register. (See Example HH in Appendix.) Each rulemaking agency receives a copy of the yearly publication schedule containing these deadlines, and the schedule is posted on the OAL's web site www.state.nj.us/oal under "Rules." Additionally, each Register contains the deadlines of the next four issues. This information may be found at the end of the table of contents in each New Jersey Register.

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***This Example is an excerpt from a notice, omitting text not relevant to this Example's purpose. The omission of such text is noted by the presence of an ellipsis (. . .).**

****This Example appears at 65 percent of its actual legal paper size (8 1/2 by 14 inches).**

EXAMPLE A

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Pre-Proposal

Licensing and Professional Development Discussion Paper

December 2001

In September 2000, the State Board of Education reviewed the initial Licensing and Professional Development Discussion Paper. The paper highlighted critical issues that needed to be addressed in the comprehensive review of the Licensing and Professional Development Administrative Code. It was disseminated to all education stakeholders in an effort to solicit comments and recommendations. The hundreds of responses received emphasize the far-reaching impact and complexity of these regulations, affecting every public school teaching staff member and administrator in providing a quality education to all students.

Since that paper was disseminated, the Office of Licensing and Credentials staff initiated a comprehensive review of the licensing regulations. To determine needed changes, each section of the Code was evaluated for its relevance to current practice and demands in public education, and to assure its alignment with New Jersey's standards-based reform. This process has also included a review of the public comment generated by the paper, focus group recommendations on specific certificate areas, research on national trends about quality education preparation and professional development efforts, and input from key stakeholders on a variety of issues.

This second discussion paper summarizes the most important issues identified in this comprehensive review process and provides direction about how the department is planning to address them in the Administrative Code. This paper will also be widely disseminated to solicit additional input about the issues in preparation for presentation of the regulations to the State Board planned for April 2002.

The overarching goal guiding the code review process is to ensure that all professional educators are prepared to meet the challenges of educating New Jersey's students for success in the 21st century. To meet this goal, this paper presents five critical categories of potential change now under consideration. These include: alignment of the Code to standards-based reform; development of provisions that enhance the quality of teaching and learning; attention to professional preparation programs; recommendations for certificate changes; and revisions that improve operational aspects of the Code.

1. Standards-based reform

Through the Core Curriculum Content Standards, the State Board of Education determined the standards for identifying what public school students should know and be able to demonstrate when their public education is completed. The alignment of educator licensing and professional development with the standards and other aspects of the reform is necessary to ensure that all educators are prepared to provide the quality instruction and support needed to facilitate public school students' attainment of the standards. In order to support this effort, the Department is considering the following:

Align teaching certificates with the Core Curriculum Content Standards. For each content standard area, the instructional certificates that authorize the holder to teach the topics included in the standards will be identified and aligned.

Revise the generic pedagogy required of all teachers to include study of the content standards and the application of the standards to instruction. In 1999, the Department convened a panel of educators and other stakeholders who recommended a revision of the generic pedagogy that includes emphasis on the Core Curriculum Content Standards and other aspects of standards-based reform. The complete description of this generic pedagogy appears as the Appendix to this pre-proposal.

Develop standards for teaching that focus on the content standards. New Jersey is one of only a few states that has not adopted standards for teaching that guide teacher preparation programs and other aspects of the profession. The Department will explore the development of teaching standards with the Professional Teaching Standards Board. These standards would ultimately be included in the regulations. In addition, the Department will explore a partnership with the National Council for Accreditation of Teacher Education (NCATE) to ensure quality teacher education preparation programs at colleges and universities.

Revise administrator regulations that are aligned with state and national standards. New Jersey is taking steps to extend standards-based reform efforts to enhance school leadership. Last spring, New Jersey became one of 15 states selected from among 37 applicants to receive a \$50,000 design grant from the Council of Chief State School Officers. Through the Council's State Action for Education Leadership Project (SAELP), the Department has initiated a consortium of key policy makers to help design an implementation plan to strengthen school leadership. State standards to define what a principal and school administrator should know and be able to do will be recommended based on the adoption or adoption of national Interstate School Leader Licensure Consortium (ISLLC) standards in these areas. Preparation programs at colleges and universities will be required to be revised to reflect these standards.

Include a professional development subchapter for administrators. The Department will propose new regulations requiring professional development for school administrators. There is a new emphasis nationwide on the need for school leaders to be the instructional leaders of the district, capable of spearheading district and school efforts to improve student achievement. More than ever, the school leader needs ongoing professional development focused on teaching and learning. School administrators, including chief school administrators, principals and supervisors, will take part in professional development that is standards-based, focused on teaching and learning and appropriate to the needs of individual administrators within the context of their position in the school district.

2. Enhancing the Quality of Teaching and Learning

The regulations currently in effect allow individuals with substandard certificates to be assigned to classrooms. These individuals are not fully prepared to meet the instructional needs of students, and in some circumstances have little or no content preparation. In order to remedy this problem, the Department is considering the following revisions to the code:

Eliminate emergency certificates. The regulations governing issuance of emergency certificates do not identify any required preparation. The main requirement is the documentation of district need and the county superintendent's approval. As a result, in areas such as special education, bilingual and ESL education, and other areas of shortage, candidates are placed in assignments with little or no preparation. Therefore, the Department will recommend the elimination of the emergency certificate.

Create conditional certificates in areas of need where there are teacher shortages. The Department will expand the issuance of conditional certification, now available only in the area of world languages, to other areas where there is a shortage of teachers. A minimum level of preparation in the certification field will be required and a limited period of time for completion of requirements for standard certification will be prescribed. Candidates with no preparation will no longer be issued certificates.

Create limited certificates for foreign teachers to ameliorate teacher shortages. The Department will consider reinstating the practice of issuing certificates with a three-year validity to teachers from other countries who meet appropriate requirements. These teachers are recruited to teach in New Jersey by approved international agencies that work in collaboration with school districts. There is pending State legislation that will provide direction in this area.

Amend the regulations governing county substitute certificates. The Department will recommend changing the authorization of the county substitute certificate to prevent misuse of substitute teachers. The existing Code permits a substitute teacher to work for a maximum of 20 days in any one classroom. However, it has been the practice in some districts to assign county substitute teachers to long-term vacancies, removing them for one day at the end of 20 days and returning them after the one-day absence. This practice does not fully serve the needs of the students. The Department will recommend that time limits be developed to preclude the continuation of this practice.

The Department will consider some flexibility for teachers who hold out-of-State teaching certificates, have three years of successful teaching experience under the out-of-State certificate and are eligible for New Jersey standard certification with the exception of the test requirement.

The Department will also recommend completing employment clearances prior to issuance of the county substitute certificate. The State Board of Examiners has had to revoke a sizable number of county substitute certificates because the holders have criminal convictions that disqualify them from public school employment.

Revise world languages certificate requirements. All world language teachers and all elementary school teachers assigned to teach world languages should provide evidence of oral language proficiency and complete a course in second language acquisition.

3. Professional Preparation Programs

The State's commitment to high quality educational programs for all students requires a sound system for delivery of instruction by well-prepared certified educators. To that end, the Department must assure that educators undergo a consistent, coherent and rigorous program of studies. To achieve this goal, the following changes are being considered:

Revise teacher preparation programs by:

- Replacing the existing Boyer topics with the new generic pedagogy for State teacher preparation programs, both college preparation programs and Alternate Route regional training centers. The new pedagogy focuses on preparing new teachers to understand how all children can achieve the Core Curriculum Content Standards and to implement the standards in the classroom. A strong emphasis is placed on providing new teachers with the knowledge of how students learn language arts literacy skills, methods of teaching them, and their role in the acquisition of knowledge, skills, and attitudes appropriate to the area of certification;
- Allowing college programs to provide more than 30 credits in the professional education sequence. The additional credits will permit comprehensive professional preparation of pre-service teachers;
- Developing regulations to govern post-baccalaureate and graduate-level teacher preparation programs. Currently, the regulations govern only baccalaureate programs. The Department has no regulatory oversight of post-baccalaureate or graduate teacher preparation programs. Representatives from the State's institutions of higher education have recommended that regulations be adopted;
- Expanding Alternate Route preparation program availability to include English as a second language, bilingual/bicultural education and special education certification. Alternate Route programs have not been available to these three certification areas. The number of requests for emergency certification in these areas documents the need for their inclusion in the alternate program; and

- Reviewing special education professional preparation programs with the intent of reform. It has been 25 years since the regulations in this area have been revised. The Department has conducted a major review of the professional preparation required of all special education teachers to ensure that the regulations are aligned with the current research and practice in that field.

Update educational services preparation programs. After review of stakeholder recommendations, the Department will revise the educational services preparation programs to align them with national standards where appropriate.

Revamp administrator preparation programs. The Department will require colleges and universities to revise administrator programs to meet the newly developed State administrator standards. This will likely include the adoption of modified Interstate School Leaders Licensure Consortium (ISLLC) standards and a State partnership with the National Council for Accreditation of Teacher Education (NCATE).

4. Major Certificate Changes

Certification changes are inherent in each of the topics discussed in the previous sections of this paper. This section specifically highlights proposed changes in certification structure and/or requirements that are now under consideration.

Explore early childhood/elementary grade-level authorizations. Recognizing that early childhood/elementary school teachers need to have levels of content preparation appropriate to the student population being taught, the Department is exploring the revision of the current certification structure for teaching in preschool through grade eight. The goal will be to assure that teachers are prepared to teach the Core Curriculum Content Standards at the grade levels to which they are assigned. The following options have been suggested:

- A Preschool through Grade 3 certificate and a Grade 3 through Grade 8 certificate that would require content preparation in a minimum of two of the standards; or
- A Preschool through Grade 3 certificate, a Kindergarten through Grade 5 certificate, and a middle school certificate in specific content standards areas.

Evaluate educational services certificate regulations by:

- Eliminating the requirements for teaching certificates and experience for the student personnel and educational media certificates. These requirements have created artificial barriers to certification in these areas. This change will assist in the expansion of reciprocity, particularly with the neighboring states of New York and Pennsylvania. These states do not require classroom teaching and teacher certification as prerequisites to certification as guidance counselors and school librarians. In place of the teaching requirements, the Department will recommend completion of a residency program in a school setting;
- Updating study requirements for educator preparation programs in response to recommendations of major stakeholders, colleges and practitioners. The changes will reflect the evolving responsibilities of the positions and, where applicable, national standards. For example, the current regulations do not require a school psychologist or a guidance counselor to hold a master's degree. The Department will propose that the master's degree be a minimum entry requirement for most educational services certificates; and
- Creating a certificate for educational interpreters to meet the needs of hearing impaired students in inclusion settings.

Overhaul vocational-technical education by:

- Aligning the vocational-technical education certificates with the United States Department of Education's 16 Career Clusters;
- Exploring how to address certificates that are not aligned with the Federal Career Clusters; and

- Investigating structured learning experiences and identifying appropriate certificates needed to supervise students in these experiences. Structured learning experiences are supervised educational activities designed to provide students with exposure to the requirements and responsibilities of specific job titles or job groups, and to assist them in gaining employment skills and making career and educational decisions. It is important to provide guidance through licensing regulations to districts regarding the staffing of these experiences.

Develop new certificates to meet the Core Curriculum Content Standards in the following areas:

- Teacher of Vocational Arts/Drama—this will allow an experienced actor/director to provide career education in a vocational setting;
- Teacher of Computer Science—currently no certificate is available for teaching computer education. This certificate will fill that void;
- Teacher of Technology Education—existing college programs no longer prepare students to be industrial arts teachers. As a result of the rapid changes in technology, college programs must prepare teachers to instruct students about the design and engineering of technological products, systems, and environments and the impact of those activities on the individual, society, and natural environment;
- Teacher of Distance Learning—this limited certificate will allow appropriately prepared out-of-State certified teachers to provide instruction via distance learning in under-enrolled or low incidence courses offered to satisfy graduation requirements. The Department will also explore how certification should be applied to on-line educational courses;
- Teacher of Adult Literacy—this certificate will allow teachers to teach literacy and basic skills to adult populations.
- Teacher of Physics and Teacher of Chemistry—these separate certificates will be added to the existing science certificates. Many candidates are well prepared in only physics or chemistry. The existing certificate, Teacher of Physical Science, allows the holder to teach both physics and chemistry. It requires that an applicant have academic preparation in both chemistry and physics and pass tests in both content areas. As a result, strong candidates prepared exclusively in physics or chemistry are precluded from certification. By adding the new certificates, the pool of well-prepared candidates to teach chemistry or physics will be increased significantly. The Teacher of Physical Science certificate will be retained.
- Teacher of American Sign Language—American Sign Language is a recognized world language. A specific certificate will be developed; and
- Educational Interpreter—this certificate will authorize the holder to provide interpreting services to deaf or hard of hearing students.

Upgrade the requirements for the school business administrator certificate. The Department will require a master's degree or a CPA license for school business administrator certification in addition to the required areas of study. It is proposed that the study areas will be clearly defined in the code language.

5. Operational Changes

The following proposed changes will provide the State Board of Examiners, the Office of Licensing and Credentials, and the Office of Standards and Professional Development with the structure necessary to execute their statutory and regulatory responsibilities efficiently.

Codify all State Board of Examiners procedures. The Department will change the appeal procedures for performance evaluation after residency programs for provisional teachers to eliminate conflicting procedures and to provide clarity. In addition, the revised Code will have a provision for the voluntary surrender of certificates and a uniform appeal process for all State Board of Examiners decisions.

Drop the term "endorsement" and replace it with "certificate." In the past, teachers were issued one certificate in one of three areas: instructional, educational services and administrative. As a teacher completed the requirements for additional specializations within a certificate area, endorsements were added to the initial certificate. This is no longer the case. Individual certificates are issued each time an educator earns a new specialization. The regulation change will eliminate unnecessary confusion.

Provide flexibility to the 2.75 grade point average requirement. In an effort to continue to ensure the quality of the teacher pool, while addressing the realistic need to build the supply of new teachers, the Department is considering the following amendments:

- Permitting teachers holding teaching certificates from other states, who have a minimum of three years of successful teaching experience under the certificate, to substitute the certificate and experience for the GPA requirement; or
- Permitting candidates who achieve a 3.00 GPA in the academic major as certified by the college/university and an overall 2.50 GPA to satisfy the GPA requirement; or
- Permitting candidates who achieve a 3.00 GPA in the junior and senior years of the bachelor's degree program as certified by the college/university and an overall 2.50 GPA to satisfy the GPA requirement.

Add a definitions section to the Code to enhance the clarity of the chapter.

Include criteria to allow nonpublic school participation in the Provisional Teacher Program. The Department will recommend that nonpublic schools, in which a student can fulfill compulsory school attendance requirements and that choose to participate in the Provisional Teacher Program, meet the same standards required of public school districts. These criteria will include such requirements as staff certification, formal agreements between the school and the Department, and acceptable teaching assignments for provisional teachers.

In summary, this paper provides the direction for the comprehensive review of the Licensing and Professional Development Code. The paper includes the major relevant comments and ideas that were received from stakeholders, current research, and the ideas generated from other states engaged in standards-based reform. The Department encourages additional public comment over the next several months. Please send written comments by February 6, 2002 to Jay Doolan, Acting Assistant Commissioner, New Jersey Department of Education, Division of Academic and Career Standards, PO Box 500, Trenton, NJ 08625-0500. Recommendations will further inform the Department as Code language is developed for presentation to the State Board of Education in April 2002.

APPENDIX

Generic Pedagogical Study Areas

Recommended by the Certification Review Panel

1. **Standards and their Implementation:** Studies designed to build on knowledge of New Jersey's Core Curriculum Content Standards and to address their implementation in all content areas and all grade levels appropriate to the certification. These studies shall include content knowledge, theory and practice of instructional and assessment strategies, instructional media, technology, and curriculum materials, and links between standards in different content areas.
2. **Learners:** Studies designed to foster an understanding of how all children can achieve New Jersey's Core Curriculum Content Standards, including how to address developmental stages and different styles in learning, how to manage a classroom and promote student civility, and how to teach in order to maximize the achievement of all students, including those who bring cultural and linguistic diversity, those with special needs and the gifted. These studies shall include a knowledge of how students learn language arts literacy skills, methods of teaching them, and their role in the acquisition of knowledge, skills, and attitudes appropriate to the area of certification.
3. **Teaching as a Profession:** Studies designed to foster understanding of how one becomes an effective teacher, including commitment to the principle that all students can learn, the importance of reflective planning and practice, the importance of collaborative and mentoring relationships, the perspective of life-long learning and professional development, the advocacy of best practice, and the development of professional and ethical behavior.
4. **The Schools and the Community:** Studies designed to foster an understanding of the broader context in which education takes place, including the role of schools in promoting civic and civil responsibilities in a democratic society, current issues in education, and how to strengthen the involvement of families and community in education.

EXAMPLE B

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Notice of Pre-proposal Individual Development Accounts

N.J.A.C. 5:46

Take notice that, pursuant to P.L. 2001, c.93, approved May 10, 2001, the Department of Community Affairs is required to adopt rules establishing the Individual Development Accounts program. Under this program, Federal funds will be used to provide incentives to low income wage earners to save some of their income for future use in purchase of housing, higher education or business formation. The Department will work with community-based organizations to implement the program. Participants will be eligible to receive matching funds of up to \$1,500 per year.

In order to obtain maximum input from the public, the Department is submitting its current draft proposal as a pre-proposal. Comments on the pre-proposal should be sent on or before July 18, 2001 to:

Mary Ann Barkus
IDA Program Administrator
Department of Community Affairs
Division of Housing and Community Resources
PO Box 806
Trenton, NJ 08625-0806
Fax: (609) 633-6729

Full text of the pre-proposed new rules follows:

CHAPTER 46 INDIVIDUAL DEVELOPMENT ACCOUNTS

SUBCHAPTER 1. GENERAL PROVISIONS

5:46-1.1 Title, scope; purpose

(a) This chapter shall be known as the "New Jersey Individual Development Account Program Rules."

(b) The scope of this chapter includes the following:

1. Policies concerning the establishment of individual development accounts;
2. Minimum standards for economic literacy education;
3. Selection criteria and requirements for participating community-based organizations; and
4. Eligibility criteria for individual participants.

(c) This chapter is intended to facilitate fair and efficient implementation of the New Jersey Individual Development Account Act, P.L. 2001, c.93, N.J.S.A. 44:10-86 et seq., so that all eligible individuals will have an opportunity to establish individual development accounts with State assistance, to the extent that funding will permit.

5:46-1.2 Definitions

(a) All definitions set forth in section 3 of the New Jersey Individual Development Account Act shall be applicable to this chapter.

"Account holder" means a person who is the owner of an individual development account.

"Commissioner" means the Commissioner of Community Affairs.

"Community-based organization" means a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. §501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. §501(a)), that is approved by

the Commissioner to implement the New Jersey Individual Development Account Program established under the Act.

"Department" means the Department of Community Affairs.

"Economic literacy" means a basic understanding of budgets and savings accounts, credit and interest and how to use financial services; and having a savings plan and using it to reach the account holder's savings goal for an individual development account.

"Eligible individual" means an adult with an annual household gross income up to a maximum of 200 percent of the official poverty level.

"Financial institution" means a state or Federally chartered bank, savings bank, savings and loan association or credit union with an office in this State.

"Fund" means the Individual Development Account Fund established pursuant to 42 U.S.C. §604(h) and 45 C.F.R. Part 263 (45 C.F.R. §§263.0 et seq.).

"Individual development account" means an account established pursuant to 42 U.S.C. §604(h) and 45 C.F.R. Part 263 (45 C.F.R. §§263.0 et seq.) in trust for an eligible individual that is a trust account pursuant to the "Multiple-party Deposit Account Act," P.L. 1979, c.491 (N.J.S.A. 17:161-1 et seq.).

"Program" means the New Jersey Individual Development Account Program established pursuant to the provisions of the Act.

"Program contributor" means a person or entity who makes a contribution to an individual development account reserve fund, except that "program contributor" does not mean the account holder.

"Reserve fund" means the individual development account reserve fund created by a community-based organization for the purposes of funding the costs incurred in the administration of the program; receiving matching funds from the State; and providing matching funds for individual development accounts pursuant to section 5 of the Act.

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

"Act" means the New Jersey Individual Development Account Act, P.L. 2001, c.93, N.J.S.A. 44:10-86 et seq.

"Qualified provider organization" means and includes a public or private school or school district, an institution of higher education, a nonprofit consumer protection or consumer education organization, a for-profit educational institution or a trade association of financial institutions.

"Supervised savings account" means a savings account of an individual account holder for which a community-based organization receives copies of monthly statements and has documentation sufficient to establish the source of all deposits.

SUBCHAPTER 2. PARTICIPATION

5:46-2.1 Participation criteria for organizations

(a) In order to qualify for approval for participation in the Program, a community-based organization shall demonstrate, to the satisfaction of the Department, that it meets the following criteria:

1. It shall qualify as a tax-exempt, not-for-profit organization under sections 501(a) and 501(c)(3) of the U.S. Internal Revenue Service;
2. It shall maintain an office that is reasonably accessible to account holders;
3. It shall have human and material resources sufficient to implement the Program in its local community and shall have a history of providing service to low-income persons in that community and of success in raising funds for that purpose. If it is a new organization, it shall have staff and board members who have had such experience in other organizations;
4. It shall present a workable plan for development, implementation and management of an individual development account program in the community, which plan shall include endorsement from at least one cooperating local financial institution. The plan shall indicate the length of time, in months and years, of the operation of the program by the organization, taking into account the resources that are or will be available;

5. It shall provide a comprehensive economic literacy program suited to the needs of the participating individuals, either with its own staff or

under a proposed agreement with a provider that is ready, willing and able to provide such a program of instruction;

6. It shall identify the target population, together with a workable plan to exceed, to the extent that it shall identify, the minimum requirement of 33.3 percent participation by current or former Work First New Jersey recipients pursuant to P.L. 1997, c.38 (N.J.S.A. 44:10-55 et seq.), or Aid to Families with Dependent Children recipients, or Temporary Assistance for Needy Families recipients pursuant to 42 U.S.C. §§601 et seq.; and

7. It shall demonstrate that it has a satisfactory working relationship with the Work First New Jersey Program and with the Workforce Investment Board of the county in which the community is located.

(b) The Department shall select for participation in the Program those organizations that, in its judgment, would most effectively and efficiently provide to the target population the service required by the Act.

5:46-2.2 Trust accounts for individuals

(a) A community-based organization participating in the Program shall maintain a separate trust account in a financial institution. The trust account shall be an interest-bearing savings account.

(b) To the extent that available funding, including funding from both public and non-public sources, may allow, the community-based organization shall deposit into each account holder's trust account at a minimum one dollar for each dollar deposited by the account holder into a supervised savings account.

1. Matching trust account deposits shall only be made for income earned by the individual and not deposited by any third party.

5:46-2.3 Supervised savings accounts

(a) In order to qualify for matching monthly trust fund deposits, an individual account holder shall deposit each month in his or her supervised savings account an amount that is not less than one percent of monthly earned income.

(b) Deposits in excess of \$125.00 per month shall not qualify for publicly funded matching trust fund deposits. (Or maximum allowable deposits shall not exceed \$1,500 per year.)

(c) No withdrawal of funds from any supervised savings account shall be permitted by a financial institution without signatures of both the account holder and an authorized representative of the community-based organization.

1. Prior to consenting to any withdrawal of funds, a representative of the community-based organization shall discuss with the account holder the consequences of the intended withdrawal of funds. The community-based organization shall not unreasonably withhold its consent to the withdrawal.

(d) In the event that an account holder withdraws any money from a supervised savings account for any other than post-secondary educational expenses, qualified acquisition costs of a primary residence, or qualified business capitalization expenses, there shall be a commensurate reduction in the amount of money held by the community-based organization in the trust account maintained for that account holder. Funds withdrawn from the trust account pursuant to this subsection shall be used for matching deposits in other trust accounts, unless the Department shall otherwise direct.

5:46-2.4 Time limitations

(a) An account holder who wishes to withdraw money from a supervised savings account and receive matching funds from the matching trust account shall give to the community-based organization serving as trustee not less than 30 days advanced notice of intent to make such withdrawal.

(b) In order to be eligible to withdraw funds from the supervised savings account and receive matching funds from the trust account, an account holder must first maintain the supervised savings account for a period of at least 12 months.

(c) Matching funds may be earned for a period not to exceed 60 months.

SUBCHAPTER 3. ECONOMIC LITERACY EDUCATION

5:46-3.1 Economic literacy education

(a) Each account holder shall be required to satisfactorily complete an economic literacy education and asset specific training program sponsored by the participating community-based organization.

(b) Community-based organizations may use either their own staff or a qualified provider organization to teach economic literacy to account holders.

(c) Any qualified provider organization, or any community-based organization that wishes to use its own staff to teach economic literacy, shall submit its proposed course to the Department for approval at least 60 days prior to the first session. The application for approval may be in letterform.

(d) Each application for approval shall be submitted in the name of the organization by a person authorized by the governing board to do so and shall, at a minimum, contain the following information:

1. A description of the length of each session, the frequency of the sessions and the total number of sessions;

2. An outline of the course content, broken down by session;

3. A description of any materials or texts to be used;

4. A statement of the qualifications of the person(s) who will be teaching the course;

5. A statement of how often the course will be offered;

6. A statement that the organization will notify the Department if the course is withdrawn or changed in any way;

7. A statement that, if the course is taught by a qualified provider organization, it will inform the community-based organization whenever a participant withdraws from the training;

8. A statement that the organization will conduct the course in accordance with the Act, this chapter and any directives that the Department may issue pursuant thereto; and

9. A statement of any rules or requirements of the organization with which account holders must comply.

(e) Upon verification that a proposed course meets the requirements and intent of this chapter and of the Act, the Department shall issue a letter of approval to the organization that includes any terms and conditions of the approval. The approval shall only continue in effect so long as the course conforms to the application and to any terms and conditions imposed by the Department.

(f) The Department may revoke its approval, after notice and an opportunity to be heard, whenever it determines that a course does not conform to the requirements of the Act, of this chapter or of the terms and conditions of the approval.

EXAMPLE C

EDUCATION

STATE BOARD OF EDUCATION

Third Quarter, 2002

July 2002 through December 2002

Authorized By: State Board of Education, William L. Librera,
Commissioner, Department of Education and Secretary, State
Board of Education.

Take notice that proposals not listed in this rulemaking calendar may be published as a pre-proposal in the New Jersey Register or a 60-day comment period may be permitted as necessary. For additional information on proposals not contained in this calendar, please refer to the Department of Education Administrative Code website at <http://www.state.nj.us/nided/code/>.

The Department is making four additional amendments to what appeared in its Second Quarter 2002 Rulemaking Calendar as published in the April 1, 2002 New Jersey Register.

The calendar item "Proposed Amendments to N.J.A.C. 6A:28-1 School Ethics Commission" is amended to change the anticipated month/year of the New Jersey Register publication from April 2002 to July 2002.

The calendar item "Proposed Amendments to N.J.A.C. 6A:4 Equality in Educational Programs" is amended to change the anticipated month/year of the New Jersey Register publication from June 2002 to January 2003.

Two new calendar items have been added:

"Proposed Amendments to N.J.A.C. 6A:11 Charter Schools" with an anticipated month/year of New Jersey Register publication set for August 2002.

"Proposed Amendments to N.J.A.C. 6A:16 Programs to Support Student Development" with an anticipated month/year of New Jersey Register publication set for September 2002.

Full text of the calendar follows (additions to prior calendar are indicated in boldface thus; deletions from prior calendar are indicated in brackets [thus]):

Proposed Amendments to N.J.A.C. 6A:28-1 School Ethics Commission

Authority: N.J.S.A. 18A:4-10, 4-15, 18A:12-21 et seq. as amended, P.L. 2001, c.178 and 18A:12-34.

Synopsis of rulemaking and objective or purpose: The Department of Education is proposing to amend N.J.A.C. 6A:28-1 to comply with N.J.S.A. 18A:12-21 et seq., as amended June 26, 2001 by P.L. 2001, c.178. This statutory amendment adds the Code of Ethics for School Board members to the School Ethics Act. The statutory amendments also set strict timelines for the Commission to decide cases under the Code of Ethics requiring amended procedures for the handling of complaints.

Anticipated month/year publication of notice of proposal: [April 2002] July 2002.

Proposed Recodification with Amendments of N.J.A.C. 6A:4 Equality in Educational Programs

Authority: N.J.S.A. 18A:36-20.

Synopsis of rulemaking and objective or purpose: The amendments in this proposal are part of a comprehensive review of the entire chapter, N.J.A.C. 6:4. The fundamental purpose of the chapter is to ensure that educational opportunity is available to all students by identifying discriminatory practices prohibited by State and Federal law and by establishing monitoring procedures for districts to achieve compliance. N.J.A.C. 6:4 will be recodified as a new chapter in Title 6A.

Anticipated month/year publication of notice of proposal: [June 2002] January 2003.

Proposed Amendments to N.J.A.C. 6A:8 Standards and Assessment

Authority: The State Board of Education is responsible for establishing State educational goals and standards according to P.L. 1990, c.52, P.L. 1991, c.3 and P.L. 1991, c.62.

Synopsis of rulemaking and objective or purpose: Amendments to the standards and assessment regulations will be presented in the Statewide assessment area of the Code. Changes will be made to the assessment schedule in order to comply with an early literacy initiative and new Federal mandates included in Title I of the Elementary and Secondary Education Act (ESEA), which call for assessments in grades three through eight. The assessment and accountability systems will also be brought into compliance with the Federal requirements, which require the inclusion of all students in these systems.

Anticipated month/year publication of notice of proposal: August 2002.

Proposed Amendments to N.J.A.C. 6A:11 Charter Schools

Authority: N.J.S.A. 18A:36A-1 et seq., The Charter School Program Act of 1995.

Synopsis of rulemaking and objective or purpose: Amend N.J.A.C. 6A:11 to clarify timelines and definitions and to comply with amendments to N.J.S.A. 18A:36A-1 et seq. Amendments also ensure sound fiscal operations.

Anticipated month/year publication of notice of proposal: August 2002.

Proposed Amendments to N.J.A.C. 6A:16 Programs to Support Student Development

Authority: N.J.S.A. 26:3D-17.

Synopsis of rulemaking and objective or purpose: Amends N.J.A.C. 6A:16 to define school grounds and to amend N.J.A.C. 6A:16-3 to expand the area for the prohibition of smoking tobacco to include school grounds and permit school districts to regulate the use of smokeless tobacco products.

Anticipated month/year publication of notice of proposal: September 2002.

EXAMPLE D

EDUCATION

STATE BOARD OF EDUCATION

Amended Rulemaking Calendar

Third Quarter, 2002

July 2002 through December 2002

Authorized By: State Board of Education, William L. Librera,
Commissioner, Department of Education and Secretary, State
Board of Education.

Take notice that proposals not listed in this rulemaking calendar may be published as a pre-proposal in the New Jersey Register or a 60-day comment period may be permitted as necessary. For additional information on proposals not contained in this calendar, please refer to the Department of Education Administrative Code website at <http://www.state.nj.us/nided/code/>.

The Department is making one amendment to its Third Quarter 2002 Rulemaking Calendar as published in the July 1, 2002 New Jersey Register at 34 N.J.R. 2345.

The calendar item "Proposed Amendments to N.J.A.C. 6A:28-1, School Ethics Commission" is amended to change the anticipated month/year of the New Jersey Register publication from July 2002 to September 2002.

Full text of the calendar follows (additions to prior calendar are indicated in boldface thus; deletions from prior calendar are indicated in brackets (thus)):

Proposed Amendments to N.J.A.C. 6A:28-1, School Ethics Commission

Authority: N.J.S.A. 18A:4-10, 4-15, 18A:12-21 et seq. as amended, P.L. 2001, c.178 and 18A:12-34.

Synopsis of rulemaking and objective or purpose: The Department of Education is proposing to amend N.J.A.C. 6A:28-1 to comply with N.J.S.A. 18A:12-21 et seq., as amended June 26, 2001 by P.L. 2001, c.178. This statutory amendment adds the Code of Ethics for School Board members to the School Ethics Act. The statutory amendments also set strict timelines for the Commission to decide cases under the Code of Ethics requiring amended procedures for the handling of complaints.

Anticipated month/year publication of notice of proposal: [July 2002] September 2002.

Proposed Recodification with Amendments to N.J.A.C. 6A:4, Equality in Educational Programs

Authority: N.J.S.A. 18A:36-20.

Synopsis of rulemaking and objective or purpose: The amendments in this proposal are part of a comprehensive review of the entire chapter, N.J.A.C. 6:4. The fundamental purpose of the chapter is to ensure that educational opportunity is available to all students by identifying discriminatory practices prohibited by State and Federal law and by establishing monitoring procedures for districts to achieve compliance. N.J.A.C. 6:4 will be recodified as a new chapter in Title 6A.

Anticipated month/year publication of notice of proposal: January 2003.

Proposed Amendments to N.J.A.C. 6A:8, Standards and Assessment

Authority: The State Board of Education is responsible for establishing State educational goals and standards according to P.L. 1990, c.52, P.L. 1991, c.3 and P.L. 1991, c.62.

Synopsis of rulemaking and objective or purpose: Amendments to the standards and assessment regulations will be presented in the Statewide assessment area of the Code. Changes will be made to the assessment schedule in order to comply with an early literacy initiative and new Federal mandates included in Title I of the Elementary and Secondary Education Act (ESEA), which call for assessments in grades 3 through 8. The assessment and accountability systems will also be brought into compliance with the Federal requirements, which require the inclusion of all students in these systems.

Anticipated month/year publication of notice of proposal: August 2002.

Proposed Amendments to N.J.A.C. 6A:11, Charter Schools

Authority: N.J.S.A. 18A:36A-1 et seq., The Charter School Program Act of 1995.

Synopsis of rulemaking and objective or purpose: Amend N.J.A.C. 6A:11 to clarify timelines and definitions and to comply with amendments to N.J.S.A. 18A:36A-1 et seq. Amendments also ensure sound fiscal operations.

Anticipated month/year publication of notice of proposal: August 2002.

Proposed Amendments to N.J.A.C. 6A:16, Programs to Support Student Development

Authority: N.J.S.A. 26:3D-17.

Synopsis of rulemaking and objective or purpose: Amends N.J.A.C. 6A:16 to define school grounds and to amend N.J.A.C. 6A:16-3 to expand the area for the prohibition of smoking tobacco to include school grounds and permit school districts to regulate the use of smokeless tobacco products.

Anticipated month/year publication of notice of proposal: September 2002.

EXAMPLE E

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS NEW JERSEY STATE BOARD OF DENTISTRY Parenteral Conscious Sedation Proposed Amendment: N.J.A.C. 13:30-8.2

Authorized By: New Jersey State Board of Dentistry, Kevin B. Earle,
Executive Director.

Authority: N.J.S.A. 45:6-1 and 45:1-15.1.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2002-237.

Submit comments by September 13, 2002 to:

Kevin B. Earle, Executive Director
New Jersey State Board of Dentistry
124 Halsey Street
PO Box 45005
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to its general rulemaking authority, N.J.S.A. 45:1-15.1, the New Jersey State Board of Dentistry (the Board) proposes various amendments to N.J.A.C. 13:30-8.2, which sets forth requirements for the proper administration of parenteral conscious sedation (PCS) by licensed dentists. The Board proposes to amend N.J.A.C. 13:30-8.2 in order to make the requirements of the rule more consistent with the American Dental Association (ADA) guidelines on the use of PCS and with the PCS regulations promulgated by a majority of states.

N.J.A.C. 13:30-8.2(d) currently requires a licensed dentist who wishes to obtain a permit to administer PCS to submit proof that he or she has completed a minimum of 100 hours of didactic training and 100 hours of clinical training in the administration of PCS. The Board believes that because the current rule does not specify what the required didactic and clinical training must encompass, the rule does not provide licensees and administrators of PCS training programs with sufficient guidance as to appropriate training program content. In an effort to clarify the existing rule, the Board undertook a thorough review of ADA guidelines on PCS administration, as well as the regulations governing PCS administration in at least 40 states. Based upon its review, the Board has determined that the current training standard established in N.J.A.C. 13:30-8.2(d) is inconsistent with the training requirements supported by the ADA and implemented in a majority of states.

The PCS guidelines issued by the ADA provide that proper training in PCS administration requires a minimum of 60 hours of comprehensive coursework in PCS and additional laboratory experience. The ADA guidelines also state that proper training should include the supervised management by the PCS trainee of at least 20 patients who have been administered PCS. A dentist being trained in the administration of PCS must achieve competency in numerous areas before such training is deemed complete.

The Board notes that currently most PCS programs offered by academic institutions or hospitals are structured to adhere to these ADA guidelines. However, applicants who complete such programs and establish their competency in PCS administration are required, nevertheless, to take additional course and clinical work that is repetitive, in order to satisfy the current requirements in N.J.A.C. 13:30-8.2(d). The Board does not believe that this requirement serves a beneficial purpose. Rather, the Board believes that the competency-based training standard supported by the ADA is more appropriate than the standard currently articulated in N.J.A.C. 13:30-8.2(d), and that once implemented in New Jersey, it will help to ensure that only those dentists who receive proper training will be permitted to administer PCS.

The Board is proposing to amend N.J.A.C. 13:30-8.2(d) to require an applicant for a PCS permit to submit a certification from an accredited university, teaching hospital or training institution, which establishes that the applicant has completed formal training in the administration of PCS. Formal PCS training must consist of a combined 80 hours in didactic instruction and supervised clinical training. The supervised clinical training must include delivering intravenous, intramuscular, subcutaneous, submucosal and

inhalation medications, monitoring patient activity, and managing patient care for at least 20 patients who have been administered PCS. As part of the applicant's submission, the institution must certify that the applicant is competent to perform all functions associated with the administration of PCS. The Board believes that a combined 80 hours of instruction, along with the requisite certification of competency from the institution, will be sufficient to ensure that applicants are properly trained. The Board believes that requiring a combined 80 hours of instruction, as opposed to 60 hours of didactic training with additional clinical work, will allow academic institutions and hospitals greater flexibility in structuring their PCS programs. The academic institutions and hospitals, the Board believes, will ensure that such programs fall within the parameters established by the ADA guidelines.

In addition to the proposed amendments to the training requirements of subsection (d), the Board is also proposing amendments to the minimum equipment requirements outlined in N.J.A.C. 13:30-8.2(g). Subsection (g), which currently requires PCS permit holders to certify that their facilities contain certain emergency equipment, is amended to require each permit holder to ensure that his or her facility includes an EKG monitor and a pulse oximeter, in addition to the equipment currently required. The Board is proposing to require that the facility also be equipped with back-up, battery-operated lighting, suction and pulse oximetry equipment, which must be readily accessible and properly operating. The Board believes that the proposed amendments will help to ensure that permit holders have basic equipment and supplies available when administering PCS to adequately protect patients should an emergency situation arise.

The Board is also proposing a new subsection (j) in order to clarify the requirements imposed upon the holder of a PCS permit who administers PCS in the dental facility of another Board licensee. The Board proposes this amendment in response to concerns among many in the regulated community that permit holders who provide itinerant PCS services should have their mobile equipment and supplies inspected in the same manner as do permit holders who provide their services in one facility. Proposed new subsection (j) provides that any permit holder who is invited by a dentist to provide PCS services in a dental facility will be responsible for compliance with minimum assisting staff and equipment requirements. Existing subsections (j), (k) and (l) are recodified as subsections (k), (l) and (m).

For similar safety reasons, the Board is proposing to amend subsection (c) in order to clarify for permit holders who have branch offices that they must obtain a PCS permit for each branch office or facility in which they administer PCS. Except in the case of itinerant PCS providers, a PCS permit must be issued for a specified practice location. The Board proposes this amendment in order to ensure that each facility in which a permit holder administers PCS is properly equipped and staffed so as to provide the highest level of patient care.

The Board also proposes to amend N.J.A.C. 13:30-8.2(e) and (f) which provide that a PCS permit holder and his or her assisting staff, respectively, must complete the Basic Life Support Course C offered by the American Heart Association. The proposed amendment provides permit holders and their assisting staff with the option of taking either the basic life support course or a course in Advanced Cardiac Life Support. The Board believes that both courses are acceptable and proposes this amendment in order to provide permit holders and their staff with greater flexibility in their choice of training.

The Board proposes technical amendments to the remaining sections of N.J.A.C. 13:30-8.2 in order to clarify the existing requirements of the rule. Specifically, the Board proposes technical amendments to existing subsections (a), (b), (h) and (i), and recodified subsections (k), (l) and (m), for clarification purposes. The Board is proposing to delete existing subsection (m), which provides that a licensee who administers PCS without a permit will be deemed to have engaged in occupational misconduct, because the provision is duplicative of N.J.A.C. 13:30-1.1(c), which provides that a violation of any Board rule may be deemed professional misconduct and may subject a licensee to disciplinary action.

The Board has determined that the comment period for this proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this proposal is excepted from the rulemaking calendar requirement.

Social Impact

The Board believes that the proposed amendments to N.J.A.C. 13:30-8.2 will have a positive impact upon licensees and the patients they serve. The proposed amendments to N.J.A.C. 13:30-8.2(c), which will require a permit holder who has multiple offices to obtain a PCS permit for each branch office or facility in which he or she administers PCS, will ensure that each facility will be properly equipped and staffed. In addition, the Board believes that the

new training requirements proposed in subsection (d) will help to ensure that only those applicants who have fulfilled the educational requirements of a structured PCS training program, and have been certified as competent in all areas of PCS administration, will be granted permits to administer PCS.

The Board also believes that the proposed amendments to subsection (g), which require a PCS permit holder to maintain an EKG monitor, a pulse oximeter, and additional battery-operated, back-up equipment at the facility where PCS will be administered, will ensure that PCS permit holders are appropriately equipped to deal with emergency situations. The requirements of recodified subsection (j) will also have a positive impact upon patients by ensuring that PCS permit holders who are providing PCS services in one or more dental facilities will comply with the minimum requirements imposed by the Board as to assisting staff and equipment, regardless of the number of facilities in which they provide their services. In addition, recodified subsection (j) will also positively impact patients by ensuring that the mobile equipment and supplies of the itinerant PCS provider are inspected and approved by the Board or its designee once every three years.

Economic Impact

The Board believes that the proposed amendments to N.J.A.C. 13:30-8.2(c) may have an economic impact upon applicants for PCS permits and current PCS permit holders to the extent that applicants and permit holders may incur administrative expenses associated with submitting applications, complete with any required documentation, for each branch office or facility in which the licensee will administer PCS. In addition, the proposed amendments to subsection (d) may have an economic impact upon applicants for PCS permits to the extent that such licensees will have to satisfy the training requirements outlined in subsection (d) prior to being granted a PCS permit. The Board believes that the costs associated with satisfaction of the required training will vary depending upon which university, teaching hospital or training institution a licensee chooses to attend in order to obtain the requisite training. Licensees, once they have been granted a PCS permit, will also incur the added expense associated with obtaining emergency life support training on a biennial basis. The proposed amendments to N.J.A.C. 13:30-8.3(g) may also have an economic impact upon applicants for PCS permits to the extent that they will incur costs associated with purchasing the required safety equipment and supplies. In addition, the Board believes that the proposed amendments to subsection (g) may have an economic impact upon current PCS permit holders to the extent that permit holders may have to purchase the new equipment and supplies that will now be required to be maintained in a dental office in which PCS is administered. The Board cannot estimate the costs that may be incurred by new PCS permit holders or by current PCS permit holders in terms of the equipment and supplies that must be purchased because such costs will vary depending on the type of equipment and supplies licensees choose to purchase in order to satisfy the requirements of the rule.

The Board believes that any economic impact that may be borne by PCS permit holders as a result of the proposed amendments will be outweighed by the benefit to patients in ensuring that PCS permit holders are appropriately trained and properly equipped to administer PCS.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments to N.J.A.C. 13:30-8.2 are governed by N.J.S.A. 45:6-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The Board does not believe that the proposed amendments to N.J.A.C. 13:30-8.2 will result in the creation or the loss of any jobs in the State. It is possible, however, that the proposed amendments to N.J.A.C. 13:30-8.2(d), which will decrease the number of training hours that an applicant for a PCS permit must complete, may result in an increase in the number of applicants for such permits. The Board, however, cannot anticipate at this time what impact, if any, the proposed amendments will have on the number of jobs available for PCS permit holders, because such impact will vary depending on the number of licensees who seek PCS permits in the future.

Agriculture Industry Impact

The Board does not believe that the proposed amendments will have any impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., requires the Board to provide a description of the types and an estimate of the number of small businesses to which the proposed amendments will apply. Currently, the Board licenses approximately 9,616 dentists. If these Board

licensees are considered "small businesses" within the meaning of the Act, then the following analysis applies.

The Act requires the Board to set forth the reporting, recordkeeping and other compliance requirements of the proposed amendments, including the kinds of professional services likely to be needed to comply with the requirements. The Act further requires the Board to estimate the initial and annual compliance costs of the proposed amendments, to outline the manner in which it has designed the proposed amendments to minimize any adverse economic impact upon small businesses, and to set forth whether the proposed amendments establish differing compliance requirements for small businesses.

The proposed amendments do not impose any reporting requirements upon Board licensees. N.J.A.C. 13:30-8.2(k) imposes recordkeeping requirements upon licensees to the extent that licensees must retain a patient's complete medical history, obtained prior to the administration of PCS, for at least seven years.

The existing provisions of N.J.A.C. 13:30-8.2, as well as the proposed amendments, will impose various compliance requirements upon Board licensees. N.J.A.C. 13:30-8.2(a) requires licensees administering PCS to satisfy all requirements outlined in N.J.A.C. 13:30-8.2. N.J.A.C. 13:30-8.2(c) prohibits a dentist from administering PCS unless he or she possesses a PCS permit. Subsection (c) also requires that a dentist obtain a separate PCS permit for each practice location where PCS is to be administered.

N.J.A.C. 13:30-8.2(d) requires a licensee applying for a PCS permit to submit a completed application to the Board. The application must contain a certification from an accredited university, teaching hospital or other training institution or facility, establishing that the applicant has completed formal training in the administration of PCS. As part of this training, the applicant for a PCS permit must have completed a combined 80 hours of didactic instruction and supervised clinical training in the administration of PCS. The supervised clinical training must have included the management of patient care for a minimum of 20 PCS patients. N.J.A.C. 13:30-8.2(d) also requires that this formal training have been completed within three years preceding the date of application. The certification submitted by the applicant's training facility must specify that the applicant is competent to: evaluate the medical status of patients and perform management assessments; understand and evaluate the effects of conscious sedation agents on patients; perform venipunctures and maintain intravenous access during PCS procedures; recognize and manage complications from drug administrations; understand the clinical pharmacology and interactions of the drugs used for PCS; maintain patient airways and support ventilation; monitor patients during the administration of PCS; recognize and manage anesthetic and medical emergencies arising from the use of PCS; manage patients during the post-operative period; and maintain accurate records.

N.J.A.C. 13:30-8.2(e) requires all applicants for PCS permits to obtain emergency training by completing the American Heart Association's Basic Life Support Course C, or its equivalent, or a course in Advanced Cardiac Life Support, or its equivalent. N.J.A.C. 13:30-8.2(f) requires all applicants for PCS permits to certify upon their application, and upon permit renewal, that the dentist employs no fewer than two persons who will be present in the office when PCS is administered. The applicant must also certify that such employees are appropriately trained in basic life support or advanced cardiac life support.

N.J.A.C. 13:30-8.2(g) requires all applicants for PCS permits to certify as part of their initial application, and upon renewal, that they possess basic equipment and supplies, which are readily accessible and properly operating. The facilities must contain, at a minimum, an emergency drug kit, positive pressure oxygen, a stethoscope, suction, nasopharyngeal tubes, oropharyngeal tubes, a blood pressure monitoring device, an EKG monitor and a pulse oximeter. The permit holder's facility must also contain back-up, battery-operated lighting, suction and a pulse oximeter.

N.J.A.C. 13:30-8.3(i) requires a PCS permit holder who administers PCS at the office of another dentist to remain present during the administration of PCS and retain full responsibility for the procedure until the patient has fully recovered and has been discharged. N.J.A.C. 13:30-8.2(j) requires a PCS permit holder who administers PCS at the office of another dentist to ensure that minimum requirements for assisting staff and equipment are satisfied. In addition, subsection (j) also requires that the mobile equipment and supplies of such permit holders be inspected once every three years. N.J.A.C. 13:30-8.2(l) requires all PCS permit holders to certify, upon biennial renewal, that they have completed at least 20 credits of continuing education in PCS.

No additional professional services will be needed to comply with the proposed amendments. The costs of compliance with the proposed amendments are discussed in the Economic Impact statement above. The

Board believes that the proposed amendments should be uniformly applied to all PCS permit holders in order to ensure the health, safety and welfare of the general public in the administration of PCS and, therefore, no differing compliance requirements for any permit holder are provided based upon size.

Smart Growth Impact

The Board does not believe that the proposed amendments will have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

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

13:30-8.2 Parenteral conscious sedation

(a) [The use of parenteral conscious sedation (hereinafter referred to as "PCS") by a dentist without first having met the minimum standards of training and procedure as stated herein shall constitute a deviation from the normal standards of practice required of a licensee.] **No dentist shall administer parenteral conscious sedation ("PCS") unless the minimum standards of training and procedure set forth in this section are satisfied.**

(b) [Parenteral conscious sedation] PCS is defined as a depressed level of consciousness produced by the parenteral administration of pharmacologic substances that [retains] **allows the patient[s] to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.** This modality includes administration of medications via all parenteral routes, that is, intravenous, intramuscular, subcutaneous, submucosal, or inhalation, but does not include nitrous-oxide inhalation analgesia.

(c) No dentist shall use PCS for dental patients unless such dentist possesses a PCS permit issued by the State Board of Dentistry. [The dentist holding such permit shall be subject to review, and such permit] **for a specified practice location which shall be renewed biennially. A dentist shall obtain a separate PCS permit for each practice location at which PCS is administered, except as set forth in (j) below.**

(d) [Any] A dentist [who wishes to obtain] **applying for a Board permit to [employ] administer PCS shall complete an application as provided by the Board [office and shall provide certified or verifiable proof that the dentist has completed a minimum of 100 hours of continuing education in didactic training and 100 hours in clinical training in PCS within three years preceding the application]. The dentist shall submit as part of a completed application a certification from an accredited university, teaching hospital or other training institution or facility approved pursuant to N.J.S.A. 45:6-2, establishing that the applicant has completed formal training in the administration of PCS. Such formal training shall consist of, at a minimum, a combined 80 hours in didactic instruction and supervised clinical training in the administration of PCS. Such formal training shall have been completed within three years preceding the date of application. Supervised clinical training shall consist of, at a minimum, delivering intravenous, intramuscular, subcutaneous, submucosal and inhalation medications, monitoring patient activity and managing patient care for 20 PCS patients. As part of the dentist's PCS permit application, the institution shall certify the applicant is competent to:**

1. Evaluate the medical status of patients and perform risk management assessments according to American Society of Anesthesiology (ASA) Classification by use of patient histories, physical examinations, vital signs, and pertinent laboratory data and information obtained by medical consultations, and that the applicant can modify treatment plans accordingly;

2. Understand and evaluate the effects of conscious sedation agents on the medical, physical and psychological status of patients;

3. Perform venipunctures and maintain intravenous access during PCS procedures;

4. Recognize and manage complications from drug administrations;

5. Understand the clinical pharmacology and interactions of the drugs used for PCS;

6. Maintain patient airways and support ventilation;

7. Monitor patients during the administration of PCS using clinical evaluations and mechanical means including the use of an

EKG monitor and a pulse oximeter and the interpretation of such readings;

8. Recognize and manage anesthetic and medical emergencies arising from the use of PCS;

9. Manage patients during the post-operative period and assess patients' suitability for discharge; and

10. Maintain accurate anesthetic records including drug dosages, vital signs and patient responses.

(e) [Every] An applicant for a PCS permit [to use PCS] shall obtain emergency training by completing "Basic Life Support: Course C" of the American Heart Association or its equivalent or a course in **Advanced Cardiac Life Support or its equivalent** and shall maintain current certification in [the] such course. The applicant shall furnish proof of this training and certification to the Board upon application for a PCS permit and proof of recertification upon biennial renewal of the permit.

(f) [Every] An applicant for a PCS permit [to use PCS additionally] shall certify to the Board **upon application for a permit and upon biennial renewal of the permit** that the dentist employs no fewer than two persons who will be present in the office, at least one of whom [will] **shall assist in monitoring the patient whenever PCS is employed.** The applicant shall further certify that these persons are trained in and capable of monitoring vital signs and of assisting in emergency procedures and that they maintain current certification in "Basic Life Support: Course C" or its equivalent or in **Advanced Cardiac Life Support or its equivalent.**

(g) [Every] An applicant for a PCS permit [to use PCS] shall certify as part of the application **for a permit and upon biennial renewal of the permit** that he or she possesses basic equipment and supplies to deal with emergency situations. The permit holder's facility shall contain the following readily accessible and properly operating equipment: emergency drug kit; positive pressure oxygen; stethoscope; suction; nasopharyngeal tubes; oropharyngeal tubes; [and] a blood pressure monitoring device; **an EKG monitor; and a pulse oximeter or its equivalent. The permit holder's facility shall also contain back-up, battery-operated equipment consisting of, at a minimum, lighting, suction and a pulse oximeter, which shall be readily accessible and properly operating.**

(h) [Any] A licensee who holds a current general anesthesia permit issued by the Board of Dentistry shall be authorized to use PCS and shall not be required to [make application] **apply for a PCS permit pursuant to this section.**

(i) [Any] A dentist who utilizes the services of a PCS permit holder or an M.D. or D.O. [who is a member of the anesthesiology staff of an accredited hospital] **who is authorized to perform anesthesia services by the Board of Medical Examiners pursuant to N.J.A.C. 13:35-4A.1 shall not be deemed to be [practicing] administering PCS, provided that [such] the PCS permit holder or anesthesiologist [must] remains present during the administration of PCS and bears full responsibility during the entire procedure [and] until [any] the patient has recovered fully and has been [dismissed] discharged. [Any permit holder invited by a dentist to provide PCS services shall bear full responsibility for compliance with all terms and conditions of this rule including, but not limited to, the minimum requirements for equipment and assisting staff.]**

(j) A PCS permit holder invited by a dentist to provide PCS services at a specific location shall bear full responsibility for compliance with all provisions of this section including the minimum requirements for assisting staff and equipment set forth in (f) and (g) above. When a PCS permit holder utilizes mobile equipment and supplies to administer PCS pursuant to this section, the mobile equipment and supplies of the permit holder shall be inspected by the Board or its designee not less than once every three years. "Mobile equipment and supplies," for purposes of this subsection, means any equipment and/or supplies which are transported and used by a permit holder to administer PCS in one or more locations. When more than one permit holder utilizes the mobile equipment and supplies, it shall be the responsibility of the permit holder using the equipment and supplies to ensure that the mobile equipment and supplies satisfy the requirements of this section as set forth in (g) above prior to the administration of PCS.

[(j)](k) Prior to the administration of a PCS agent for the purpose of controlling pain, a physical evaluation of **the patient** shall be made by the permit holder and a complete medical history shall be obtained which shall include previous medications, allergies and sensitivities. [Said] **The patient** history shall be maintained in the files of each dentist for a period of not less than seven years. Specific records on the use of PCS shall be kept as part of every patient chart and shall include the type of agent, the dosage, and the duration of sedation.

[(k)](l) [Every] A licensee who holds a PCS permit shall [present satisfactory proof] **certify** to the Board upon biennial renewal that the holder has completed a least 20 [credit] hours during the previous two-year period in continuing education courses devoted to PCS [and presented by an accepted program in a suitable institution. Satisfactory credit hours to fulfill this continuing education requirement may be obtained from the following:] **consistent with the requirements set forth in N.J.A.C. 13:30-5.1.**

1. Professional service review organizations;
2. Teaching;
3. Lectures;
4. Seminars; or
5. Other methods approved by the Board.]

[(l)](m) Any designee of the Board shall be authorized during ordinary business hours to enter and inspect any dental office or **mobile equipment and supplies** for the purpose of enforcing the provisions of this rule.

[(m) Any licensee who administers PCS without first having obtained a permit from the Board or any licensee who fails to comply with the rules set forth herein, shall be deemed to have engaged in professional misconduct and/or gross malpractice or negligence and may be subjected to appropriate disciplinary action including an action for the suspension or revocation of the licensee's license to practice dentistry in the State of New Jersey.]

EXAMPLE F

LABOR

(a)

INCOME SECURITY

Employee Leasing Companies

Proposed New Rules: N.J.A.C. 12:16-24

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:8-67 et seq., specifically 34:8-78.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-191.

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

Monday, June 24, 2002
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

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 5, 2002 to:
Frederick S. Cohen, Regulatory Officer
Office of Regulatory Services
New Jersey Department of Labor
PO Box 110—13th Floor, Suite G
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

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

The agency proposal follows:

Summary

On December 6, 2001, an Act concerning the regulation of employee leasing companies and employee leasing agreements became effective as P.L. 2001, c.260, N.J.S.A. 34:8-67 et seq. Employee leasing companies, also called professional employer organizations (PEOs), have assumed an increasingly important niche within the State as a supplier of trained labor to businesses which operate in New Jersey. The proposed new rules, in concert with the Act, seek to codify and clarify the status of employee leasing companies as the co-employers of record for purposes of unemployment and temporary disability insurance and workers' compensation coverage. In order to achieve that end, and to protect the workers and businesses which utilize the services of employee leasing companies, both the Act and these proposed new rules require that the employee leasing companies register annually with the Commissioner of Labor. Failure to so register or to comply with the terms of the Act and the proposed new rules will result in the rescinding of a leasing company's co-employer status with its client companies, thus placing full responsibility for the individual employees with the client company. The proposed new rules further provide, along with the requirement of annual registration, that the employee leasing company must submit to the Commissioner of Labor a reviewed financial statement at the time of initial registration and annually thereafter. The financial statement, which will be certified by a certified public accountant, must demonstrate that the employee

leasing company possesses a minimum net worth of \$100,000. In addition, the proposed new rules require that an employee leasing company which cannot certify to the foregoing minimal net worth, shall deposit with the Commissioner of Labor a security bond or deposit of securities with a current market value of \$5,000. Subsequently, the Commissioner of Labor may periodically review the adequacy of the security furnished by the employee leasing company in order to determine if any adjustment thereto is required. Moreover, deposit of a bond or of securities may be required if it is learned that the employee leasing company has had its license suspended, limited or denied in another jurisdiction or if the company has been remiss in paying benefit assessments when they became due or failed to pay in a timely manner any Federal and State payroll taxes.

In addition to the foregoing, the proposed new rules require that an employee leasing company must provide the Commissioner of Labor, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant that all Federal and State payroll taxes have been paid on a timely basis. The Commissioner, in turn, will then notify the client companies which are listed on the employee leasing company's most recent registration form, if the employee leasing company had failed to file its quarterly payroll tax certification within 10 days of the mailing of a notice of delinquency. Furthermore, the proposed new rules obligate an employee leasing company to give advance notice of dissolution to the Commissioner when one or more employee leasing agreements are to be dissolved. If advance notice is impracticable, then the leasing company must notify the Commissioner of the dissolution within 10 days thereof, along with the name, address and taxpayer identification number of the employee leasing company, the expected or actual date of the dissolution, as well as the name, address and taxpayer identification number of each client company for whom an employee leasing agreement is, or will be, dissolved. For each client company which leased any part of its total workforce from the employee leasing company for a period of less than two calendar years, such notice must include the names and social security numbers of the leased employees and the amount of taxable wages, employer tax benefit contributions and charges attributable to the client company during the duration of the leasing agreement.

The proposed new rules further provide that the Commissioner may rescind the registration of an employee leasing company which fails to adhere to the terms of N.J.S.A. 34:8-67 et seq., as well as for non-compliance with these proposed new rules. At that time, the client company will be expected to register its business with the Division of Revenue if it had not done so prior to having entered into a leasing agreement. Furthermore, in determining if an employee leasing company has repeatedly violated its obligations under the Act or these proposed new rules, the Commissioner of Labor will consider the failure to file contribution or wage reports for each individual client company to be a separate and distinct violation. The failure to file a contribution or wage report or the failure to remit a contribution assessment in full and in a timely manner will be deemed to constitute an egregious violation of the Act and of these proposed new rules. Lastly, an employee leasing company which has its registration rescinded will be so notified in writing by the Commissioner who will state specifically the reasons for the rescission. The employee leasing company will also be informed of its appeal rights from the order of rescission.

In sum, the proposed new rules implement and complement N.J.S.A. 34:8-67 et seq. with respect to the registration of employee leasing companies, also known as professional employer organizations, in order to ensure that those entities possess the financial strength and viability required for them to provide requisite services to their client companies, the workers leased by the latter and to meet their monetary responsibilities to the State's unemployment and temporary disability insurance trust funds.

Proposed N.J.A.C. 12:16-24.1 sets forth the application and scope of the proposed new rules.

Proposed N.J.A.C. 12:16-24.2 sets forth the definitions of terms utilized in this subchapter. The term "benefit experience" means the relationship between an employer's contributions paid on his or her own behalf with respect to employment occurring during a specified period and benefits paid with respect to unemployment and temporary disability and charged against the account of the employer in whose employment such individual established base weeks constituting the basis of such benefits. The term "client company" means a sole proprietorship, partnership, corporation or business entity which enters into an employee leasing agreement and is assigned employees performing services in New Jersey by the employee leasing company. "Commissioner" means the Commissioner of Labor. "Covered employee" means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement. "Department"

means the Department of Labor. "Division of Revenue" means the unit of New Jersey State Government within the Department of Treasury which is responsible for the registration of employers for the payment of gross income taxes, unemployment and temporary disability contributions, and other State taxes. "Employee leasing agreement" or "professional employer agreement" means an arrangement, under written contract, whereby an employee leasing company and a client company co-employ a covered employee on an ongoing, non-temporary basis which is not aimed at temporarily supplementing the client company's workforce. "Employee leasing company," also known as a "professional employer organization," means a sole proprietorship, corporation or other business entity which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and which provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities set forth in N.J.S.A. 34:8-68.

Proposed N.J.A.C. 12:16-24.3 sets forth the requirement for and mode of the initial registration of employee leasing companies with the Commissioner of Labor, as well as the requirement for the subsequent annual registration of employee leasing companies with the Commissioner of Labor.

Proposed N.J.A.C. 12:16-24.5 sets forth the financial security requirements to which an employee leasing company must adhere in order to function within the State. Those requirements include the annual filing of a financial statement with the Commissioner of Labor which has been reviewed and attested to by a certified public accountant and the filing of a security bond or deposit of securities.

Proposed N.J.A.C. 12:16-24.6 sets forth the requirements that an employee leasing company provide the Commissioner of Labor on a quarterly basis with a payroll tax certification.

Proposed N.J.A.C. 12:16-24.7 sets forth the requirement that the employee leasing company must provide workers' compensation insurance for their covered employees.

Proposed N.J.A.C. 12:16-24.8 sets forth the requirements by which an employee leasing company must notify the Commissioner of Labor of the dissolution of an employee leasing agreement.

Proposed N.J.A.C. 12:16-24.9 sets forth the manner in which the registration of an employee leasing company may be rescinded.

Proposed N.J.A.C. 12:16-24.10 sets forth the requirement that those client companies affected by the dissolution of an employee leasing agreement file reports and submit payment of unemployment and temporary disability insurance trust fund contributions on their own behalfs as of the date of dissolution, as well as register with the Division of Revenue if they had not done so prior to said dissolution.

Proposed N.J.A.C. 12:16-24.11 sets forth what constitutes a "repeated and egregious" violation which would serve as the basis for rescinding the registration of an employee leasing company.

Proposed N.J.A.C. 12:16-24.12 sets forth the manner in which notification of the rescission of registration shall be provided to the employee leasing company and references the applicable rules, N.J.A.C. 12:16-22, which delineates the hearing process which will govern the appeal therefrom.

As the Department has provided a 63-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules establish a regulatory framework for the registration and monitoring of employee leasing companies, also known as professional employer organizations, to ensure compliance with the provisions of N.J.S.A. 34:8-67 et seq. Accordingly, the proposed new rules implement the intent of the Legislature as set forth in the aforementioned statute with respect to employee leasing companies to ensure that such entities possess the financial strength to provide the benefits or services which they have contracted to provide. This, in turn, benefits the client companies and their employees whose services are provided by the employee leasing companies or professional employer organizations by (1) relieving client companies of quarterly filing requirements and other paperwork associated with employer-employee relationships, (2) providing safeguards to ensure that employees have workers' compensation coverage, and (3) requiring the employee leasing company to continue to honor and abide by existing collective bargaining agreements.

Economic Impact

While the employee leasing companies may experience some additional costs, the overall regulatory process will have a positive economic impact on the client companies, the leased employees and the unemployment and temporary disability trust funds. Specifically, there are few if any additional

costs imposed by the initial or annual registration process, other than the minimal cost of providing documentation of compliance with the provisions of N.J.S.A. 34:8-67 et seq., such as proof of workers' compensation coverage. In regard to the expense of providing a quarterly certification by a certified public accountant that all payroll taxes have been paid and the potential cost of providing a security bond or deposit of securities, the Department believes that any employee leasing company seeking to assume financial risk should be in a position to bear the costs imposed. The Department believes that those costs are reasonable, necessary, and appropriate to help ensure that the entity possesses the financial strength and soundness to fulfill its obligations to its client companies and, most saliently, to the workers whom they lease.

The regulation of employee leasing companies including confirmation of their net worth and/or the imposition of a bond or security requirement, will allow client companies to take advantage of the cost savings offered by these entities with a higher degree of confidence. This, in turn, will allow the client companies to offer their employees more and varied fringe benefits. The bonding/security provisions provide a greater degree of certainty that the unemployment and temporary disability trust funds will receive all contributions due from these entities.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department believes that these proposed new rules will not result in the generation or loss of any jobs, but will facilitate existing employment opportunities through use of the modality of employee leasing companies.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

It is unlikely that the employee leasing companies or professional employer organizations being regulated under these proposed new rules are small businesses. However, it is very likely that many of the client companies will be "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the number of those small businesses which will function as clients is not presently quantifiable. These rules do not impose any additional burdens on the client companies. Indeed, they will allow the leasing companies to lessen the associated paperwork and filing requirements in which their client companies would otherwise have to engage, that is, reporting of tax benefit assessments and payroll accounting. The proposed new rules do not provide for different compliance requirements based on business size. Rather, these new rules establish a regulatory framework for the registration of, and periodic reporting by, employee leasing companies in an attempt to ensure their strength and ability to fulfill their contractual obligations to their clients and to the workers leased by their clients. However, all employee leasing companies and professional employer organizations will, as a result of the proposed regulations, have to assume the limited costs associated with having to provide the Commissioner, at the time of initial registration, and annually thereafter, with a certification by a certified public accountant that each has a minimum net worth of \$100,000. Similarly, all employee leasing companies or professional employer organizations will also have to assume the costs associated with the submission to the Commissioner of quarterly certifications prepared by a certified public accountant that each has paid all requisite payroll taxes owed to the State.

Smart Growth Impact

The proposed new rules will not have an impact on the growth, development or redevelopment of the State's urban or suburban areas with regard to existing or proposed land use, protection of open space or transportation systems. Therefore, the rules will not impact the achievement of smart growth on the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

12:16-24.1 Application and scope

(a) The rules in this subchapter set forth the requirements and methodology by which an employee leasing company, also known as a professional employer organization ("PEO"), shall register with the

Commissioner of Labor, pursuant to P.L. 2001, c.260, N.J.S.A. 34:8-67 et seq.

(b) The provisions of this subchapter apply to all employee leasing companies as defined in N.J.A.C. 12:16-24.2.

12:16-24.2 Definitions

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

"Benefit experience" means the relationship between an employer's contributions paid on his or her own behalf with respect to employment occurring during a specified period and benefits paid with respect to unemployment and temporary disability and charged against the account of the employer in whose employment such individual established base weeks constituting the basis of such benefits. Benefit experience for temporary disability purposes shall also take into account contributions paid by the employer's workers.

"Client company" means a sole proprietorship, partnership, corporation or other business entity, which enters into an employee leasing agreement and is assigned employees performing services in New Jersey by the employee leasing company.

"Commissioner" means the Commissioner of Labor.

"Covered employee" means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement.

"Department" means the Department of Labor.

"Division of Revenue" means that unit of New Jersey State Government within the Department of Treasury which is responsible for the registration of employers for the payment of gross income taxes, unemployment and temporary disability contributions, and other State taxes.

"Employee leasing agreement" or "professional employer agreement" means an arrangement, under written contract, whereby:

1. An employee leasing company and a client company co-employ covered employees; and

2. The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company's work force.

"Employee leasing company" or "professional employer organization" means a sole proprietorship, partnership, corporation or other business entity, which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities provided in N.J.S.A. 34:8-68.

12:16-24.3 Initial and annual registration

(a) An employee leasing company or professional employer organization, as defined in N.J.A.C. 12:16-24.2, shall register with the Commissioner or his or her designee. This registration is separate from, and in addition to, any statutory requirements to register as an employer in this State or to conduct business in this State.

1. The form for the initial registration of an employee leasing company or professional employer organization shall be prescribed by the Commissioner or his or her designee, and is available on the Department website at: www.state.nj.us/labor/admin/forms.htm, or may be requested by contacting the Department directly, by calling the Labor hotline at (609) 633-6400. This form requires the business to record its beginning date, the name of the business incorporation information, the names, social security numbers and home addresses of the owners, partners or responsible corporate officers, and relevant wage, salary and commission information, as well as indicating the status of the business in regard to various State and Federal contributory programs (for example, Unemployment Compensation).

2. An employee leasing company or professional employer organization shall request the registration form from the Commissioner or his or her designee within 30 days from the first day of employment or co-employment in this State.

3. The initial registration form shall be completed and returned to the Commissioner or his or her designee within 30 days from the date of

mailing. If the registration form is completed on the Department of Labor website, it shall be submitted within 60 days of the date of the first employment or co-employment in this State.

(b) After initial registration, an employee leasing company or professional employer organization shall register annually on a form prescribed by the Commissioner or his or her designee.

(c) The annual registration form shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

12:16-24.5 Financial security requirements

(a) An employee leasing company or professional employer organization shall submit a reviewed financial statement to the Commissioner or his or her designee with the initial registration and also with each annual registration on or before the dates detailed in N.J.A.C. 12:16-24.3(a)3 and (c).

1. Each reviewed financial statement shall incorporate a certification that it was prepared by an independent certified public accountant in accordance with generally accepted accounting principles within six months prior to the date of the initial or the annual registration or with a certification by the independent certified public accountant in accordance with generally accepted accounting principles stating that it is the most recent financial statement and that they have reviewed the financial statement within six months prior to the date of the initial or the annual registration and certify that there have been no adverse effects negatively impacting the minimum net worth of \$100,000.

2. Each reviewed financial statement shall demonstrate that the employee leasing company or professional employer organization has a minimum net worth of \$100,000.

(b) An employee leasing company or professional employer organization, which is not in compliance with (a) above, shall file with the Commissioner or his or her designee a security bond or deposit of securities with a current market value of \$75,000 on or before the dates detailed in N.J.A.C. 12:16-24.3(a)2 and 3.

1. The Commissioner or his or her designee may make a periodic review of the adequacy of the security furnished by the employee leasing company or professional employer organization to determine if any adjustment may be necessary.

2. The Commissioner or his or her designee may sell the securities so deposited to the extent necessary to satisfy any unpaid unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee. The employee leasing company or professional employer organization will be notified of the sale of such securities and the amount used.

3. The Commissioner or his or her designee may also require the bond or deposit of securities described in (b) above if he or she finds that the employee leasing company or professional employer organization has had its license or registration suspended, denied, or limited in any other jurisdiction; or that there have been instances in which the employee leasing company has not paid covered employees' wages or benefits when due, or failed to make timely payment of any Federal or State payroll taxes or unemployment and/or disability contributions when due, or for other good cause.

4. An employee leasing company or professional employer organization which has had its security reduced to satisfy any unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee, and has not had its registration rescinded, shall file with the Commissioner or his or her designee an additional security bond or deposit of securities which when combined with any unused portion of the prior security bond or securities will equal a current market value of \$75,000. Such additional securities must be received no later than 60 days after the notification of sale of such securities as set forth in (b)2 above.

5. The Commissioner or his or her designee may extend for good cause the date for complying with the security requirement for a period of up to 30 days beyond the original due date.

12:16-24.6 Payroll tax certification

(a) An employee leasing company or professional employer organization shall provide the Commissioner or his or her designee,

within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant on a form prescribed by the Commissioner or his or her designee that all applicable Federal and State payroll taxes have been paid on a timely basis.

(b) The payroll certification form shall be filed quarterly by the following dates:

<u>Quarter Ending</u>		<u>Due Date</u>	
March	31	May	30
June	30	August	29
September	30	November	29
December	31	March	1

(c) The Commissioner or his or her designee shall notify the client companies reported on the most recent registration form if an employee leasing company or professional employer organization fails to file its quarterly payroll tax certification within 10 days of the mailing of the notice of delinquency in accordance with N.J.S.A. 34:8-71.

12:16-24.7 Workers' compensation insurance

(a) It is the obligation of the employee leasing company to provide workers' compensation insurance for their covered employees. Policies may be issued by any insurance carrier licensed by the State of New Jersey. Policies shall indicate that the employee leasing company is the labor contractor for each client company, by name.

12:16-24.8 Dissolution of employee leasing agreement

(a) When one or more employee leasing agreements are to be dissolved, the employee leasing company or professional employer organization shall give advance notice of dissolution to the Commissioner or his or her designee. In the event that it is impracticable to give such advance notice, the employee leasing company or professional employer organization shall notify the Commissioner or his or her designee within 10 business days of such dissolution.

(b) Such notice shall contain the following information:

1. The name, address, and taxpayer identification number of the employee leasing company or professional employer organization;
2. The expected or actual date of dissolution; and
3. The name, address, and taxpayer identification number or Federal employer identification number of each client company for whom an employee leasing agreement is or will be dissolved.

(c) For each client company that leased its total workforce, or any part thereof, from the employee leasing company or professional employer organization for a period of less than two full calendar years, such notice shall include the names and social security numbers of the leased employees and the amount of taxable wages, employer unemployment and disability contributions and unemployment and disability benefit charges attributable to the client company during the duration of the leasing agreement.

12:16-24.9 Rescission of the registration of an employee leasing company or professional employer organization

(a) The registration of an employee leasing company or professional employer organization may be rescinded by the Commissioner, or his or her designee, for violations as set forth in N.J.S.A. 34:8-67 through 78 and for non-compliance with this subchapter. The rescission shall be effective as of the first day of the next calendar quarter.

(b) After the registration of an employee leasing company or professional employer organization has been rescinded, all of the client companies will be notified by the Commissioner or his or her designee that they are required to file reports and submit payment of contributions on their own behalf effective with the date of the rescission. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(c) A client company of an employee leasing company which has had its registration rescinded shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

12:16-24.10 Dissolution of an employee leasing company or professional employee organization

(a) Upon the dissolution of an employee leasing company or professional employer organization, all of the client companies shall file reports and submit payment of contributions on their own behalf effective with the date of dissolution. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(b) A client company which has dissolved its employee leasing arrangement shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

12:16-24.11 Violations

(a) If an employee leasing company knowingly and willfully fails to file a contribution or wage report by the due date, the Commissioner, or his or her designee, shall consider such failure as a separate violation for each client with whom the leasing company has an employee leasing agreement.

(b) If an employee leasing company fails to file a contribution or wage report or fails to remit payment within 15 days of the due date, the Commissioner, or his or her designee, shall consider such failure as egregious violations under N.J.S.A. 34:8-76c and shall result in rescission.

(c) In determining if rescission is an appropriate remedy, the Commissioner may also consider the following factors:

1. The record of previous violations by the employee leasing company;
2. The significance or scale of the violations;
3. The existence of outstanding reports or failure to pay;
4. Failure to respond to a request to produce records, documents, or proof of payment;
5. Submission of falsified or altered records, forms, documents, or proof of payment;
6. Whether the violations were willful or knowing; and
7. Good faith efforts by the employee leasing company to remedy any violations.

12:16-24.12 Appeals

The Commissioner, or his or her designee, shall notify the employee leasing company or professional employer organization in writing of the reason for rescission which notice shall include a "Request for Hearing" as provided for in N.J.A.C. 12:16-22.

EXAMPLE G

The agency proposal follows:

Summary

The Department of Banking and Insurance ("Department") proposes to amend N.J.A.C. 3:6-12.1 to implement the new parity provisions enacted in P.L. 2000, c.69, §3 (known as the "Parity Act"), and codified at N.J.S.A. 17:9A-24b.1. The grant of parity contained in the statutory amendment involves powers, rights, benefits and privileges that are possessed by Federal or out-of-State chartered financial institutions. The Department has carefully reviewed the underlying policy decisions that have led to the current regulatory system and the series of laws enacted by the Legislature to protect consumers and maintain the safety and soundness of New Jersey State chartered banks and savings banks.

After careful review and consideration, the Department has concluded that the grant of parity was not intended to free New Jersey banks and savings banks from operating within the general regulatory structure that currently exists through the Department. The Department has also concluded that the grant of parity by the Legislature was not intended to repeal by implication important New Jersey State consumer protection laws, such as usury laws.

Consistent with the Parity Act, the rule proposed for repeal and new rule address both New Jersey State chartered bank and savings bank parity with Federally chartered and out-of-State banks, savings banks, and savings associations. Any such power must be exercised upon the same terms and subject to the same conditions as are authorized for Federally chartered or out-of-State banks, savings banks, and savings associations. To exercise a power, right, benefit, or privilege afforded to an out-of-State bank, savings bank, or savings association, the exercise of which the Commissioner of the Department of Banking and Insurance ("Commissioner") has not previously approved by rule, banks and savings banks will be required to submit a notice of intent to the Department, supported by information specified in the new rule, which the Commissioner may, within 45 days, approve, disapprove, or condition on safety and soundness grounds or on other grounds established in the new rule.

The proposed new rule makes it clear that certain areas of this State's regulation of banks and savings banks are not included in the scope of application of the Parity Act. These proposed limitations apply to both Federal and out-of-State powers, rights, benefits, and privileges. The Department notes, for example, that some national banks operating in New Jersey have claimed that they are exempt from the requirement of offering consumer checking accounts established in N.J.S.A. 17:16N-1 et seq. Consumer checking accounts are low cost personal checking accounts that require only minimal amounts of money to open and maintain. The accounts provide a substantial benefit to young, low income, and elderly people. The Department does not believe that the Legislature intended to permit New Jersey State chartered banks and savings banks to use parity to avoid their responsibilities to comply with this or certain other consumer protection laws. Accordingly, in the proposed new rule, the Department has identified the type of consumer protection laws and administrative rules that shall not be subject to parity. The Department views these proposed limitations on the exercise of parity as reasonable and necessary generally to discharge the Commissioner's statutory responsibility to promulgate rules for the appropriate regulation of institutions within the Department's jurisdiction. In addition, the new rule implements the legislative authorization to promulgate rules with the objective of achieving substantially competitive parity, while preserving the existing framework of the dual banking system, which there is no evident intent to disrupt, especially with respect to consumer protections enacted by the Legislature over many years.

The limitations also serve to establish grounds for disapproving a notice of intent, in accordance with rulemaking authority specifically granted in the Parity Act.

The application of the proposed new rule to N.J.A.C. 3:6-12.1 to both banks and savings banks would make unnecessary the provisions set forth in recently readopted N.J.A.C. 3:6-12.2 and 12.3 (see 33 N.J.R. 2079 (June 18, 2001)), and those sections are, therefore, proposed for repeal.

The Department believes that the limitations on parity set forth in the proposed new rule are consistent not only with legislative intent, but also with provisions of Federal law, including the 1999 Gramm-Leach-Bliley Act which reconfirmed the principle of functional regulation of certain activities traditionally regulated by the states. The Department welcomes public comment on these provisions of the proposed new rule so that the final rule adopted will provide the appropriate balance between the grant of powers under the Parity Act and reasonable restrictions on their exercise, consistent with applicable State laws for the protection of consumers and the administration of the Department's regulatory responsibilities.

BANKING

(a)

DEPARTMENT OF BANKING AND INSURANCE DIVISION OF BANKING

General Provisions

State Bank and Savings Bank Parity

Proposed Repeal and New Rule: N.J.A.C. 3:6-12.1

Proposed Repeals: N.J.A.C. 3:6-12.2 and 12.3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:9A-24b.1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-150.

Submit comments by June 14, 2002 to:

Karen Garfing, Assistant Commissioner
Regulatory Affairs

New Jersey Department of Banking and Insurance
PO Box 325

Trenton, NJ 08625-0325

Fax: (609) 292-0896

Email: Legsregs@dobi.state.nj.us

A 60-day comment period is provided in this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rule and repeals would apply to all New Jersey chartered banks and savings banks, assuring them substantially competitive parity with their Federal and out-of-State counterparts. The proposed new rule will permit the Department to continue to require banks and savings banks to adhere to safe and sound banking practices and key consumer protections, while enjoying such substantially competitive parity. The new rule and repeals, therefore, should have a beneficial social impact on the industry and consumers. Consumer reaction is expected to be positive.

Economic Impact

The Department expects that the ability to exercise powers, rights, benefits, and privileges authorized now or in the future for Federal or out-of-State institutions will have a positive economic impact. Banks and savings banks will be able to offer services and products that may not be specifically authorized by applicable New Jersey statutes and rules, but which may enable banks and savings banks to increase their business, their market share and, therefore, their profitability and competitiveness with their Federal and out-of-State counterparts.

Banks and savings banks that seek to exercise parity with out-of-State institutions will incur costs in order to submit a notice of intent with the required supporting information. The Department expects that associated administrative costs will be marginal. Consumers should benefit economically from resulting increases in service and product options and marketplace competition.

Federal Standards Analysis

Banks and savings banks may, in the future, become subject to Federal standards pursuant to a proper exercise of parity in accordance with the proposed new rule and repeals. While the Federal standards applicable in such cases cannot be identified at this time, there will be no applicable State standards that may exceed them because parity with Federal institutions entails application of the pertinent Federal standards.

The proposed new rule, however, also removes certain State statutory and regulatory consumer protections from the scope of parity. In some cases, these limitations may exceed Federal standards applicable to Federally chartered banks, savings banks, and savings associations, in the sense that the limitations may restrict New Jersey banks and savings banks from certain types or levels of activity in which their Federal counterparts may conceivably be permitted to engage at present or in the future. Notwithstanding the proposed limitations, under parity, banks and savings banks should soon be able to offer services and products not specifically authorized by applicable New Jersey statutes and rules, and reap the resulting economic benefits.

As a matter of policy, however, the Department views the proposed limitations as reasonable and necessary generally to discharge the Commissioner's statutory responsibility to promulgate rules for the appropriate regulation of banks and savings banks, and specifically to implement the legislative authorization in the Parity Act to promulgate rules with the objective of achieving substantially competitive parity while preserving the existing framework of the dual banking system, which there is no evident intent to disrupt, especially with respect to consumer protections ratified by the Legislature over many years. The costs that may result from promulgating the proposed limitations are speculative at best. Such costs, even if realized, are outweighed by the solid benefits afforded to New Jersey consumers by, for example, the continued viability of laws addressing consumer checking accounts, criminal usury, mortgage loan prepayment penalties, medical and financial records privacy, and the safety and soundness of state-chartered banks and savings banks. In addition, the Department sees no technological obstacle to the regulated industry's continued compliance with these limitations.

Jobs Impact

The Department does not anticipate that any jobs will be lost as a result of the proposed new rule and repeals. If banks or savings banks increase their business or market share as a result of the parity permitted by the proposed new rule, additional jobs may be generated.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed new rule and repeals together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rule and repeals.

Regulatory Flexibility Analysis

Some New Jersey banks and savings banks are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule will impose compliance requirements on these entities if they seek to exercise a power, right, benefit or privilege authorized for out-of-State banks, savings banks or savings associations. The compliance required will consist of requiring the bank or savings bank to provide notice to the Commissioner of its intent to exercise such power, right, benefit or privilege and will require the bank or savings bank to provide a description of the intended activity, a copy of the regulatory authority that governs the out-of-State institution that the bank or savings bank proposes as the basis of parity, and a business plan and statement describing the general or specific experience of the bank or savings bank that establishes how the proposed exercise of parity will be conducted in a manner consistent with safe and sound banking practices. If banks or savings banks seek to exercise parity with out-of-State banks, savings banks or savings associations, professional assistance in the form of attorneys and accountants may be necessary. The cost of compliance will vary from professional to professional depending on the services needed.

The proposed new rule and repeals will grant New Jersey banks and savings banks flexibility yet require them to operate in a manner that is responsible to the industry, its customers and the general public. The Department does not believe that the compliance requirements are unduly burdensome and finds that they are consistent with prudent banking practices. The purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed new rule and repeals have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed repeals of N.J.A.C. 3:6-12.2 and 12.3 may be found in the New Jersey Administrative Code at N.J.A.C. 3:6-12.2 and 12.3.

Full text of the proposed repeal and new rule at N.J.A.C. 3:6-12.1 follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:6-12.1 State bank **and savings bank** parity with [national banks] **Federal and out-of-State institutions**

[In addition to other authority granted by law, and unless contrary to State law, a bank may exercise any power, right, benefit or privilege which is now or hereafter authorized for national banks pursuant to Federal law or rules or regulations of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation. Any such power shall be exercised upon the same terms and subject to the same conditions as are authorized for national banks. The powers, rights, benefits or privileges shall be automatically exercisable upon the expiration of 30 days from the date of adoption by the Federal regulatory agency, except if the Commissioner of Banking and Insurance within that 30 day period provides notice that the power shall not be granted to State banks. Such notice shall be provided to each bank, and to the trade publications of the New Jersey Bankers Association and the New Jersey League Community and Savings Bankers, and or their successor organizations, if any, for publication. The Commissioner of Banking and Insurance may permit banks to begin exercise of a power prior to the expiration of the 30 day period by providing notice of permission to each bank and to the above mentioned trade publications.]

(a) **Banks and savings banks may exercise those powers, rights, benefits or privileges authorized as of (the effective date of this rule) and thereafter for national banks, Federal savings banks or Federal savings associations, either directly or through a financial subsidiary or other subsidiary, to the same extent and subject to the same limitations as national banks, Federal savings banks or Federal savings associations may exercise those powers, rights, benefits or privileges. Except as otherwise provided in this subchapter, pursuant to N.J.S.A. 17:9A-24b.1, banks and savings banks may exercise such powers, rights, benefits or privileges, notwithstanding the provisions of N.J.S.A. 17:9A-1 et seq. or any other law.**

(b) Banks and savings banks may exercise those powers, rights, benefits or privileges authorized as of (the effective date of this rule) and thereafter for out-of-State banks, savings banks or savings associations either directly or through a financial subsidiary or other subsidiary, to the same extent and subject to the same limitations as out-of-State banks, savings banks or savings associations may exercise those powers, rights, benefits or privileges, provided that before exercising any such power, right, benefit or privilege, the Commissioner has approved, by rule, the exercise of such a power, right, benefit or privilege by banks and savings banks generally, or the bank or savings bank provides notice of its intent to exercise such a power, right, benefit or privilege to the Commissioner and, on a case by case basis, the Commissioner either approves the activity or does not determine within 45 days of such notice that the power, right, benefit or privilege is not to be exercised by the bank or savings bank on grounds of safety and soundness or on other grounds designated by the Commissioner by rule. Except as otherwise provided in this subchapter, pursuant to N.J.S.A. 17:9A-24b.1, banks and savings banks may exercise such powers, rights, benefits or privileges, notwithstanding the provisions of N.J.S.A. 17:9A-1 et seq. or any other law.

(c) The parity provided by N.J.S.A. 17:9A-24b.1 shall not permit a violation of:

1. Any provision of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., including, but not limited to, the criminal usury limits established at N.J.S.A. 2C:21-19 as applied to loan products;

2. New Jersey statutes and rules providing for the structure and corporate governance of banks and savings banks, including, but not limited to, those governing amendment of a certificate of incorporation and adoption of bylaws, and those establishing rights of shareholders and members and the membership of a board of directors;

3. New Jersey statutes and rules providing for the safety and soundness of banks and savings banks, including, but not limited to, the limitations on liability to a bank as set forth at N.J.S.A. 17:9A-60 et seq., limitations on leeway investments set forth at N.J.S.A. 17:9A-24.12, and those providing for reports to and examination by the Department, including, but not limited to, N.J.S.A. 17:9A-252 et seq.;

4. New Jersey statutes and rules providing the Department with supervisory powers over banks and savings banks, including, but not limited to, the power to issue orders and apply for relief from a court of competent jurisdiction established at N.J.S.A. 17:9A-266 et seq.;

5. New Jersey statutes and rules regulating real estate appraisers, real estate brokers, real estate salespersons, and real estate broker-salespersons, including, but not limited to, the licensing and other provisions of the Real Estate Appraisers Act, N.J.S.A. 45:14F-1 et seq., and the licensing and other provisions of the Real Estate License Act, N.J.S.A. 45:15-1 et seq.;

6. New Jersey statutes and rules regulating insurance companies and insurers, including, but not limited to, the authorization and other provisions of N.J.S.A. 17:17-1 et seq., N.J.S.A. 17:46B-1 et seq., and N.J.S.A. 17B:17-1 et seq., provisions of the trade practices acts, N.J.S.A. 17:29B-1 et seq., and N.J.S.A. 17B:30-1 et seq., and provisions of the Insurance Information Practices Act, N.J.S.A. 17:23A-1 et seq.;

7. New Jersey statutes and rules generally regulating insurance producers, including, but not limited to, the licensing and other provisions of the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 et seq.;

8. New Jersey statutes and rules regulating health maintenance organizations, including, but not limited to, the Health Maintenance Organizations Act, N.J.S.A. 26:2J-1 et seq., and the Health Care Carrier Accountability Act, N.J.S.A. 2A:53A-30 et seq.;

9. New Jersey statutes and rules regulating viatical settlement brokers, representatives, and providers including, but not limited to, N.J.S.A. 17B:30A-1 et seq.;

10. The prepayment penalty prohibition established at N.J.S.A. 46:10B-1 et seq. as applied to mortgage loan products;

11. The provisions of N.J.A.C. 3:1-16 as applied to the processing of mortgage loan applications and loans;

12. The provisions of N.J.A.C. 3:1-2.15 as applied to the closing of an office;

13. The provisions of N.J.S.A. 17:9A-316 prohibiting the establishment of a de novo branch office by a foreign bank;

14. The provisions of N.J.S.A. 17:16N-1 et seq. regarding Consumer Checking Accounts;

15. The provisions of N.J.S.A. 17:9A-1 et seq., and 17:12B-1 et seq. requiring any application or approval process; and

16. The provisions of the Uniform Commercial Code as adopted in New Jersey at N.J.S.A. 12A:1-1 et seq.

(d) Prior to the exercise of any power, right, benefit, or privilege exercised by an out-of-State bank, savings bank, or savings association, a bank or savings bank shall submit a notice of intent for the Commissioner's approval. Such notice of intent shall include: a description of the intended activity and a copy of the statutory or regulatory authority, including any pertinent regulatory interpretation of such authority, that governs the out-of-State institution that the applicant bank or savings bank proposes as the basis for such exercise of parity, and a business plan and statement of the general or specific experience of the applicant that establishes how such exercise of parity would be conducted in a manner consistent with safe and sound banking practices. The items submitted as part of the business plan and statement of experience shall be treated as confidential by the Department and shall not be public records pursuant to N.J.S.A. 47:1A-1 et seq. The Commissioner may disapprove the exercise of any power, right, benefit or privilege on the grounds of an incomplete notice of intent; safety and soundness; or other grounds as provided in this subchapter. The Commissioner may condition the exercise of any power, right, benefit or privilege on the grounds of safety and soundness, or on other grounds as provided in this subchapter.

(e) A bank or savings bank that violates the provisions of this subchapter shall be subject to the enforcement provisions of N.J.S.A. 17:9A-267, 268 and 269.

EXAMPLE H

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Proposed Readoption: N.J.A.C. 10:72

Authorized By: James W. Smith, Jr., Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-3 and 7 and Section 1902(a)(10) of Social Security Act (42 U.S.C. §1396a(a)(10)).

Calendar Reference: See Summary below for an explanation of the exception to the rulemaking calendar requirements of N.J.A.C. 1:30-3.3.

Agency Control Number: 02-P-09.

Proposal Number: PRN 2002-100.

Submit comments by May 17, 2002 to:

Jean Cary, Administrative Practice Officer
Division of Medical Assistance and Health Services
PO Box 712, Mail Code #26
Trenton, NJ 08625-0712
Fax: (609) 588-7672
Delivery: 6 Quakerbridge Plaza, Mercerville, NJ 08619
Email: jcary@dhs.state.nj.us

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1 and N.J.A.C. 1:30-6.4, N.J.A.C. 10:72, New Jersey Care . . . Special Medicaid Programs Manual, expires on August 15, 2002. This proposed readoption is designed to readopt all six subchapters without change. Pursuant to N.J.S.A. 52:14B-5.1c, as this notice of proposal was submitted to the Office of Administrative Law prior to the expiration date, that date was extended 180 days to February 11, 2003.

An administrative review has been conducted, and a determination made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated.

The New Jersey Care . . . Special Medicaid Programs Manual extends Medicaid eligibility for certain pregnant women and specified children not eligible under the provisions of N.J.A.C. 10:69 as well as for certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71. The eligibility criteria established by the rules in this chapter are more liberal than those applicable under Aid to Families with Dependent Children (AFDC)-related Medicaid and Social Security Income (SSI)-related Medicaid.

A subchapter summary of the rules contained in N.J.A.C. 10:72 follows:

N.J.A.C. 10:72-1, Introduction, includes the purpose, scope and administrative organization of the New Jersey Care . . . Special Medicaid Programs. It explains procedures for confidentiality of information and nondiscrimination regarding program participation.

N.J.A.C. 10:72-2 describes case processing, including application, interview, verification requirements, case transfer, redetermination of eligibility, post-application client responsibilities and retroactive eligibility.

The rules that comprise N.J.A.C. 10:72-3, Nonfinancial Eligibility Factors, delineate the nonfinancial factors required to establish program eligibility. Following a section on general provisions are rules regarding citizenship, residency, eligible persons, and budget unit. The subchapter also includes rules on third party liability, persons sanctioned under AFDC rules, and other

requirements such as application for other benefits including pensions, annuities, retirement and disabilities benefits. It also contains rules related to inmates of public institutions.

N.J.A.C. 10:72-4 sets out income eligibility factors, countable income standards and resource eligibility.

N.J.A.C. 10:72-5, Administrative Requirements, includes rules regarding notice of county welfare agency decisions affecting applicants and/or beneficiaries, fair hearings and the contents of case records.

N.J.A.C. 10:72-6 explains presumptive eligibility including, the scope of services provided, and the responsibilities of qualified providers, the Division of Medical Assistance and Health Services, the county welfare agencies and the applicant. This subchapter also includes the notification and fair hearing requirements of the program.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

It is necessary to continue the New Jersey Care . . . Special Medicaid Programs, and these rules governing eligibility, to ensure that beneficiaries who qualify continue to receive those Medicaid services authorized under these programs. There is no change in the social impact as the Division is continuing to cover the same persons eligible under this program.

The State should benefit because these rules allow the Division to continue these programs ensuring continuation of benefits to beneficiaries and continued reimbursement to providers.

Economic Impact

The eligibility rules contained in this readoption have not changed since the last readoption. There is no change in the economic impact as the Division is continuing to cover the same persons eligible under this program.

There were 176,662 beneficiaries in the program in calendar year (CY) 2000. For State Fiscal Year 2000 the sum of all payments on behalf of program participants was \$493,807,152 (Federal and State combined), of which \$42,172,455 was spent on individuals in nursing facilities. This number is not expected to increase as a result of these rules proposed for readoption.

Federal Standards Statement

Federal law, Section 1902(a)(10) of the Social Security Act (42 U.S.C. §1396a(a)(10)), requires coverage of pregnant women and children up to the age of six with income less than 133 percent of the poverty level and children born after September 30, 1983 with income less than 100 percent of the poverty level. The provisions of this statute also allow the State to cover pregnant women and infants up to the age of one with income less than 185 percent of the poverty level, and the aged, blind, and disabled with income less than 100 percent of the poverty level. Federal law anticipates that, within the Federal guidelines, a state will promulgate regulations to define covered programs and the eligibility standards. The rules contained in this readoption are within the parameters of Section 1902(a)(10) of the Social Security Act (42 U.S.C. §1396a(a)(10)) and do not exceed its requirements.

Jobs Impact

The rules proposed for readoption are not expected to create or reduce jobs in the State of New Jersey. Both the Division of Medical Assistance and Health Services and the county welfare agencies will continue to use existing staff to administer the program. The persons who qualify for coverage under the New Jersey Care . . . Special Medicaid Programs are pregnant women and specified children not eligible under N.J.A.C. 10:69, or certain persons age 65 and over, blind or disabled not eligible under N.J.A.C. 10:71. Children covered by this program are not usually employed and pregnant women, even if employed, usually leave employment (if only temporarily) before the end of pregnancy due to medical conditions. In general, the SSI-receiving population is not employed.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because applicants and/or beneficiaries are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules contain eligibility criteria for individual applicants for Division services. Determinations are made by governmental agencies, such as county welfare agencies boards of social services.

Smart Growth Impact

The Department anticipates that the proposed rulemaking will have no impact on the achievement of smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:72.

EXAMPLE I

BANKING

(a)

**DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING**

Depository Institutions

Proposed Readoption with Amendments: N.J.A.C. 3:4

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 1-15e, 17:9A-8.10, 17:9A-27.50,

17:9A-106, 17:9A-266 et seq., 17:12B-72 and 17:12B-177 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-206.

Submit comments by August 30, 2002 to:

Karen Garfing, Assistant Commissioner
Regulatory Affairs
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance ("Department") proposes to readopt N.J.A.C. 3:4 governing depository institutions. Pursuant to N.J.S.A. 52:14B-5.1c, the rules in this chapter are scheduled to expire August 15, 2002. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extended that expiration date 180 days to February 11, 2003.

The Department proposes to amend the chapter by making the language in the definitions standardized and by correcting certain references to Federal regulations.

The Department proposes to readopt the balance of the rules without amendment. The Department has reviewed the rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The rules proposed to be readopted thus will continue to provide the regulatory framework to enable the Commissioner to monitor depository institutions. They also help ensure that institutions do not operate in an unsafe and unsound manner, and that they maintain appropriate levels of capital and file necessary reports. Further, the rules continue to set standards for stock options plans offered to directors, officers and employees.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments apply to all New Jersey State chartered depository institutions. N.J.A.C. 3:4-3 also applies to those out-of-State state chartered depository institutions that have a branch in New Jersey.

The rules in this chapter provide standards with respect to capital requirements for depository institutions for determining whether such institutions are operating in an unsafe or unsound condition, and reflect permissible activities with respect to the provision of stock option plans consistent with law.

With respect to capital requirements, the Department notes that reviewing capital ratios is an important way to measure the safety of a depository institution. A depository with a higher capital ratio has a larger cushion for protection in the event of a business decline. By periodically reviewing capital ratios, the Department is able to identify potential problem institutions and assist those institutions in their recovery before their condition becomes such that they may require that the Commissioner take possession of the institutions pursuant to N.J.S.A. 17:9A-269 or 17:12B-179. This, in turn, should help avoid disruptions to the depositors, and the public generally, that may result from such occurrences.

With respect to compensation requirements, the rules proposed for readoption will continue to reflect existing statutory requirements by providing flexibility to State depositories in compensating their directors, officers and employees. This, in turn, may better enable such depositories to attract and retain qualified persons to such positions. To the extent that depositories are able to operate efficiently and profitably through this employment, the public should similarly benefit.

The banking industry has also come to rely on the presence and viability of these rules and their operation. State depository institutions are provided with standards concerning capital requirements and threshold levels at which the Department will determine whether such depositories are in an unsafe or unsound financial condition for purposes of taking action in accordance with N.J.S.A. 17:9A-266 et seq. and 17:12B-177 et seq. The rules further reflect and implement provisions with respect to compensation and the offering of stock options by State depositories to their directors, officers and employees. These rules in this chapter thus implement various statutory requirements and enable the Department to fulfill its statutory duties under law. Failure to readopt these rules would impair the Department's ability to properly oversee banking operations, and would unsettle established relations between banking institutions and the public, their directors, officers and employees, and the Department. The protection that these rules afford depositors and the operational guidance that they afford the banking industry mandate their continued existence both to implement statutory provisions and to foster or promote a sound regulatory policy. Therefore, the rules will have a beneficial social impact for the institutions, their customers and the general public.

The amendments to the various rules set forth in the chapter are technical in nature and should not have any significant impact on depository institutions or the public.

Economic Impact

The readoption with amendments will not impose any additional economic impact on State depository institutions or depositors in that the readoption will continue existing requirements. The proposed amendments address stylistic changes in the rules and updating of some legal citations, and do not impose any additional recordkeeping or compliance requirements on banks, savings banks or savings and loan associations.

State depositories will continue to be required to incur any costs associated with continued compliance with the requirements set forth in the chapter. These requirements include maintaining applicable capital to asset ratios as set forth in N.J.A.C. 3:4-1. As indicated above, these ratios are comparable to those applicable to nationally chartered banks and to members of the Federal

Reserve Board and FDIC. Moreover, by continuing to define unsafe operation and unsafe condition, the rules specify when the Department may take enforcement action against the depository institution in accordance with N.J.S.A. 17:9A-266 et seq. and 17:12B-177 et seq. State depository institutions will continue to be required to incur costs associated with any order issued due to the failure of such institution to maintain appropriate capital ratios as set forth in the rules. However, the Department believes that any costs that may be imposed are outweighed by the benefits to be achieved through the potential elimination of unsafe or unsound financial conditions and attendant costs and disruptions.

With respect to stock option plans, the rules will continue to provide a positive economic impact on these institutions to the extent that depositories are able to transact business more efficiently and attract and retain qualified people. Since depositories are not required to make stock options available, the Department does not believe that any negative economic impact should result from the readoption of N.J.A.C. 3:4-2.

Further, as noted in the Social Impact above, the rules in this chapter address various statutory requirements governing banks and other regulated entities. The rules will continue to provide standards by which the Department may monitor the financial position of State depositories to help ensure that such entities will not be or become in an unsafe or unsound financial condition, and if a State depository is in such condition, to take appropriate action pursuant to law to help avoid further deterioration. This, in turn, should benefit depositors, banks, savings banks, savings and loan associations, taxpayers, and the public generally.

The failure to readopt this chapter would require State depository institutions to engage in business without guidance from the Department. This could impose significant costs on the industry since current compliance requirements would not be readily available to the industry, requiring it to implement guidelines which may or may not be acceptable to the Department. This, in turn, could result in disruption to the market with attendant additional costs. Further, the readoption of the current rules will enable the Department to continue to monitor State depository institutions in an appropriate manner.

Further, the Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the banking industry and the public. The Department is unaware of any provisions of these rules that impose undue or unnecessary financial burdens on State depositories.

Finally, the Department will continue to be required to incur any costs associated with monitoring the financial position of depository institutions to ensure compliance with this chapter. The Department anticipates that future annual costs of compliance with these rules should be consistent with current annual costs. Some depository institutions may choose to seek or continue to use professional assistance for compliance with the rules. This assistance would be in the form of accountants, financial industry consultants or attorneys. The cost of the professional will vary based on the individual professional and the amount of work requested.

Federal Standards Statement

The rules proposed for readoption with amendments do not contain standards or requirements that exceed standards or requirements imposed by Federal law. The rules proposed for readoption with amendments continue to apply to depositories certain Federal standards, as set forth at 12 C.F.R. §325 Appendix A, 12 C.F.R. §304.4, 12 C.F.R. §324, 12 C.F.R. §§325.2t and 325.2v, 12 C.F.R. §567.6, and 12 U.S.C. §1813(a)(2).

Jobs Impact

The Department does not anticipate that any jobs will be lost as a result of the rules proposed for readoption with amendments. Most depository institutions will use existing staff for continued compliance with the existing rules. Some institutions may choose to employ professional services to meet the recordkeeping, reporting and other compliance requirements. The costs of these professional services are discussed in the Economic Impact above.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

Some depository institutions operating in this State are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No new requirements are being proposed. The rules proposed for readoption with

amendments will continue to impose recordkeeping and reporting requirements on these entities in the form of reports of financial conditions to the Department. The rules proposed for readoption with amendments will also continue to require New Jersey banks, savings banks and savings and loan associations to maintain capital in the amount set forth in the rules and, if such institution seeks to do so, to provide for stock option plans in accordance with the rules.

The Department believes that these requirements are generally mandated pursuant to good banking practice. The costs of these requirements are discussed in the Economic Impact above. Moreover, the Department does not believe that these requirements are unduly burdensome and should not require professional services for compliance. The purpose of these rules is to assist depository institutions in their operations and to protect consumers. Thus, the purpose does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:4.

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

SUBCHAPTER 1. CAPITAL REQUIREMENTS

3:4-1.1 Definitions

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

"Bank" [shall have the meaning ascribed to it] **means a bank as defined in N.J.S.A. 17:9A-1.**

"Capital stock association" [shall have the meaning ascribed to it] **means a capital stock association as defined in N.J.S.A. 17:12B-244.**

"Capital stock savings bank" [shall have the meaning ascribed to it] **means a capital stock savings bank as defined in N.J.S.A. 17:9A-8.1.**

"Depository institution" [shall mean] **means a bank, savings bank, capital stock savings bank, capital stock association or mutual association.**

"Mutual association" [shall have the meaning ascribed to it] **means a mutual association as defined in N.J.S.A. 17:12B-5.**

"Qualifying capital" [shall have the same meanings ascribed to it] **means qualifying capital as defined in Appendix A to 12 C.F.R. Part 325.**

"Risk weighted assets" for a bank and savings bank [shall have the meaning ascribed to it] **means risk weighted assets as defined in Appendix A to 12 C.F.R. Part 325, and for a savings and loan association [shall have the meaning ascribed to it] means risk weighted assets as defined in 12 C.F.R. 567.6**

"Savings bank" [shall have the meaning ascribed to it] **means a savings bank as defined in N.J.S.A. 17:9A-1(13).**

"Tier 1 capital" [shall have the meaning ascribed to it] **means Tier 1 capital as defined in 12 C.F.R. §325.2(m)t.**

"Total assets" [shall have the meaning ascribed to it] **means total assets as defined in 12 C.F.R. §325.2(n)v.**

SUBCHAPTER 2. COMPENSATION

3:4-2.1 Definitions

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

"Bank" [shall have the same definition as provided] **means a bank as defined in N.J.S.A. 17:9A-1.**

"Depository" [shall mean] **means a bank, savings bank or savings and loan association, and includes a limited purpose trust company.**

"Savings and loan association" [shall mean] **means a capital stock association established pursuant to N.J.S.A. 17:12B-244 et seq.**

"Savings bank" [shall mean] **means a capital stock savings bank established pursuant to N.J.S.A. 17:9A-8.1 et seq.**

SUBCHAPTER 3. REPORTING REQUIREMENTS

3:4-3.2 Definitions

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

"Branch office" [is] **means a branch office as defined in N.J.S.A. 17:9A-1.**

EXAMPLE J

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Reproposed Amendments: N.J.A.C. 5:80-33

Authorized By: New Jersey Housing and Mortgage Finance Agency,
Deborah DeSantis, Executive Director.

Authority: N.J.S.A. 55:14K-5.g and 26 U.S.C. §42(m).

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2002-172.

Submit comments by June 5, 2002 to:

Martin G. Bershtein

New Jersey Housing and Mortgage Finance Agency

63rd South Clinton Avenue

PO Box 18550

Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

Section 42 of the Internal Revenue Code of 1986 ("Code"), 26 U.S.C. §42, establishes a low-income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for low-income families. As the housing credit agency for the State of New Jersey ("State"), the New Jersey Housing and Mortgage Finance Agency ("NJHMFA" or "Agency") allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The Low Income Tax Credit ("LITC") Program is one of a variety of resources used to stimulate the development of affordable housing. As with most State and Federal resources, the LITC Program is a limited resource with a finite dollar amount allocated to it each year. With the State's affordable housing needs continually growing, it is imperative to allocate this limited resource to obtain the greatest results. NJHMFA has promulgated rules at N.J.A.C. 5:80-33 which set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and which also represent the qualified allocation plan ("QAP") for the State required by Section 42 of the Code.

As a result of recommendations from its advisory group and NJHMFA staff and of comments received from the public, NJHMFA is proposing amendments to the rules. Certain amendments (the "original 2002 amendments") were proposed on January 7, 2002 at 34 N.J.R. 47(a). The original 2002 amendments are summarized as follows:

1. Definitions. In order to encourage development that is consistent with that advocated by the Smart Growth Policy Council, the Agency proposes to add definitions of "core" and "Pinelands center" at N.J.A.C. 5:80-33.2 to define terms proposed to be inserted at N.J.A.C. 5:80-33.16(a)9, which is proposed to be recodified as N.J.A.C. 5:80-33.16(a)7. The Agency is also proposing to amend the definitions of "low rise" and "mid-rise" at N.J.A.C. 5:80-33.2, by increasing by one the number of residential floors or stories allowed in a low rise project, the Agency is seeking to improve the financial viability of such projects (by providing for a greater rental income stream) while taking care not to create an undue concentration of large families in such projects. The Agency is also proposing an amendment to the definition of "NPP Projects" at N.J.A.C. 5:80-33.2 to attain consistency among scattered site NPP Projects and other scattered site projects that are eligible for the neighborhood set-aside (that is, targeted neighborhood projects). Additionally, the Agency is proposing amendments to the definition of "targeted neighborhood" at N.J.A.C. 5:80-33.2 to reflect a change in the designation of the targeted neighborhood set-aside to the neighborhood set-aside. Finally, the Agency is proposing to amend the definitions of "qualified nonprofit organization," "special needs project" and "sponsor certification" to attain consistency in the designation of project owners.

2. Cycles. The Agency proposes to amend N.J.A.C. 5:80-33.3 to state clearly that it will announce application filing deadlines and the available credits as early in the year as possible and reservations approximately 90 days after the cycle deadline. At N.J.A.C. 5:80-33.4 and 33.5, the Agency is proposing amendments to create an affordability set-aside, in conjunction with election of the 20 percent at 50 percent Federal set-aside, in the Urban and Suburban Cycles to replace the point categories for low-income set-asides at N.J.A.C. 5:80-33.16(a)2 and 33.19(a)1; 15 percent of the available credits in the Urban Cycle and 25 percent of the available credits in the Suburban Cycle are proposed to be allocated to the affordability set-aside. At N.J.A.C. 5:80-33.6, an amendment is proposed to mandate that projects which are included in HOPE VI proposals apply in the HOPE VI Cycle.

3. Amendments are proposed at N.J.A.C. 5:80-33.7(a)1 to attain consistency in the designation of project owners and applicants and to clarify that the designated letter from the Department of Human Services, Division of Developmental Disabilities shall be included in an application for credits from the developmentally disabled set-aside. At N.J.A.C. 5:80-33.7(a)2, an amendment is proposed to allow Work First projects eligibility to credits beyond the Work First set-aside and to make available any unused credits in the Work First set-aside for other projects applying for credits in the Special Needs Cycle; this proposed amendment will make the use of credits in the Work First set-aside consistent with that of credits in the developmentally disabled set-aside of the Special Needs Cycle. At N.J.A.C. 5:80-33.7(c), an amendment is proposed to clarify the ability of projects to qualify for multiple set-asides, consistent with provisions set forth at N.J.A.C. 5:80-33.4(c) and 33.5(c) and proposed at 33.8(c). The Agency is proposing an amendment at N.J.A.C. 5:80-33.8(a)1 to create a HOPE VI set-aside of \$1,000,000 in the Final Cycle in an effort to meet the demand of HOPE VI projects (estimated to be \$7,000,000) and to recodify N.J.A.C. 5:80-33.8(a)1 and limit credits available in the preservation set-aside to \$500,000, rather than 50 percent of the credits available in the Final Cycle. At N.J.A.C. 5:80-33.8(b), an amendment is proposed to prioritize reservations from the Final Cycle where the Federal nonprofit requirement has been satisfied. Finally, an amendment is proposed to delete N.J.A.C. 5:80-33.8(e) as the provisions thereof are proposed to be incorporated in N.J.A.C. 5:80-33.8(c).

4. Reserve. The Agency proposes an amendment at N.J.A.C. 5:80-33.9(a)1 to give HOPE VI projects priority in the award of supplemental credits from the Reserve. An additional amendment is proposed at N.J.A.C. 5:80-33.9(a)2 to clarify that the per project limit on hardship requests from the Reserve is for additional credits.

5. Volume cap credits. In order to encourage the development of energy efficient homes, an amendment is proposed at N.J.A.C. 5:80-33.10(a) to include participation in the ENERGY STAR Homes program as an eligibility requirement for new construction projects requesting credits from volume cap. Also, an amendment is proposed at N.J.A.C. 5:80-33.10(a)5 which, by reference to N.J.A.C. 5:80-33.27, increases the issuance fee for projects requesting credits from volume cap from two percent of the issuance amount to three percent thereof to reflect the increased underwriting and processing costs involved for those projects not financed by the Agency.

6. Application fee schedule. The Agency proposes to amend N.J.A.C. 5:80-33.11(a)2 to attain consistency in the designation of project owners.

7. Cycle/eligibility requirements. For purposes of clarity, the Agency is proposing an amendment to N.J.A.C. 5:80-33.13(a) to provide an example of a density bonus. The Agency also proposes to amend N.J.A.C. 5:80-33.13(c) to clarify that it reserves the right to contact an applicant if the need to do so arises. Amendments are proposed at N.J.A.C. 5:80-33.13(c)1i and ii to attain consistency in the designation of applicants; additional amendments are proposed at N.J.A.C. 5:80-33.13(c)1i to eliminate the unnecessary requirement that preliminary drawings include cross-sections and at N.J.A.C. 5:80-33.13(c)1ii to mandate that a market study be submitted for all projects and to clearly and succinctly state that analysts shall disclose in their certifications that all market study requirements have been adhered to. The Agency is proposing amendments to the minimum market study requirements set forth at N.J.A.C. 5:80-33.13(c)1iii(1) through (9) to bring those requirements in line with the Code and with current industry practice in the preparation of market studies. Specifically, the Agency is proposing to amend: (i) N.J.A.C. 5:80-33.13(c)1iii(1) and (4) to provide flexibility to market analysts with respect to the structure and content of a market study; (ii) N.J.A.C. 5:80-33.13(c)1iii(2) to clarify the distinction between site and building issues; (iii) N.J.A.C. 5:80-33.13(c)1iii(3) to highlight the importance of establishing an accurate market area; (iv) N.J.A.C. 5:80-33.13(c)1iii(5) to provide flexibility to market analysts with respect to the structure and content of a market study and to mandate that occupied projects receive additional due diligence; and (v) N.J.A.C. 5:80-33.13(c)1iii(6) to provide flexibility to market analysts with respect to the structure and content of a market study and to provide additional guidance to analysts with respect to capture rate calculations to enable the market study review process to be streamlined. The Agency is also proposing amendments at N.J.A.C. 5:80-33.13(c)1iii to clarify that certain enumerated projects may submit the form of market analysis described at N.J.A.C. 5:80-33.13(c)1iii(1) and (2). (The Agency is proposing by amendment to recodify a portion of N.J.A.C. 5:80-33.13(c)1iii as N.J.A.C. 5:80-33.13(c)1iii(1) and to add N.J.A.C. 5:80-33.13(c)1iii(2) to reference the requirements set forth at N.J.A.C. 5:80-33.13(c)1iii(7) through (9)).

The Agency proposes to add N.J.A.C. 5:80-33.13(c)1iv to reflect the requirement that updates of market studies more than six months old reflect a recent site visit by the analyst, current information on comparable properties and an analysis of any significant changes to the subject project, while excluding from the updating requirements for market studies less than two years old demographic information unless otherwise dictated by recent decennial census data. The Agency proposes to amend N.J.A.C. 5:80-33.13(c)3 to clarify that the obligation of a project owner to ensure that nothing at the local or county level will interfere with the project's obtaining all necessary permits is an obligation that continues beyond the application stage. At N.J.A.C. 5:80-33.13(c)4, an amendment is proposed to delete the reference to hardship credits "from the Reserve" to establish that if an applicant is awarded credits without the submission of a Phase I environmental study, the applicant will be prohibited from applying for hardship credits from the Reserve or from other cycles for environmental issues. An amendment is proposed at N.J.A.C. 5:80-33.13(c)6 to correct the reference to the provisions of the rules which follow. At N.J.A.C. 5:80-33.13(c)6iii, an amendment is proposed to attain consistency in the designation of applicants. In order to provide a cushion in the development budget to cover potential cost overruns, the Agency proposes to amend N.J.A.C. 5:80-33.13(c)6v to provide that the maximum amount of developer fee which can be pledged at the application stage is 50 percent of the total fee amount, with the only exception being where the developer fee pledge is being used on an interim basis (that is, where another funding source is identified in the application and will be committed by carryover). At N.J.A.C. 5:80-33.13(c)7i, amendments are proposed to provide that, where market conditions permit, projects will be allowed to establish feasibility at median income levels, rather than at 2.5 percent below such levels as is presently required; it is anticipated that this will provide a cushion for projects that are bound by the rents indicated in the application and cannot adjust those rents to account for inflation between the time the application is submitted and the date the project places in service. Amendments are proposed at N.J.A.C. 5:80-33.13(c)7ii(4) to indicate a recommended per unit operating expense range which is in line with NJHMFA database figures. At N.J.A.C. 5:80-33.13(c)13, an amendment is proposed to reflect the proposed recodification of N.J.A.C. 5:80-33.16(a)7 and, at N.J.A.C. 5:80-33.13(c)13iv, amendments are proposed to attain consistency in the designation of project owners.

8. Application for additional credits. The Agency proposes to amend the heading of N.J.A.C. 5:80-33.14 to reflect that application for additional credits may be made either from the Reserve or through a competitive cycle.

The Agency also proposes amendments at N.J.A.C. 5:80-33.14(a), (a)1 and (a)2 to set forth the procedure for an application for additional credits, specifying that hardship requests for an amount up to \$100,000 shall be made to the Reserve and requests for additional credits for an amount greater than \$100,000 shall be made to a competitive cycle. An amendment is also proposed at N.J.A.C. 5:80-33.14(b) to account for the proposed amendment at N.J.A.C. 5:80-33.27, which would provide a three percent fee for projects not financed by NJHMFA.

9. Scoring and ranking. The Agency proposes an amendment at N.J.A.C. 5:80-33.15(c) to reflect that the exceptions to the requirement that all project units must qualify for a point category in order to receive the point are set forth at N.J.A.C. 5:80-33.16 through 33.20. The Agency also proposes an amendment at N.J.A.C. 5:80-33.15(d) to provide that it may designate an outside individual or entity to conduct on-site inspections of successful applicants.

10. Urban Cycle point system. At N.J.A.C. 5:80-33.16(a)1i, the Agency proposes amendments to attain consistency in the designation of project owners. The Agency is proposing an amendment to delete N.J.A.C. 5:80-33.16(a)2 to reflect that the low-income set-aside thereby provided is proposed to be replaced by the affordability set-aside to be created at N.J.A.C. 5:80-33.4(a)2 and 33.5(a)1. The Agency proposes to amend N.J.A.C. 5:80-33.16(a)4 by recodifying it at N.J.A.C. 5:80-33.16(a)3i and, in an effort to encourage community revitalization in targeted areas of the State, by adding N.J.A.C. 5:80-33.16(a)3ii to provide that up to 10 points shall be awarded to applicants proposing to incorporate a commercial component in their projects. In an attempt to allow projects which do not obtain a tax abatement to more effectively compete for tax credit awards, the Agency is proposing amendments to combine the tax abatement and county municipal/public housing authority (PHA) point categories, presently codified at N.J.A.C. 5:80-33.16(a)5 and 6 respectively, into a single category to be codified at N.J.A.C. 5:80-33.16(a)4 and to reduce the maximum number of points available in that category to five. Amendments are also proposed at N.J.A.C. 5:80-33.16(a)4i through iv to establish a sliding scale whereby a fixed rate, 15-year tax abatement will receive the maximum five points while combinations of two-year tax escrows and other municipal, county or PHA support will receive between two and four points. In order to encourage development that is consistent with that advocated by the New Jersey Smart Growth Policy Council, the Agency is proposing amendments at N.J.A.C. 5:80-33.16(a)9, which is proposed to be recodified at N.J.A.C. 5:80-33.16(a)7, to award two points to projects located in delineated cores or Pinelands centers; these proposes amendments should be read in conjunction with the definitions of "core" and "Pinelands center" proposed to be added at N.J.A.C. 5:80-33.2. In order to encourage the development of energy efficient homes, the Agency is proposing amendments at N.J.A.C. 5:80-33.16(a)14 (recodified at N.J.A.C. 5:80-33.16(a)12) to specifically include participation in New Jersey's ENERGY STAR Homes program, as well as participation in the Environmental Protection Agency's ENERGY STAR Homes Program, as qualifying for the proposed two points (an increase from one point in the current QAP); the Agency is also proposing to amend N.J.A.C. 5:80-33.16(a)14 to attain consistency in the designation of project owners. At N.J.A.C. 5:80-33.16(a)19 (recodified at N.J.A.C. 5:80-33.16(a)17), an amendment is proposed to simplify the documentation required to be submitted to qualify for the brownfield point. The proposed amendment mandates that a brownfield site's Brownfields Site Marketing Inventory (BSMI) Project Tracking Number ("OSP BF#") be provided if there is such a number and, if there is not, that a copy of the approved New Jersey Department of Environmental Protection Remedial Action Work Plan be submitted; the proposed amendment also provides a website at which a list of brownfield sites and the corresponding tracking numbers can be obtained.

11. Suburban/Rural Cycle point system. The Agency is proposing an amendment at N.J.A.C. 5:80-33.17(a) to reflect the proposed recodification of N.J.A.C. 5:80-33.16(a)9 and, to promote clarity, the Agency proposes an amendment at N.J.A.C. 5:80-33.17(c) to provide an example of a density bonus.

12. HOPE VI Cycle point system. As a result of the proposed elimination of the point category at N.J.A.C. 5:80-33.16(a)6, the Agency is proposing to amend N.J.A.C. 5:80-33.18 to state that the point system for the HOPE VI Cycle consists of all point categories of the Urban Cycle except for the point category concerning public housing authority waiting lists codified at N.J.A.C. 5:80-33.16(a)3, but which is proposed to be recodified as N.J.A.C. 5:80-33.16(a)2.

13. Special Needs Cycle point system. The Agency is proposing to amend N.J.A.C. 5:80-33.19(a) to reflect the proposed recodification of N.J.A.C. 5:80-33.16(a)4 and 7. The Agency is also proposing to amend

N.J.A.C. 5:80-33.19(a) by deleting the low-income set-aside thereby provided, which is proposed to be replaced by the affordability set-aside to be created at N.J.A.C. 5:80-33.4(a)2 and 33.5(a)1. Amendments are proposed at N.J.A.C. 5:80-33.19(b)3, 4 and 6 to attain consistency in the designation of applicants and owners.

14. Final Cycle point system. An amendment is proposed at N.J.A.C. 5:80-33.20(a)2 to attain consistency in the designation of applicants.

15. Municipal comment. In order to provide for a more review process, the Agency proposes to amend N.J.A.C. 5:80-33.22 to provide an option for letters of municipal support to be submitted with an application in lieu of a request being made by the Agency for such documentation at a later date.

16. Reservations, allocations and binding commitments. In order to better meet the added expense and regulatory burden of processing allocation requests received after the established deadlines, the Agency is proposing an amendment at N.J.A.C. 5:80-33.26(a) to set a fee of \$1,000 for each week or part thereof that the allocation request package is late; this fee is proposed to replace the current Spring Cycle graduated fee of \$500.00 per week or part thereof in October and \$1,000 per week or part thereof in November and December that the package is late. Also, amendments are proposed at N.J.A.C. 5:80-33.26(a), (a)1, (a)2 and (a)2i to attain consistency in the designation of owners.

17. Allocation/Issuance fee schedule. The Agency is proposing to amend N.J.A.C. 5:80-33.27 to provide that, for projects requesting an issuance of tax credits from volume cap, the issuance fee shall be two percent of issuance amount for NJHMFA financed projects and three percent for non-NJHMFA financed projects; this proposed amendment is to reflect the increased underwriting and processing costs for projects not financed by the Agency.

18. IRS Form 8609: deadlines and extension fees. In order to process 8609 requests more expeditiously, the Agency proposes to amend N.J.A.C. 5:80-33.28 by adding "deadlines and extension fees" to the heading and by recodifying the existing text at N.J.A.C. 5:80-33.28(a) (with a proposed amendment to clarify that the Agency may designate an outside individual or entity to conduct an on-site inspection of a project) and adding N.J.A.C. 5:80-33.28(b) to require submission of the 8609 request package at the later of six months following the issuance of the final certificate for occupancy for the project or two months after the first year of the credit period, with the Agency reserving the right to recapture an allocation if the deadline is not met. The proposed amendment further provides for an extension of the filing deadline on a case-by-case basis upon a showing of good cause, with payment of an extension fee of \$1,000 per week or part thereof that the package is late.

19. Project cost certification and contractor fee limits. The Agency proposes to amend the heading of N.J.A.C. 5:80-33.30 to add "and contractor fee limits" and to amend the text of N.J.A.C. 5:80-33.30(a) and (c) to attain consistency in the designation of project owners and, at N.J.A.C. 5:80-33.30(a), to delete provisions which are proposed to be included in proposed N.J.A.C. 5:80-33.28(b).

20. Applicant's obligation to disclose changes. The Agency proposes to amend N.J.A.C. 5:80-33.33(a) to attain consistency in the designation of project owners.

21. Compliance monitoring. In recognition of the fact that audited financial statements are usually prepared in anticipation of tax return filings with the IRS, the Agency proposes to amend N.J.A.C. 5:80-33.34(c) to require the submission by project owners of audited financial statements for the prior fiscal year by May 1, rather than 120 days after the close of each compliance period fiscal year. Also, the Agency proposes to amend N.J.A.C. 5:80-33.34(d)6, (d)7 and (f)3 to accurately reflect the purpose of the 100 percent recertification waiver offered by the IRS, which is conservatively applicable only to third-party income verification requirements. Additionally, the Agency proposes to amend N.J.A.C. 5:80-33.34(e) by moving the provisions of N.J.A.C. 5:80-33.34(e)3 to the end of N.J.A.C. 5:80-33.34(e)2, where such provisions more logically fit, and by deleting N.J.A.C. 5:80-33.34(e)3. The Agency further proposes amendments at N.J.A.C. 5:80-33.34(f) to reflect changes in the names of certain compliance monitoring documents.

22. Owner's annual reports and deadlines. The Agency proposes to amend the heading of N.J.A.C. 5:80-33.35 to reflect that the proposed remaining provisions thereof are responsibilities of the project owner. As with the proposed amendments to N.J.A.C. 5:80-33.34(f) noted above, the Agency proposes to amend N.J.A.C. 5:80-33.35(a) to reflect changes in the names of certain compliance monitoring documents. The Agency also proposes to amend N.J.A.C. 5:80-33.35 by recodifying N.J.A.C. 5:80-33.35(b), (c) and (d) at N.J.A.C. 5:80-33.36(b), (c) and (d), respectively, as the provisions thereof are aspects of the Agency review and inspection process.

23. NJHMFA review and inspection. The Agency proposes to amend the heading of N.J.A.C. 5:80-33.36 to reflect that the provisions thereof, including the proposed additions, are aspects of the Agency review and inspection process. As noted above, the Agency proposes to amend N.J.A.C. 5:80-33.36 by recodifying the current provision thereof as N.J.A.C. 5:80-33:36(a) and by recodifying N.J.A.C. 5:80-33.35(b), (c) and (d) as N.J.A.C. 5:80-33.36(b), (c) and (d), respectively.

24. Notification of noncompliance. The Agency proposes to amend N.J.A.C. 5:80-33:37(a) to clarify that noncompliance with any portion of subchapter 33 will result in the issuance of a formal notice of noncompliance.

The official comment period for the original 2002 amendments ended on February 6, 2002. As a result both of comments received in response to publication of the original 2002 amendments and of determinations made by Agency staff, NJHMFA is reproposing the original 2002 amendments as modified below.

The Agency received comments from the following individuals in response to publication of the original 2002 amendments:

1. Christiana Foglio of Conifer Realty, L.L.C. ("Conifer");
2. Ed Martoglio of RPM Development Group;
3. Jacqueline A. Haley of Lenz Enterprises Ltd.;
4. Barbara K. Schoor of Conifer;
5. Joseph Vas, Mayor of the City of Perth Amboy, New Jersey; and
6. Peter J. O'Connor, Esq., Executive Director of Fair Share Housing Center.

The comments and the Agency's responses thereto are summarized as follows:

COMMENT: The QAP should eliminate any additional points awarded to projects in urban areas that require the 45-year extended use period of affordability controls.

RESPONSE: The current point category at N.J.A.C. 5:80-33.16(a)1i satisfies 26 U.S.C. §42(m)(1)(B)(ii)(I), which mandates that a preference be given to "projects obligated to serve qualified tenants for the longest periods. . . ." However, the Agency agrees with the commenter that growth should be encouraged in distressed urban areas. If market rents can be achieved in what are now "pockets of poverty," defined as qualified census tracts by HUD and the IRS, then this program and the Agency have succeeded in the goal of revitalization. Consequently, the Agency proposes to insert new N.J.A.C. 5:80-33.16(a)1ii to provide points for projects which are located in qualified census tracts as defined by HUD and the IRS. This proposed amendment also conforms with changes made to 26 U.S.C. §42(m)(1)(B)(ii)(III) with the passage of the Community Renewal Act of 2000.

COMMENT: In lieu of calculating points under N.J.A.C. 5:80-33.16(a)16 based on an absolute reduction in the developer fee amount, the calculation should be based on the amount pledged back to the project. Points should be maximized for a project with a 15 percent developer fee where seven percent of the fee is deferred and contributed back to the project. In this way, the developer still earns an eight percent fee but more tax credit equity can be generated to insure financial feasibility.

RESPONSE: The absolute reduction in fee has been utilized by the Agency since 1995 as a cost containment measure. Cost continues to be a major issue and the Internal Revenue Service often focuses on developer fee in an audit review. Consequently, the QAP will retain this provision.

COMMENT: In the Urban Cycle, the QAP should encourage projects where 20 percent of the units are at or below 50 percent of area median income, with the balance of the LITC units at 60 percent of area median income in the Urban Cycle.

RESPONSE: The Federal set-aside election determines the qualifying income level for all low-income units in a project. This means that if the 20 percent at 50 percent Federal set-aside is selected, all tax credit units must be at or below 50 percent of median income to qualify for credits. This is an IRS Code requirement and not one that can be changed by the Agency. In addition, outside of the affordability set-aside, there is no distinction in the ranking made between projects that elect the 20 percent at 50 percent set-aside versus those that elect the 40 percent at 60 percent set-aside.

From 1995-2001, almost every competitive project was required to utilize the more restrictive 20 percent at 50 percent Federal test. Changes made to the 2002 QAP still retain the preference for the 20 percent at 50 percent Federal test in accordance with 26 U.S.C. §42(m)(1)(B)(ii)(I), but allow more flexibility in the utilization of the 40 percent at 60 percent Federal test which the commenter has suggested.

COMMENT: Allow forward commitments of up to 50 percent of the following year's allocation.

RESPONSE: For the past several years, the Agency has allowed binding commitments for two types of projects under N.J.A.C. 5:80-33.26(b). These projects include the next highest ranking project in the Final Cycle if that project received only a partial allocation as a consequence of the Agency's exhaustion of its tax credit authority for the current year and projects in a competitive cycle affected by a technical error. In response to public comments this year, the Agency proposes to amend N.J.A.C. 5:80-33.26 to allow the Tax Credit Committee to issue binding commitments to a limited number of targeted neighborhood and HOPE VI projects. This greater flexibility is based on the recognition that such projects involve extensive urban revitalization, demolition, and the creation of new infrastructures which result in very high project costs. While the commenter advocates a 50 percent allocation of future credit authority, the Agency has tempered its binding commitment authority in recognition of its need to preserve future resources.

COMMENT: The deadline under N.J.A.C. 5:80-33.13(c)2 for submission of executed lease agreements should be moved from the point of carryover to the time of the 8609 submission.

RESPONSE: Under N.J.A.C. 5:80-33.13(c)2, projects can score points in the ranking system in two different ways, that is by providing either commercial space or large family units. Projects achieving the points via large family units do not have the burden of presenting commercial leases. However, if an application is based on the economics of commercial rent, the need for economic certainty for underwriting purposes necessitates the burden of submitting these executed lease agreements.

COMMENT: The commenter requests technical clarification as to whether rounding will be utilized in determining the points for municipal support at N.J.A.C. 5:80-33.16(a)4ii through 4iv.

RESPONSE: The Agency shall utilize rounding in determining the points for municipal support.

COMMENT: The submission of a letter of municipal support should not be a threshold requirement because it would prevent many projects from being eligible to compete.

RESPONSE: 26 U.S.C. §42(m)(1)(A)(ii) requires that the chief executive officer of the local jurisdiction within which a project is located be given a reasonable opportunity to comment on a project. In prior years, the Agency has satisfied this requirement by notifying the mayor of the intention of a project to apply for tax credits and by offering a 30-day time period within which the mayor may respond. In an effort to eliminate this step in the administrative process, the Agency requests that a letter of municipal support be included if available. The Agency recognizes that it is not always possible to obtain such a letter. For those projects unable to include a letter in their applications, Agency staff shall continue its practice of notifying the jurisdictions themselves. See N.J.A.C. 5:80-33.22.

COMMENT: The designated center point category at N.J.A.C. 5:80-33.16(a)7 should be expanded to provide points to projects in CAFRA Centers and Planning Area 2 ("PA2").

RESPONSE: The Agency relies upon input from the Smart Growth Policy Council (formerly the Office of State Planning ("OSP")) in determining the areas to include as part of the point category at N.J.A.C. 5:80-33.16(a)7. The list provided in the 2002 application was prepared in conjunction with OSP. While this list has been expanded to include Pinelands centers and delineated cores, it does not include CAFRA Centers or PA2.

COMMENT: The parking space option under the project amenity point category at N.J.A.C. 5:80-33.16(a)10 should be amended to award points for one space per unit for family projects and one-half space per unit for senior projects.

RESPONSE: The point category at N.J.A.C. 5:80-33.16(a)10 offers several means by which points can be obtained. In addition, the list provided may be supplemented by other comparable amenities offered. To date, the Agency has not been provided with significant evidence to show that one parking space per unit in a family development is comparable to one-half parking space per unit in a senior development.

COMMENT: In lieu of submitting an approved Remedial Action Work Plan, a signed Memorandum of Understanding with the Department of Environmental Protection should be sufficient documentation for the Brownfields point category at N.J.A.C. 5:80-33.16(a)17.

RESPONSE: Agency staff works in close connection with the Brownfields Redevelopment Task Force in determining the criteria for the point category at N.J.A.C. 5:80-33.16(a)17. As such, an approved Remedial Action Work Plan or the site's Brownfields Site Marketing Inventory ("BSMI") Project Tracking Number ("OSP BF#") have been determined to be the appropriate forms of documentation to meet the point category.

COMMENT: The commenter requests technical clarification as to where the two-year tax escrow under N.J.A.C. 5:80-33.16(a)(4) through 4iv should be reflected in the tax credit application.

RESPONSE: Applicants should reflect the two-year tax escrow on the last line of the "Escrows" section, entitled "Tax," on the Breakdown of Costs and Basis form.

COMMENT: The neighborhood set-aside at N.J.A.C. 5:80-33.4(a) should prioritize targeted neighborhoods in cities that have never received a tax credit allocation.

RESPONSE: The Agency agrees with the commenter that tax credit developments should be available in all areas of the State. Through its point category at N.J.A.C. 5:80-33.16(a)8, the Agency prioritizes the funding of projects located in municipalities that have received few or no tax credit allocations. However, the need to reach distressed targeted areas should receive greater attention and priority. Consequently, the Agency proposes to revise the QAP to prioritize the funding of projects located in targeted neighborhoods in cities that have never received a tax credit allocation. Further, the targeted neighborhood set-aside is being reinstated as the first set-aside priority under N.J.A.C. 5:80-33.4(a) and (b) as it was under the 2001 QAP.

COMMENT: The maximum annual tax credit award for projects in targeted neighborhoods which must provide garage parking should be increased to \$2,100,000.

RESPONSE: The Agency recognizes that urban revitalization and the creation of new infrastructure results in higher project costs. Thus, the Agency proposes to revise the QAP to allow a maximum annual tax credit allocation of \$2,100,000 for projects that would qualify under N.J.A.C. 5:80-33.4 or 33.6 and which also provide either community space, garage parking (free to tenants) or involves the revitalization and creation of new infrastructure. Accordingly, the Agency also proposes to delete the last sentence of N.J.A.C. 5:80-33.3, which limits project allocations to no more than \$1,500,000 in credits in any one calendar year.

COMMENT: The proposed requirement at N.J.A.C. 5:80-33.13(c)2 for a recorded declaration of taking at the application stage is not financially feasible for municipalities or redevelopers.

RESPONSE: The Agency agrees with the commenter that the financial burdens associated with condemnation proceedings are better suited to projects that have received a tax credit reservation; therefore, the Agency proposes to revise N.J.A.C. 5:80-33.13(c)2 to extend the timing of the recordation of the declaration of taking to carryover.

COMMENT: The QAP should allow for binding commitments to be issued to projects in targeted neighborhoods in cities that have never received a tax credit allocation.

RESPONSE: The Agency recognizes that urban revitalization and the creation of new infrastructure result in higher project costs. Consequently, the Agency proposes to revise N.J.A.C. 5:80-33.26(b) to vest authority in the Tax Credit Committee to provide additional assistance via a binding commitment to targeted neighborhood projects that require more than the maximum allowed tax credit allocation. In order to qualify for this type of binding commitment, all of the following must be satisfied: (a) the targeted neighborhood project must be located in a municipality which has not received a tax credit allocation in the past 10 years; (b) the project must successfully compete under N.J.A.C. 5:80-33.4(a)1; and (c) the project must provide community space, garage parking (free to tenants) or involves the revitalization and creation of new infrastructure. In addition, the Agency proposes to add N.J.A.C. 5:80-33.26(b)3 to allow the Tax Credit Committee to issue binding commitments for up to four HOPE VI projects that successfully compete under N.J.A.C. 5:80-33.6 or 33.8. The Tax Credit Committee may fund credits in excess of the maximum allowed tax credit allocation through a binding commitment which, together with the current allocation, does not exceed a total annual credit allocation of \$3,100,000.

COMMENT: The QAP should target a range of affordability of 40 percent of area median income.

RESPONSE: The Agency has established affordability set-asides to conform with the Federal mandate established under 26 U.S.C. §42(m)(1)(B)(ii)(I) while taking into consideration the severe shortage of soft funding sources needed to create developments to serve the most needy populations. Seeking the goal of average affordability of 40 percent of area median income, while theoretically desirable, is impractical Statewide. In calendar years 2000 and 2001, the Agency established affordable set-aside targets that sought a range of affordability with some units at 40 percent of area median income, some at 50 percent of area median income and some at 60 percent of area median income. Of the 61 projects that applied during these two years, only three selected this option. If projects can obtain

additional funding, the QAP does not discourage deeper affordability targeting.

COMMENT: The QAP should target portions of projects to families earning 20 percent or less of area median income.

RESPONSE: The Agency currently achieves some deep targeting at 20 percent of area median income with its Work-First set-aside under N.J.A.C. 5:80-33.7(a)2. Generally targeting such deep affordability for every project would be impractical. The Agency has established set-asides to conform with the Federal mandate established under 26 U.S.C. §42(m)(1)(B)(ii)(I) while taking into consideration the severe shortage of soft funding sources needed to create developments to serve the most needy populations. If projects can obtain additional funding, the QAP does not discourage deeper affordability targeting.

COMMENT: The commenter recommends changes to the definitions of inclusionary development and density bonus and their application to both competitive and volume cap tax credits.

RESPONSE: Regulations and definitions concerning inclusionary developments and density bonuses are all made in concert with advice from the Attorney General's Office, the Council on Affordable Housing and the Department of Community Affairs. The QAP as currently written does not entirely exclude projects with a density bonus from receiving tax credits. While it is difficult to accurately calculate the economic benefits of a density bonus and its financial impact on an affordable housing development, the Agency recognizes this subsidy is not always sufficient to assure the financial feasibility of the project. As such, these types of projects may apply for credits under N.J.A.C. 5:80-33.10.

COMMENT: The commenter recommends changes to encourage non-profit participation and conformance with Executive Order No. 4(2002), which requires State agencies to incorporate principles of smart growth.

RESPONSE: Currently, the QAP advances non-profit participation under N.J.A.C. 5:80-33.4(a)4 and 33.5(a)2. Under these provisions, the rate of non-profit participation was nearly five times that required under Federal law in calendar year 2001. The QAP extensively incorporates aspects of smart growth with its locational targeting based on recommendations from the Smart Growth Policy Council. Therefore, the Agency proposes to add a statement at N.J.A.C. 5:80-33.1(g) to state that the QAP has been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4(2002). Also, the Agency proposes to delete all references in the QAP to the "Office of State Planning" or "State Planning Commission" and replace them with the "Smart Growth Policy Council." The QAP further assists distressed areas with greater levels of poverty in accordance with 26 U.S.C. §42(m)(1)(B)(ii)(III).

COMMENT: The QAP disproportionately directs tax credits toward urban projects and, in so doing, violates New Jersey's *Mount Laurel* doctrine, which directs municipalities to afford a realistic opportunity for the creation and maintenance of their fair share of the regional need for low- and moderate-income housing.

RESPONSE: By striking an appropriate funding balance between urban and suburban rural projects, the QAP is fully consistent with the *Mount Laurel* doctrine. It is important to recognize that the *Mount Laurel* doctrine itself, as reflected in the regional contribution agreements authorized by the 1985 New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., recognizes the need for funding urban projects as well as those in the suburbs. The Code, moreover, requires that the QAP grant a priority to projects in "qualified census tracts," as defined in 26 U.S.C. §42(d)(5)(C), which are typically distressed urban areas.

COMMENT: By disproportionately funding projects in racially segregated urban areas, the QAP funding priorities violate the Federal Fair Housing Act, Title VIII of the 1968 Civil Rights Act, 42 U.S.C. §§3601 et seq.

RESPONSE: Title VIII makes it unlawful to refuse to rent a dwelling unit on the basis of race, color, religion, sex, familial status or national origin, 42 U.S.C. §3604. The QAP in no way authorizes, condones or promotes such unlawful discrimination. In fact, the QAP, as a part of its mandate of ongoing monitoring of project compliance, requires the owners of tax-credit projects to certify to the absence of any violations of Title VIII, N.J.A.C. 5:80-33.34(f)2. With respect to the funding of projects in distressed urban areas that may have high concentrations of racial minorities, it is important to recognize that Federal law requires that the QAP give a priority to projects in "qualified census tracts," 26 U.S.C. §42(m)(1)(B)(ii)(III). The QAP, in fact, achieves an appropriate funding balance between urban and suburban-rural projects.

COMMENT: The QAP disproportionately allocates credits to urban areas at the expense of suburban areas.

RESPONSE: The Community Renewal Act of 2000 ("Community Renewal Act") generated a 40 percent increase in per capita low income tax credits. Since passage of the Community Renewal Act, the Suburban Rural Cycle tax credit authority has been increased by 55 percent. In calendar year 2001, the Agency responded to this same comment and increased its Suburban Rural Cycle tax credit authority. Last year, there was little demand for credits from suburban projects, thereby leaving excess credits. Nevertheless, credit authority for 2002 has again been increased. The QAP has increased its dedication toward HOPE VI projects, which are urban by definition. This dedication is based on preservation of a valuable Federal resource.

In addition, the commenter does not consider the issuance determinations of volume cap tax credits made under the QAP. Since 1996, the Agency has issued or made determinations with regard to \$6,998,988 in volume cap tax credits. Of this amount, \$4,504,332, or 64 percent of these credits, went to suburban projects. To make this commitment, the Agency has had to additionally allocate scarce volume cap bonding resources to these suburban areas.

COMMENT: The Mixed Income Cycle should be reinstated.

RESPONSE: The QAP was amended in calendar year 2001 to include a mixed income set-aside within the Suburban Rural Cycle. Only one mixed income project competed in 2001 and it was funded. Despite excessive demand and limited supply, the tax credit authority for the Suburban Rural Cycle has been increased by 55 percent since calendar year 2000 in part to achieve this goal.

COMMENT: The "affordability set-asides" at N.J.A.C. 5:80-33.4 and 33.5 need to reach lower income levels. In addition, the feasibility standards operate to make infeasible any project going below 50 percent of area median income. As required by 26 U.S.C. §42(m)(1)(B)(ii)(D), the QAP should give the following points to projects reaching the lowest income tenants: one point for reaching 40 percent of area median income; one point for reaching 30 percent of area median income; one point for reaching 20 percent of area median income; and one point for reaching 10 percent of area median income.

RESPONSE: The Agency addresses the requirements of 26 U.S.C. §42(m)(1)(B)(ii)(I) through a number of preferences provided for in the current QAP. The "affordability set-asides" in the Urban and Suburban Rural Cycles prioritize projects that house tenants with incomes of 50 percent or less of area median income. As opposed to prior allocation plans, which merely awarded points for such an election, the creation of a set-aside guarantees the funding of these types of projects (provided the eligibility criteria at N.J.A.C. 5:80-33.13(c) are met). The targeting at 50 percent of area median income is a maximum income level—there are no penalties for projects that implement deeper affordability controls.

As recommended by the commenter, the Agency has, in years past, provided points to projects that reach lower income tenants. In calendar years 2000 and 2001, applicants were awarded points for targeting a percentage of their units at 40 percent, 50 percent and 60 percent of area median income (the "three-tier set-aside"). Of the 61 projects that applied during calendar years 2000 and 2001, only three projects elected the three-tier set-aside. This extreme underutilization of this point category led to its proposed elimination in the 2002 QAP.

The Agency believes that the election to target incomes at levels below 50 percent of area median income is a decision that should be based on the economic factors of a particular project, rather than an absolute mandate on the part of the Agency. For example, the limited availability of additional soft funding sources, as well as a market analysis of the appropriate rent levels for a locale, are relevant factors to be considered in making such a determination. Furthermore, such an evaluation satisfies the Agency's obligation under 26 U.S.C. §42(m)(2)(A) to insure the financial feasibility and viability of each tax credit project.

The mixed income set-aside within the Suburban Rural Cycle is another means by which the QAP satisfies the requirements of 26 U.S.C. §42(m)(1)(B)(ii)(I). This set-aside essentially acts as a "cycle within a cycle" and creates priority for projects that provide a combination of market and affordable units. Since the set-aside equals 15 percent of the total cycle authority, the significant increase in Suburban Rural Cycle credits (over 55 percent since the passage of the Community Renewal Act, which generated a 40 percent increase in per capita low income tax credits) ultimately means an increase in the amount of credits prioritized for mixed income properties.

Lastly, the Work First set-aside in the Special Needs Cycle prioritizes projects that set aside 10 percent of the units for Work First participants, with rents that are restricted to no more than 20 percent of area median income. While the Agency has maintained this set-aside in an effort to encourage the development of housing for Work First participants, the significant

underutilization of this set-aside (one project since the inception of the set-aside in 2000) affirms the Agency's position that a mandate of deep rent skewing is impractical for most tax credit properties.

COMMENT: The commenter recommends changes to the definitions of "inclusionary development" and "density bonus" and their application to both competitive and volume cap tax credits.

RESPONSE: Regulations and definitions concerning inclusionary developments and density bonuses are all made in concert with advice from the Attorney General's Office, the Council on Affordable Housing and the Department of Community Affairs. The QAP as currently written does not entirely exclude projects with a density bonus from receiving tax credits. While it is difficult to accurately calculate the economic benefits of a density bonus and its financial impact on an affordable housing development, the Agency recognizes that this subsidy is not always sufficient to assure the financial feasibility of a project. As such, these types of projects may apply for credits under N.J.A.C. 5:80-33.10.

COMMENT: The commenter states that current eligible basis limits are insufficient.

RESPONSE: The Agency does not limit total development cost because such limitations might compromise project quality. However, limits are placed on total tax credit funding given the excessive demand and limited supply. Calendar year 2002 eligible basis limits for suburban non-elevator projects currently stand at 210 percent over the 24 C.F.R. §221(d)3 guidelines, 23 percent higher than limits imposed in calendar year 2000. Since 1997, only two projects out of 18 funded suburban projects have exceeded these limits. Even an historic rehabilitation development, the most expensive type of project, did not violate the eligible basis limits in calendar year 2001.

COMMENT: Points for community policing should be eliminated because such policing is not needed in suburban areas.

RESPONSE: The Agency continues to encourage the use of public safety enhancements in all tax credit projects, regardless of location in an urban or suburban locale. While some options under the point category at N.J.A.C. 5:80-33.16(a)11 may not be appropriate in all types of tax credit properties, there are several alternative means by which this point category may be satisfied. In addition, the list of options provided is not an all-inclusive list; substitutions will be considered by the Agency as long as the applicant demonstrates that the proposed substitution provides a comparable benefit to the project.

COMMENT: The commenter states that the QAP violates Federal enabling legislation in not providing points for nonprofit organizations pursuant to 26 U.S.C. §42(m)(1)(C)(v).

RESPONSE: The Community Renewal Act repealed 26 U.S.C. §42(m)(1)(C)(v). Currently, the QAP advances nonprofit participation under N.J.A.C. 5:80-33.4(a)4 and 33.5(a)2. Under these provisions, the rate of nonprofit participation in calendar year 2001 was nearly five times that required under 26 U.S.C. §42(m)(5)(A).

COMMENT: The commenter suggests that the QAP does not conform to the State Plan.

RESPONSE: The QAP extensively incorporates aspects of smart growth with its locational targeting based on recommendations from the Smart Growth Policy Council. The QAP further assists distressed areas with greater levels of poverty in accordance with 26 U.S.C. §42(m)(1)(B)(ii)(III).

COMMENT: The commenter requests that the QAP include adequate funding in the mixed-income cycle to provide credits for two specific projects and for other mixed-income affordable projects.

RESPONSE: Low-income housing tax credits are a finite resource for which the demand greatly exceeds the supply. Despite this excessive demand and limited supply, the mixed-income set-aside in the Suburban Cycle was sufficient in amount in 2001 to fund all of the mixed income projects that applied. It is also noted that the tax credit authority for the Suburban Rural Cycle has been increased by 55 percent since calendar year 2000 in part to achieve this goal.

The Agency is also proposing to make the following technical changes to the proposal published at 34 N.J.R. 47(a):

1. At N.J.A.C. 5:80-33.2, the word "the" is being inserted between the words "at" and "time" in the second sentence of the second paragraph of the definition of "developer fee" or "development fee" for grammatical purposes and to be consistent with the same phrase in the previous sentence.

2. At N.J.A.C. 5:80-33.4(a)1, the initial capitalization is being removed and a hyphen is being inserted in the phrase "set-aside" to be consistent with other references to set-asides in the rules:

3. At N.J.A.C. 5:80-33.9(a)1, the reference in the third sentence to the Suburban Cycle is being changed to "Suburban Rural" Cycle to attain consistency with other references in the rules to that Cycle.

4. The comma in the fourth sentence of N.J.A.C. 5:80-33.13(c)1ii is being removed for grammatical correctness; and

5. The reference to "(c)1iii(3) above" in the first sentence of N.J.A.C. 5:80-33.13(c)1ii(4) is being corrected to "(c)1ii(3) above."

In addition to the foregoing, the Agency is proposing the following additional amendments (not part of or modifying the original 2002 amendments) to the current QAP:

1. For purposes of clarification, a definition of "community service facility" is proposed to be added at N.J.A.C. 5:80-33.2.

2. The Agency proposes to delete all references to "SNAP Neighborhoods," including the definition thereof at N.J.A.C. 5:80-33.2, from the QAP since there are currently no neighborhoods in New Jersey with SNAP designations.

3. To further encourage the rehabilitation and preservation of existing affordable housing projects, it is proposed to amend the definitions of "developer fee" or "development fee" and "minimum rehab project" at N.J.A.C. 5:80-33.2 to provide that the cost of acquiring a building should be allowed in the calculation of the developer fee for all minimum rehab projects. It is also proposed to amend the definition of "minimum rehab project" to provide that the Agency utilize an amount not less than 33.33 percent of the developer fee based on building acquisition costs as a funding source in its evaluation required pursuant to 26 U.S.C. §42(m)(2).

4. The Agency proposes to amend N.J.A.C. 5:80-33.4(a)3 to provide that the senior set-aside be expanded to insure the funding of at least two senior projects.

5. In an effort to insure equitable distribution of the tax credits within prioritized set-asides or the HOPE VI Cycle, the Agency proposes to amend N.J.A.C. 5:80-33.4(b), 33.5(b), 33.6, 33.7(b) and 33.8(b) to state that if there is excess demand in any prioritized set-aside, the ranking shall be adjusted so that multiple reservations allocations do not go to any one city.

6. At N.J.A.C. 5:80-33.7(a), the Agency proposes an amendment to codify the limitation of \$1,000,000 of credits that projects competing in the Special Needs Cycle can receive in a calendar year.

7. At N.J.A.C. 5:80-33.13(c)1ii(9), the Agency proposes an amendment to reference the most recent edition of the Uniform Standards of Professional Appraisal Practice ("USPAP"), as well as future amendments and supplements.

8. At N.J.A.C. 5:80-33.13(c)9, the Agency proposes an amendment to require an attorney's opinion as to each building's eligibility for acquisition credits, deleting the exemption for buildings as to which the deed into the previous owner showed not to have changed ownership within the past 10 years.

9. As a result of the proposed insertion of new N.J.A.C. 5:80-33.16(a)1ii, the Agency proposes to amend N.J.A.C. 5:80-33.16(a)1 to clarify that applicants may select one of the three options which follow and to recodify current N.J.A.C. 5:80-33.16(a)1ii as 33.16(a)1iii.

10. At N.J.A.C. 5:80-33.16(a)13iii(6), the Agency proposes to add proximity to a park to the list of positive proximate land uses eligible for the point provided for such uses.

11. At N.J.A.C. 5:80-33.16(a)17, the Agency proposes an amendment to the last sentence (which was proposed as part of the original 2002 amendments) to accurately reflect the current administrator of the State brownfield redevelopment program.

12. At N.J.A.C. 5:80-33.20(a)1, the Agency proposes an amendment to provide eight points to projects which would qualify under N.J.A.C. 5:80-33.4 or 33.6 and an additional two points to such projects which are located in qualified census tracts.

13. The Community Renewal Act provides for a six-month extension to the 10 percent carryover requirement under 26 U.S.C. §42(h)(1)(E). Consequently, the Agency proposes to delete the point categories at N.J.A.C. 5:80-33.20(a)2 and 3.

14. In order to allow greater flexibility to the Tax Credit Committee in issuing reservations and to developers in achieving the allocation test specified under 26 U.S.C. §42(h)(1)(E), the Agency proposes to amend N.J.A.C. 5:80-33.26(a) to replace the specific date deadlines with three-month-period deadlines.

15. At N.J.A.C. 5:80-33.28, the Agency proposes to add subsection (b) to require submission of the IRS Form 8609 documentation at the later of six months following the issuance of the final certificate of occupancy for the project or two months after the first year of the credit period.

16. At proposed N.J.A.C. 5:80-33.35, the Agency proposes amendments to identify the deadline for extension requests for the submission of the Owner's Certificate of Continuing Program Compliance and the Building Status Report.

This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)1. The Agency is authorized to allocate low income housing tax credits under section 42 of the Code. Pursuant to 26 U.S.C. §42(n)(1)(A)(i), the Agency allocates those credits in accordance with the QAP. The Agency published the original 2002 amendments on January 7, 2002 at 34 N.J.R. 47(a); based on significant additional amendments proposed to the rules both as a result of comments received during the comment period and proposed by the Agency on its own initiative, the Agency is repropounding amendments. Failure to adopt the repropounded amendments in a timely manner will severely prejudice the State. The time factor involved in amending the rulemaking calendar to provide for the additional amendments would make it extremely difficult, if not impossible, for the Agency to allocate tax credits by the end of the calendar year; failure to do so would result in the potential loss of over \$14,000,000 in Federal tax credits, which could provide over \$105,000,000 in investment proceeds for housing rehabilitation and construction in the State.

Social Impact

It is expected that the amended definition of "minimum rehab project" at N.J.A.C. 5:80-33.2 will encourage the rehabilitation and preservation of existing affordable housing projects. The definition of minimum rehab project has been amended to provide that minimum rehab projects participating in the NJHMFA moderate rehabilitation financing program may earn up to a 15 percent developer fee for building acquisition costs.

It is expected that the proposed expansion of the neighborhood set-aside at N.J.A.C. 5:80-33.4(a)1 to insure funding of the highest ranking eligible project located in a targeted neighborhood in a city which has not received a tax credit allocation in the past 10 years and the proposed authorization at N.J.A.C. 5:80-33.26(b)1 to the Tax Credit Committee to provide binding commitments to targeted neighborhood projects will provide more housing in these targeted areas of the State.

It is expected that the proposed affordability set-aside at proposed N.J.A.C. 5:80-33.4(a)2 and 33.5(a) will allow projects to effectively compete for tax credits while allowing the rents to be raised to up to 60 percent of area median income. This increase from 50 percent to 60 percent broadens the band of potential tenants eligible to live in tax credit properties.

It is expected that the amendment proposed at proposed N.J.A.C. 5:80-33.4(a)3 (currently N.J.A.C. 5:80-33.4(a)2) to expand the senior set-aside to insure the funding of at least two eligible senior projects will provide additional affordable senior housing units in the State.

It is expected that the new point categories proposed at N.J.A.C. 5:80-33.16(a)1ii and 33.20(a)1 for projects located in qualified census tracts will encourage the provision of additional affordable housing in those areas and thereby satisfy the Federal preference set forth at 26 U.S.C. §42(m)(1)(B)(ii)(III) for projects located in qualified census tracts and the development of which contributes to concerted community revitalization plan.

It is expected that the proposed award of points at N.J.A.C. 5:80-33.16(a)3ii for incorporating a commercial component will encourage community revitalization in targeted areas of the State.

It is expected that the combination of the tax abatement and municipal support point categories at N.J.A.C. 5:80-33.16(a)4, as well as the overall reduction in points for these types of support, will allow projects which lack municipal support and would otherwise not be funded due to a lower point score to effectively compete in the application process.

It is expected that the proposed increase in points for participation in the ENERGY STAR Homes Program at N.J.A.C. 5:80-33.16(a)12 will further encourage energy conservation. Participation is also now a requirement for new construction volume cap projects.

By expanding the number of places that qualify for the point category at N.J.A.C. 5:80-33.16(a)9, which is proposed to be recodified as N.J.A.C. 5:80-33.16(a)7, it is anticipated that more developments will be built in conformance with the State Development and Redevelopment Plan and/or the Pinelands Comprehensive Management Plan.

Economic Impact

The proposed amendment to the definition of "minimum rehab project" at N.J.A.C. 5:80-33.2 is expected to improve the financial feasibility of minimum rehab projects because developer fees on the acquisition costs of such projects will generate tax credits and developers will be able to defer a portion of the developer fee until it can be paid from the project's cash flow.

The proposed increases at N.J.A.C. 5:80-33.4(a), 5(a), 6(a) and 8(a) in the maximum tax credit awards for Urban, Suburban Rural, HOPE VI and some Final Cycle projects are expected to alleviate the additional financial burden faced by developers of those projects who have been forced to construct their projects in multiple phases, thus requiring the submission of multiple tax credit applications. The proposed decrease in the maximum tax credit award for Special Needs Cycle projects is expected to have minimal or no impact since those projects tend to be smaller in scope and therefore require fewer tax credits than other projects.

NJHMFA satisfies the requirement of Section 42(m)(1)(B)(ii)(I) of the Code to serve the lowest income tenants by its proposed creation of the affordability set-aside at proposed N.J.A.C. 5:80-33.4(a)2 and 5(a)1. At the same time, it allows projects that do not choose the affordability set-aside to benefit from the larger stream of income generated by higher rents.

The rules regarding pledges of developer fee at N.J.A.C. 5:80-33.13(c)6vii, while possibly requiring the commitment of additional funding sources at application, will benefit developers overall because it limits the amount of fee that can be pledged, which conversely increases the amount of fee that can be paid to the developer up front.

The Agency's proposal at N.J.A.C. 5:80-33.13(c)7i to increase underwriting up to area median income is expected to provide a financial benefit to projects by providing a cushion for projects that cannot adjust rents to account for inflation between the date of application and the date the project places in service because they are bound by the rents indicated in their application.

By the proposed lowering of the recommended per unit operating expense range at N.J.A.C. 5:80-33.13(c)7ii(4), projects will potentially have more income to support a higher mortgage.

Although the proposed amendment at N.J.A.C. 5:80-33.13(c)9 will, by deleting the exception for buildings the deeds to which clearly show have not changed ownership in the past 10 years, require that all applicants obtain an attorney's opinion regarding each building's eligibility for acquisition credits, the cost of obtaining such an opinion is minimal in comparison with the amount of equity expected to be generated from the additional credits.

It is hoped that the proposed addition at N.J.A.C. 5:80-33.16(c)3ii of a commercial component into targeted areas within the State will foster economic stability by providing an added source of revenue as well as a source of employment for the surrounding area.

The proposed elimination of the Final Cycle point categories at N.J.A.C. 5:80-33.20(a)2 and (a)3 regarding title to land and completion of the 10 percent carryover test by the time of application is expected to reduce the financial expense incurred by developers in completing tax credit applications.

The proposed new fee schedule at N.J.A.C. 5:80-33.27 for non-NJHMFA financed projects is a reflection of the added underwriting and processing involved in these types of projects. While it is an increase in the overall fee paid by these types of projects, it should be noted that this fee is still substantially less than the fee paid by applicants to a competitive cycle (three percent of a "four percent" tax credit amount versus two percent of a "nine percent" tax credit amount).

The proposed extension fees at N.J.A.C. 5:80-33.28(b) are a reflection of the regulatory burden placed on NJHMFA staff in processing IRS Form 8609 requests that are received after the submission deadline. As such, it should be noted that this fee has no economic impact on projects which submit paperwork on time.

Federal Standards Statement

The proposed amendments are either the same as those imposed by Federal law (26 U.S.C. §42 and the regulations promulgated thereunder at 26 C.F.R. §§1.42 et seq.) or not subject to any standards or requirements imposed by any known Federal laws. Therefore, a Federal standards analysis is not required.

Jobs Impact

The LTC program created under this subchapter has resulted in the creation of jobs for persons and entities receiving allocations of tax credits. The proposed amendments are not expected to eliminate any jobs. If a project incorporates a commercial development, it is anticipated that new jobs will be created to work in the new commercial establishments. The number of jobs created will depend upon the number and size of commercial developments.

Agriculture Industry Impact

The proposed amendments are not expected to have any impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendments affect primarily housing sponsors, most of which are "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is anticipated that the proposed amendments will not necessitate any new reporting or recordkeeping requirements or require any initial capital costs or annual costs of compliance. The existing compliance, reporting and recordkeeping requirements of the rules have been mandated by the tax credit regulations promulgated under the Code. As the requirements are imposed by Federal regulations, no differentiation in the compliance, reporting or recordkeeping requirements based on business size has been proposed.

Smart Growth Impact

As expressed by the Legislature in the Agency's enabling legislation, a primary reason for the Agency's being is to increase the supply of affordable housing available for residents of the State, N.J.S.A. 55:14K-2. Accordingly, the overall tenor of the QAP, including the proposed amendments thereto, is to promote that goal; based on recommendations from the Smart Growth Policy Council, it is focused on locational targeting.

Specifically, the proposed increase at N.J.A.C. 5:80-33.4(a) in the maximum tax credit award for Urban Cycle projects is expected to generate much-needed additional affordable housing in the State's older urban areas. Additionally, the proposed amendments at N.J.A.C. 5:80-33.4(a)1 and 33.26(b)1 providing increased funding to projects located in targeted neighborhoods in cities which have not received a tax credit allocation in the past 10 years are expected to spur housing development in those targeted areas; the proposed new point categories at N.J.A.C. 5:80-33.16(a)1ii and 33.20(a)15 for projects located in qualified census tracts are expected to have a similar salutary effect in those areas.

Also, the proposed amendment at N.J.A.C. 5:80-33.4(a)3 to insure the funding of at least two eligible senior projects is expected to increase the supply of affordable housing for the State's senior citizens.

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

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.1 Introduction

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

(g) These rules have been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4(2002).

5:80-33.2 Definitions

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

"Community service facility" means a community room, club house or recreation center. Lobbies and laundry facilities are not within the scope of this definition.

"Core" means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality or a designated center, generally including housing and access to public transportation, which is delineated by the Smart Growth Policy Council. For scattered site projects where not all the sites are in a delineated core, a majority of the units must be located in the delineated core to qualify for the delineated core points. In order to qualify for points, cores shall be delineated by the application deadline.

"Designated center" means a center designated by the New Jersey [State Planning Commission] Smart Growth Policy Council. These consist of urban centers, regional centers, towns, villages and hamlets. For scattered site projects where not all the sites are in a designated center, a majority of the units must be located in the designated center to qualify for the designated center points. In order to qualify for points, centers shall be designated by the application deadline.

"Developer fee" or "development fee" means the fee that covers the overhead and profit of the developer. Certain fees are subsumed within the developer fee—such as acquisition fees, compensation to the general partner, financial consultants, employees of the developer, construction

EXAMPLE K

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Pai Gow Poker

Rotational Start of the Deal; Button

Adopted Amendments: N.J.A.C. 19:47-11.4 and 11.8C

Proposed: March 4, 2002 at 34 N.J.R. 982(a).

Temporarily Adopted: February 19, 2002 at 34 N.J.R. 936(b).

Adopted: June 19, 2002 by the Casino Control Commission, James R. Hurley, Chairman.

Filed: June 21, 2002 as R.2002 d.232, **without change**.

Authority: N.J.S.A. 5:12-5, 69a, 70f, 99a and 100.

Effective Date: July 15, 2002.

Expiration Date: March 9, 2006.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement does not object to the adoption of the proposed amendments.

RESPONSE: Accepted.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:47-11.4 Pai gow poker shaker and dice: computerized random number generator; button

(a) (No change.)

(b) As an alternative to the pai gow poker shaker and dice described in (a) above, a casino licensee may, pursuant to N.J.A.C. 19:46-1.13B and 19:47-11.8C, play the game of pai gow poker with:

1. A computerized random number generator that automatically selects and displays the number from 1 through 7 inclusive; or
2. If an automated card shuffling device and dealing shoe is used pursuant to N.J.A.C. 19:47-11.8B, a button.

19:47-11.8C Procedure for determining the starting position for dealing cards or delivering stacks of cards

(a) In order to determine the starting position for the dealing of cards or the delivery of stacks of cards for the game of pai gow poker, a casino licensee may, in its discretion, use the procedure authorized in (b), (c) or (d) below.

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

(d) If an automated card shuffling device and dealing shoe is used pursuant to N.J.A.C. 19:47-11.8B, the dealer may use a flat disk button approved by the Commission to indicate the starting position. At the commencement of play, the button shall be placed in front of the dealer. Thereafter, the button shall rotate around the table in a clockwise manner after each round of play.

(e) (No change in text.)

EXAMPLE L

RESPONSE: Accepted. Presently, Master Slot Machine Lists are invariably submitted to Commission principal inspectors and the Division in hardcopy form generated from a database. Although the amendments do not specify any mode for required submissions, the Commission does not discern any reason to prohibit electronic filing.

Summary of Agency-Initiated Change:

To clarify that the Commission's interest in slot machine inventories is limited to slot machines located within the State, "in New Jersey" is added to N.J.A.C. 19:43-7.4(a) in reference to those slot machines possessed by casino licensees off the premises of its casino hotel facility.

Federal Standards Statement

A Federal standards analysis is not required because the amendments contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*):

19:43-7.4 Operation certificate: master lists of approved slot machines and table games; movement of gaming equipment; amendments of operation certificates upon filing of updated master lists

(a) Prior to the issuance of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall file with the Commission, at the office of the Commission's principal inspector in the establishment, and serve on the Division, at a location it has designated for that purpose, comprehensive lists of:

1. (No change.)
2. The slot machines and bill changers on its casino floor (the Slot Machine Master List);
3. The slot machines possessed by the casino licensee in restricted casino areas off the casino floor but on the premises of its casino hotel facility; and
4. The slot machines possessed by the casino licensee at locations *in New Jersey* off the premises of its casino hotel facility.

(b) At a minimum, each list of slot machines required by (a)2 through 4 above shall contain the following information, as applicable, which information shall be presented, for each slot machine and any accompanying bill changer on the Slot Machine Master List, in consecutive order by location number:

- 1.-3. (No change.)
 4. A cross reference for each slot machine by zone and serial number;
 5. The restricted casino area within the casino hotel facility where the slot machine is located for each slot machine included on the list required by (a)3 above;
 6. The address of the slot machine storage facility where the slot machine is located for each slot machine included on the list required by (a)4 above; and
 7. (No change in text.)
- (c)-(d) (No change.)
- (e) Immediately after each gaming table, slot machine and bill changer is brought into, removed from or moved within a casino or casino simulcasting facility, as applicable, the casino licensee completing the move shall file and serve, in accordance with (a) above, updated master lists of its table games and slot machines to the extent that the move causes a change in the information contained on the most recent version of the applicable list on file with the Commission. In addition, each casino licensee shall, on a monthly basis, file updated lists of slot machines required pursuant to (a)2 through 4 above with the Division.
- (f) (No change.)

19:46-1.22 Possession of slot machines

- (a)-(b) (No change.)
- (c) Each applicant for or holder of a gaming related casino service industry license that possesses slot machines in New Jersey shall maintain and file with the Division and the Commission on a monthly basis a comprehensive list of slot machines in its possession in this State. Such list shall contain all information, as applicable, required pursuant to N.J.A.C. 19:43-7.4(b).

(b)

CASINO CONTROL COMMISSION

Casino Licensees Gaming Equipment Slot Machine Inventories Casino Licensees and Vendors

Adopted Amendments: N.J.A.C. 19:43-7.4 and 19:46-1.22

Proposed: November 5, 2001 at 33 N.J.R. 3722(a).

Adopted: March 27, 2002 by the Casino Control Commission, James R. Hurley, Chairman.

Filed: April 8, 2002 as R.2002 d.130, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 5:12-5, 69a, 70i and 99a.

Effective Date: May 6, 2002.

Expiration Dates: April 15, 2007, N.J.A.C. 19:43;
April 15, 2003, N.J.A.C. 19:46.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement (Division) supports the adoption of the proposed amendments.

RESPONSE: Accepted.

COMMENT: Adamar of New Jersey, Inc. d/b/a Tropicana Casino and Resort (Tropicana) requests that, due to the volume of its current Master Slot Machine List, it be required to file with the Division and Commission only changes instead of complete lists of its inventory of slot machines in its possession.

RESPONSE: Rejected. The intent of the regulatory amendments is to conform the requirements and procedure already in place for all slot machines within the State of New Jersey not accounted for by the Master Slot Machine List, a list limited to those machines operational on a casino floor. In order to effectively track the thousands of slot machines within the State, the Division believes, and the Commission concurs, that it is imperative for casino licensees and vendors of slot machines to affirmatively account entire inventories in a self-contained filing on a monthly basis.

COMMENT: Tropicana further requests to submit the inventories electronically rather than in hardcopy form.

EXAMPLE M

(a)

**DIVISION OF HEALTH CARE SYSTEMS ANALYSIS
Hospital Licensing Standards
Lithotripsy Services**

Adopted New Rule: N.J.A.C. 8:43G-37

Proposed: August 6, 2001 at 33 N.J.R. 2624(a).

Adopted: April 17, 2002 by Clifton R. Lacy, M.D., Commissioner,
Department of Health and Senior Services (with approval of the
Health Care Administration Board).

Filed: April 18, 2002 as R.2002 d.143, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-8.

Effective Date: May 20, 2002.

Expiration Date: January 27, 2005.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

There is no Federal regulation of lithotripsy services. Therefore the adopted new rule does not impose standards on those facilities which exceed Federal law or regulation.

Full text of the adoption follows:

**SUBCHAPTER 37. EXTRACORPOREAL SHOCK WAVE
LITHOTRIPSY SERVICES**

8:43G-37.1 Extracorporeal shock wave lithotripsy services

All general hospitals providing extracorporeal shock wave lithotripsy services shall conform to the applicable criteria set forth in this chapter as well as the provisions set forth in N.J.A.C. 8:43A-29.

EXAMPLE N

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Premium Support Program

Adopted New Rules: N.J.A.C. 10:78-9

Proposed: August 20, 2001 at 33 N.J.R. 2913(a).

Adopted: May 31, 2002 by Gwendolyn L. Harris, Commissioner, Department of Human Services.

Filed: June 3, 2002 as R.2002 d.199, with substantive changes not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:4D-1 et seq., as amended by P.L. 2000, c.71, specifically N.J.S.A. 30:4J-4.

Agency Control Number: 01-A-02.

Effective Date: July 1, 2002.

Expiration Date: March 5, 2006.

Summary of Public Comments and Agency Responses:

There were several comments submitted, from Melville D. Miller, President and General Counsel, and Linda Garibaldi, Supervising Attorney, Legal Services of New Jersey, Inc., Edison, New Jersey.

1. COMMENT: N.J.A.C. 10:78-9.2. Legal Services of New Jersey suggests that the separate term "wraparound" services should be included in this provision, following the definition for "small employer." The term should be defined as described in N.J.A.C. 10:78-9.16(b). Its inclusion in this provision will decrease confusion as to the intent of the program concerning the comparability of health care services to be covered by employer-sponsored insurance and the NJ FamilyCare program.

RESPONSE: The Division agrees that adding the definition of "wraparound" at N.J.A.C. 10:78-9.2 will make it less confusing as to the intent of the program concerning the comparability of health care services. This change can be made upon adoption because it is not substantive since it is already defined as described in N.J.A.C. 19:78-9.16(b).

2. COMMENT: N.J.A.C. 10:78-9.3(d). Legal Services of New Jersey recognizes that the specific health care services that are required under a small employer health benefit plan (for employers of two to 50 employees) are deliberately less than what is required of a large employer health plan. Legal Services of New Jersey agrees that services offered to a PSP applicant by his employer must be at least equal to those services in the NJ FamilyCare Plan D (if the employer is a large employer). However, the extent of coverage for services provided by a small employer plan should also be identical to that of NJ FamilyCare Plan D.

The Division has consistently publicized that its NJ FamilyCare Plan D package provides a quality health care package because it is identical to the most popular commercial health insurance package on the market. Therefore, those NJ FamilyCare enrollees who receive premium assistance should be receiving the same benefits, which means the same extent of benefits (that is, the same amount of coverage for the same services), as those NJ FamilyCare enrollees who do not receive premium assistance.

RESPONSE: As pointed out by the commenter, the extent of covered services is limited by the small employer plan coverage as compared to the NJ FamilyCare Plan D package of services. To that end, the NJ FamilyCare Premium Support Program provides services not covered by the small

employer plan as "wraparound" services to the beneficiary (see N.J.A.C. 10:78-9.2 for definition of wraparound services). "Wraparound services" are paid on a fee-for-service basis and the provider must be a New Jersey Medicaid/FamilyCare participating provider. The NJ FamilyCare enrollees who receive premium assistance are receiving the same benefits as those NJ FamilyCare enrollees who do not receive premium assistance.

3. COMMENT: N.J.A.C. 10:78-9.4(a). Legal Services of New Jersey believes there should be clarification concerning current NJ FamilyCare enrollees' obligation to apply for PSP. This appears to be the appropriate provision to include such information, including any time limits for submission of applications.

RESPONSE: Once a determination is made and a person becomes eligible for NJ FamilyCare, it is required that the person apply for the Premium Support Program. In fact, if the person does not cooperate with the application for the premium support program, that person will be disenrolled from NJ FamilyCare. The Division is presently pursuing various outreach methods, such as direct mailing to potential PSP enrollees, and to identify current NJ FamilyCare enrollees who are employed and who have employer-sponsored insurance available to them. Through these various outreach methods, the Division will be able to identify potential PSP participants from the NJ FamilyCare eligibility files. Prospectively, the NJ FamilyCare enrollment application has been modified and the required data is being collected. The data will be used to identify and outreach new NJ FamilyCare enrollees to participate in the PSP.

The Division does not feel that N.J.A.C. 10:78-9.4 requires revision or clarification, since it addresses the requirement to participate in general terms.

4. COMMENT: N.J.A.C. 10:78-9.6(c)2. Legal Services of New Jersey has two comments relevant to this provision:

1. The term "multiple" in the first sentence should be more specifically defined so that there are sufficient attempts made by the PSP to contact the applicants, many of whom do not have telephones; and

2. There should be a provision in paragraph (c)2 which defines appeal rights for the adult applicant who is terminated from NJ FamilyCare based on alleged non-cooperation with PSP, as well as termination for children at their next annual redetermination, based on allegations of non-cooperation. This low-income population often changes addresses because of problems with affordable housing. This, and their lack of telephone service, has produced problems in the past in regard to notifications from NJ FamilyCare. The commenters believe that there should be appropriate appeal rights for terminations from NJ FamilyCare based on allegations of PSP non-cooperation.

Legal Services of New Jersey suggests that the PSP eligibility unit notify the applicant within 30 days of termination of FamilyCare coverage based on alleged non-cooperation with PSP. The applicant should have 20 days from the date of the adverse action to request a grievance review and the right to have continued benefits until the grievance has been finally decided, if requested within 10 days of the adverse notice. The PSP applicant has already been determined eligible for FamilyCare and it is contrary to the intent of the program to terminate the benefits "immediately" on an allegation of non-cooperation. This amount of time will allow the applicant to correct errors in the PSP application, supply missing information to PSP and/or prepare to present evidence of cooperation for a grievance review. The appeal rights for PSP should basically mirror those of the grievance provisions in N.J.A.C. 10:78-8.1(c) and (d) for FamilyCare beneficiaries' opportunities for a grievance review for adverse actions.

RESPONSE: The commenters' concerns will be addressed in order.

1. The Division agrees with the commenters and will propose an amendment in the near future which will address specificity of the number of contacts and define more precisely the time frames which will be employed.

2. Beneficiaries who have been terminated from the NJ FamilyCare program due to lack of cooperation with the Premium Support Program are not entitled to a hearing. Instead, they are entitled to use the grievance process as defined in N.J.A.C. 10:78-8.1 through 8.3. Children are not terminated from the NJ FamilyCare program immediately, even though their parent(s) may be terminated from the program due to lack of cooperation. If the parents continue to refrain from cooperating, at the time of the next determination, the children will be terminated from the NJ FamilyCare program.

5. COMMENT: N.J.A.C. 10:78-9.7(a)1. Legal Services of New Jersey commends the Division for its commitment to provide notification to applicants that their completed applications for PSP have been received and are being processed. However, Legal Services of New Jersey has two suggestions:

1. That the applicants also be promptly notified if they have omitted any necessary information from their application; and

2. While this provision includes a specific time limit for PSP to make the determination of the applicant's eligibility for PSP, PSP should also be required to notify the applicant of PSP eligibility within 60 days.

RESPONSE: 1. The PSP appreciates the favorable comment concerning this rule and will continue to attempt to keep beneficiaries informed of all action or changes that may affect their continued participation in the NJ FamilyCare Program. The applicants will be advised of any omission. The notification letter cited in N.J.A.C. 10:78-9.7 is an initial outreach letter that will be followed up with at least two additional letters and telephone calls, if possible, and as necessary, within, at a minimum, a 40-day period.

2. The request to include a specific time frame to notify a beneficiary of PSP eligibility is further conditioned on the cooperation and timely responsiveness of the beneficiary's employer. Since there is no regulatory or statutory requirement for participation or cooperation by the employer, it is impractical, if not impossible, to establish a parameter for timely notification to the beneficiary. The beneficiary is neither penalized nor disadvantaged by the lack of cooperation by the employer. Continued eligibility and participation in NJ FamilyCare remains uninterrupted.

6. COMMENT: N.J.A.C. 10:78-9.7(a)2. Legal Services of New Jersey suggests that there be a time limit required of the employer to submit information to PSP to reduce delay and any resulting financial burden on the low-income NJ FamilyCare participant. The time limit for an employer to comply with the PSP's request for information should be no more than 30 days from the receipt of the PSP request to the employer.

RESPONSE: As indicated in the Response to Comment 5, item 2, the NJ FamilyCare Premium Support Program has no regulatory or statutory authority to compel an employer to cooperate or participate in the PSP process or program. While such a requirement would be helpful in the administration of the PSP, it is outside the authority of the Division to impose that requirement.

7. COMMENT: N.J.A.C. 10:78-9.8(b). Legal Services of New Jersey commends the Division on its commitment to provide NJ FamilyCare coverage to any participant who would otherwise have to bear the burden of paying greater than 50 percent of his or her available employer-sponsored health insurance premium.

RESPONSE: The PSP appreciates the favorable comment to the proposed rule at N.J.A.C. 10:78-9.8(b). It is neither the Department's intent nor its wish to disadvantage the beneficiary in any way from participating in the NJ FamilyCare Premium Support Program.

8. COMMENT: N.J.A.C. 10:78-9.9(a)ii. As in N.J.A.C. 10:78-9.3(d), those employees of a small employer should have at least the same extent of coverage as would be available to them under NJ FamilyCare Plan D. If the provision of "wraparound" services is meant to include this extent of coverage, it should be mentioned here, as well as under a definition of "wraparound services" in N.J.A.C. 10:78-9.2 and in 9.16(b).

RESPONSE: Employees of a small employer, if they participate in the Premium Support Program, will receive the same extent of coverage as NJ FamilyCare Plan D enrollees. This will be assured through the use of "wraparound" services. See the Response to Comment 1.

This section of the rulemaking is intended to explain the NJ FamilyCare Premium Support Program policy in distinguishing between plan review of large employer versus small employer plans. In the evaluation of large employer plans, the rule requires that the large employer plan meet the NJFC plan "D" benchmark package of services, service-for-service. This is due to the variability of plans in the large employer market.

However, in the small employer plan review, the requirement for a service-for-service match is not required because the Division is aware that small employer plans do not match service-for-service with the NJFC Plan "D" benchmark package. In the small employer plan market, there are a limited number of service packages available in New Jersey. For those services not covered by the small employer plan, the Division has made these services available on a "wraparound" basis.

9. COMMENT: N.J.A.C. 10:78-9.10(e). Legal Services of New Jersey suggests that there be an additional provision following this subsection that explains what will happen if the Division determines that the employer-sponsored plan is not cost-effective. Legal Services of New Jersey is assuming that the applicant, whose employer is not paying at least 50 percent of the insurance premium, will be denied eligibility for PSP but will continue to participate in the NJ FamilyCare Program, but this needs to be included in the rules.

RESPONSE: The commenter is correct. The beneficiary would be able to continue to participate in the NJ FamilyCare Program. Consistent with the proposed text at N.J.A.C. 10:78-9.6(c)1, the Division will not terminate a beneficiary's participation in the NJ FamilyCare Program if the beneficiary is

prevented from participating in the Premium Support Program through no fault of his own, but because the employer-sponsored plan does not qualify. Subsection (e) has been amended to clarify this.

10. COMMENT: N.J.A.C. 10:78-9.11(c). Legal Services of New Jersey thinks this provision needs clarification. The employees' cost-share of their health insurance premium is deducted by their employers from their wages. Legal Services of New Jersey does not see why the PSP participants will be making payments to their employers.

RESPONSE: The PSP payment to the employer by the employee is in reference to the amount of money the employer is deducting from the beneficiary/employees payroll deduction for the health benefit premium. No further clarification is necessary.

11. COMMENT: N.J.A.C. 10:78-9.11(d). Legal Services of New Jersey suggests that there be more specific requirements in this subsection regarding the frequency of submissions to prove continued insurance coverage by the PSP participant. It seems impractical for the participant to have to submit bi-weekly or monthly pay stubs, and Legal Services of New Jersey suggests that a letter from the employer or semi-annual or annual submission of proof of coverage is sufficient.

RESPONSE: The intent of this rulemaking is to indicate that the beneficiary will receive the first PSP payment prior to the occurrence of the payroll deduction so as not to disadvantage the beneficiary. This first payment does not require documented proof of employer plan enrollment or coverage. Before the second and any subsequent PSP payments are made, the beneficiary must submit proof of employer plan enrollment, as indicated in the rule.

The beneficiary is not required to submit bi-weekly or a monthly pay stub. After the initial submission of documentation is received, and before release of the second and subsequent PSP payments, one form of documentation is required in the form of a pay stub, a copy of an insurance identification card or a letter from the employer or the insurance carrier.

Subsequently, verification of continued employer plan participation is evaluated once quarterly through the first year of PSP participation and then less frequently (semi-annually) thereafter.

12. COMMENT: N.J.A.C. 10:78-9.13(a). Legal Services of New Jersey believes that the phrase "whose gross income, as adjusted for the size of the family unit, does not exceed 150 percent of the Federal poverty level" should be added to the end of this provision for clarification.

RESPONSE: This is not needed, because subsection (b) provides it. "This section" means N.J.A.C. 10:78-9.13, including all parts of it, that is, subsections (a), (b), (c), (d) and (e).

13. COMMENT: N.J.A.C. 10:78-9.14(a). Legal Services of New Jersey commends the Division for its acknowledgement of these co-pay charges as actual costs and financial burdens to the low-income participants, and their inclusion for partial reimbursement by PSP.

RESPONSE: The Division appreciates the favorable comment concerning this provision of the rules. The Division included this provision based on recommendations by advocates and stakeholders.

14. COMMENT: N.J.A.C. 10:78-9.15(c). Legal Services of New Jersey suggests the term "allowable" be defined at the end of the first sentence. It is unclear what medical expenses are referred to and whether these are not "allowable" under the participant's employer-sponsored plan or normally covered under the participant's NJ FamilyCare plan. The term "allowable" should be defined as those services that are identical to the covered services in NJ FamilyCare Plan D, including the extent of the Plan D services.

This provision also infers that the participant would be liable for some medical expenses and would not have a possibility of reimbursement by the PSP until the end of each calendar year, which seems to be in contradiction to the next provision, N.J.A.C. 10:78-9.15(d). Please clarify.

RESPONSE: The Division agrees that "allowable" should be clarified. The Division will allow as deductible those expenses for services covered under the beneficiary's service package.

While it is true that the participant may be liable for some medical expenses, the two provisions are not in contradiction because N.J.A.C. 10:78-9.15(c) provides reimbursement for allowable expenses at the end of the plan year, while N.J.A.C. 10:78-9.15(d) provides that once the limit is reached, the participant is no longer required to incur these expenditures.

15. COMMENT: N.J.A.C. 10:78-9.16(b). Legal Services of New Jersey has two comments concerning this provision:

1. The word "eligible" should be omitted from the first sentence ("Any eligible services not covered . . ."). It is unnecessary and misleading.

2. May wraparound services be provided by a Medicaid provider on a fee-for-service basis? This would be easier for the participant who may be required to obtain his or her employer-sponsored services through a

commercial HMO. However, if the PSP participant is required to receive his or her wraparound services through an HMO contracted with the Division, this provision does not require this.

RESPONSE: 1. The Division agrees to delete the word "eligible," since the sentence is clear without it. This change can be made upon adoption because it clarifies the statement.

2. Wraparound services are provided only on a fee-for-service basis by a participating NJ Medicaid/FamilyCare provider. The PSP participant is not required to receive wraparound services through an HMO.

16. COMMENT: N.J.A.C. 10:78-9.16(c). Again, it should be stated here whether the PSP participant may access wraparound services through a Medicaid provider on a fee-for-service basis.

RESPONSE: The Division agrees to revise N.J.A.C. 10:78-9.16(c) with the addition of the following text: "**Any wraparound services shall be received from a NJ Medicaid/FamilyCare participating provider. Reimbursement will be made to the provider on a fee-for-service basis according to the Department rules for those services.**" This change can be made upon adoption because N.J.A.C. 10:78-9.16(b) provides that wraparound services are available to PSP participants and that any wraparound services provided shall be provided by a New Jersey Medicaid/NJ FamilyCare participating, approved provider.

Federal Standards Statement

The Division has reviewed the Federal statutory and regulatory requirements and has determined that the new rules do not exceed the applicable Federal standards, which are contained at 42 U.S.C. §1396. The rules which address WorkFirst New Jersey General Assistance beneficiaries' participation in the program conform to Federal standards at 42 C.F.R. 1396. There are no other Federal standards which apply, because the balance of the program rules are promulgated under N.J.S.A. 30:4-1 et seq., as amended by P.L. 2000, c.71.

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 9. PREMIUM SUPPORT PROGRAM (PSP)

10:78-9.1 Purpose and scope

(a) The purpose of the Premium Support Program (PSP) is to provide financial support to adults and children to help defray the cost of employer-sponsored health insurance.

(b) The Premium Support Program is designed to cover individuals eligible for NJ FamilyCare who have access to employer-sponsored health plans. Assistance will be provided in the form of a direct subsidy payment to the beneficiary for a portion of the payroll deduction required for participation in the employer-sponsored health plan. Beneficiaries will be reimbursed on a regular schedule, to coincide with their employer's payroll deduction, so as to minimize any adverse financial impact on the beneficiary.

10:78-9.2 Definitions

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

"Large employer" means any person, firm, corporation, partnership or political subdivision that is actively engaged in business that employed an average of more than 50 employees on business days during the preceding calendar year.

"Small employer" means any person, firm, corporation, partnership or political subdivision that is actively engaged in business that employed an average of at least two, but no more than 50, employees on business days during the preceding calendar year.

"*Wraparound service" means any service that is not covered by the enrollee's employer plan that is an eligible service covered by NJ FamilyCare for the enrollee's category of eligibility.*

10:78-9.3 Who is eligible to participate in NJ FamilyCare Premium Support Program

(a) Single individuals, childless couples and families, as defined in N.J.A.C. 10:69, who have been determined eligible for NJ FamilyCare in accordance with this chapter shall be eligible to apply for participation in the Premium Support Program (PSP).

(b) An applicant shall have access to an employer-sponsored health plan prior to applying to participate in the PSP.

(c) In order to participate in the PSP, a PSP applicant employed by a large employer shall first have access to an employer-sponsored plan which provides coverage at least equal to the services provided in the NJ FamilyCare Plan D service package.

(d) If an applicant is employed by a small employer, the specific services available to the applicant shall be at least equal to the services in the NJ FamilyCare Plan D service package; however, the extent of coverage of the services need not be the same as the extent of coverage in the NJ FamilyCare Plan D service package. For a comprehensive listing of small employers health plans, refer to N.J.A.C. 11:21.

10:78-9.4 Premium Support Program enrollment process

(a) All applicants to the Premium Support Program shall first be found eligible for the NJ FamilyCare program. Applicants to the Premium Support Program shall provide information concerning employment and employer-sponsored health insurance benefits. If an otherwise eligible applicant has access to employer-sponsored health benefits, the applicant must enroll in the Premium Support Program, in accordance with the provisions of this subchapter.

(b) If the applicant meets the criteria in (a) above, the State Eligibility Vendor for the NJ FamilyCare program or the County Board of Social Services that made the determination of eligibility will refer the case record for review to:

DMAHS PSP
PO Box 712
Mail Code 46
Trenton, NJ 08625-0712

10:78-9.5 Application review

(a) The NJ FamilyCare Program eligibility vendor or County Board of Social Services will refer all applications to the Premium Support Program. The referral will consist of a copy of the original application for NJ FamilyCare and shall include copies of any pertinent documentation, including, but not limited to, any information provided by the applicant regarding his or her employer's health benefit plan.

(b) The application will be reviewed for completeness and NJ FamilyCare eligibility will be verified by the Division.

10:78-9.6 Applicant's responsibilities during the application process

(a) The Premium Support Program applicant shall provide employer health benefit plan information regarding all family members for whom coverage is sought.

(b) The applicant shall assist the Division as needed in obtaining employer health benefits plan information.

(c) If the employee fails to provide the Division with the information needed to complete the application review, the application for premium support shall be denied.

1. If the application for premium support is denied due to lack of cooperation by the employer, the applicant (and family, if applicable) shall continue to participate in a State-contracted managed care plan through the NJ FamilyCare program.

2. If the application for premium support is denied due to lack of cooperation by the applicant and after multiple attempts by the Premium Support Program to enlist cooperation, the NJ FamilyCare participation of the applicant and any other adult eligible members of the household shall be discontinued immediately. The eligible children in the household will continue to remain eligible until the next annual redetermination at which time failure to cooperate and provide necessary information shall result in termination of NJ FamilyCare eligibility for all members of the household.

10:78-9.7 Premium Support Program data collection

(a) Upon receipt of a completed application, the Premium Support Program (PSP) will:

1. Issue a notification letter to the applicant(s) stating that the application has been referred to the Premium Support Program for determination of eligibility for PSP participation; and

2. Send a letter and a Request for Information Form to the applicant's employer, seeking information on the type of employer-sponsored health plan(s) available to the employee.

10:78-9.8 Employer participation criteria

(a) The employer should complete the Request for Information Form and return the form to the Premium Support Program (PSP) with a copy of the employer's Statement of Insurance Coverage.

(b) An application to participate in the Premium Support Program shall be supported by the indication by the applicant's employer that the employer contributes, at a minimum, 50 percent of the annual cost of the insurance premium for the employee (and family, as applicable). If the employer does not contribute 50 percent of the premium cost, the PSP application shall be denied and the applicant shall continue to participate in a State-contracted managed care program through the NJ FamilyCare program.

(c) If the employer does attest to contributing, at a minimum, 50 percent of the annual cost of premium on behalf of the employee (and family, as applicable), the Division will evaluate the application for cost-effectiveness, in accordance with N.J.A.C. 10:78-9.10.

10:78-9.9 Employer plan review

(a) Upon return of the employer's completed "Request for Information Form" and "Statement of Insurance Coverage," the Premium Support Program will initiate a two step review of the employer plan to determine if the plan meets the Division's plan participation requirements, as follows:

1. Step I: The employer-sponsored plan shall be compared, benefit-by-benefit, to the NJ FamilyCare Plan 'D' service package, to determine whether the employer-sponsored plan's services are the same services the employee would be eligible for under NJ FamilyCare.

i. If the employer is a large employer, both the specific services and the extent of coverage of the services shall be at least equal to the services in the NJ FamilyCare Plan D service package.

ii. If the employer is a small employer, the specific services shall be identical to the services in the NJ FamilyCare Plan D service package; however, the extent of coverage of the services need not be the same as the extent of coverage in the NJ FamilyCare Plan D service package. For small employer health plan information, refer to N.J.A.C. 11:21.

2. Step II: The employer plan will be evaluated for cost effectiveness, in accordance with N.J.A.C. 10:78-9.10.

10:78-9.10 Cost-effectiveness test

(a) Cost-effectiveness shall be determined by comparing the cost of the beneficiary/employee and all eligible family members' participation in the NJ FamilyCare program against the total cost to the State of reimbursing the beneficiary/employee for the employee share of the cost of family coverage less a monthly premium contribution amount for the family purchasing the employer plan. The amounts used for the calculations in this section shall be derived from actuarial tables used by the NJ FamilyCare program and actual costs reported by the employee/employer during the processing of the Premium Support Program (PSP) application.

(b) For the State to provide benefits under NJ FamilyCare, an actuarially valid total cost per family per month will be determined, using current data from NJ FamilyCare (NJFC), Managed Care participant rates.

(c) The cost of the employer-sponsored plan shall be determined by totaling the costs to the State to participate in the employer-sponsored plan.

1. The monthly amount of the employee premium plus the actuarial value of all excess cost-sharing expenditures (co-payments, deductible and coinsurance), less the NJ FamilyCare/Premium Support Program monthly premium amount, plus the cost of "wraparound" services, if applicable, will constitute the total cost to the State to purchase the employer plan.

(d) As a condition of PSP approval, the result of the cost-effectiveness test shall indicate a cost savings difference of, at a minimum, five percent between what the State would pay for the employee's participation in the employer-sponsored health plan and what the State would pay for the employee's participation in the NJ FamilyCare program.

(e) If the employer-sponsored plan is determined by the Division to be cost-effective in accordance with (d) above, the applicant shall participate in the Premium Support Program. ***If the employer-sponsored plan is determined not cost-effective, in accordance with**

(d) above, the beneficiary will continue to participate in the NJ FamilyCare program.*

10:78-9.11 Plan approval notification and premium support payments

(a) If the beneficiary/employee is found eligible to participate in the Premium Support Program (PSP), a letter of notification will be sent to the employee. The notification letter will advise the employee of PSP approval and request that the beneficiary/employee and all eligible family members be enrolled in the employer-sponsored plan at the earliest possible date.

(b) The letter of notification will provide a suggested future date of plan enrollment, and a date on which the first PSP payment should be made.

1. The first PSP payment will be made to the employee in advance of the first payroll deduction by the employer.

(c) All PSP participants' payments to their employers shall be subject to verification by the Division.

(d) The PSP beneficiary/employee shall submit proof of employer plan participation prior to the payment by the Division of any premium support payments after the initial payment. Proof of employer plan participation shall include, but need not be limited to: payroll stubs indicating the amount of the employee's contribution to employer plan coverage, a copy of the insurance carrier identification card indicating all covered family members, or a letter of coverage from the employer or insurance carrier. All documents submitted shall be subject to verification by the Division.

10:78-9.12 Payment of premium support to beneficiaries

(a) All Premium Support Program (PSP) payments will be made directly to the beneficiaries, for a portion of the amount payable to the employer by the beneficiary for the employer-sponsored health plan.

(b) The periodic payments to the beneficiary will coincide with the schedule of payroll deductions as established by the employer.

(c) The amount of the periodic payments to the employee shall be the amount of the employee's contribution to the employer's plan, less the monthly NJFC/PSP premium amounts for which the employee is responsible, in accordance with N.J.A.C. 10:78-9.13.

10:78-9.13 NJ FamilyCare/Premium Support Program payment formula

(a) A monthly premium charge shall be assessed and collected for all participants in the NJ FamilyCare Premium Support Program (PSP), as provided in this section.

(b) NJ FamilyCare PSP participants whose gross income, as adjusted for the size of the family unit, exceeds 150 percent, but is not in excess of 200 percent, of the Federal poverty level shall be responsible for a monthly premium of \$25.00 for the first adult, \$10.00 for the second eligible adult in the household unit, and \$10.00 per month for one or more children. For example:

1. A family of two adults and one child would pay \$45.00 per month;

2. A family of two adults and three children would pay \$45.00 per month;

3. A family of one adult and one child would pay \$35.00 per month; and

4. A family of one adult and three children would pay \$35.00 per month.

(c) NJ FamilyCare PSP participants whose gross income, as adjusted for the size of the family unit, exceeds 200 percent, but does not exceed 250 percent, of the Federal poverty level shall be responsible for a monthly premium of \$20.00 for one or more children.

(d) NJ FamilyCare PSP participants whose gross income, as adjusted for the size of the family unit, exceeds 250 percent, but does not exceed 300 percent, of the Federal poverty level shall be responsible for a monthly premium of \$50.00 for one or more children.

(e) NJ FamilyCare PSP participants whose gross income, as adjusted for the size of the family unit, exceeds 300 percent, but does not exceed 350 percent, of the Federal poverty level shall be responsible for a monthly premium of \$90.00 for one or more children.

10:78-9.14 Payment of cost sharing expenditures

(a) The Premium Support Program (PSP) will reimburse the beneficiary for the difference between the NJFC/PSP co-payment amount and that of the employer-sponsored plan co-payment amount. For example, if the NJFC/PSP co-payment amount for a physician's office visit is \$5.00 and the employer-sponsored plan co-pay charge is \$15.00 for the same service, the PSP will reimburse the beneficiary the difference in excess of the NJFC/PSP co-payment amount (\$10.00).

(b) Copayment amounts for services available through the HMO shall be consistent with those of the NJ FamilyCare program (see N.J.A.C. 10:78).

10:78-9.15 Five percent of gross family income annual limit on cost-sharing (out-of-pocket) expenditures

(a) If, during the course of a regular plan year (January 1 to December 31), the beneficiary and/or any other eligible family members incur cost sharing expenditures (copayments, co-insurance and deductibles) that are not directly reimbursable by the Premium Support Program (PSP), and that exceed five percent of the individual's or family's gross annual income, they may submit proof of such expenditures to the PSP for review and possible reimbursement, in accordance with the provisions of this section. If the beneficiary chooses an employer-sponsored plan which costs more than the basic plan approved by the Premium Support Program for that employee and/or any other eligible family members, the difference between the approved premium and the actual premium:

1. Will not be reimbursed by the Premium Support Program; and

2. Will not be included in the five percent cost sharing calculation (see N.J.A.C. 10:49-9.3).

(b) The annual limit on cost sharing expenditures shall be five percent of the individual's or family's gross annual income.

(c) The PSP will review all submitted medical expenditures made during the course of a plan year, and will determine those expenses that are allowable. If the allowable expenditures are equal to or greater than five percent of the individual's or family's gross annual income, all future cost sharing expenditures for the remainder of the plan year will be payable by the PSP.

1. Allowable expenses, for the purpose of the annual limit on cost-sharing (out-of-pocket) expenditures, shall be those expenses for services covered under the beneficiary's service package.

(d) The PSP will authorize such expenses by indicating a message on the NJ FamilyCare monthly ID Card waiving payment of such expenses for the remainder of the plan year. The provider will then bill the PSP for the amount of the cost share or the beneficiary may submit a bill to the PSP for reimbursement.

10:78-9.16 Covered services

(a) Participants in the NJ FamilyCare/Premium Support Program shall be eligible for all covered services based on their NJ FamilyCare category of eligibility (Plan A, B, C or D). Premium Support Program (PSP) participants shall utilize their employer-sponsored plan as primary coverage.

(b) Any *[eligible]* services not covered by the employer plan, but covered under the enrollees' NJ FamilyCare category of eligibility, will be available to PSP participants as a "wraparound" service. Any such wraparound service (for example, optical appliances or hearing aids) shall be provided by a New Jersey Medicaid/NJ FamilyCare participating approved provider. The failure of a beneficiary to use a New Jersey Medicaid/FamilyCare provider for "wraparound services" will result in a denial of payment by the NJ FamilyCare Program. The services received would then be the full responsibility and liability of the beneficiary.

(c) To access any "wraparound" service, a Premium Support Program beneficiary/employee or eligible family member will be issued a NJ FamilyCare monthly identification card and shall present such proof of eligibility to the provider prior to receipt of services. Failure to present proof will not obligate the PSP to pay for such services or require the provider to bill NJ FamilyCare for such services. In case of failure to present proof of eligibility, the beneficiary/employee or eligible family member shall be liable for all incurred expenses. ***Any wraparound services shall be received from a NJ Medicaid/FamilyCare participating provider. Reimbursement will be made to the provider on a fee-for-service basis according to the Division's rules for those services.***

10:78-9.17 Fraud and abuse provisions applicable to the Premium Support Program

All of the relevant provisions pertaining to fraud and abuse investigations and administrative actions, third party liability, and recoveries which are contained in N.J.S.A. 30:4D-1 et seq. and in N.J.A.C. 10:49 shall be fully applicable to the NJ FamilyCare/ Premium Support Program, including, but not limited to, N.J.S.A. 30:4D-6c, 6f, 7h, 7i, 7k, 7l, 7.1, 12, 17(e), 17(f), 17(g), 17(i), 17.1 and 17.2, as well as N.J.A.C. 10:49-3.2, 4.1 through 4.5, 5.5, 6.1(a)3, 7.3, 7.4, 7.5, 9.6 through 9.12, 11.1, 12.1 through 12.7, 13.1, 13.4, and 14.2 through 14.6 and 16.5.

10:78-9.18 Applicability of rules of the Department of Banking and Insurance; small employer health plans

Notwithstanding the provisions of this subchapter, in the case of a conflict between the rules in this subchapter and the rules of the Department of Banking and Insurance, the rules of the Department of Banking and Insurance regarding small employer health plans shall apply.

10:78-9.19 Interpretations of rules

Circumstances which are neither specifically nor generally addressed in these rules shall be referred to the DMAHS/PSP unit for resolution.

EXAMPLE O

ENVIRONMENTAL PROTECTION

(a)

LAND USE MANAGEMENT WATER SUPPLY ADMINISTRATION

Water Supply Loan Programs

Readoption: N.J.A.C. 7:1A

Proposed: January 22, 2002 at 34 N.J.R. 388(a).

Adopted: May 10, 2002 by Bradley M. Campbell, Commissioner,
Department of Environmental Protection.

Filed: May 10, 2002 as R.2002 d.176, **without change**.

Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261, as
amended by P.L. 1983, c.355; N.J.S.A. 13:1B-3; 13:1D-9;
40A:11-1 et seq.; 58:1A-1 et seq.; 58:12A-1 et seq.; and 58:12A-
22 through 58:12A-25.

DEP Docket Number: 38-01-12.257.

Effective Date: May 10, 2002.

Expiration Date: May 10, 2007.

The Department is readopting, without change, the Water Supply Loan Program rules, at N.J.A.C. 7:1A, which establish consolidated loan application procedures, minimum standards of conduct for borrowers, and performance standards for work funded under the water supply loan programs. The Water Supply Bond Act of 1981 (Bond Act), P.L. 1981, c.261, as amended by P.L. 1983, c.355, authorizes the issuance of \$350 million in State bonds to fund State or local projects for (1) the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly-owned water supply facilities, (2) the interconnection of unconnected or inadequately connected water supply systems, and (3) the planning, design, acquisition and construction of State water supply facilities, all as recommended by the New Jersey Statewide Water Supply Plan. In 1983, the Bond Act was amended to authorize the use of water supply bond funds for financing local projects for planning, designing and constructing water supply facilities which address contamination problems as identified by the Department. See P.L. 1983, c.355.

The Water Supply Replacement Trust Act (Trust Act), P.L. 1988, c.106 (codified at N.J.S.A. 58:12A-22 through 58:12A-25) created the Water Supply Replacement Trust Fund (Trust Fund). The Trust Fund is used in part to provide loans to municipalities or municipally-owned public water systems (as defined at N.J.S.A. 58:12A-3) for the purpose of providing a permanent alternate water supply to persons whose principal source of potable water is contaminated or is threatened with contamination by hazardous substances as identified by the Department. In 1989, the Trust Act was amended to authorize the use of the Trust Fund for loans to privately-owned public water supply systems in situations where a principal source of potable water fails to meet the State primary drinking water standards as established by regulation by the Department. (See P.L. 1989, c.311.)

The proposed readoption without change was published in the New Jersey Register at 34 N.J.R. 388(a) on January 22, 2002. The comment period closed February 21, 2002.

Summary of Hearing Officer Recommendation and Agency

Response:

The public hearing was held on February 6, 2002 at the Offices of the New Jersey Environmental Infrastructure Trust in Lawrenceville, New Jersey. No one from the public attended the hearing and, therefore, no testimony was submitted regarding the proposed readoption without change. Theresa Fenton, Bureau Chief of the Municipal Finance and Construction Element served as the hearing officer. The hearing officer recommended that this rule action proceed to adoption. One written comment was received during the public comment period.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention Docket Number: 38-01-12.257
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

One comment was submitted by letter, jointly signed by D.W. Bennett of American Littoral Society; Sandy Batty of Association of New Jersey Environmental Commissions; Julia Somers of Great Swamp Watershed Association; Tom Gilmore of New Jersey Audubon Society; Michele Byers of New Jersey Conservation Foundation; Amy Goldsmith of New Jersey Environmental Federation; Marie Curtis of New Jersey Environmental Lobby; George Howard of New Jersey State Federation of Sportsmen's Clubs; Carlton Montgomery of Pinelands Preservation Alliance; Jeff Tittle of New Jersey Sierra Club; George Hawkins of Stonybrook Millstone Watershed Association and Dave Peifer of Upper Raritan Watershed Association.

COMMENT: The commenters request that the Department defer the readoption without change of the Water Supply Loan Program rules and meet with stakeholders to discuss a reproposal that would include consideration of infrastructure policies of the State Development and Redevelopment Plan (State Plan).

The commenter provided a description of the Statewide policy on infrastructure as follows:

Provide infrastructure and related services more efficiently by investing in infrastructure to guide growth, managing demand and supply, restoring systems in distressed areas, maintaining existing infrastructure investments, design multi-use school facilities to serve as centers of community, creating more compact settlement patterns in appropriate locations in suburban and rural areas, and timing and sequencing the maintenance of capital facilities service levels with development throughout the State (State Plan Executive Summary).

RESPONSE: The Water Supply Loan Program rules were promulgated to establish standards and procedures for the administration of funds appropriated from the Water Supply Fund created by the Water Supply Bond Act of 1981, and subsequent amendments.

As of this date, all loan agreements for the distribution of funds made available by the Bond Act have been executed. In all cases, construction plans and specifications have been reviewed and approved and, in most instances, construction has commenced. While the Department agrees that it is extremely important to include consideration of applicable aspects of the State Plan in the Department's rules, the sole purpose of this readoption of rules is to continue to provide guidelines by which borrowers will repay any outstanding loans. Once these loans are completely repaid, these rules will not be needed. Since the planning aspects of this financial program have been completed, inclusion of a requirement to consider the State Plan is unnecessary.

The Safe Drinking Water Act Amendments of 1996 authorized the creation of a Drinking Water State Revolving Fund Program to replace the Water Supply Bond Fund Loan Programs and to assist water systems in financing the costs of infrastructure needed to achieve or maintain compliance with that law. The distribution of those funds is administered pursuant to the rules of the Department at N.J.A.C. 7:22. Those rules contain a comprehensive set of policies and procedures for the distribution of funds. The rule requirements include, at N.J.A.C. 7:22-10, that consideration be given to the State Development and Redevelopment Plan adopted pursuant to the New Jersey State Planning Act.

Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The readopted rules do not include any standards more stringent than any Federal standards. There are no Federal standards applicable to this loan program.

Applicants for loans are specifically required to comply with the provisions of N.J.A.C. 7:10, the Safe Drinking Water Act rules, which apply generally to water supply systems. A Federal standards analysis of the Safe Drinking Water Act Rules was published in the New Jersey Register on September 20, 1999 at the time that those rules were proposed for readoption with amendments. See 31 N.J.R. 2717(a), specifically 2720.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:1A.

EXAMPLE P

(a)

CASINO CONTROL COMMISSION

Equal Employment and Business Opportunity

Readoption With Amendments: N.J.A.C. 19:53

Adopted Repeals: N.J.A.C. 19:53-1.3, 2.3, 2.4, 2.6, 2.8, 2.9, 3.4, 4.3, 4.4, 4.5, 4.6, 6.5, 6.6 and 6.12

Proposed: January 22, 2002 at 34 N.J.R. 381(a).

Adopted: May 23, 2002 by the Casino Control Commission, James R. Hurley, Chairman.

Filed: May 24, 2002 as R.2002 d.186, without change.

Authority: N.J.S.A. 5:12-63, 69, 134 and 135.

Effective Date: May 24, 2002. Readoption;

June 17, 2002. Amendments and Repeals.

Expiration Date: May 24, 2007.

Summary of Public Comments and Agency Responses:

Comments were received from the State of New Jersey Affirmative Action Officers' Council (NJAAOC), the Human and Civil Rights Association of New Jersey (HCRANJ), the Division of Gaming Enforcement (DGE), the New Jersey State Conference of NAACP Branches (NAACP-NJ) and the Atlantic City Branch of the NAACP (NAACP-AC).

COMMENT: The NAACP-NJ, NAACP-AC and HCRANJ each expressed serious concerns over the proposed repeal of various regulatory provisions that enhanced business and employment opportunities for minorities and women. The NAACP-AC commented that the proposed amendments and repeals, if approved, would have catastrophic effects on the ability of minorities and women to obtain an equal opportunity to participate in the casino industry. The HCRANJ expressed concern about the future of minority and women business enterprises that have been sharing or hoped to share in the economic benefits of the industry. Although aware of the recent court decisions declaring invalid and enjoining various sections of the Casino Control Act and the Commission's regulations, HCRANJ requested that appropriate and aggressive regulations be implemented by the Commission to ensure that all persons participate equally in the casino industry.

RESPONSE: The Casino Control Commission is aware of and sympathetic to the concerns expressed in these comments. However, as explained in the Summary contained in the notice of proposed readoption, the primary purpose of the readoption is to avoid the expiration of those sections of the existing rules that have not been successfully challenged in the courts and that continue to provide significant affirmative equal opportunity benefits to all persons.

Those provisions of the rules that were proposed for repeal, including all provisions that established or were perceived to establish employment or business preferences for minorities or women, have been determined in various Federal court proceedings to violate the United States Constitution and their enforcement has been permanently enjoined by the courts. Thus, the Commission did not exercise any real discretion in choosing which rules were proposed for repeal as part of the readoption process.

As noted, the rules being retained by the Commission emphasize the equal employment and equal business opportunity obligations of persons and entities involved in the casino industry. Moreover, these rules create certain affirmative equal employment opportunity obligations that are not imposed by any other Federal or State law. The Commission is examining ways to strengthen these obligations even further while maintaining compliance with the constitutional limitations defined by the recent court decisions. However, for the reasons explained in the notice of proposed readoption, any proposed new rules will be developed as part of an independent rulemaking process.

COMMENT: The DGE and NJAAOC expressed their support for the readoption of the rules and recognized the importance of the readopted rules to the ongoing enforcement of equal employment opportunity and equal employment business opportunity for all persons wishing to participate in the casino industry.

RESPONSE: Accepted.

COMMENT: The DGE and the HCRANJ suggested that the definition of persons to be afforded equal employment opportunity under the Commission's rules should be modified to reflect the categories set forth in State's Merit System Board regulations and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., respectively.

RESPONSE: Section 134 of the Casino Control Act provides that "[e]ach applicant shall formulate and abide by an affirmative action program of equal

employment opportunity . . . in accordance with the provisions of the 'Law Against Discrimination.' " N.J.S.A. 5:12-134(c). The definitions of "equal employment opportunity" and "equal business opportunity" contained in the Commissioner's rules are derived from, and are almost identical to, definitions contained in the Law Against Discrimination. Accordingly, the Commission does not believe that any changes are needed to these definitions at this time, but would certainly be willing to entertain any specific suggestions made as part of a future rulemaking proceeding.

COMMENT: The NAACP-NJ opposed the elimination of the regulatory obligations to monitor and report on workforce composition and the amount of business conducted with minority and women owned businesses. The NAACP-NJ noted that various Federal programs require businesses to report data concerning business with or employment of minorities and women and suggested that casinos, casino service industry enterprises and casino construction contractors should be required to do the same. The HCRANJ recommended that the Commission impose a proactive monitoring system to ensure that any potential discriminatory activities within the casino industry are prevented.

RESPONSE: The elimination of the reporting obligations in the prior rules was required by the recent Federal court decisions referenced in the notice of proposed readoption. As to the reporting of workforce composition, the Commission is exploring alternative ways to gather such data in a constitutional manner. As to the reporting of business activity, the Commission currently has no statutory authority to require the reporting of such activity and new initiatives, consistent with constitutional standards, will have to be addressed by the Legislature.

COMMENT: The DGE recommended that each casino licensee be required, through its Equal Employment and Business Opportunity Plan, to report all discrimination complaints to the Commission and that recurring complaints be referred to the DGE.

RESPONSE: Although the Commission does not disagree with the suggestion of the DGE, any such requirement would have to be imposed by an amendment to the rules and is beyond the scope of the readoption. The Commission will, however, keep this suggestion in mind when preparing any future rule proposal.

COMMENT: The NAACP-AC recommended that it be included in any future rulemaking process to further refine the Equal Employment and Business Opportunity rules. It also suggested that the Commission undertake a study of other urban areas with casinos to see what policies and procedures they use in working with minorities and women in business and the workplace.

RESPONSE: Accepted.

COMMENT: The NJAAOC suggested that other means of providing oversight of equal opportunity efforts, such as applicant flow analysis and adverse impact analysis of employment transactions, should be developed.

RESPONSE: Although this comment is beyond the scope of the current readoption, the Commission agrees that such proposals should be considered during any future rulemaking proceeding.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking requirements of the Casino Control Commission are directly authorized by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:53.

Full text of the adopted amendments follows:

19:53-1.1 Scope, policy and purpose

(a) It has long been the public policy of the State of New Jersey to promote equal employment and business opportunity by prohibiting discrimination.

(b) These rules are adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors engaged in construction projects for casino licensees and applicants. These rules also establish affirmative action requirements for casino licensees and applicants, certain casino service industry enterprise licensees and applicants and construction contractors and subcontractors with regard to the employment of persons with disabilities.

19:53-1.2 Definitions

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

19:53-1.3 (Reserved)

19:53-1.4 Designation of equal opportunity officer by casino licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ persons with disabilities, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license.

(b) The responsibilities of the equal opportunity officer shall include, without limitation, the responsibility to:

1. (No change.)

2. Recommend in writing to the chief executive officer the suspension of any personnel procedure, decision or transaction which is not consonant with the approved EEBOP of the casino license or applicant or with any Federal or State law regarding equal employment opportunity; and

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of section 134 of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the licensee's or applicant's:

i.-ii. (No change.)

iii. Good faith efforts to implement its EEBOP;

iv.-ix. (No change.)

(c) In addition to the responsibilities specified in (b) above, the equal opportunity officer shall have the responsibility to:

1. Monitor and review all aspects of the contracting and purchasing procedures and decisions of the licensee or applicant; and

2. Recommend in writing to the chief executive officer the suspension of any contracting or purchasing procedure, decision, or transaction which is not consonant with its approved EEBOP or with any Federal or State law regarding equal business opportunity.

(d) In addition to the responsibilities specified in (b) and (c) above, the equal opportunity officer shall have the responsibility to:

1. (No change.)

2. Recommend in writing to the chief executive officer the suspension of any contract or subcontract or payment thereof where the contractor or subcontractor is engaging in any employment, recruitment, referral or bidding practice which is not consonant with the Act or the rules of the Commission or with any Federal or State law regarding equal employment and business opportunity;

3. (No change.)

4. Prepare and submit to the Commission such reports, documentation and statistical information as the Commission shall require concerning any contractor or subcontractor used by the licensee or applicant in connection with the construction, renovation or reconstruction of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or any related facility.

(e) In addition to any other requirements imposed by this section, a casino licensee or applicant shall comply with the following requirements concerning its equal opportunity officer:

1. The principal areas of responsibility of the equal opportunity officer shall be the implementation, monitoring and enforcement of the equal employment and business opportunity requirements established by the Act and this chapter. These responsibilities may include, without limitation, the following functions: recruitment; equal employment opportunity awareness training; legal and statistical analysis of work force composition and utilization; grievance counselling and fact-finding; career advancement counselling; assessment and adaptation of all personnel and compensation policies and procedures for conformity with the equal employment and business opportunity plan approved by the Commission and with any Federal or State equal employment and business opportunity laws; monitoring and coordinating contracting, purchasing and construction activities, and developing and maintaining the involvement of the licensee or applicant in the community in support of equal employment and business opportunity.

2.-4. (No change.)

(f) (No change.)

19:53-1.5 Advisory boards

(a) The Commission may establish an advisory board consisting of local or State officials, representatives of area businesses and communities, women and minority organizations, union officials, persons with disabilities, casino industry representatives or other interested parties. Such advisory board may make recommendations to the Commission, upon its request, concerning policies or techniques to assure equal employment and business opportunity for all persons in the casino industry and the casino-related construction industry.

(b) (No change.)

19:53-1.6 Powers of the Commission: effect of rules

(a) (No change.)

(b) Nothing contained in this chapter shall be interpreted to supplant, diminish, limit or in any way affect the scope and application of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §2000(e), the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq., or any other law regarding equal employment or business opportunity.

19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity

(a) (No change.)

(b) The monitoring system shall provide for systematic coordination between the equal opportunity officer, the relevant departments within the organization of the casino licensee or applicant which contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures which:

1. Outline the steps to be used by the casino licensee or applicant to obtain compliance from contractors and subcontractors who fail to fulfill their obligations under this subchapter;

2. (No change in text.)

3. Provide notification to all contractors and subcontractors of the obligations of the casino licensee or applicant under the Act and this subchapter; and

4. Encourage contractors and subcontractors to employ persons with disabilities at all levels of the work force.

19:53-2.3 and 2.4 (Reserved)

19:53-2.5 Special compliance obligations applicable to a casino license applicant building a casino hotel facility

(a) In addition to complying with all of the regulatory requirements of N.J.A.C. 19:53-2.2 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the requirements of this section in accordance with a schedule to be set by the Commission based on the projected opening date of the casino hotel facility and the hearing schedule of the Commission.

(b) The casino license applicant shall submit a draft employment application to the New Jersey Division on Civil Rights (DCR) in accordance with N.J.A.C. 13:7 for review as to its consonance with the rules on pre-employment inquiries and procedures, revise the application as guided by the review and comments of DCR, and file a copy of the

final version of the document and the notice of DCR approval with the Commission.

(c) Notwithstanding the provisions of N.J.A.C. 19:53-4.1, the casino license applicant shall submit for approval by the Commission a description of all hiring criteria and procedures used to determine whether to hire an applicant for employment or to transfer, upgrade or promote an existing employee. Each casino license applicant shall submit the following in satisfaction of this requirement:

1.-4. (No change.)

5. A training summary which shall include information as to:

i. The job title of those employees who underwent skill enrichment training prior to opening; and

ii. (No change.)

6. A summary of the strategies and actual techniques used to hire persons with disabilities at all levels of the work force;

7. (No change.)

8. Documentation of contacts with any recruitment sources such as referral agencies, colleges, executive search firms or organizations, and advertisements in media oriented to persons with disabilities;

9.-10. (No change.)

19:53-2.6 (Reserved)

19:53-2.7 Construction contracts and subcontracts; mandatory contract language

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

19:53-2.8 and 2.9 (Reserved)

19:53-3.3 Affirmative action obligations of casino service industry enterprise licensees and applicants which have 50 or more employees in New Jersey

(a) Each casino service industry enterprise licensee and applicant which employs 50 or more employees in the State of New Jersey shall be required to undertake affirmative measures to ensure that persons with disabilities are recruited and employed at all levels of its work force and treated during employment without regard to their disability. Such affirmative efforts shall, without limitation, address all employment practices including:

1.-5. (No change.)

(b) Each casino service industry enterprise licensee and applicant governed by this section shall be required to:

1. (No change.)

2. Send notices of employment openings to and solicit the referral of qualified candidates for employment from:

i. Organizations which serve the interest of promoting equal employment opportunity for persons with disabilities; and

ii. Regional job banks or job fairs that are maintained or conducted in order to assist qualified persons with disabilities in obtaining employment;

3. (No change.)

4. Send to each labor union or representative of workers with which it has a collective bargaining agreement a request for referral of qualified candidates for employment who are voluntarily self-identified persons with disabilities; and

5. (No change.)

19:53-3.4 (Reserved)

19:53-4.3 through 4.6 (Reserved)

SUBCHAPTER 5. (RESERVED)

19:53-6.1 Equal Employment and Business Opportunity Plan (EEBOP); purpose and basic elements

(a) In order to insure compliance with the requirements of section 134 of the Act and this chapter, each casino licensee and applicant shall be required to submit an Equal Employment and Business Opportunity Plan (EEBOP) to the Commission for its approval. The EEBOP of each casino licensee or applicant shall address in specific terms the strategies, procedures and internal requirements which the casino licensee or applicant intends to implement so that the equal employment opportunity

and equal business opportunity objectives of the Act and this chapter are achieved, both on a current and continuing basis.

(b) Each casino licensee or applicant shall be encouraged to use imagination and innovation in the development of its EEBOP. Although, in general, no particular format will be required, every EEBOP prepared by a casino licensee or applicant shall contain sections addressing each of the following areas:

1. (No change.)

2. Construction requirements; and

3. Operations work force requirements.

(c) (No change.)

19:53-6.2 General regulatory section of an EEBOP

(a) Every EEBOP submitted by a casino licensee or applicant shall include, at a minimum, the following:

1.-2. (No change.)

3. A description of the means by which the policies of the casino licensee or applicant concerning equal opportunity shall be disseminated and enforced including, without limitation, the following:

i.-iii. (No change.)

(b) (No change.)

19:53-6.3 Construction section of an EEBOP

(a) The construction section of an EEBOP prepared by a casino licensee or applicant shall describe in detail the means by which the licensee or applicant intends to comply with the equal opportunity and regulatory obligations imposed by N.J.A.C. 19:53-2. Topics appropriate for inclusion in the construction section of an EEBOP shall include, without limitation, the following:

1. (No change.)

2. Implementation of a monitoring system which will enable the casino licensee or applicant to evaluate the performance of contractors and subcontractors and the performance of the licensee's or applicant's own organization in fulfilling the equal employment and equal business opportunity requirements imposed by this chapter; and

3. Procedures and penalties to be used by the casino licensee or applicant if a contractor or subcontractor does not fulfill its obligations under this chapter.

19:53-6.4 Operations work force section of an EEBOP

(a) (No change.)

(b) The operations work force section of an EEBOP shall also describe in detail the manner in which a casino licensee or applicant shall undertake to satisfy its obligation to recruit and employ persons with disabilities. Topics appropriate for inclusion in this section of an EEBOP may include, without limitation, the following:

1. Strategies and measurable objectives for improving the employment of persons with disabilities at all levels of the work force including, without limitation, proactive initiatives in the following areas:

i.-iv. (No change.)

2.-5. (No change.)

19:53-6.5 and 6.6 (Reserved)

19:53-6.8 EEBOP assessment hearing; demonstration of compliance through documentation of EEBOP implementation

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

(d) Sixty days prior to the scheduled date of a casino license hearing or an interim EEBOP assessment hearing, the casino licensee or applicant shall submit a self-assessment of its performance under its approved EEBOP during the assessment period, including, as applicable and without limitation, the following:

1. An internal review and evaluation of each of the areas of the EEBOP where objectives were not achieved, including documentation of specific transactions or programs which were included in the EEBOP as a means to attain these objectives;

2. An analysis by the casino licensee or applicant as to why the particular objectives were not achieved;

3. An internal review and evaluation of each programmatic portion of its approved EEBOP as to which the Commission has directed an assessment; and

4. (No change.)

(e) Upon completion of an EEBOP assessment hearing for a casino licensee or applicant, the Commission may find that the casino licensee or applicant has complied with the obligations of the Act and this chapter if:

1. The casino licensee or applicant did implement and comply with the terms of its approved EEBOP during the assessment period; or
2. The casino licensee or applicant has in fact made good faith efforts to comply with its approved EEBOP and its failure to do so was based on occurrences which were beyond the control of the casino licensee or applicant.

(f) (No change in text.)

19:53-6.12 (Reserved)

EXAMPLE Q

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH SERVICES

Short Term Care Facility Standards

Readoption with Amendments: N.J.A.C. 10:37G

Proposed: November 19, 2001 at 33 N.J.R. 3887(a).

Adopted: June 13, 2002 by Gwendolyn L. Harris, Commissioner,
Department of Human Services.

Filed: June 17, 2002 as R.2002 d.221, with substantive changes not
requiring additional public notice and comment (see N.J.A.C.
1:30-6.3).

Authority: N.J.S.A. 30:4-27.8, 27.9 and 27.10.

Effective Date: June 17, 2002. Readoption;
July 15, 2002. Amendments.

Expiration Date: June 17, 2007.

Summary of Public Comments and Agency Responses:

In addition to publication of the proposed amendments in the New Jersey Register (33 N.J.R. 3887, November 19, 2001), the Division of Mental Health Services notified interested parties via letter dated November 27, 2001, notified the press through the State House Press Room, and posted a notice that rule had been proposed on the Department's website.

N.J.A.C. 10:37G-2.1(a)2

COMMENT: New Jersey Hospital Association's Behavioral Health Constituency Group was pleased with the new provision allowing the psychiatrist who determined a patient's committability to also treat the patient in the STCF, as long as reasonable but unsuccessful attempts were made to have two different psychiatrists perform these functions.

RESPONSE: The Department acknowledges the commenter's positive response to this new provision. However, it must be emphasized that, pursuant to N.J.S.A. 30:4-27.10(a), the regulation requires STCFs to document the specific attempts that were made to obtain the services of two different psychiatrists to screen and treat the patient. This documentation will be monitored as a part of the Division's review of STCF functions.

N.J.A.C. 10:37G-2.1(e)4

COMMENT: Two associations commented on the provision requiring STCFs to admit patients with an organic diagnosis or dementia if they are a danger to themselves or others and if their behavioral symptoms can be ameliorated by psychiatric intervention. First, the New Jersey Association of Mental Health Agencies, Inc. (NJAMHA) cautioned that organic brain diseases should not be managed in an inpatient psychiatric unit because the assessment and identification of such diseases requires costly diagnostic neurological studies and treatment, which are difficult to implement in a short-term stay unit and which may be ineffective when applied to patients whose cognitive abilities are so compromised. Second, the New Jersey Hospital Association (NJHA) urged further study of the economic impact on the operational and financial resources of STCFs that could be caused by the admission of this population. NJHA also sought assurance that State reimbursement would be adequate to cover this care.

RESPONSE: This purpose of N.J.A.C. 10:37G-2.1(e)4 is to precondition the admission of patients with organic diagnoses or dementia upon the presence of two factors: (1) the patient exhibits behavioral symptoms that present a danger to self or others; and (2) these behavioral symptoms can be ameliorated by the type of short-term psychiatric intervention available in a STCF. To make this intent clear within the language of the rule, the Division has amended upon adoption N.J.A.C. 10:37G-2.1(e)4 to read as follows: "Admission criteria shall require that patients with a diagnosed organic condition or dementia shall be admitted if their behavioral symptoms pose a danger to self or others and if those behavioral symptoms can be ameliorated by the short-term psychiatric intervention available in a STCF."

As to the argument that this provision would require a STCF to perform burdensome and expensive diagnostic studies and treatment, a patient's organic diagnosis or dementia generally is known upon admission to the STCF (for example, where a nursing home patient is admitted), obviating the need for the STCF to do any additional neurological testing or studies. In such a situation, the STCF is required only to provide those medical services that

are within its existing capability—for example, medication management and certain behavioral interventions.

N.J.A.C. 10:37G-2.1(e)5

COMMENT: NJAMHA and NJHA objected to the provision prohibiting the exclusion of patients solely because of pending criminal charges indicated by a detainer. NJAMHA contended that this provision would create "clinical and administrative obstacles" and that the State should appropriate the funds necessary to implement any resulting, additional security requirements. NJHA also claimed that the admission of patients on detainer would impose additional costs to the hospitals and requested further study of this economic impact and assurance of State reimbursement for these costs.

RESPONSE: The underlying intent of N.J.A.C. 10:37G-2.1(e)5 is to require STCFs to base an admission decision on the clinical condition of a patient, and not solely on the fact that a patient has criminal charges pending against him or her. As in N.J.A.C. 10:37G-2.1(e)4 (regarding the admission of patients with diagnosed organic conditions), the STCF must consider whether the patient presents behavioral symptoms attributable to a mental illness that would create a risk of danger to self or others and whether those behavioral symptoms would be alleviated by the type of short-term psychiatric care available in a STCF (N.J.S.A. 30:4-27.9). The existence of a detainer is not, by itself, indicative of these factors, and so should not result in the need for more security or expenditures for any additional precautions or staff. For example, a patient with a pending shoplifting charge and no apparent violent characteristics may be appropriate for STCF admission, while a more physically threatening patient with a pending murder charge and behavioral symptoms requiring longer term treatment may be inappropriate for STCF admission because of the security risk. The limitation of the STCF's ability to exclude patients solely because they have detainers does not require that the STCF admit someone who has a heightened danger or security risk if it does not have the capacity to keep the person in conditions that would be safe for the patient, other patients, or the public. The intent of the amendment is not to require the admission of more dangerous patients, but to assure that when a patient is sent to a more restrictive facility the appropriate assessment is made and documented on a clinical basis.

N.J.A.C. 10:37G-2.2(e)

COMMENT: NJAMHA requested that the increased expenditures incurred through the required review and updating of the written comprehensive treatment plan in a shorter time period (five, instead of seven days) be addressed in the rules.

RESPONSE: The standard reflects the reality that average lengths of stay in STCFs are between eight and 12 days. It is noted that for facilities that have shorter lengths of stay, good clinical practice dictates that the comprehensive treatment plan is already being completed in less than five days. The Division does not believe that the shortening of the standard period for completion will lead to significantly greater costs. Even for an unusually long stay of 30 days, the staff would have to complete only one additional report at the most per month. For most patients, an initial plan and one update will prepare the client for discharge under the original rule or the rule as amended.

N.J.A.C. 10:37G-2.3(e)

COMMENT: NJAMHA asked whether the requirement that STCFs address a patient's special medical needs would necessitate the administration of dialysis in the STCF unit. If so, NJAMHA requested that the resulting additional costs and "clinical obstacles" be addressed in the rules.

RESPONSE: Nothing in this regulatory provision requires the administration of dialysis in the STCF unit. Consistent with long-standing practice, a patient in need of dialysis would typically be moved from the STCF unit to the appropriate location to receive medical treatment, with the necessary psychiatric services provided there on a one-to-one basis by STCF staff.

N.J.A.C. 10:37G-2.2(f)

COMMENT: Jay Hershberg, of the Office of Legislative Services in the New Jersey State Legislature, suggested that clinical privileges be extended to the Programs of Assertive Community Treatment ("PACT"), as well as to the Integrated Case Management Services ("ICMS") program.

RESPONSE: The Department agrees that the PACT providers would be included within the meaning of "community liaison staff" and should be extended clinical privileges, along with ICMS staff. The Department has added to this provision a reference to PACT staff, effective upon adoption. This change is not too substantive to make upon adoption because the PACT staff have the same credentials and function as ICMS staff; the difference

between the two lies in the intensity of service and the needs of the clients for supervision.

N.J.A.C. 10:37G-2.3(c)

COMMENT: The University Hospital commented that the requirement for three hours of daily therapy by a professional with a master's degree in a mental health discipline would be cost-prohibitive and difficult to comply with, given the small pool of qualified applicants. The University Hospital maintained that the option of using certified therapists was necessary to avoid recruitment problems and jeopardizing the retention of current staff.

RESPONSE: The amendments to this subsection change the phrase "therapeutic activity" to "therapy" and add that the master's degree must be awarded from an accredited institution. The amendments do not affect the existing requirement that five hours of therapy (not three, as the commenter misstates) be provided. Regarding the commenter's claim that the use of certified therapists is necessary because of recruitment and attrition issues, the subsection continues to allow an "appropriately licensed or certified" staff member to provide this therapy, in lieu of a professional with a master's degree.

N.J.A.C. 10:37G-2.5

COMMENT: NJHA praised the modification to the manager staffing requirement (allowing a half-time manager in units with fewer than seven beds) as "more practical and cost effective."

RESPONSE: The Department agrees that the modification will allow more cost-effective operation of STCFs, while still protecting public health and safety.

N.J.A.C. 10:37G-2.8

COMMENT: NJHA was appreciative of the streamlined application procedure for additional unit beds.

RESPONSE: The Department acknowledges the commenter's appreciation. The amendments are intended to clarify the administrative process for determining the need for additional STCF beds.

Summary of Changes upon Adoption:

The Department is making two changes to the rule text upon adoption. First, the language at N.J.A.C. 10:37G-2.1(e)4 has been rewritten to make that provision's intent clearer. The rewritten provision attempts to emphasize that patients with organic diagnoses or dementia are admissible to the STCF only if their behavioral symptoms pose a danger to themselves or others and if those behavioral symptoms can be ameliorated by the short-term psychiatric intervention available in the STCF. The substantive meaning of this provision remains the same as on proposal.

The second change upon adoption appears in N.J.A.C. 10:37G-2.2(f), which now requires clinical privileges be extended to PACT, as well as ICMS, staff. The amendment, as originally proposed, was intended to replace the outdated phrase, "community liaison staff," with more current and accurate terminology, but, through administrative oversight, did not include PACT. The change upon adoption corrects this oversight while keeping the provision consistent with the original intent.

Federal Standards Statement

A Federal standards analysis is not required because these rules are not subject to any Federal requirements or standards.

Full text of the re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:37G.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *(thus)*):

10:37G-1.2 Definitions

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

"Acute care" means community and in-patient psychiatric services designed to provide stabilization during the acute phase of psychiatric illness.

"Acute care system" means those services either contracted for, licensed by or designated by the Division as part of a geographic area's acute care services. They include, but are not limited to: screening center, emergency services, short term care facility, affiliated voluntary inpatient service, acute partial care, crisis housing, integrated case management, and programs of assertive community treatment.

"Assessment" means evaluation of the individual in crisis in order to ascertain his or her current and previous level of functioning, psychosocial and medical history, potential for dangerousness, current psychiatric and medical condition, factors contributing to the crisis, and support systems that are available.

"Certified screener" means an individual who has fulfilled the requirements set forth in N.J.A.C. 10:31-3.3 and has been certified by the Division to assess a patient to determine if he or she meets the standard for commitment.

"Comparable STCFs" means:

1. Facilities in the same region;
2. Facilities which are similar in size; and or
3. Facilities which serve similar populations (for example, urban, suburban, etc.).

"Consensual" means the type of admission applicable to a person who has received a face-to-face assessment from a certified screener and screening psychiatrist at a designated screening center, who is determined to be dangerous to self, others or property by reason of mental illness, and who understands and agrees to be admitted to a STCF for stabilization and treatment.

"Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination takes into account a person's history, recent behavior and any recent act or threat.

"Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care, or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available.

"Department" means the Department of Human Services.

"Designated screening center" means a public ambulatory care service designated by the Commissioner of the Department of Human Services and located in or adjacent to an emergency room in a general hospital, which provides mental health services including assessment, screening, emergency and referral services for mentally ill persons in a specified geographic area. A designated screening center is the facility in the public mental health care system wherein a person who may be in need of treatment at a short-term care facility (STCF) or a State or county psychiatric hospital or a unit in a special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be appropriately provided.

"Designation as a short term care facility" means that a facility has received approval for a certificate of need (CON) application by the Department of Health in consultation with the Division and that the Division has determined that the STCF applicant meets all of the rules of this chapter and is authorized to begin operating as a STCF, provided that the unit also meets applicable Department of Health licensure requirements. The application for designation shall be submitted at least 60 days prior to planned implementation.

"DHSS" means the Department of Health and Senior Services.

"Integrated Case Management Services (ICMS)" means a collaborative outreach program designed to engage, support, and integrate individuals with serious mental illness into the community and facilitate their use of available resources and supports in order to maximize their independence.

"Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment as defined herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

"Psychiatric facility" means a State psychiatric hospital listed in N.J.S.A. 30:1-7, a county psychiatric hospital, a psychiatric unit of a county hospital, or a special psychiatric hospital.

"Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology and the American Osteopathic Board of Neurology and Psychiatry.

"Rehabilitation/creative arts" means disciplines with a defined course of study addressing assessment and treatment for persons with mental illness. Such disciplines will be licensed or credentialed by their respective associations. Rehabilitation/creative arts may include, but need not be limited to, rehabilitation specialists, art, music, dance/movement, drama, occupational, and recreational therapy.

"Short term care facility (STCF)" means an acute care adult psychiatric unit in a general hospital for short term admission of individuals who meet the legal standards for commitment and require intensive treatment. The STCF shall be designated by the Division of Mental Health Services to serve residents of a specific geographic area within the State. All admissions to short term care facilities must be referred through a designated emergency/screening mental health service.

"Special psychiatric hospital" means a public or private hospital licensed by the Department of Health and Senior Services to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment and rehabilitation services to persons who are mentally ill.

10:37G-2.1 Admission

(a) All patients admitted to the STCF shall be referred exclusively through a designated screening center. Prior to admission, all patients shall receive a face-to-face assessment by both a certified screener and a psychiatrist formally affiliated with the screening center to confirm that the patient is mentally ill, the mental illness causes the person to be dangerous to self or dangerous to others or property and the patient needs care at a STCF because other services are not appropriate or available to meet the person's mental health care needs.

1. The STCF shall maintain written policies and procedures which describe the referral function of the designated screening center regarding transfers to the STCF from other hospitals or from beds within the same hospital to assure that patients meet the criteria noted at (a) above.

2. The STCF policies and procedures shall specify that the psychiatrist who treats the patient in the STCF shall not also have been the psychiatrist who completed the face-to-face screening evaluation to determine commutability or who completed the screening certificate, unless and only after reasonable but unsuccessful attempts were made to have another psychiatrist conduct the evaluation and execute the certificate.

i. The STCF policies and procedures shall stipulate that the "reasonable attempts" referred to in (a)2 above shall include but shall not be limited to reassignment, scheduling changes, or any other mechanism that may result in another psychiatrist treating the patient in the STCF.

ii. The STCF policies and procedures shall require the documentation of all reasonable but unsuccessful attempts made to avoid the same psychiatrist completing both the screening and clinical certificates.

(b) (No change.)

(c) All the affiliation agreements shall be approved by the Division's Assistant Director responsible for the geographical area served by the STCF or his or her designee. Affiliation agreements between STCFs and State or county hospitals shall comply with the requirements set forth herein at N.J.A.C. 10:37G-2.4(d).

(d) (No change.)

(e) The STCF's written policies and procedures shall specify inclusionary and exclusionary admission criteria which describe the diagnostic and patient characteristics appropriate for the STCF.

1.-3. (No change.)

4. *[Admission criteria shall require that patients with an organic diagnosis or dementia shall be admitted if they are a danger to themselves or others and if their behavioral symptoms can be ameliorated by psychiatric intervention.]* ***Admission criteria shall require that patients with a diagnosed organic condition or dementia shall be admitted if their behavior symptoms pose a danger to self or others**

and if those behavioral symptoms can be ameliorated by the short-term psychiatric intervention available in a STCF.*

5. Admission criteria shall adequately address clinical and safety concerns and shall not permit the exclusion of a patient for the sole reason of pending criminal charges indicated by a detainer.

6. (No change in text.)

(f) The STCF's written procedures shall require the immediate admission of patients who meet the admission criteria whenever an STCF bed is available.

(g) When a new patient meets the admissions criteria and all STCF beds are full, current patients shall be reassessed for possible transfer to the less restrictive acute unit or possible transfer to longer term treatment, as appropriate, to allow the admission of the new patient.

(h) Pursuant to Division approved written agreements among designated screening centers and STCFs, a STCF may also be contacted regarding a possible admission of a new patient from outside its county whenever all the STCF beds assigned to that patient's county of residence are full or no STCF exists in the patient's county of residence. STCFs can expect the designated screening center with the new admission to inquire regarding the feasibility of such transfers and such approved out-of-county placements.

(i) STCF staff shall comply with the provisions of N.J.S.A. 26:2H-53 et seq. ("New Jersey Advance Directives for Health Care Act") including the adoption of such policies and practices as are necessary to provide for routine inquiry at the time of admission and at such other time as are appropriate under the circumstances, concerning the existence and location of an advance directive, pursuant to N.J.S.A. 26:2H-65a(1).

10:37G-2.2 Assessment and service planning

(a) The STCF's written procedures shall require that STCF staff shall complete written diagnostic evaluations of each patient. These evaluations shall provide clear descriptions of each patient's psychiatric, psychosocial, medical and social service needs.

(b) The STCF's written procedures shall require that, within 24 hours of admission, the following evaluations, at a minimum, shall be completed:

1. A psychiatric assessment and mental status examination which includes the patient's and family's psychiatric history and concludes with a diagnosis, and treatment recommendations;

2. A physical examination, including a medical, alcohol and substance abuse history and resulting in a summary with conclusions; and

3. A nursing assessment by a registered nurse, concluding with individualized clinical treatment recommendations and reflecting nursing staff interventions.

(c) The STCF's written procedures shall require the completion, within 24 hours of admission, of an initial treatment plan. This plan shall be completed by a board certified or board eligible psychiatrist or a licensed psychiatric resident under the supervision of a board certified or board eligible psychiatrist to minimally address the patient's presenting problem(s) and any emergent medical or physical needs.

(d) The STCF's written procedures shall require that, within 72 hours of admission or prior to the development of the comprehensive treatment plan, the following evaluations shall be completed:

1. A social assessment, including information regarding family, educational, and employment history, current mental health and social services used by the patient, financial status, and current living arrangements, and concluding with clinical treatment recommendations and discharge planning; and

2. A rehabilitation/creative arts assessment, including functional performance and interests and concluding with treatment recommendations.

Recodify existing vi.-viii. as 3.-5. (No change in text.)

(e) A written comprehensive treatment plan shall be completed for the patient. This written comprehensive treatment plan shall be updated every five days or more frequently as the patient's needs change, and shall:

1. Identify patient strengths, problems, and limitations;

2. Reflect the input of the patient, the psychiatrist, the registered nurse, the social worker, the rehabilitation/creative arts therapist, the patient's family, any other significant hospital staff involved in treatment.

and, as appropriate, the findings and recommendations of the ICMS or PACT worker:

3. Include stabilization goals to be achieved by the patient which are discharge-oriented and which address mental, medical, and social goals, as appropriate; and

4. Include specific measurable objectives that relate to the goals, indicate frequency of interventions, identify responsible staff and include anticipated time frames for achievement.

(f) Clinical privileges shall be provided to ICMS *and PACT* staff so that they shall have access to the clinical records of the patients they serve and so that they may participate in both the assessment process and the discharge planning process.

(g) STCF staff shall document in the patient's record in chronological order the following information:

1. Treatment provided and the patient's response;

2. Implementation of the treatment plan and changes made in the treatment plan;

3. Significant incidents or events occurring during the patient's treatment;

4. Attendance at and level of participation in unit activities and therapies; and

5. Discharge planning.

(h) The psychiatrist shall document all patient contacts and describe the patient's clinical status.

1. Every patient shall receive a visit by a psychiatrist every day unless there is a clinical basis to justify the patient not receiving such a visit which is documented in the medical record by the psychiatrist. In all cases, a patient shall receive a visit by a psychiatrist at least once every two days.

(i) The social worker shall document in the patient's record discharge-oriented progress notes twice per week.

(j) The rehabilitation/creative arts therapist shall document in the patient's record individual discharge-oriented progress notes twice per week.

10:37G-2.3 Services to be provided

(a) As clinically appropriate, STCF staff shall directly provide the following range of intensive services:

1.-6. (No change.)

7. Rehabilitation activities and therapies;

8. Substance abuse assessment, consultation, and counseling/education; and

9. Seclusion and restraint, as required pursuant to N.J.S.A. 30:4-27.11(d)(3), and other special treatment procedures.

(b) (No change.)

(c) STCF staff shall provide a minimum of five hours of activities per day which include at least three hours of therapy conducted by a professional with a master's degree from an accredited institution in a recognized mental health discipline or a staff member appropriately licensed or certified to provide such services.

(d) STCF staff shall develop and implement a written procedure that requires nursing staff, in addition to other professional STCF staff, to be available to meet with families of patients and to provide treatment on evenings, weekends and holidays.

(e) STCF staff shall develop and implement written procedures to address provisions for the treatment of patients with physical limitations and those with medical needs, including, but not restricted to, human immunodeficiency virus (HIV), pregnancy, and dialysis.

(f) STCF staff shall develop and implement procedures for ensuring that patients' rights, as delineated at N.J.S.A. 30:4-24.3, 27.11 et seq., 27.14, 27.18 and 27.20 and N.J.A.C. 8:43G-4.1, are not violated.

(g) STCF staff shall develop and implement a written procedure for ensuring that the notifications required by N.J.S.A. 30:4-27.9a are performed.

10:37G-2.4 Termination, transfer and referral of patients

(a) (No change.)

(b) STCF staff shall develop a written discharge and aftercare plan for each patient. This plan shall be developed together with the appropriate community program in which the patient will be receiving services.

(c) (No change.)

(d) Affiliation agreements between STCFs and the State and county psychiatric hospitals shall include criteria and procedures for:

1. STCF staff to transfer patients who meet the standard for commitment to the State or county psychiatric hospital, including compliance with the provision at N.J.S.A. 30:4-27.10(i) prohibiting the transfer of an STCF patient less than five days prior to the scheduled date of a commitment hearing, unless such change is dictated by a change in the person's clinical condition and requiring 24 hours advance notice of the pending transfer to the patient, his or her family and his or her attorney;

2. (No change.)

3. STCF staff to obtain patient consent whenever possible and to notify the patient's family as appropriate regarding further in-patient treatment.

(e) The affiliation agreements with the State and county hospitals shall specify the respective responsibilities of both parties with regard to medical clearance and all other activities related to the transfer of a patient from STCF to the State or county psychiatric hospital, including designation of a contact person at each facility. The State or county hospital shall agree to admit patients from the STCF on a consensual basis, if the results of a psychiatric evaluation indicate that the patient meets the standard for involuntary commitment and needs longer term care but is willing to be admitted consensually.

(f) (No change in text.)

(g) STCF shall develop and implement procedures for ensuring that the commitment documents for each patient are completed and accommodate commitment hearings as scheduled.

10:37G-2.5 Administration and staffing

(a) (No change.)

(b) If it has fewer than seven beds, the STCF may employ a manager on a half-time basis. If it has seven or more beds, the STCF shall employ a full-time manager. The manager shall be given the responsibility and authority for day-to-day operation of the STCF and shall be charged with assuring that the STCF functions as part of a continuum of care. The manager of the STCF or designee shall be required to actively participate in System Review Committee meetings in the geographic area in which the STCF is located.

(c) In addition to employing a manager, the STCF shall, at a minimum, meet the following staffing requirements:

1. The STCF shall have policies and procedures ensuring that total staffing equals a minimum of two full-time direct care positions in appropriate disciplines for each designated bed. The equivalent of up to one full-time clerical position per 10 beds may be included in this category;

2. There shall be a minimum of two full-time nursing staff on the STCF unit on every shift;

3. There shall be no less than one full-time nursing staff for every three patients on day and evening shifts and no less than one full-time nursing staff for every five patients on the night shift, with a minimum of one full-time registered nurse per shift on the STCF unit;

4.-5. (No change.)

(d) (No change.)

10:37G-2.6 Quality assurance activities

(a) STCF staff shall address the following areas:

1.-2. (No change.)

3. (No change in text.)

4. The STCF manager shall ensure that persistent problems are addressed;

5. The STCF manager shall complete the Systems Review Committee STCF form and shall submit it to the Division and the systems review committee (SRC) monthly, noting, at a minimum, the number and or kind of:

i.-vii. (No change.)

viii. Length of stay on the STCF;

6. The STCF manager shall utilize various sources of data on acute hospital in-patient care and review statistics from comparable STCFs to identify areas for special review in order to evaluate performance; and

7. The STCF manager shall report any unusual incidents in accordance with the requirements of N.J.A.C. 10:37-6.108.

10:37G-2.7 Designation and redesignation

(a) A candidate for STCF designation shall submit a certificate of need application to the New Jersey Department of Health and Senior Services DHSS and respond to whatever follow-up application questions DHSS and the Division may have. The DHSS and the Division shall review all statements and responses by the applicant. Pursuant to certificate of need rules and subsequent to consultation with the Division, the DHSS shall approve or disapprove the application and shall so notify the applicant.

(b) Application for designation as a STCF must be submitted to the Division a minimum of 60 days prior to the planned STCF implementation.

(c) Each applicant seeking designation as a STCF shall receive a site review by Division staff. Thereafter, redesignation reviews shall be conducted annually by Division staff.

Recodify existing (c)-(h) as (d)-(i) (No change in text.)

(j) The STCF shall inform the Division of any proposed changes affecting its bed complement.

(k) If the STCF chooses to appeal the Director's decision made pursuant to these rules, the STCF may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Commissioner, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations, pursuant to N.J.A.C. 52:14B-10.

10:37G-2.8 Determination of the need for additional STCF beds

(a) This section delineates the procedure that a STCF shall follow to apply for additional beds.

(b) In the review of applications for new beds, the Division, in conjunction with the DHSS, shall ensure that the following conditions are present:

1. An adequate number of adult open acute and STCF beds shall be available within the same facility to ensure clinically appropriate levels of care. The adequacy of the distribution of open and STCF beds will be demonstrated by the applicant when the adult open acute bed capacity will accommodate projected admissions.


i. To determine the projected occupancy rate, the applicant shall multiply the occupancy rate for the past 12 months by the existing number of open acute beds. This number shall be divided by the number of open acute beds that would remain if the conversion occurred.

ii. If the development of STCF capacity is proposed through conversion of existing open acute beds, the applicant shall demonstrate that the conversion shall not negatively impact accessibility to these less restrictive services for patients who need them.

2. If the projected occupancy rate for the remaining open acute beds exceeds 85 percent, STCF staff shall ensure that arrangements have been made to accommodate patients who need open acute services. Prior to implementing the conversion, this arrangement shall be approved by the Division.

(c) (No change in text.)

EXAMPLE R

 <p>OFFICE OF ADMINISTRATIVE LAW CERTIFICATE OF PROPOSAL, ADOPTION AND PROMULGATION</p>		TO: _____ (b) Subject of Proposal _____
I. PROPOSED RULE (Completed by OAL)		(j) This is to certify that the notice of proposed rule was filed and published in the New Jersey Register pursuant to N.J.S.A. 52:14B-3(4) and 4(a)(1). Rules Analyst _____ Date _____
(a) Proposal Number _____	(c) Proposing Agency _____	
(d) Legislative Receipt _____	(e) Calendar Reference _____	(f) Proposal Notice Citation _____
(g) Type of Rule 1. <input type="checkbox"/> New Rule 2. <input type="checkbox"/> Amendment 3. <input type="checkbox"/> Repeal 4. <input type="checkbox"/> Readoption 5. <input type="checkbox"/> Concurrent Proposal	(h) Code Citation N.J.A.C. _____ (i) Publication Date _____	
II. RULEMAKING RECORD AND ADOPTION OF PROPOSED RULE (To be completed by proposing agency)		
(a) Public Notice for Proposal 1. <input type="checkbox"/> N. J. Register 2. <input type="checkbox"/> State House Press Room 3. <input type="checkbox"/> Agency Web Site 4. <input type="checkbox"/> Other Secondary Notice (specify) _____ _____ _____	(b) Public Comment Permitted 1. <input type="checkbox"/> Written Statement 2. <input type="checkbox"/> Phone Conversation 3. <input type="checkbox"/> Public Hearing 4. <input type="checkbox"/> Personal Interview 5. <input type="checkbox"/> Conference 6. <input type="checkbox"/> Other _____	(c) Special procedure initiated pursuant to the APA or Otherwise Required by Law 1. <input type="checkbox"/> Pre-Proposal for a Rule 2. <input type="checkbox"/> Petition for a Rule 3. <input type="checkbox"/> Public Hearing <input type="checkbox"/> Pursuant to N.J.S.A. 52:14B-4(a)3 <input type="checkbox"/> Mandated <input type="checkbox"/> Discretionary
(d) Public Hearing (where applicable) 1. Date (s) _____ 2. Place(s) _____ 3. # Persons Tested _____		4. <input type="checkbox"/> Submission to Advisory Board <input type="checkbox"/> Mandated by _____ 5. <input type="checkbox"/> Special Notice <input type="checkbox"/> Mandated by _____ 6. <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Mandated by _____ Attach Explanation Verifying Special Procedures _____
(e) Record of Public Comment 1. <input type="checkbox"/> File of Written Statements 2. <input type="checkbox"/> Transcript of Public Hearing 3. <input type="checkbox"/> Public Hearing Officer's Report 4. <input type="checkbox"/> List of Individuals or Associations 5. <input type="checkbox"/> Minutes of Conference or Other Meeting 6. <input type="checkbox"/> Number of Persons who Commented 7. <input type="checkbox"/> No Comments Received Attach List of Commenters and Summary of Public Comments Received and Agency Responses	(f) Variance Between Proposal and Adoption 1. <input type="checkbox"/> No Change 2. <input type="checkbox"/> With Changes Not in Violation of N.J.A.C. 1:30-6.3 Attach Explanation of and Reasons for Changes _____	
(g) Expiration Date 1. <input type="checkbox"/> _____ <input type="checkbox"/> Established by this Rule <input type="checkbox"/> Already Established as Part of N.J.A.C. 2. <input type="checkbox"/> Exempt under _____	(h) Type of Adoption 1. <input type="checkbox"/> Ordinary Rule 2. <input type="checkbox"/> Emergency Rule 3. <input type="checkbox"/> Organizational Rule 4. <input type="checkbox"/> Federally Required Rule 5. <input type="checkbox"/> E.O. 66 Readoption 6. <input type="checkbox"/> Readoption of Emergency Rule Attach Statement of Imminent Peril and Expiration Date for any Emergency Rule _____	
(i) Operative Date: 1. <input type="checkbox"/> Upon Promulgation (Date of Publication) 2. <input type="checkbox"/> After Promulgation _____ 3. <input type="checkbox"/> Upon Filing (for Emergency and Readoption Rules if filed timely)		
(j) Adoption Pursuant to authority of N.J.S.A. _____ and in accordance with the New Jersey APA and any applicable provisions of State or Federal statutes or State or Federal regulations the (Agency) _____ hereby adopts this proposal and certifies that rulemaking record contained in and attached to this Certificate complies with N.J.A.C. 1:30-5.6 ORDERED this _____ day of _____ 2001 _____ Signature and Title of Adopting Officer		
III. PROMULGATION (Completed by OAL)		
(a) Code Citation N.J.A.C. _____	(b) Document Number R. _____ d. _____	
(c) Adoption Notice Citation _____	(d) Publication Date _____	
(e) This is to certify that the adopted rule was filed and promulgated pursuant to N.J.S.A. 52:14B-1 et seq.		
Signature _____	Rules Analyst _____	Date _____

EXAMPLE S

EMERGENCY ADOPTION

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Tax Amnesty

Adopted Emergency and Concurrent Proposed New Rules: N.J.A.C. 18:39

Emergency New Rule Adopted and Concurrent Proposed Rule Authorized: April 3, 2002 by Robert K. Thompson, Division of Taxation.

Emergency Amendment Filed: April 18, 2002 as R.2002 d.144. Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): April 8, 2002.

Authority: N.J.S.A. 54:50-1 and P.L. 2002, c.6.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2002-182.

Emergency Adoption Effective Date: April 18, 2002.

Emergency Adoption Expiration Date: June 17, 2002.

Submit comments by June 5, 2002 to:

Nicholas Catalano
Chief, Regulatory Services Branch
Division of Taxation
50 Barrack Street
PO Box 269
Trenton, NJ 08695-0269

This is an emergency adoption and concurrent proposal by the Division of Taxation implementing procedures for a State tax amnesty period. These rules are proposed for adoption on an emergency basis and will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.5(b)). Concurrently, the provisions of this emergency adoption are proposed for re-adoption pursuant to the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The rules become effective upon acceptance for filing by the Office of Administrative Law (N.J.A.C. 1:30-6.5(d)), if filed on or prior to the emergency expiration date.

The agency emergency adoption and concurrent proposal follows:

Summary

On March 18, 2002, the Governor signed the State Tax Amnesty statute, P.L. 2002, c.6. The Act authorized the Director to establish a period not to exceed 60 days during which taxpayers may pay any eligible State tax which is required to be paid. The Act further provides that the taxpayer will not be subject to any interest, cost of collection, or imposition of any civil or criminal penalties arising out of an unpaid obligation imposed under any eligible State tax law. Specifically, the Act shall apply to State tax liabilities for tax returns due on and after January 1, 1996 and prior to January 1, 2002. Amnesty is not allowable to any taxpayer who at the time of the payment is under criminal investigation or charge for any State tax matter, as certified by a county prosecutor or the Attorney General to the Director. A five percent penalty which shall not be subject to waiver or abatement shall be imposed upon any eligible State tax liabilities not satisfied during the amnesty period.

Emergency adoption is necessary in order to collect up to \$150 million of estimated taxes that have gone unpaid since 1996. Adoption of the proposed rules will enable the Division to discharge its obligation to enforce tax statutes and effect collection and processing of tax payments as quickly and efficiently as possible.

A summary of the agency emergency adopted and concurrent proposed new rules follows:

1. N.J.A.C. 18:39-1.1 establishes the eligibility periods and the beginning and ending dates for the amnesty period. The section also provides examples of when a taxpayer may or may not be eligible for amnesty.

2. N.J.A.C. 18:39-1.2 sets forth the scope of amnesty which permits the waiver of civil and criminal penalties, interest and collection costs upon liabilities for which tax amnesty is granted.

3. N.J.A.C. 18:39-1.3 specifies the methods a taxpayer may use to obtain tax amnesty and where the taxpayer may obtain the required forms. The section details how a taxpayer may participate in tax amnesty if unable to obtain or complete an official tax amnesty form.

4. N.J.A.C. 18:39-1.4 establishes the criteria for the granting or denial of tax amnesty.

5. N.J.A.C. 18:39-1.5 specifies special rules to be applied where a taxpayer is subject to wage garnishment, attachment or seizure of property, a corporation has a voided charter, a taxpayer has requested a conference with the Division, a taxpayer has filed a complaint with the Tax Court, a taxpayer is eligible for partial amnesty, a taxpayer is currently under audit, a taxpayer seeks amnesty for gross income tax liabilities, and a taxpayer has matters pending before the Conference and Appeals Branch.

6. N.J.A.C. 18:39-1.6 sets forth the consequences of denial of tax amnesty specifically where the taxpayer is under criminal investigation or charge as certified by the Attorney General or a county prosecutor.

7. N.J.A.C. 18:39-1.7 establishes the rights of a taxpayer where amnesty has been denied and provides the address of mailing a letter of disagreement.

8. N.J.A.C. 18:39-1.8 sets forth the procedures for reporting an overpayment of tax during the tax amnesty period which may require correction, transfer, or refund.

Pursuant to its authority under N.J.S.A. 52:14B-4(c), the Division of Taxation intends the concurrent proposal to be permanently effective upon the filing of its notice of adoption with the Office of Administrative Law.

Taxpayers wishing additional information about amnesty should call or write to New Jersey Division of Taxation, Amnesty Headquarters, PO Box 445, Trenton, NJ 08646-0445 or 1-800-781-8407, or inquire on the Internet at <http://www.njtaxamnesty.com>.

As involving an imminent peril subject to provisions of N.J.S.A. 52:14B-4(c), this rulemaking is exempted from the rulemaking calendar requirement by N.J.A.C. 1:30-3.3(a).

Social Impact

The legislation and the proposed rules are intended to provide a period during which taxpayers, who have failed to pay any eligible State tax payable to or collectible by the Division of Taxation, may remit the tax due and owing. Taxpayers will be excused from any interest or collection costs that may otherwise be due, and from the imposition of any civil or criminal penalties arising out of an obligation imposed under any State tax law. The amnesty statute contains a provision for the imposition of a five percent penalty on amnesty eligible State taxes not paid during the amnesty period which shall not be subject to waiver or abatement. That penalty is in addition to all other penalties, interest, or costs of collection otherwise authorized by law. The new penalty takes effect after the amnesty period expires. The proposed rules provide the general operating guidelines that will be followed by the Division; the requirements which must be met to qualify for tax amnesty; those circumstances that will result in the denial of tax amnesty; and a discussion of a number of specialized situations into which many taxpayers will fall. The amnesty law provides the means by which a taxpayer may come forward and pay existing tax liabilities, both known and unknown to the Division of Taxation without any fear of civil action or criminal prosecution.

Economic Impact

The legislation which these rules implement will increase the tax compliance level of New Jersey taxpayers by providing an incentive for prompt payment. No additional taxes are imposed during the amnesty period. Subsequent to the tax amnesty period, compliance levels should be enhanced by the reduced backlog of non-compliant taxpayers allowing the Division of Taxation to focus on persistent evaders, and the addition of taxpayers to the tax rolls resulting from their identification during the tax amnesty period. This should have a residual positive revenue impact for the State. The proposed rules should also reduce compliance costs for taxpayers interested in availing themselves of the program, by giving them clear guidance as to how to participate in the program.

The State Treasurer has estimated that an amnesty program may result in net tax revenue collections for the General Fund of \$150 million.

Federal Standards Statement

A Federal standards analysis is not required because the procedures for the tax amnesty are not subject to any Federal regulation and, therefore, do not exceed Federal requirements and standards.

Jobs Impact

The new rules are not expected to have any effect on jobs in the State.

Agriculture Industry Impact

The Division does not anticipate any agriculture industry impact from the rules proposed for adoption.

Regulatory Flexibility Statement

The primary purpose of the proposed rules is to ease the terms of payment of existing liabilities without any collection costs, civil or criminal penalties, and without any interest. To that end, small businesses would be encouraged to pay their outstanding tax liabilities, given the incentives expressed in the legislation. The statute does not provide for differentiation in the treatment of large or small businesses as defined by the pertinent statutes.

The proposed rules do not impose new reporting, recordkeeping or compliance requirements. Because of the simplification of compliance as a result of the terms of amnesty, the small business owner should be encouraged voluntarily to submit taxes due and owing to the State.

Smart Growth Impact

The Division does not anticipate that the rules proposed for adoption will impact the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the emergency adopted and concurrent proposed new rules follows:

CHAPTER 39 TAX AMNESTY

SUBCHAPTER 1. TAX AMNESTY

18:39-1.1 Eligibility for tax amnesty

(a) All eligible taxpayers with an outstanding New Jersey State tax liability reportable on any tax return due on or after January 1, 1996 and prior to January 1, 2002 are eligible for tax amnesty during the "tax amnesty period" designated by the Director of the Division of Taxation.

(b) The designated tax amnesty period will begin Monday, April 15, 2002 and end midnight Monday, June 10, 2002.

Example 1: A taxpayer was issued a Notice of Deficiency in June 2000 for underpayment of corporation business tax for the calendar year 1999. The return was due prior to January 1, 2002. The tax is eligible for remittance under the tax amnesty program, provided the taxpayer pays the amount of tax liability due during the amnesty period and signs the required payment/waiver statement.

Example 2: A taxpayer with a January 31 fiscal year fails to report the gain on the sale of a capital asset that occurred in March 2001. The result of this failure is the underpayment of the taxpayer's corporation tax liability and imposition of penalty and interest charges for the insufficiency of corporation tax installment payments. Even though the taxable event occurred prior to January 1, 2002, the return was due after January 1, 2002. Therefore the taxpayer is not eligible to receive amnesty on either the tax liability or the penalty and interest charged for the insufficient installment payment that would be due on the gain from the sale of the capital asset.

Example 3: A vendor sold an automobile in January 2002. She failed to remit the sales tax in February of 2002. She is not eligible for tax amnesty since the due date of the sales tax return occurs after January 1, 2002. The due date of any tax returns must be before January 1, 2002 to be eligible for tax amnesty.

(c) A taxpayer may elect to participate and be granted tax amnesty for any eligible tax which is payable to the Division of Taxation. Taxes not payable to the Division of Taxation, such as, but not necessarily limited to, unemployment and disability taxes (payable to the Department of Labor), boxing taxes (payable to the State Athletic Commission), and local property tax (payable to municipal tax collectors), are not eligible for tax amnesty.

(d) All taxpayers owing State taxes for an eligible period may receive tax amnesty unless taxpayers are under criminal investigation or charge for a State tax matter and that fact has been certified to the Division of Taxation by a county prosecutor or the Attorney General.

(e) Tax amnesty will not be granted with respect to taxes, penalties and/or interest otherwise eligible for tax amnesty that have been paid prior to the commencement of the tax amnesty period.

(f) If a taxpayer has paid a tax in full but still owes penalty and interest on that tax, the outstanding liability for penalty and interest is eligible for tax amnesty.

(g) Tax amnesty will be granted for penalty and interest only if the penalty and interest were assessed with respect to an amnesty eligible liability.

18:39-1.2 Scope of amnesty

(a) When tax amnesty is granted, all collection costs, civil and criminal penalties and all interest attributable to the tax and period for which tax amnesty has been granted will be waived.

(b) Once tax amnesty is granted, all penalties and interest as defined by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., or any other State tax law and any civil, administrative or criminal proceedings are barred relating to the designated tax only.

(c) If tax amnesty is not granted, the taxpayer's obligation to pay the full amount of the tax due with penalty, interest and cost of collection, if any, will not be waived.

(d) The waivers of interest and penalties and prohibition against prosecution apply only to those amounts of tax for which amnesty is requested and granted.

(e) Penalties and interest will be imposed and proceedings will not be barred relating to any amount of tax later found to be due in excess of the tax amnesty payment.

(f) Once amnesty is granted and the full payment of the tax for which a request for amnesty has been made, the taxpayer relinquishes all rights to refund and of administrative and judicial appeal which have not run or otherwise expired.

18:39-1.3 Application for granting tax amnesty

(a) To obtain tax amnesty, the Division of Taxation must receive from the taxpayer all required forms, and/or tax returns along with the full payment for amnesty eligible taxes. Voice or electronic signatures will be recognized when submitted according to Division procedures.

1. The official forms of the Division of Taxation must be used. These include any forms or returns designed by the Division for use during the amnesty period and any regular New Jersey tax returns being filed under amnesty. Any information submitted for consideration for amnesty not submitted on the required forms will be considered incomplete and amnesty will be denied.

2. Official Tax Amnesty forms are available by writing to: New Jersey Division of Taxation, Amnesty Headquarters, PO Box 445, Trenton, NJ 08646-0445 or by calling 1-800-781-8407, or Tax Fax at (609) 826-4500, or inquiry on the Internet at <http://www.njtaxamnesty.com>.

3. The filing must be postmarked by midnight of the last day of the tax amnesty period or delivered to the Division of Taxation by midnight of the last day of the tax amnesty period.

4. Notwithstanding (a)1 above, if the taxpayer electing to participate in tax amnesty is unable to obtain or complete an official tax amnesty form or the necessary tax returns by the last day of the tax amnesty period, the taxpayer may submit a letter which will, for purposes of the filing date, be considered timely filed. That letter must include the following information:

- i. The taxpayer's name;
- ii. The taxpayer's address;
- iii. The taxpayer's ID number, if known, or Social Security number;
- iv. The tax for which tax amnesty is being requested and its amount;
- v. The period for which tax amnesty is being requested; and
- vi. Payment of the tax in full.

5. The letter, in lieu of the submission of appropriate tax amnesty forms and/or tax returns, must be received by midnight of the last day of the tax amnesty period, or postmarked by that date. The tax amnesty election will not be considered complete until all necessary official tax returns have been signed and filed. Thus, the letter is to be used only in such emergencies where tax amnesty forms and/or tax returns cannot be obtained or completed prior to the final day of tax amnesty. The taxpayer must submit the necessary returns within 30 days of the letter's postmark; if not, amnesty will be denied. Taxpayers should keep copies of the

applicable forms and/or tax returns and proof of mailing or delivery in order to avoid rejection of the subsequent filing of the tax returns on the grounds that such official filing is not timely.

(b) The taxpayer, in order to be eligible for any tax amnesty, must pay the tax within the period of tax amnesty.

1. If the taxpayer does not know or cannot calculate the tax due, the taxpayer may approximate the amount of this tax liability and send payment for the approximation to the Division within the tax amnesty period. Any subsequent bill to the taxpayer for additional tax due will bear full penalty and interest charges plus an additional five percent penalty which shall not be subject to waiver or abatement. It will not, however, affect the amount on which tax amnesty had previously been granted.

(c) Notwithstanding (a) above, an amnesty application may also be made electronically under the procedures and requirements described at www.njtaxamnesty.com.

18:39-1.4 Granting or denial of tax amnesty

(a) Tax amnesty will be specifically granted or denied by the Division.

(b) A taxpayer will be denied tax amnesty if the tax amnesty forms and/or tax returns are not sufficiently complete for the Division to understand the period and tax for which amnesty is applied.

(c) Tax amnesty will be denied with respect to taxes not eligible for tax amnesty (for example, local property tax).

(d) A taxpayer will be denied tax amnesty for tax liabilities arising outside of the tax amnesty period in accordance with P.L. 2002, c.6, §1a.

(e) A taxpayer will be denied tax amnesty if the taxpayer is certified to be under criminal investigation or charge by the Attorney General or a county prosecutor.

(f) A taxpayer will be denied tax amnesty for nonpayment or underpayment of tax, payment with a dishonored check or other improper forms of payment established by the Division.

(g) A taxpayer will be denied tax amnesty for any other acts or failures to act which evidence that the taxpayer is not in compliance with these rules or the enabling legislation.

18:39-1.5 Special rules

(a) A taxpayer who is subject to wage garnishment, attachment, or seizure of property by the Division of Taxation may apply and receive tax amnesty provided the taxpayer complies with the terms of tax amnesty. Upon full payment of all taxes due and the granting of tax amnesty, the Division will apply the payment in satisfaction of the applicable judgments and release any levies against real or personal property.

(b) A corporation that has had its corporate charter voided may be granted tax amnesty providing it complies with the terms of tax amnesty. A corporate charter can only be reinstated upon filing all required returns, full payment of all taxes due, the payment of the reinstatement fee to the Division of Revenue, Business Services Bureau, and approval of the Attorney General. Upon meeting these conditions, tax amnesty will be granted and the corporate charter reinstated.

(c) A taxpayer who has requested a conference with the Division of Taxation may be granted tax amnesty. This can be done provided the taxpayer sets forth the portions of the assessments for which amnesty is sought and withdraws them from the conference process. The portion, if any, on which tax amnesty is not sought nor granted will continue to be the subject of the conference and the five percent penalty in P.L. 2002, c.6, §1b shall apply to it.

(d) A taxpayer who has filed a complaint with the New Jersey Tax Court or who is pursuing an appeal before any other judicial tribunal may be considered for tax amnesty provided the taxpayer agrees to withdraw or otherwise cause the complaint or appeal to be dismissed with prejudice as to the amnesty eligible claims set forth in the complaint. The portion, if any, on which tax amnesty is not sought or granted will continue to be the subject of litigation and the five percent penalty in P.L. 2002, c.6, §1b shall apply to it.

(e) A taxpayer may receive partial tax amnesty on any eligible part of unpaid State tax. The balance of the liability remains subject to penalty and interest at the rates applicable to the pre and post-amnesty periods. Full penalties and interest on the balance of the liability will be imposed by the Director, Division of Taxation.

(f) A taxpayer currently under audit may be granted tax amnesty for any eligible State tax as to any part of an assessment he has agreed to. The taxpayer must however, elect to be considered for tax amnesty for that part of the agreed liability, be eligible to receive it, and have it granted.

(g) A taxpayer seeking amnesty for gross income tax liabilities must pay the liability and, in addition to the election to be considered, must submit a return on the NJ-1040 or any other form acceptable by the Director of the Division of Taxation.

(h) A taxpayer can be denied amnesty for tax matters pending before the Conference and Appeals Branch or for tax matters pending before the Tax Court of New Jersey or other judicial body. Specific approval from the Director must be granted in order to receive amnesty for these situations.

18:39-1.6 Consequences of denial of tax amnesty

(a) A taxpayer denied tax amnesty for a reason other than having been certified as under criminal investigation or charge will have his payments applied to other open tax accounts.

(b) If amnesty is denied because the taxpayer is under criminal investigation or charge as certified by the Attorney General or a county prosecutor, the tax returns and amounts remitted will be returned to the taxpayer and the additional five percent penalty will not be assessed.

18:39-1.7 Rights of taxpayer denied tax amnesty

(a) A taxpayer denied tax amnesty for reasons other than being certified as under criminal investigation or charge can appeal the decision by sending a letter of disagreement within 30 days of the date of the notice denying tax amnesty, stating the basis of the disagreement. If the taxpayer is later found to be eligible for tax amnesty, the taxpayer can pay the applicable tax within 30 days from the date of a favorable decision. In cases where an unfavorable decision denying amnesty is returned in response to a timely filed letter of disagreement, a taxpayer may appeal to the Tax Court of New Jersey, pursuant to the provisions of N.J.S.A. 54:48-1 et seq. within 90 days of the date of the unfavorable decision.

(b) The letter of disagreement should be addressed to:

New Jersey Division of Taxation
Amnesty Review
PO Box 445
Trenton, NJ 08646-0445

18:39-1.8 Overpayment of tax

(a) Amounts submitted in excess of any amounts due are to be credited against open tax accounts for the subject taxpayer when tax amnesty is applied for. A taxpayer can, however, apply for a refund of any penalty and interest paid in excess of the amount required by tax amnesty, provided the taxpayer meets the following conditions:

1. The tax liability, penalty, and/or interest was paid during the tax amnesty period; and

2. The taxpayer is determined to be eligible for tax amnesty.

(b) Refunds will not be issued with respect to any eligible State tax liabilities for which tax amnesty has been granted.

1. Consideration will be given to correcting errors made in a tax amnesty payment which occurs during the amnesty period. Appropriate transfers to other tax accounts or refunds may be made during the amnesty period to remedy such errors.

2. After the tax amnesty period, no such corrections, transfers, or refunds will be made. A payment submitted for tax amnesty by a taxpayer is an admission by the taxpayer that he owes the amount of tax for which amnesty is being requested.

3. Refund procedures available for taxes paid under other than tax amnesty conditions are not available for tax amnesty payments.

EXAMPLE S1

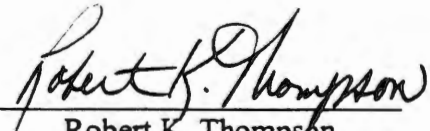
AGENCY STATEMENT OF IMMINENT PERIL

The Division of Taxation is adopting N.J.A.C. 18:39-1 et seq. to establish the operating guidelines that the Division will use in the administration of the tax amnesty program and tax amnesty period. The law (P.L. 2002, c.6) provides that the Director of the Division of Taxation must designate an amnesty period not to exceed 60 days in duration ending not later than June 10, 2002. The designated Amnesty Period is April 15, 2002 through June 10, 2002. Tax amnesty will apply to tax returns due on or after January 1, 1996 and prior to January 1, 2002. Since regulations must be in place under P.L. 2002, c.6 in order for the program to operate, adoption of these regulations must be done on an emergency basis.

There is a second reason to implement the program as soon as possible. Whenever government implements an amnesty program, taxpayers tend to wait to take advantage of the opportunity. Thus, it is in the interest of the public to implement the program quickly in order to avoid any undue delay.

The immediate adoption of these rules is essential to collect up to \$150 million in delinquent net tax revenue for the General Fund of the State of New Jersey. The taxes collected during this amnesty program will be accounted for as Fiscal Year 2002 revenues. Amnesty will enable the Division, through this voluntary program, to collect

delinquent taxes and realize savings by avoiding lengthy, expensive litigation and other costly collection procedures. Failure to adopt the proposed rules could result in an inability to collect outstanding identified and unidentified State tax liabilities in Fiscal Year 2002.



Robert K. Thompson
Director
4/3/02

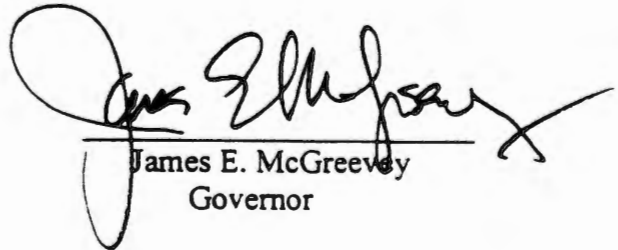
Date

EXAMPLE S2

**GOVERNOR'S STATEMENT OF IMMINENT PERIL
CERTIFICATION OF IMMINENT PERIL**

Robert K. Thompson, Director, Division of Taxation, has proposed pursuant to the imminent peril provisions of P.L. 1981, c.27, an Emergency Rule with a Concurrent Proposal at N.J.A.C. 18:39-1 et seq. The text of this Emergency Rule and Concurrent Proposal and the attached Statement of Imminent Peril, which includes a statement of reasons describing the imminent peril to collecting outstanding tax payments to satisfy the fundamental goals of reducing the tax burden on New Jersey state citizens while intensifying tax compliance efforts, have been submitted for my review and concurrence.

I hereby concur with the findings of the Director of the Division of Taxation that an emergency exists warranting the above described Emergency Rule Adoption at N.J.A.C. 18:39-1 et seq.



James E. McGreevey
Governor

April 8, 2002
Date

EXAMPLE T

CHAPTER 39 TAX AMNESTY

SUBCHAPTER 1. TAX AMNESTY

18:39-1.1 Eligibility for tax amnesty

(a) All eligible taxpayers with an outstanding New Jersey State tax liability reportable on any tax return due on or after January 1, 1996 and prior to January 1, 2002 are eligible for tax amnesty during the "tax amnesty period" designated by the Director of the Division of Taxation.

(b) The designated tax amnesty period will begin Monday, April 15, 2002 and end midnight Monday, June 10, 2002.

Example 1: A taxpayer was issued a Notice of Deficiency in June 2000 for underpayment of corporation business tax for the calendar year 1999. The return was due prior to January 1, 2002. The tax is eligible for remittance under the tax amnesty program, provided the taxpayer pays the amount of tax liability due during the amnesty period and signs the required payment waiver statement.

Example 2: A taxpayer with a January 31 fiscal year fails to report the gain on the sale of a capital asset that occurred in March 2001. The result of this failure is the underpayment of the taxpayer's corporation tax liability and imposition of penalty and interest charges for the insufficiency of corporation tax installment payments. Even though the taxable event occurred prior to January 1, 2002, the return was due after January 1, 2002. Therefore the taxpayer is not eligible to receive amnesty on either the tax liability or the penalty and interest charged for the insufficient installment payment that would be due on the gain from the sale of the capital asset.

Example 3: A vendor sold an automobile in January 2002. She failed to remit the sales tax in February of 2002. She is not eligible for tax amnesty since the due date of the sales tax return occurs after January 1, 2002. The due date of any tax returns must be before January 1, 2002 to be eligible for tax amnesty.

(c) A taxpayer may elect to participate and be granted tax amnesty for any eligible tax which is payable to the Division of Taxation. Taxes not payable to the Division of Taxation, such as, but not necessarily limited to, unemployment and disability taxes (payable to the Department of Labor), boxing taxes (payable to the State Athletic Commission), and local property tax (payable to municipal tax collectors), are not eligible for tax amnesty.

(d) All taxpayers owing State taxes for an eligible period may receive tax amnesty unless taxpayers are under criminal investigation or charge for a State tax matter and that fact has been certified to the Division of Taxation by a county prosecutor or the Attorney General.

(e) Tax amnesty will not be granted with respect to taxes, penalties and interest otherwise eligible for tax amnesty that have been paid prior to the commencement of the tax amnesty period.

(f) If a taxpayer has paid a tax in full but still owes penalty and interest on that tax, the outstanding liability for penalty and interest is eligible for tax amnesty.

(g) Tax amnesty will be granted for penalty and interest only if the penalty and interest were assessed with respect to an amnesty eligible liability.

18:39-1.2 Scope of amnesty

(a) When tax amnesty is granted, all collection costs, civil and criminal penalties and all interest attributable to the tax and period for which tax amnesty has been granted will be waived.

(b) Once tax amnesty is granted, all penalties and interest as defined by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., or any other State tax law and any civil, administrative or criminal proceedings are barred relating to the designated tax only.

(c) If tax amnesty is not granted, the taxpayer's obligation to pay the full amount of the tax due with penalty, interest and cost of collection, if any, will not be waived.

(a)

DIVISION OF TAXATION

Tax Amnesty

Adopted Concurrent New Rules: N.J.A.C. 18:39

Proposed: May 6, 2002 at 34 N.J.R. 1739(a).

Adopted: June 10, 2002 by Robert K. Thompson, Director, Division of Taxation.

Filed: June 10, 2002 as R.2002 d.213, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 54:50-1 and P.L. 2002, c.6.

Effective Dates: June 10, 2002. Readoption of Concurrent New Rules:

July 1, 2002. Change Upon Adoption.

Expiration Date: June 10, 2007.

Summary of Public Comment and Agency Response:

No comments were received.

Summary of Agency-Initiated Change:

In emergency situations where tax amnesty forms and or tax returns cannot be obtained or completed prior to the final day of tax amnesty, the concurrent proposed new rules at N.J.A.C. 18:39-1.3(a) provide a 30-day grace period from the letter's postmark for the necessary returns to be submitted. Due to the size and complexity of certain returns, this 30-day grace period may be difficult to meet. Therefore, the grace period is being extended to 60 days in the rule as adopted.

Federal Standards Statement

A Federal standards statement is not required because the procedures for the tax amnesty are not subject to any Federal regulation and therefore, do not exceed Federal requirements and standards.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*):

(d) The waivers of interest and penalties and prohibition against prosecution apply only to those amounts of tax for which amnesty is requested and granted.

(e) Penalties and interest will be imposed and proceedings will not be barred relating to any amount of tax later found to be due in excess of the tax amnesty payment.

(f) Once amnesty is granted and the full payment of the tax for which a request for amnesty has been made, the taxpayer relinquishes all rights to refund and of administrative and judicial appeal which have not run or otherwise expired.

18:39-1.3 Application for granting tax amnesty

(a) To obtain tax amnesty, the Division of Taxation must receive from the taxpayer all required forms, and/or tax returns along with the full payment for amnesty eligible taxes. Voice or electronic signatures will be recognized when submitted according to Division procedures.

1. The official forms of the Division of Taxation must be used. These include any forms or returns designed by the Division for use during the amnesty period and any regular New Jersey tax returns being filed under amnesty. Any information submitted for consideration for amnesty not submitted on the required forms will be considered incomplete and amnesty will be denied.

2. Official Tax Amnesty forms are available by writing to: New Jersey Division of Taxation, Amnesty Headquarters, PO Box 445, Trenton, NJ 08646-0445 or by calling 1-800-781-8407, or Tax Fax at (609) 826-4500, or inquiry on the Internet at <http://www.njtaxamnesty.com>.

3. The filing must be postmarked by midnight of the last day of the tax amnesty period or delivered to the Division of Taxation by midnight of the last day of the tax amnesty period.

4. Notwithstanding (a) above, if the taxpayer electing to participate in tax amnesty is unable to obtain or complete an official tax amnesty form or the necessary tax returns by the last day of the tax amnesty period, the taxpayer may submit a letter which will, for purposes of the filing date, be considered timely filed. That letter must include the following information:

- i. The taxpayer's name;
- ii. The taxpayer's address;
- iii. The taxpayer's ID number, if known, or Social Security number;
- iv. The tax for which tax amnesty is being requested and its amount;
- v. The period for which tax amnesty is being requested; and
- vi. Payment of the tax in full.

5. The letter, in lieu of the submission of appropriate tax amnesty forms and/or tax returns, must be received by midnight of the last day of the tax amnesty period, or postmarked by that date. The tax amnesty election will not be considered complete until all necessary official tax returns have been signed and filed. Thus, the letter is to be used only in such emergencies where tax amnesty forms and/or tax returns cannot be obtained or completed prior to the final day of tax amnesty. The taxpayer must submit the necessary returns within **[30]**60*** days of the letter's postmark; if not, amnesty will be denied. Taxpayers should keep copies of the applicable forms and/or tax returns and proof of mailing or delivery in order to avoid rejection of the subsequent filing of the tax returns on the grounds that such official filing is not timely.

(b) The taxpayer, in order to be eligible for any tax amnesty, must pay the tax within the period of tax amnesty.

1. If the taxpayer does not know or cannot calculate the tax due, the taxpayer may approximate the amount of this tax liability and send payment for the approximation to the Division within the tax amnesty period. Any subsequent bill to the taxpayer for additional tax due will bear full penalty and interest charges plus an additional five percent penalty which shall not be subject to waiver or abatement. It will not, however, affect the amount on which tax amnesty had previously been granted.

(c) Notwithstanding (a) above, an amnesty application may also be made electronically under the procedures and requirements described at www.njtaxamnesty.com.

18:39-1.4 Granting or denial of tax amnesty

(a) Tax amnesty will be specifically granted or denied by the Division.

(b) A taxpayer will be denied tax amnesty if the tax amnesty forms and/or tax returns are not sufficiently complete for the Division to understand the period and tax for which amnesty is applied.

(c) Tax amnesty will be denied with respect to taxes not eligible for tax amnesty (for example, local property tax).

(d) A taxpayer will be denied tax amnesty for tax liabilities arising outside of the tax amnesty period in accordance with P.L. 2002, c.6, §1a.

(e) A taxpayer will be denied tax amnesty if the taxpayer is certified to be under criminal investigation or charge by the Attorney General or a county prosecutor.

(f) A taxpayer will be denied tax amnesty for nonpayment or underpayment of tax, payment with a dishonored check or other improper forms of payment established by the Division.

(g) A taxpayer will be denied tax amnesty for any other acts or failures to act which evidence that the taxpayer is not in compliance with these rules or the enabling legislation.

18:39-1.5 Special rules

(a) A taxpayer who is subject to wage garnishment, attachment, or seizure of property by the Division of Taxation may apply and receive tax amnesty provided the taxpayer complies with the terms of tax amnesty. Upon full payment of all taxes due and the granting of tax amnesty, the Division will apply the payment in satisfaction of the applicable judgments and release any levies against real or personal property.

(b) A corporation that has had its corporate charter voided may be granted tax amnesty providing it complies with the terms of tax amnesty. A corporate charter can only be reinstated upon filing all required returns, full payment of all taxes due, the payment of the reinstatement fee to the Division of Revenue, Business Services Bureau, and approval of the Attorney General. Upon meeting these conditions, tax amnesty will be granted and the corporate charter reinstated.

(c) A taxpayer who has requested a conference with the Division of Taxation may be granted tax amnesty. This can be done provided the taxpayer sets forth the portions of the assessments for which amnesty is sought and withdraws them from the conference process. The portion, if any, on which tax amnesty is not sought nor granted will continue to be the subject of the conference and the five percent penalty in P.L. 2002, c.6, §1b shall apply to it.

(d) A taxpayer who has filed a complaint with the New Jersey Tax Court or who is pursuing an appeal before any other judicial tribunal may be considered for tax amnesty provided the taxpayer agrees to withdraw or otherwise cause the complaint or appeal to be dismissed with prejudice as to the amnesty eligible claims set forth in the complaint. The portion, if any, on which tax amnesty is not sought or granted will continue to be the subject of litigation and the five percent penalty in P.L. 2002, c.6, §1b shall apply to it.

(e) A taxpayer may receive partial tax amnesty on any eligible part of unpaid State tax. The balance of the liability remains subject to penalty and interest at the rates applicable to the pre and post-amnesty periods. Full penalties and interest on the balance of the liability will be imposed by the Director, Division of Taxation.

(f) A taxpayer currently under audit may be granted tax amnesty for any eligible State tax as to any part of an assessment he has agreed to. The taxpayer must however, elect to be considered for tax amnesty for that part of the agreed liability, be eligible to receive it, and have it granted.

(g) A taxpayer seeking amnesty for gross income tax liabilities must pay the liability and, in addition to the election to be considered, must submit a return on the NJ-1040 or any other form acceptable by the Director of the Division of Taxation.

(h) A taxpayer can be denied amnesty for tax matters pending before the Conference and Appeals Branch or for tax matters pending before the Tax Court of New Jersey or other judicial body. Specific approval from the Director must be granted in order to receive amnesty for these situations.

18:39-1.6 Consequences of denial of tax amnesty

(a) A taxpayer denied tax amnesty for a reason other than having been certified as under criminal investigation or charge will have his payments applied to other open tax accounts.

(b) If amnesty is denied because the taxpayer is under criminal investigation or charge as certified by the Attorney General or a county prosecutor, the tax returns and amounts remitted will be returned to the taxpayer and the additional five percent penalty will not be assessed.

18:39-1.7 Rights of taxpayer denied tax amnesty

(a) A taxpayer denied tax amnesty for reasons other than being certified as under criminal investigation or charge can appeal the decision by sending a letter of disagreement within 30 days of the date of the notice denying tax amnesty, stating the basis of the disagreement. If the taxpayer is later found to be eligible for tax amnesty, the taxpayer can pay the applicable tax within 30 days from the date of a favorable decision. In cases where an unfavorable decision denying amnesty is returned in response to a timely filed letter of disagreement, a taxpayer may appeal to the Tax Court of New Jersey, pursuant to the provisions of N.J.S.A. 54:48-1 et seq. within 90 days of the date of the unfavorable decision.

(b) The letter of disagreement should be addressed to:

New Jersey Division of Taxation
Amnesty Review
PO Box 445
Trenton, NJ 08646-0445

18:39-1.8 Overpayment of tax

(a) Amounts submitted in excess of any amounts due are to be credited against open tax accounts for the subject taxpayer when tax amnesty is applied for. A taxpayer can, however, apply for a refund of any penalty and interest paid in excess of the amount required by tax amnesty provided the taxpayer meets the following conditions:

1. The tax liability, penalty, and/or interest was paid during the tax amnesty period; and
2. The taxpayer is determined to be eligible for tax amnesty.

(b) Refunds will not be issued with respect to any eligible State tax liabilities for which tax amnesty has been granted.

1. Consideration will be given to correcting errors made in a tax amnesty payment which occurs during the amnesty period. Appropriate transfers to other tax accounts or refunds may be made during the amnesty period to remedy such errors.

2. After the tax amnesty period, no such corrections, transfers, or refunds will be made. A payment submitted for tax amnesty by a taxpayer is an admission by the taxpayer that he owes the amount of tax for which amnesty is being requested.

3. Refund procedures available for taxes paid under other than tax amnesty conditions are not available for tax amnesty payments.

EXAMPLE U

SPECIAL ADOPTION

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

School Facilities Projects

P.L. 2000, c.72, Section 15 Grant Procedures

Special Adopted New Rules: N.J.A.C. 19:32

Adopted: June 29, 2001 by the New Jersey Economic Development Authority, Caren S. Franzini, Executive Director.

Filed: June 29, 2001 as R.2001 d.263.

Authority: P.L. 2000, c.72, §§15 and 26b.

Effective Date: June 29, 2001.

Expiration Date: June 29, 2002.

Take notice that, in compliance with the provisions of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, specifically §26b, the New Jersey Economic Development Authority promulgated rules implementing Section 15 of P.L. 2000, c.72 and codified the procedural requirements for obtaining grants for school facilities projects by school districts.

Full text of the adopted new rules follows:

CHAPTER 32 SCHOOL FACILITIES PROJECTS P.L. 2000, C.72, SECTION 15 GRANT PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

19:32-1.1 Applicability and scope

These rules are promulgated by the New Jersey Economic Development Authority (the "Authority") to implement Section 15 of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-15) (the "Act"). Section 15 of the Act establishes a grant program to fund the State share of the final eligible costs of school facilities projects undertaken by school districts whose district aid percentage as defined in the Act is less than 55 percent. These rules are adopted in order to provide the mechanism whereby school districts who are eligible to receive grants from the Authority can receive such grants and to ensure that these grant funds are used properly by the school districts. Any district applying for a grant or having received a grant pursuant to the Act shall at a minimum comply with the requirements of this chapter, as applicable.

19:32-1.2 Construction of rules

This chapter shall be liberally construed to permit the Authority to discharge its statutory functions under the Act.

19:32-1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires. Any references to particular sections of the New Jersey Code Administrative (N.J.A.C.) shall be deemed to refer to any sections of the N.J.A.C. that amend or supersede sections of the N.J.A.C. indicated in this Agreement.

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-1 et seq.

"Agreement" means the grant agreement (and all attachments thereto) between the Authority and the district.

"Approved costs" means costs of the school facilities project which are eligible to be paid from the proceeds of the grant and have been paid or shall be paid by the district.

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c.80 (N.J.S.A. 34:1B-1 et seq.)

"Authority bonds" means bonds issued by the Authority pursuant to N.J.S.A. 18A:7G-14, proceeds of which may fund all or part of the grant.

"Authorized officer" means:

1. With respect to the district, any person or persons authorized pursuant to a resolution of the governing body of the district to perform any act or execute any document relating to the grant and the grant agreement, including the school business administrator; and

2. With respect to the Authority, any person or persons authorized to perform any act or execute any document relating to the grant and the grant agreement.

"Bond counsel" means any lawyer or firm of lawyers nationally recognized in the field of municipal finance and satisfactory to the Authority.

"Capital reserve account" means the account of the district established pursuant to N.J.A.C. 6:23A-5.

"Change order" means a written order, directing or authorizing some change, in whatever degree to a design consultant contract or construction contract, including, but not limited to, an increase or decrease in the scope of work to be performed by the design consultant or the contractor, as the case may be, or an acceleration of time for the performance of such work, or a change in the sequence in which such work is being performed.

"Checklist" means a form to be completed by the district at various milestones in the design and construction of the school facilities project prior to receiving certain disbursements of the grant. The district will submit the completed checklist to the DCA for review which will forward the information to the Authority for approval. There shall be a design phase checklist; a construction phase checklist; and a final completion checklist. The district may file a checklist electronically if such option is made available to the district by the Authority. The checklists may be revised by the Authority.

"Closeout" means the process by which the Authority determines that all applicable administrative actions and all required work have been completed by the district.

"Code" means the "Internal Revenue Code of 1986, as amended," as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto, and administrative and judicial interpretations thereof.

"Commencement date" means the date on which a grant agreement has been fully executed by all the parties thereto and the district has delivered, to the satisfaction of the Authority, the documentation required by the grant agreement and N.J.A.C. 19:32-2.4.

"Commissioner" means the Commissioner of the New Jersey Department of Education.

"Completion date" means the date specified by the district for completion of the school facilities project which may be changed by the district upon notice to the Authority.

"Construction contract" means an agreement between the district and the contractor governing the construction of all or a portion of a school facilities project and any documents attached thereto and amendments thereof. There may be one or more construction contracts for a school facilities project.

"Construction phase" means that phase of a school facilities project in which construction of the school facilities project is undertaken by a contractor or contractors.

"Consultant" means a consultant, including a design consultant, engaged by the district for a school facilities project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance

EXAMPLE V

SPECIAL ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Ticket to Work

Special Adopted and Concurrent Proposed Amendments: N.J.A.C. 10:72-4.1 and 4.5

Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 10:72-9.

Special Amendment and New Rules Adopted and Concurrent Proposed
Amendment and New Rules Authorized: December 26, 2001 by James
W. Smith, Jr., Acting Commissioner, Department of Human Services.
Filed: December 26, 2001 as R.2002 d.31.

Authority: N.J.S.A. 30:4D-1 et seq., as amended by P.L. 2000 c.116.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Agency Control Number: 01-P-13.

Concurrent Proposal Number: PRN 2002-54.

Effective Date: December 26, 2001.

Expiration Date: June 26, 2002.

Submit comments by March 23, 2002 to:

Jean Cary, Administrative Practice Officer
Division of Medical Assistance and Health Services
PO Box 712, Mail Code #26
Trenton, NJ 08625-0712
Fax: (609) 588-7672
Email: jcary@dhs.state.nj.us
Delivery: 6 Quakerbridge Plaza, Mercerville, NJ 08619

These new rules were adopted in accordance with P.L. 2000, c.116, and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4).

Concurrently, the provisions of these amendments and new rules are being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted amendments and new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f) if filed on or before the six months expiration date, in accordance with P.L. 2000, c.116.

The agency special adoption and concurrent proposal follows:

Summary

The Division of Medical Assistance and Health Services is adopting amendments to the rules contained in the New Jersey Care . . . Special Medicaid Programs chapter in order to implement the requirements of P.L. 2000, c.116, which authorized the Ticket to Work program in New Jersey. New Jersey enacted legislation to provide for this program in response to the Federal Ticket to Work and Work Incentives Improvement Act of 1999, enacted December 17, 1999, which provides states with opportunities to assist disabled individuals to obtain and/or maintain employment.

The Ticket to Work program is designed to eliminate barriers to employment for individuals with disabilities. Often, such individuals want to enter, or remain in, the workforce as full time employees, but are concerned about losing eligibility for Medicaid and/or Medicare. Private health insurance is often either unavailable or prohibitively expensive. Disabled individuals are therefore placed in the position of having to choose between health care and full employment. The New Jersey Medicaid program has been amended to provide assurance of health care for eligible disabled individuals, and to allow access to full employment for the working disabled.

The Ticket to Work program allows eligible individuals to purchase Medicaid coverage when their earnings would otherwise disqualify them for Medicaid. The Medicaid coverage is provided either fee-for-service or through a managed care organization which has an established contract with

the Division. Eligible individuals are those who are between the ages of 16 and 65, disabled and employed, and who have an earned income of up to 250 percent of the Federal poverty level, and unearned income of up to 100 percent of the Federal poverty level.

Premiums will be paid by those who are provided with health coverage under the Ticket to Work program. Eligible individuals with income of 150 percent of the Federal poverty level or more will pay a monthly premium of \$25.00; eligible couples with an income of 150 percent of the Federal poverty level or more will pay a monthly premium of \$50.00.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Eligible individuals who are disabled and employed, between the ages of 16 and 65, whose income is within the required limits, will be able to secure Medicaid coverage by paying a premium, if their income is over a specified amount, or at no cost. Many disabled individuals have needs for health care which, if unmet, effectively remove them from the workforce. Additionally, concerns about loss of health coverage through Medicare and/or Medicaid often prevent disabled individuals from increasing their hours of work to full-time employment. The assurance of Medicaid coverage at a small cost or no cost will provide support to these individuals as they remain in the workforce, or increase their hours of work.

Economic Impact

Those eligible individuals who have an income over 150 percent of the Federal poverty level will be required to pay a premium of \$25.00 per month for an individual and \$50.00 per month for a couple. Those with incomes under the limit will not be required to pay a premium. Eligible individuals, whether or not they are required to pay a premium, will be able to access health care services either fee-for-service or through a managed care organization with which the Division has a contract. The cost of the health services will be paid by the Division. The amount budgeted for State Fiscal Year 2002 (State and Federal funds combined) is approximately \$3 million.

Federal Standards Statement

The Federal standards which apply to the Ticket to Work rules are contained in 42 U.S.C. §§1320b-18 and 1396a(a)(10)(A)(ii)(XV). Eligible individuals are those who, but for earnings in excess of the limits established under 42 U.S.C. §1396d(q)(2)(B), would be considered to be receiving supplemental security income, are over 16 years of age but under the age of 65, and whose assets, resources and earned and unearned income (or both) do not exceed such limitations as the State may establish. The State has established the following standards for income, resources, eligibility and contributions:

1. Net earned income below 250 percent, and unearned income below 100 percent of the Federal poverty level for a family size of one or two, as applicable;
2. Resources which do not exceed \$20,000 for an individual and \$30,000 for a couple;
3. Eligibility as a disabled person in accordance with SSI/SSDI disability standards, except that employment activity, earnings and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability; and
4. Optional premium requirement.

The State of New Jersey has complied with the requirements established in Federal statute, and has established standards that are not in excess of these requirements.

Jobs Impact

The amendment and new rules are expected to have an impact on jobs in the State of New Jersey in that those disabled individuals who are underemployed due to a concern about health coverage will now be able to be fully employed without fear of being without coverage. While the number of individuals affected may be small, in terms of total numbers of employed in the State, the impact on those affected is expected to be significant. Employment is a strong factor in maintaining or achieving independence, and the removal of any barrier to employment enhances the workforce as a whole.

Agriculture Industry Impact

The proposed amendments and new rules are not expected to have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments and new rules have no impact on businesses in the State of New Jersey. The amendments and new rules govern individuals and governmental entities in the process of determination of eligibility for a Medicaid program, Ticket to Work.

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

10:72-4.1 Income eligibility limits

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

(e) Effective with the first month of coverage, earned income eligibility limits for participants in the Ticket to Work program shall be 250 percent or less of the Federal poverty level and unearned income 100 percent or less of the Federal poverty level (see 42 U.S.C. §9902(2)), and as specified in N.J.A.C. 10:72-9.4.

10:72-4.5 Resource eligibility

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

(c) Effective with the first month of coverage, resource eligibility limits for participants in the Ticket to Work program shall be as specified in N.J.A.C. 10:72-9.5.

SUBCHAPTER 9. TICKET TO WORK

10:72-9.1 Purpose, scope and applicability

(a) The purpose of this subchapter is to establish requirements to implement the Ticket to Work program in accordance with N.J.S.A. 30:4D-1 et seq., as amended by P.L. 2000, c.116, and in accordance with the Federal Ticket to Work and Work Incentives Improvement Act, Public Law 106-170 (113 Stat. 1860), and 42 U.S.C. §1396a(a)(10)(A)(ii)(XV). The purpose of the Ticket to Work program is to provide an opportunity for disabled individuals who are employed to purchase Medicaid coverage when their earnings would otherwise disqualify them for Medicaid.

(b) The rules apply to employed permanently disabled individuals residing in New Jersey who are between the ages of 16 and 64 whose earned incomes are below 250 percent, and unearned incomes below 100 percent, of the Federal poverty level for an individual or a couple. These individuals may apply to purchase Medicaid coverage (Medicaid buy-in) from the State of New Jersey, and shall pay for such coverage based on the standards contained in this subchapter.

(c) Unless specifically excepted, all other requirements of this chapter shall apply to the Ticket to Work program.

10:72-9.2 Definitions

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

"Applicant" means any person who has made application for purposes of becoming a "qualified applicant."

"Commissioner" means the Commissioner of the Department of Human Services.

"Department" means the Department of Human Services.

"Director" means the Director of the Division of Medical Assistance and Health Services.

"Division" means the Division of Medical Assistance and Health Services.

"Medicaid" means the New Jersey Medical Assistance and Health Services program.

"Medical assistance" means payments made on behalf of beneficiaries to providers for medical care and services.

"Net income" means both earned and unearned income after disregards are taken in accordance with this subchapter.

"Provider" means any person, public or private institution, agency or business concern approved by the Division in accordance with N.J.A.C. 10:49, lawfully providing medical care, services, goods and supplies which are specified in this subchapter and holding, where

applicable, a current valid license to provide such services or to dispense such goods or supplies.

"Qualified applicant" means a person who is a resident of this State who meets the requirements contained in this subchapter.

10:72-9.3 Non-financial eligibility for Ticket to Work

(a) Permanently disabled employed individuals who are 16 years of age or over, but under 65 years of age, shall be eligible to participate in the Ticket to Work program.

(b) Either the Social Security Administration or the Division's Disability Review Team may make the determination of permanent disability.

(c) The test of disability shall be identical to the SSU/SSDI disability test, except that employment activity, earnings and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability.

10:72-9.4 Income eligibility for Ticket to Work

(a) The earned income of a qualified applicant, after disregards, shall not exceed 250 percent of the Federal poverty level for a family unit of one or two, as applicable.

(b) The unearned income of a qualified applicant, after disregards, shall not exceed 100 percent of the Federal poverty level for a family unit of one or two, as applicable.

(c) Countable income for Ticket to Work individuals shall be determined in accordance with the income rules found at N.J.A.C. 10:71-5. All rules at N.J.A.C. 10:71-5 shall apply, with the following exceptions:

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:71-5.3(a)7x and xi shall not apply.

2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:71-5.7 shall not apply.

3. Wages paid by the U.S. Census Bureau for temporary employment related to Census 2000 activities shall not be counted as income.

4. Social Security Disability benefits and Railroad Disability benefits received by the individual on his or her own account shall not be counted as income.

5. Nonrecurring lump sum income received by the household unit of a disabled individual shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months.

(d) A disabled individual shall have the value of in-kind support and maintenance counted as unearned income in the following circumstances:

1. A disabled adult, who would, in accordance with rules at N.J.A.C. 10:71-5.6(c)4, be determined to be "living in the household of another," shall be considered to have unearned income in the amount specified at N.J.A.C. 10:71-5.4(a)12, less \$20.00. The amount of income so assigned shall not be rebuttable by the applicant or beneficiary.

2. Any disabled person other than those addressed in (d)1 above, to whom food, clothing, or shelter is given or paid for by someone other than a spouse, parent, or minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance shall be the values specified at N.J.A.C. 10:71-5.4(a)12. The presumed value so assigned may be rebutted in accordance with the provisions of N.J.A.C. 10:71-5.4(a)12i.

(e) In accordance with N.J.A.C. 10:71-5.5, the income of the spouse of a disabled individual shall be deemed to the disabled individual if they are residing in the same household. Income of the parent(s) of a disabled child under the age of 18 residing in the same household shall be deemed available to the child in determining income eligibility for benefits under this chapter. No income shall be deemed to a disabled individual from a person who is a member of a household unit of an eligible pregnant woman or child under the provisions of this chapter or a person who is in the budget unit of an eligible AFDC-related Medically Needy case (including a case that is eligible pending spend-down).

1. If the countable income (before income deeming) of the disabled individual exceeds the Federal poverty level for one person, he or she shall be ineligible for benefits and income deeming shall not apply.

2. When income of a spouse is deemed to a disabled individual, the total countable income after deeming shall be compared to the Federal poverty level for two persons.

3. In determining income eligibility of a child, the child's income after deeming shall be compared to the Federal poverty level for one person.

4. When the income of a spouse shall be deemed to both a disabled individual and a blind or disabled child, the income shall be first deemed to the disabled spouse. If the income (after deeming) of the disabled spouse does not exceed the Federal poverty level, he or she shall be income-eligible and there shall be no income to be deemed to the blind or disabled child. If the Federal poverty level is exceeded, the disabled adult shall be income ineligible and the excess income shall be deemed to the blind or disabled child.

5. When parental income shall be deemed to more than one blind or disabled child, the deemable income shall be divided equally among such children.

10:72-9.5 Resource eligibility for Ticket to Work

(a) Qualified applicants for Ticket to Work shall meet resources eligibility standards as defined in N.J.A.C. 10:71-4 in order to be eligible for benefits under this chapter.

(b) In the determination of countable resources, N.J.A.C. 10:71-4.2 shall apply.

(c) Eligibility shall not exist in any month in which the countable resources of a Ticket to Work person exceeds the limits of \$20,000 for an individual and \$30,000 for a couple.

(d) The spouse-to-spouse and parent-to-child deeming of resources found at N.J.A.C. 10:71-4.6 shall apply to eligibility for Ticket to Work. In the deeming of resources from one parent to a child, the countable parental resources in excess of the Medicaid Only resource limit for an individual shall be deemed to the blind or disabled child. When the resources of two parents shall be deemed to a child, the countable parental resources in excess of the Medicaid Only resource limit for a couple shall be deemed to the child.

(e) In addition to those resources excluded under N.J.A.C. 10:71-4.4, funds in an IRA, 401K or other retirement accounts shall also be excluded.

(f) The provisions at N.J.A.C. 10:71-4.6(f) requiring the deeming of resources of an alien's sponsor shall not apply.

10:72-9.6 Premium payments

(a) An eligible individual with net income in excess of 150 percent of the Federal poverty level shall pay a premium of \$25.00 per month to the Division.

(b) An eligible couple with net income in excess of 150 percent of the Federal poverty level shall pay a premium of \$50.00 per month to the Division.

(c) Premium payments required shall be submitted each month to:

Division of Medical Assistance and Health Services
Ticket to Work—Premiums
PO Box 712, Mail Code #27
Trenton, New Jersey 08625-0712

(d) Participants shall be billed in advance of the coverage month. Failure to submit the full contribution shall result in termination of coverage for the month following the coverage month where the premium has not been received by the Ticket to Work program.

10:72-9.7 Services available through the Ticket to Work program

Services available through the Ticket to Work program shall be provided by the Division through its existing contracts with health maintenance organizations and fee-for-service providers.

10:72-9.8 Application process

(a) Applications shall be obtained from, and returned to, the county board of social services in the applicant's county of residence.

(b) Information can be obtained from the Division of Disability Services by calling toll free 1-888-285-3036 or at the address below.

Division of Disability Services
DHS-Capital Place I
PO Box 700, 1st Floor
Trenton, NJ 08625-0700

EXAMPLE W

(b)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS
Notice of Receipt of Petition for Rulemaking
Animal Chiropractic**

Petitioner: Margaret M. Dillon, DC.

Take notice that on February 8, 2002, the New Jersey State Board of Chiropractic Examiners received a petition for rulemaking from the above petitioner requesting that the Board adopt a new rule governing animal chiropractic.

The petitioner states that the Board has permitted the practice of chiropractic on animals by licensees since 1994 but has not included the definition of animal chiropractic in its rules. The petitioner believes that the inclusion of animal chiropractic in the rules will protect the public by ensuring that any person practicing this form of chiropractic in the State of New Jersey will be licensed.

The full text of the petitioners' suggested new rule follows:

The adjustment and/or manipulation of the articulations of the spine and related structures of animals other than human is the practice of chiropractic on animals or animal chiropractic.

In accordance with N.J.A.C. 1:30-4.2, the Board shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

EXAMPLE X

PERSONNEL

(a)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking Appeals, Discipline and Separations Taxpayer Complaints against Merit System Employees

Petitioner: Larry S. Loigman.

Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 1:30-4.2.

Take notice that on April 12, 2002, the Commissioner of Personnel (Commissioner) received a petition for rulemaking regarding taxpayer complaints. Specifically, petitioner requested that Title 4A of the New Jersey Administrative Code be amended to require that all merit system appointing authorities adopt a procedure providing for the accepting and processing of taxpayer complaints against public employees. Petitioner also asked that the rules be amended to provide that, in the absence of such procedures, or in case the appointing authority fails to follow such procedures, the Merit System Board shall have the authority to remove the appointing authority or order a salary disapproval. The Board would also have the authority to establish standards for the handling of complaints by appointing authorities and be required to remove an appointing authority that fails to comply with these standards. A notice acknowledging receipt of the petition and summarizing its contents was filed with the Office of Administrative Law (OAL) on May 8, 2002 and appeared in the June 3, 2002 issue of the New Jersey Register (see 34 N.J.R. 1975(a)).

The Commissioner certifies that the petition was duly considered pursuant to law, and, upon due deliberation, has determined that the Department should deny the petition, as no statutory authority exists for the amendments that petitioner suggests. The section that he cites, N.J.S.A. 11A:10-1 et seq., authorizes the Merit System Board or the Commissioner to disapprove and order the payment stopped of the salary of an individual employed in violation of the Civil Service Act. Additionally, any employees responsible for continuing to employ someone in violation of the Civil Service Act may be subject to a salary disapproval or payment of monies from their personal funds for improper expenditures. However, the authority possessed by the Board and Commissioner does not extend to taking corrective measures in instances that do not involve violations of the Civil Service Act. Likewise, the Board does not have the authority to promulgate or require the promulgation of procedures regarding taxpayer complaints lodged against one or more employees of a local unit.

A copy of this public notice has been mailed to the petitioner.

EXAMPLE Y

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Notice of Action on Petition for Rulemaking Accounting and Internal Controls; Division Inspections of Slot Machine Jackpots

N.J.A.C. 19:45-1.40D

Petitioner: Division of Gaming Enforcement.

Take notice that on May 22, 2001, the above-captioned petitioner filed a petition with the Casino Control Commission ("Commission") requesting that the Commission amend its rule to increase the amount of slot machine jackpot level at which the Division of Gaming Enforcement shall be required to conduct an inspection from the current figure of \$35,000 to a new threshold of greater than \$45,000. On June 12, 2001, Sands Hotel Casino filed a letter in support of the petition. A notice of acknowledging receipt of the petition and summarizing its contents was published in the July 2, 2001, New Jersey Register at 33 N.J.R. 2351(b).

Take further notice that the petition was considered by the Commission at its public meeting of July 18, 2001. Upon due deliberation, the Commission determined to publish the amendment in the New Jersey Register in the interest of obtaining public comment. The notice of proposal of this amendment is published elsewhere in this issue of the New Jersey Register.

A copy of this public notice has been mailed to the petitioner.

EXAMPLE Z

(a)

CASINO CONTROL COMMISSION

Notice of Action on Petition for Rulemaking

Rules of the Games

Let's Get Wild Poker

**N.J.A.C. 19:40-1.2; 19:45-1.12; 19:46-1.13M, 1.17, 1.18
and 1.19; and 19:47-24**

Petitioners: Bally's Park Place, Inc. and Colorado Hold 'Em Ltd.

Take notice that on February 14, 2002, the above petitioners filed a petition with the Casino Control Commission (Commission) requesting that the Commission amend its rules to permit the use of a new table game known as "Let's Get Wild Poker." A notice acknowledging receipt of the petition and summarizing its contents was published in the March 18, 2002 New Jersey Register at 34 N.J.R. 1285(a).

Take further notice that this petition was considered by the Commission at its public meeting of April 10, 2002. At that time, the Commission determined to refer the matter for further deliberation within 90 days, in order to finalize a Notice of Proposal for the above game and review of the statistical analysis for the game by the Division of Gaming Enforcement prior to further action by the Commission.

A copy of this public notice has been mailed to the petitioners.

EXAMPLE AA

LAW AND PUBLIC SAFETY

(b)

OFFICE OF THE ATTORNEY GENERAL

Organization of the Department

Adopted New Rules: N.J.A.C. 13:1E

Adopted: June 4, 2002 by David Samson, Attorney General.

Filed: June 5, 2002 as R.2002 d.201.

Authority: N.J.S.A. 52:14B-3 and 52:17B-4.

Effective Date: June 5, 2002.

Expiration Date: June 5, 2007.

These organizational rules are exempt from the notice and public comment requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and are effective upon filing with the Office of Administrative Law, pursuant to N.J.S.A. 52:14B-4(b).

Full text of the adoption follows:

CHAPTER 1E DEPARTMENT OF LAW AND PUBLIC SAFETY

SUBCHAPTER 1. ORGANIZATION

13:1E-1.1 Attorney General

The Attorney General is the chief executive officer of the Department of Law and Public Safety. The Attorney General is a constitutional officer who is appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor. The Attorney General functions as the sole legal advisor to State agencies and the chief law enforcement officer for criminal matters.

13:1E-1.2 Divisions and offices within the Department

(a) The Office of the Attorney General provides administrative support to the Attorney General and coordinates the administration of the divisions and agencies in the Department that are subject to the supervision of the Attorney General. The Office is responsible for establishing Departmental policies and procedures and acts as liaison with the Legislature. The Office of Government Integrity and the Office

of Counter-Terrorism are also located in the Office of the Attorney General. The Office of State Police Affairs is also located in the Office of the Attorney General. The telephone number for the Office of the Attorney General Citizens Services is (609) 984-5828.

(b) The Division of Law provides legal advice and representation to State officers, departments, boards, bodies, commissions and instrumentalities. The telephone number for the Division of Law is (609) 984-3900.

(c) The Division of Criminal Justice directs the enforcement and prosecution of criminal matters of the State. The Division Police Training Commission sets the standards for and approves all aspects of police training and certification. The Office of the State Medical Examiner enforces the State Medical Examiner Act and supervises county medical examiners. The telephone number of the Division of Criminal Justice is (609) 984-6500.

(d) The Division of State Police has general law enforcement jurisdiction throughout the State. State Police provide primary law enforcement in municipalities that do not have their own police force. State Police provide Statewide enforcement of motor vehicle, criminal, marine and alcoholic beverage control laws. The Division regulates the business of private detectives and the operation of motor vehicle race tracks. The Office of Emergency Management operates under the direction of the Governor and the State Director of Emergency Management, who is the Superintendent of State Police. The telephone number of the Division of State Police is (609) 882-2000.

(e) The Division of Gaming Enforcement investigates all applications for casino or casino-related licenses, certificates and permits. The Division also reviews and audits casino operations, provides the Casino Control Commission with information necessary for the Commission's enforcement proceedings and prosecutes criminal violations of the Casino Control Act and violations of casino regulations. The State Athletic Control Board regulates boxing and other combative sports. The telephone number of the Division of Gaming Enforcement is (609) 292-9394.

(f) The Division of Alcoholic Beverage Control supervises and regulates the manufacture, distribution and sale of alcoholic beverages. The telephone number of the Division of Alcoholic Beverage Control is (609) 633-6078.

(g) The Division of the New Jersey Racing Commission has jurisdiction over thoroughbred and harness racing tracks and has the authority to regulate racing and licensing of all persons engaged in the racing industry. The telephone number of the Division of the New Jersey Racing Commission is (609) 292-0613.

(h) The Division on Civil Rights enforces the New Jersey Law Against Discrimination and is empowered to prevent and eliminate unlawful discrimination in employment, housing and places of public accommodation. The Director of the Division is empowered to order remedial action and award damages to successful claimants. The telephone number of the Division on Civil Rights is (609) 292-4605.

(i) The Division of Consumer Affairs administers and enforces the Consumer Affairs Act of 1971 and other laws related to consumer protection. The Bureau of Securities enforces State law concerning the registration and sale of securities and the licensing of brokers. The Office of Weights and Measures enforces State laws concerning packaging and weighing of commodities and the certification of scales and other delivery mechanisms. The Legalized Games of Chance Control Commission supervises the administration of the Bingo Licensing Law, the Raffles Licensing Law and the Amusement Games Licensing Law. The Division also includes professional boards that license and regulate professions and occupations. The telephone number of the Division of Consumer Affairs is (973) 504-6200.

(j) The Office of Highway Traffic Safety is responsible for establishing a Statewide highway traffic safety program and for coordinating State and local efforts to reduce highway deaths and injuries. The telephone number of the Office of Highway Traffic Safety is (609) 633-9300.

(k) The Division of Elections oversees mandated voter registration agencies in the State and reports to the Federal Elections Commission. The Division of Elections is the filing office for nomination petitions for Federal and State elective offices and certifies all such candidates to the 21 county clerks for placement on the primary and general election ballots. The Division is the repository for counties' vote totals and prepares the certifications of the general election results for the Board of State Canvassers. The Division acts as liaison to the United States Census Bureau regarding election district maps that are prepared by the county boards of election. The Division administers the regulatory authority of the Attorney General regarding voter registration, absentee ballots, election district maps and polling place accessibility. The telephone number of the Division of Elections is (609) 292-3760.

(l) The Boat Regulation Commission promulgates rules concerning the operation, equipment and safety of vessels on the waters of the State. Administrative support to the Commission is provided by the Division of State Police Marine Services Unit.

(m) The Commission to Deter Criminal Activity educates the general public regarding the State's criminal laws and the consequences of committing criminal acts in the State. The Commission provides funding for crime prevention and deterrence advertising campaigns directed to juveniles and adults. Administrative support to the Commission is provided by the Office of the Attorney General.

13:1E-1.3 Other agencies

(a) The following agencies are allocated to the Department of Law and Public Safety, but are not subject to the supervision of the Attorney General:

1. The Human Relations Council develops policy proposals for the State and assists with coordinating efforts to promote prejudice reduction and prevention and deter crimes based upon the victim's race, color, religion, national origin, sexual orientation, ethnicity, gender or physical or cognitive disability;

2. The Executive Commission on Ethical Standards initiates, receives, hears and reviews complaints regarding violations of the New Jersey Conflicts of Interest Law. The Commission also reviews and approves codes of ethics issued by executive branch agencies and is responsible for enforcing sections of the Casino Control Act concerning pre-employment interests and post-employment restrictions on members of the Casino Control Commission and employees of the Division of Gaming Enforcement;

3. The Election Law Enforcement Commission enforces the New Jersey Campaign Expenditures and Reporting Law;

4. The Victims of Crime Compensation Board administers the Criminal Injuries Compensation Act. The Board provides Statewide victim-witness assistance programs and information and conducts a victim counseling service; and

5. The Juvenile Justice Commission is responsible for the management and operation of all State facilities and programs for juveniles involved in the juvenile justice system, adopts a Statewide Master Plan for effective provision of juvenile justice services and sanctions at the State, county and local level, administers the State Community Partnership Grant Program, establishes county youth services commissions to implement the Partnership, and adopts standards for county juvenile detention facilities and programs.

EXAMPLE BB

(b)

DIVISION OF HEALTH CARE SYSTEMS ANALYSIS CERTIFICATE OF NEED AND ACUTE CARE LICENSURE

Notice of Invitation for Certificate of Need Applications for Certain Pediatric Intensive Care Units

Take notice that, in accordance with N.J.S.A. 26:2H-7, N.J.A.C. 8:43G-22.13 through 22.22, and N.J.A.C. 8:33-4.1, the Department of Health and Senior Services (Department) hereby publishes notice that it will be inviting certificate of need applications on a full review basis for pediatric intensive care units that are located within any of the State's licensed Level I and Level II trauma centers that currently are not licensed for this bed category nor licensed or eligible for licensure as a Children's Hospital. Eligible applicants include Morristown Memorial Hospital, Atlantic City Medical Center—City Division, and Capital Health Systems—Helene Fuld. Such trauma centers may apply for a maximum of six pediatric intensive care beds. Certificate of need applications for the establishment of pediatric intensive care beds and services will be accepted for processing as follows:

Certificate of need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with statutory requirements identified at N.J.S.A. 26:2H-8 and all applicable planning and licensing rules and regulations.

In accordance with N.J.A.C. 8:33-1.2(d), certificate of need applications shall be reviewed for conformity with the rules in effect on the date the certificate of need application is deemed complete for processing.

Applications shall not be accepted for the addition of pediatric intensive care beds at facilities currently licensed for this bed category.

Geographic areas to be served: Statewide.

Date application is due: July 1, 2002.

Date completeness review decision issued: August 15, 2002.

Date State Health Planning Board scheduled to review applications and submit recommendations to the Commissioner: On or before November 13, 2002.

Application forms may be requested from and must be filed with the following:

John A. Calabria, Director
Certificate of Need and Acute Care Licensure Program
New Jersey Department of Health and Senior Services
PO Box 360, Room 403
Trenton, New Jersey 08625-0360
(609) 292-8773

EXAMPLE CC

HUMAN SERVICES

(a)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Notice of Available Grant Funds Prevention of Developmental Disabilities Public Education Program

Take notice that, in compliance with P.L. 1987, c.5 and P.L. 2000, c.82 that supplement Title 52 of the Revised Statutes, the Department of Human Services anticipates the following availability of funds:

- A. **Name of the grant program that has funds available:** Prevention of Developmental Disabilities Public Education Program (FY 2003).
- B. **Purpose for which the grant program funds shall be used:** The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities anticipates the availability of State funds specific to the goal of public education and information relative to the prevention of mental retardation and other developmental disabilities. The intent of this program is to increase the public and professional awareness that some causes of developmental disabilities may be prevented, and to modify conditions of life, professional practices, or personal behaviors in such a way as to reduce the risk, and hence the incidence, of various kinds of mental and physical disabilities originating in early life.
Prevention education programs must address issues that are associated with increased risks of sustaining a developmental disability in one of three periods of childhood:
 - (1) **Birth through age five prevention education:** may address such issues as newborn screening, lead poisoning prevention, nutritional factors, immunizations, socioeconomic related issues, injury prevention, family planning, household safety, infant/child car seats, adolescent parents' education and/or other related issues;
 - (2) **Six through age 12 prevention education:** may address such issues as improved access to health care, nutritional factors, dental health, seat belts and helmet use with bicycles and other sports equipment, health education in primary school, child safety, injury prevention and/or other related issues;
 - (3) **Thirteen through age 18 prevention education:** may address pregnancy prevention and family planning, Fetal Alcohol Syndrome prevention education, genetics, child development, parenting, nutrition (including importance of folic acid), safety and injury prevention, seat belt and bike helmet use and all of the issues contained in birth to five.
- C. **Amount of money in the grant program:** A maximum of \$50,000 will be awarded to support approximately six grants. Grants may be renewed for up to two years (for a total of three years), dependent upon the availability of funding and the performance of the grantee. Funds will decrease in the second and third years of the program by approximately 20 percent each year.

Contracts may also be awarded for a one or two-year period, dependent upon the availability of funds, the ability of the provider agency to complete the prevention education program in a shorter period of time, and the recommendation of the Review Committee.

D. Multi-year contract requirements: Provider agencies with multi-year contracts may not earn more than a one-year (12-month) pro rata amount of a multi-year contract ceiling during a given 12 month period of the contract term. Carry-forward of funds, not exceeding 15 percent of the yearly total from the previous 12-month period of the multi-year contract, may be granted. All carry-forward of funds will require written prior approval from the Office of Prevention. Unexpended funds at the end of a multi-year contract may not be carried forward to a successor contract.

If a provider agency is awarded a multi-year contract, an audit per Policy Circular P7.06, Single Audit and a fiscal-year end report on an organization-wide basis will be required annually.

Provider agencies that are awarded a multi-year contract shall receive equitable treatment from the Office for Prevention with regard to all required funding increases or decreases consistent with one year contracts. The fact that a provider agency has a multi-year contract shall not be used as rationale to penalize a provider agency if additional funding becomes available for contract services or for cost of living adjustments (COLAs). Similarly, if there is a reduction in funding, a provider agency with a multi-year contract shall be as vulnerable to any necessary contract reductions as a provider agency with a one-year contract.

Any subsequent fiscal adjustments (COLAs, loss of Federal dollars, etc.) to a multi-year contract shall be applicable only to the funding in the original allocation year, prior to any carry forward action. Funds that have been carried forward to subsequent years of a multi-year contract shall not be used as a basis for adjustment(s).

E. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program: Agencies must be New Jersey based organizations, or corporate bodies; non-profit (registered with the State of New Jersey as a 501-3(c) agency) or public entities, which have demonstrated the capacity to carry out the proposed project.

Public agencies shall not be awarded multi-year contracts because of restrictions in the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-15) which prohibits local public agencies from entering into a contract for a term longer than 12 months.

F. Qualifications needed by applicant to be considered for the grant program: Agencies must have demonstrated experience in designing, implementing, and evaluating public education prevention projects. Agencies must demonstrate the ability to contribute financially to the program by the second year of the multi-year contract.

All applicants that are applying for support for a multi-year contract must:

1. Demonstrate the ability to contribute financially to the program after the first year of funding;
2. Submit a proposal that delineates all proposed activities, timelines, cooperative agreements (Annex A), and proposed budget for the multi-year period (Annex B);
3. Include a description of evaluation plans in the proposal that assess the effectiveness of the program both in terms of process and outcome. In the final year of funding, a minimum of 20 percent of the budget must be dedicated to evaluation;
4. If programs are to be delivered in schools, letters of agreement from the school district must be included with the application; and
5. Demonstrate plans to maintain the program at the conclusion of the funding cycle.

G. Procedure for eligible organizations to apply for grant funds:

Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for Prevention of Mental Retardation
and Developmental Disabilities
Department of Human Services
PO Box 700
Trenton, New Jersey 08625-0700
609-984-3351

Proposal packages may also be obtained from the Department of Human Services website at <http://www.state.nj.us/humanservices>.

A pre-application meeting will be held on Tuesday, June 18, 2002, at 10:00 A.M. at the Stark and Stark Community Room, 993 Lenox Avenue, Building 2, Lawrenceville, New Jersey. This meeting is not mandatory, but prospective applicants who have not previously received a grant from the Office for Prevention are encouraged to attend. Please notify the Office for Prevention regarding your intention to attend the meeting and/or to obtain directions by calling 609-964-3351 or email hilda.mitchell@dhs.state.nj.us.

H. Address of division, office or official receiving application: Same as G above.

I. Deadline by which applications must be submitted to the office: An original and six proposals must be submitted by 5:00 P.M. on October 4, 2002. Applications received after the deadline will be ineligible for consideration unless they are postmarked no later than 5:00 P.M. on October 4, 2002 by the United States Postal Service or by an overnight express mail delivery service.

J. Date by which applicants shall be notified whether they will receive funds under the grant program: Applicants shall receive notice of approval or disapproval by December 16, 2002.

EXAMPLE DD

Public Employment Relations Commission Proposed Rule Adoption

The Public Employment Relations Commission has proposed new rules establishing fees for filing and processing interest arbitration petitions and for appealing interest arbitration awards: N.J.A.C. 19:16-1.1 et seq. The proposed rules appear in the April 1, 1996 edition of the *New Jersey Register*. Parties may submit written comments on or before May 1, 1996 to Public Employment Relations Commission, CN 429, Trenton, N.J. 08625-0429.

A copy of the proposed rules may be obtained by mailing a request and a \$2 check payable to the State of New Jersey to cover the cost of copying (N.J.S.A. 47:1A-2) to: Public Employment Relations Commission att: Proposed Rule Adoption, CN 429, Trenton, N.J. 08625-0429. Copies of the proposed rules have been posted and are available for inspection in the lobby of the Commission's office at 495 West State Street in Trenton.

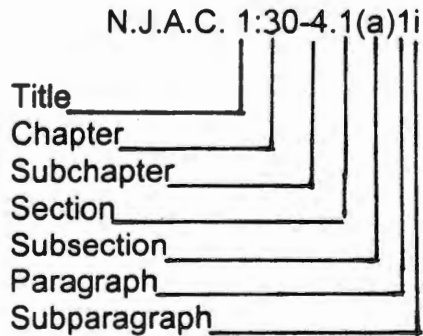
EXAMPLE EE

NEW JERSEY ADMINISTRATIVE CODE FORMAT

TITLE 1 OFFICE OF ADMINISTRATIVE LAW
CHAPTER 30 RULES FOR AGENCY RULEMAKING
SUBCHAPTER 4 PETITION FOR RULEMAKING

- 1:30-4.1 Section heading
- (a) Subsection text
1. Paragraph text
- i. Subparagraph text

Citation Form



EXAMPLE FF

CHAPTER 21 CREDIT UNIONS

Authority

N.J.S.A. 17:1-8.1, 17:1-15(e) and 17:13-79 et seq.

Source and Effective Date

R.2002 d.209, effective June 10, 2002.
See: 34 N.J.R. 816(a), 34 N.J.R. 2311(a).

Chapter Expiration Date

Chapter 21, Credit Unions, expires on June 10, 2007.

Chapter Historical Note

Chapter 21, Credit Unions, became effective with Subchapter 1, Implementation of the Credit Union Law, adopted as R.1979 d.54, effective February 8, 1979. See: 10 N.J.R. 527(c), 11 N.J.R. 117(c). Section 3:21-1.8, Loan interest rate, was adopted as R.1980 d.207, effective May 12, 1980. See: 12 N.J.R. 303(a). Section 3:21-1.8 was amended by R.1981 d.12, effective January 13, 1981. See: 13 N.J.R. 62(e).

Subchapter 2, Credit Union Parity, was adopted as R.1981 d.414, effective November 2, 1981. See: 13 N.J.R. 552(b), 13 N.J.R. 754(b).

Pursuant to Executive Order No. 66(1978), Subchapter 1, Implementation of the Credit Union Law, expired on February 8, 1984, and Subchapter 2, Credit Union Parity, expired on November 2, 1986.

A new Chapter 21, Credit Unions, became effective with Subchapter 2, Credit Union Parity, adopted as R.1987 d.93, effective February 2, 1987. See: 18 N.J.R. 2237(a), 19 N.J.R. 289(b).

Pursuant to Executive Order No. 66(1978), Chapter 21, Credit Unions, was readopted as R.1992 d.92, effective January 24, 1992. See: 23 N.J.R. 3686(b), 24 N.J.R. 580(b).

Subchapter 1, Low-Income Credit Unions, was adopted as R.1992 d.74, effective February 18, 1992. See: 23 N.J.R. 2905(a), 23 N.J.R. 3196(a), 24 N.J.R. 3(a), 24 N.J.R. 580(c).

Pursuant to Executive Order No. 66(1978), Chapter 21, Credit Unions, was readopted as R.1997 d.83, effective January 24, 1997. See: 28 N.J.R. 5123(a), 29 N.J.R. 548(a).

Subchapter 3, Branching by a State Chartered Credit Union, was adopted as R.2000 d.169, effective April 17, 2000. See: 32 N.J.R. 143(A), 32 N.J.R. 1375(a).

Chapter 21, Credit Unions, was readopted as R.2002 d.209, effective June 10, 2002. As a part of R.2002 d.209, Subchapter 4, Credit Union Mergers, was adopted as new rules, effective July 1, 2002. See: Source and Effective Date. See, also, section annotations.

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- 3:21-4.1 Merger standards

SUBCHAPTER 1. LOW-INCOME CREDIT UNIONS

3:21-1.1 Definitions

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

"Applicant" means an applicant for designation as a low-income credit union.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Credit union" means a State-chartered credit union or an entity which has submitted an application for a State charter for a credit union.

"Low-income credit union" or "LICU" means a credit union which has been designated a low-income credit union pursuant to this subchapter.

"Low-income members" or "low-income residents" means those members or residents:

1. Whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment Training Administration of the U.S. Department of Labor;
2. Who are residents of a public housing project who qualify for such residency because of low income;
3. Who qualify as recipients in a community action program; or
4. Who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

"NCUA" means the National Credit Union Administration.

EXAMPLE GG

4A:2-2.8 Appeals to Merit System Board

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.

(b) If the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Board within a reasonable time.

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;
2. The employee's name, mailing address and telephone number; and
3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above shall not result in dismissal of the appeal, but shall delay processing of the appeal until the required information is provided, and may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4.

Amended by R.1995 d.416, effective August 7, 1995.
See: 27 N.J.R. 1837(b), 27 N.J.R. 2884(b).

In (a), added the provision governing receipt of notice by the employee's attorney or union representative.

Amended by R.1998 d.518, effective November 2, 1998.
See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).

Added (c) through (e).

Case Notes

Director of county board of social services possessed final authority regarding the board's personnel and discipline decisions, as required for municipal liability under § 1983 based upon former county employee's First Amendment retaliation claims. U.S.C.A. Const.Amend. 1: 42 U.S.C.A. § 1983; N.J.Admin. Code tit. 4A, §§ 2-2.8, 2-3.2. *Marrero v. Camden County Board of Social Services*, 164 F.Supp.2d 455 (D.N.J. 2001).

Administrative code section providing the receipt of Final Notice of Disciplinary Action on a different date by the employee's attorney or union representative shall not affect the appeal period did not conflict with the legislative intent of the Civil Service Act. *Mesghali v. Bayside State Prison*, 334 N.J.Super 617, 760 A.2d 805 (N.J.Super.A.D. 2000).

Remand to Commission for supplemental hearing. Dept. of Law and Public Safety v. Miller, 115 N.J.Super. 122, 278 A.2d 495 (App.Div. 1971).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. *Russ v. Human Services Department*, 95 N.J.A.R.2d (CSV) 647.

Terminated employee did not file an objection to the employer's action in terminating her employment within reasonable period of time. *Gibbons v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 491.

Charges against psychiatric hospital worker would be dismissed where alleged victim left the state and could not be located. *Godwin v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 96.

EXAMPLE HH

2002 NEW JERSEY REGISTER PUBLICATION SCHEDULE

PUBLICATION DAY*	PROPOSAL DEADLINE (NOON)	ADOPTION DEADLINE (NOON)	30-DAY COMMENT PERIOD ENDS
January 7	December 5 (Wednesday)	December 12 (Wednesday)	February 6
January 22 (Tuesday)	December 19 (Wednesday)	December 27 (Thursday)	February 21
February 4	January 4 (Friday)	January 11 (Friday)	March 6
February 19 (Tuesday)	January 16 (Wednesday)	January 24 (Thursday)	March 21
March 4	January 31 (Thursday)	February 7 (Thursday)	April 3
March 18	February 15 (Friday)	February 25 (Monday)	April 17
April 1	March 1 (Friday)	March 8 (Friday)	May 1
April 15	March 15 (Friday)	March 22 (Friday)	May 15
May 6	April 8 (Monday)	April 15 (Monday)	June 5
May 20	April 22 (Monday)	April 29 (Monday)	June 19
June 3	May 3 (Friday)	May 10 (Friday)	July 3
June 17	May 17 (Friday)	May 24 (Friday)	July 17
July 1	June 3 (Monday)	June 10 (Monday)	July 31
July 15	June 14 (Friday)	June 21 (Friday)	August 14
August 5	July 8 (Monday)	July 15 (Monday)	September 4
August 19	July 22 (Monday)	July 29 (Monday)	September 18
September 3 (Tuesday)	August 2 (Friday)	August 9 (Friday)	October 3
September 16	August 16 (Friday)	August 23 (Friday)	October 16
October 7	September 9 (Monday)	September 16 (Monday)	November 6
October 21	September 20 (Friday)	September 27 (Friday)	November 20
November 4	October 4 (Friday)	October 11 (Friday)	December 4
November 18	October 17 (Thursday)	October 24 (Thursday)	December 18
December 2	October 29 (Tuesday)	November 6 (Wednesday)	January 1, 2003
December 16	November 13 (Wednesday)	November 20 (Wednesday)	January 15
January 6, 2003	December 5 (Thursday)	December 12 (Thursday)	February 5
January 21 (Tuesday)	December 18 (Wednesday)	December 26 (Thursday)	February 20
February 3	January 3 (Friday)	January 10 (Friday)	March 5
February 18 (Tuesday)	January 15 (Wednesday)	January 23 (Thursday)	March 20

*MONDAY, unless otherwise indicated.