



# NEW JERSEY REGISTER

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EDUCATION DEPARTMENT OF  
UNIVERSITY ARCHIVES & HISTORY  
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## THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through February 10, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 20, 1993  
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 18, 1994

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**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until **April 6, 1994**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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## NEW JERSEY REGISTER

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# RULE PROPOSALS

## AGRICULTURE

### (a)

#### DIVISION OF MARKETS

#### New Jersey Sire Stakes Program Conditions

#### Proposed Amendments: N.J.A.C. 2:32-2.1, 2.7, 2.9 and 2.27

Authorized By: Sire Stakes Board of Trustees, Bruce A. Stearns,  
Executive Director and Arthur R. Brown, Jr., Secretary,  
Department of Agriculture.

Authority: N.J.S.A. 5:5-91.

Proposal Number: PRN 1994-134.

Submit comments by April 6, 1994 to:

Bruce A. Stearns, Executive Director  
New Jersey Sire Stakes Program  
Department of Agriculture  
Division of Markets  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-8830

The agency proposal follows:

#### Summary

N.J.A.C. 2:32-2 contains the majority of the New Jersey Sire Stakes Conditions. The New Jersey Sire Stakes Conditions were based on the provisions of N.J.S.A. 5:5-91 which established the program in April of 1971. The Conditions have been amended since their initial adoption to provide an administrative framework under which the program could operate. The amendment process is done by the New Jersey Sire Stakes Board of Trustees who solicit suggestions for proposed changes from various groups of horsemen who participate in the program. The Trustees consider the various suggestions including concerns of their own and adopt changes at the end of each racing season.

The Conditions are necessary for the operation of the Sire Stakes Program and are widely distributed among the participants and are reproduced in several industry publications. They relate to standing of stallions, nomination of yearlings, sustaining payments and the racing of the New Jersey sired horses at New Jersey tracks. They have provided definitive guidelines for the operation of the Sire Stakes Program for the past two decades and have operated well during that period.

The amendments proposed for these conditions are primarily technical and are merely designed to clarify existing substantive provision. The major substantive change is the proposal to award additional points in pari-mutuel events to horses finishing sixth, seventh, eighth, ninth, tenth, eleventh and twelfth to insure full fields for these races and to provide racing opportunities to additional horses. In addition, it is proposed that yearlings will be accepted for nomination with a Canadian Registration Certificate as well as a United States Trotting Association Certificate which is essentially identical. The cancellation procedure is being clarified to specify how the distribution of purse monies are done. Finally, the schedules of meetings of the Board of Trustees have also been changed from a monthly to a bi-monthly basis.

#### Social Impact

The Sire Stakes Conditions have had limited impact on the public in general during their existence. Therefore the proposed amendments' impact will be limited to the participants in the Sire Stakes program who number approximately 6,000.

The proposed awarding of additional points will result in providing racing opportunities for additional horses. This may create more full fields.

The proposed acceptance for nomination of yearlings with a Canadian Registration Certificate will make it slightly easier for a New Jersey Sired yearling owned by a Canadian resident to be nominated to the Sire Stakes program. This may slightly increase the number of yearlings nominated.

The changes in language to the provisions regarding the distribution of purse monies is intended to help those registered as drawn; alleviating

unnecessary trips to a fair when a race has been cancelled for inclement weather and impossible racing conditions. The rule allows for the distribution of monies to those who rightfully should receive it.

The proposed change in the meeting schedule of the Board of Trustees affects only the Trustees and is in response to their request for the stated bi-monthly schedule.

#### Economic Impact

The slight economic impacts which may be a result of the proposed amendments include: (1) Slightly more opportunities for races and therefore purse monies as a result of the awarding of additional points; (2) A slight savings regarding the registration fee in the case of the Canadian Registration Certificate, although an owner will eventually have to pay a fee if they ultimately choose to race; and (3) In regard to the distribution of purse monies, the language insures the proper and fair distribution of the monies although the total distribution remains the same.

#### Regulatory Flexibility Analysis

Many of the participants in the Sire Stakes Program are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The purpose of the Sire Stakes Program is to provide competitions for New Jersey-Sired Standardbred horses that are at once, challenging enough to improve the breed and open enough to encourage the maximum participation of Standardbred, with economic incentives of sufficient magnitude to make participation worthwhile. The number of small businesses participating in the Program has increased each year. Therefore, the Sire Stakes Board of Trustees believes the program is beneficial to such businesses.

The proposed amendments do not impose any reporting or recordkeeping requirements on these small businesses. The proposed amendments in all cases include language which ensures that all participants in the Sire Stakes program are fairly and equitably treated regardless of the size of the business. If anything, the changes are made to ensure the optimal participation of the small business Sire Stakes participants. Therefore the proposed amendments are not considered of such a burden to the participating small businesses as to require a separate standard based on business size. Further in the interest of competitive fairness and to maintain the integrity of the program, no differing standards, based on business size, are offered.

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

#### 2:32-2.1 Adoption of by-laws

(a) The by-laws of the New Jersey Sire Stakes Board of Trustees are hereby adopted as follows:

1.-11. (No change.)

12. The Sire Stakes Board of Trustees shall meet [each month of] **bimonthly during** the year. The date, time, and place will be selected by the chairman, and the secretary shall notify all Board members by letter 10 days prior to each meeting.

13.-15. (No change.)

#### 2:32-2.7 Transfer of race

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

(d) In the event that a Fair Race is postponed for any reason and cannot be carried over and raced at that fair, the purse money for that race shall be divided evenly among the horses declared in **as drawn** and [on the grounds] ready to race. The 100 points toward the Fair Finals will also be divided evenly among those horses declared in **as drawn** and [on the grounds] ready to race and the event shall count as a start toward the Fair Finals.

#### 2:32-2.9 Yearling nominations

(a) All foals must be registered with the United States Trotting Association or the **Canadian Standardbred Horse Society** with a certificate of registration dated on or before the time of nomination.

1. (No change.)

2. The yearling nomination fee shall be \$40.00 if a copy of the United States Trotting Association or the **Canadian Standardbred Horse Society** certificate of registration accompanies the yearling nomination form and an additional \$10.00 processing fee shall be due if the copy of the United States Trotting Association or the

## PERSONNEL

**Canadian Standardbred Horses Society** certificate is not submitted. The nomination payment covers the nomination fee to both the Fair and Pari-mutuel divisions. Thereafter, each division will have separate sustaining payments.

3.-4. (No change.)

2:32-2.27 Final races

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

(d) In the event of less than five starters, the points shall be awarded in the same fashion as the purse breakdown with less than five starters, as in N.J.A.C. 2:32-2.21. In the [event that a series is contested with less than three preliminary legs] **Pari-mutuel events**, additional points will be awarded as follows: sixth place (four points), seventh place (three points), eighth place (two points), and ninth, **tenth, 11th, or 12th** place (one point).

(e)-(j) (No change.)

## PERSONNEL

(a)

### MERIT SYSTEM BOARD

#### Equal Employment Opportunity and Affirmative Action

#### Sexual Harassment

#### Proposed Amendments: N.J.A.C. 4A:2-2.3, 4A:7-1.3 and 4A:7-3.3

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

Authority: N.J.S.A. 11A:2-6(d), 11A:2-20 and 11A:7-1 et seq. Proposal Number: PRN 1994-140.

A public hearing concerning the proposed new rule and amendments will be held on:

Wednesday, March 23, 1994 at 5:30 P.M.

Office of Administrative Law

9 Quakerbridge Plaza

Hamilton Township, New Jersey

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

Submit written comments by April 6, 1994 to:

Janet Share Zatz

Director of Appellate Practices and Labor Relations

Department of Personnel

CN 312

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Merit System Board proposes several changes to the rules based on recommendations recently made by the Review Committee on Sexual Harassment (Review Committee).

An amendment to N.J.A.C. 4A:2-2.3 is proposed to make discrimination and, in particular, sexual harassment, a specific cause for discipline against an employee.

Second, an amendment to N.J.A.C. 4A:7-1.3 is proposed to change the language on prohibition of sexual harassment in State government to bring it into conformance with last summer's landmark New Jersey Supreme Court decision, *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587 (1993). The proposed amendments to N.J.A.C. 4A:7-1.3 would describe the two categories of conduct that constitute sexual harassment: conduct in which sexual demands of an employee are made; and conduct of a superior which causes a severe or pervasive change in the conditions of employment, thereby creating a hostile working environment. Examples of this latter type of conduct are provided. Also, N.J.A.C. 4A:7-1.3 would be amended to reflect, as stated in *Toys 'R' Us*, that an employee need not be a personal target of harassment but may show that others of the same sex have been so harassed.

Finally, amendments to N.J.A.C. 4A:7-3.3 are proposed concerning handling of discrimination complaints. N.J.A.C. 4A:7-3.3(a) would be amended to change the deadline for filing a discrimination complaint from 20 to 30 days. N.J.A.C. 4A:7-3.3(b)2 would be changed to provide

## PROPOSALS

for the written discrimination decision by the department head to be furnished to the individual filing the complaint, the affirmative action officer and/or individual who conducted the investigation into the matter, and the Division of Equal Employment Opportunity and Affirmative Action.

#### Social Impact

The proposed amendments are intended to strengthen existing procedures in merit system rules which address the problem of sexual harassment. In particular, the definition of sexual harassment to be added to N.J.A.C. 4A:7-3.3 should help employees to understand what conduct is prohibited and to help an employee identify sexual harassment before deciding to file a discrimination complaint. Further, by amending N.J.A.C. 4A:2-2.3, on causes for discipline, to specifically mention discrimination and sexual harassment, employees will be on notice that this type of conduct will lead to disciplinary action. Finally, the increase in the time limit for complaints from 20 to 30 days should minimize confusion for employees who may be familiar with the 30 day time limit for filing grievances. These amendments should help to decrease the incidence of sexual harassment and ensure a recourse for an employee who is a victim of sexual harassment.

#### Economic Impact

The Review Committee found that sexual harassment has a negative impact on employee productivity. Thus, strengthening of rules relating to sexual harassment should have a positive economic impact by promoting a more productive workplace.

#### Regulatory Flexibility Statement

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

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

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1.-7. (No change.)

8. Misuse of public property, including motor vehicles; [and]

**9. Discrimination, including sexual harassment; and**

[9.]10. Other sufficient cause.

4A:7-1.3 Prohibition of sexual harassment in State government

(a) [Deliberate or repeated unwelcome sexual advances, requests for sexual favors, comments, gestures and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.] **Sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:**

**1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;**

**2. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or**

**3. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment. This type of sexual harassment includes, but is not limited to:**

**i. Generalized gender-based remarks and behavior;**

**ii. Inappropriate, unwanted, offensive physical or verbal sexual advances and comments;**

**iii. Solicitation of sexual activity or other sex-linked behavior by promise of reward;**

**iv. Coercion of sexual activity by threat of punishment; and**

**v. Coers sexual imposition such as touching, fondling, grabbing or assault.**

(b) The employee need not be a personal target of harassment to file a complaint. The employee instead may show that other employees of the same sex were sexually harassed.

(c) Conduct under (a)3 above by a supervisor or other superior of coworkers constitutes prohibited sexual harassment when a reasonable person of the same sex in the employee's position would consider it sufficiently severe or pervasive to alter the conditions of employment.

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

4A:7-3.3 Departmental review: State service

(a) A discrimination complaint shall be presented to the affirmative action officer of the appointing authority, or authorized designee in the case of a sexual harassment complaint, with a copy to the Director of the Division of EEO/AA, within [20] 30 days of either the discriminatory action or the date on which the individual should reasonably have known of its occurrence. It shall be in writing and specify the basis for the complaint.

(b) The affirmative action officer, or authorized designee if so directed by the department head, shall investigate the complaint and prepare a report to the department head. The department head shall render a written decision within 45 days of the receipt of the complaint by the affirmative action officer, unless a longer period is agreed to by the parties.

1. (No change.)

2. The individual filing the complaint, the affirmative action officer and/or the authorized designee who conducted the investigation and the Division of EEO/AA shall be furnished with a copy of the final decision by the department head.

**(a)**

**MERIT SYSTEM BOARD**

**Make-up Examinations**

**Proposed Amendment: N.J.A.C. 4A:4-2.9**

Authorized By: Merit System Board, Linda M. Anselmini,

Commissioner, Department of Personnel.

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

Proposal Number: PRN 1994-141.

A public hearing concerning the proposed amendment will be held on:

Wednesday, March 23, 1994 at 5:30 P.M.  
Office of Administrative Law  
9 Quakerbridge Plaza  
Hamilton Township, New Jersey

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

Submit written comments by April 6, 1994 to:

Janet Share Zatz  
Director of Appellate Practices and Labor Relations  
Department of Personnel  
CN 312  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Merit System Board previously proposed amendments to N.J.A.C. 4A:4-2.9, providing that make-ups would be granted for professional level engineering promotional examinations on the same limited basis as police and fire promotional examinations (see 25 N.J.R. 4823(a) and notice of adoption published elsewhere in this issue of the New Jersey Register). In commenting on this proposed amendment, Paul Pologruto, Staff Representative, Communications Workers of America (CWA) Local 1032, noted that errors are frequently made with regard to eligibility for these examinations. When an employee's eligibility appeal is upheld after the date of the examination, he stated, a make-up examination is necessary. Therefore, he urged that "error by the Department of Personnel or appointing authority," as set forth in N.J.A.C. 4A:4-2.9(a)1, should remain a valid reason for granting a make-up examination.

The Board agrees with this comment, and further notes that it is current practice that error by the Department of Personnel or appointing

authority is a valid reason for granting a make-up of a police or fire promotional examination. Accordingly, the Board proposes that the phrase, "error by the Department of Personnel or appointing authority" be added under N.J.A.C. 4A:4-2.9(b) as an additional reason for authorizing make-ups of police, fire and professional level engineering promotional examinations.

**Social Impact**

The proposed amendment would continue current practice, whereby make-up examinations are authorized for all candidates in cases of Department of Personnel or appointing authority error. Thus, the amendment would have no impact on the operation of the examination program. However, this amendment would conform the rules to current practice, and therefore provide helpful clarification to examination candidates and appointing authorities.

**Economic Impact**

As noted above, the proposed amendment does not change current practice, and therefore no economic impact is anticipated.

**Regulatory Flexibility Statement**

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

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

4A:4-2.9 Make-up examinations

(a) (No change.)

(b) For police, fire and professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination.

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate; [or]

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation[.]; or

4. Error by the Department of Personnel or appointing authority.

(c)-(h) (No change.)

**(b)**

**MERIT SYSTEM BOARD**

**Leaves, Hours of Work and Employee Development Family and Medical Leave**

**Proposed New Rule: N.J.A.C. 4A:6-1.21A**

**Proposed Amendments: N.J.A.C. 4A:6-1.1, 1.8 and 1.10**

Authorized By: Merit System Board, Linda M. Anselmini,

Commissioner, Department of Personnel.

Authority: P.L.1989, c.261; N.J.S.A. 11A:2-6(d); N.J.S.A.

11A:-6-1 et seq.; 29 U.S.C. 2601 et seq; and 29 CFR Part 825 et seq.

Proposal Number: PRN 1994-142.

A public hearing concerning the proposed new rule and amendments will be held on:

Wednesday, March 23, 1994 at 5:30 P.M.  
Office of Administrative Law  
9 Quakerbridge Plaza  
Hamilton Township, New Jersey

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

Submit written comments by April 6, 1994 to:

Janet Share Zatz  
Director of Appellate Practices and Labor Relations  
Department of Personnel  
CN 312  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

On February 5, 1993, the Federal Family and Medical Leave Act (FMLA) was enacted into law. Regulations promulgated by the U.S. Department of Labor have since been issued to interpret and explain the purpose and effect of the FMLA. Since the FMLA applies to State and local governments (as well as to a large proportion of the private sector) the Merit System Board proposes a new informational rule to inform merit system employers and employees of their rights and responsibilities under the FMLA. The U.S. Department of Labor enforces the FMLA. The State Division on Civil Rights remains the enforcing agency for the State Family Leave Act (FLA). The following proposal, therefore, is intended in part to describe the interaction of the FMLA and FLA.

The proposed new rule at N.J.A.C. 4A:6-1.21A(a) notes the effective date of the FMLA, which is August 5, 1993. However, for employees covered under a collective negotiations agreement, the FMLA is not effective until February 5, 1994.

N.J.A.C. 4A:6-1.21A(b) includes important definitions, highlighting differences between the FLA and FMLA. For example, under the FLA, an employee eligible for leave is one who has worked for an employer for at least 12 months for a minimum of 1,000 hours. Under the FMLA, an eligible employee must have worked a minimum of 1,250 hours. Subsection (b) also defines "parent" and differs from the definition under the FLA, in that the State law includes parents-in-law, but the FMLA does not. Subsection (b) further includes a definition of "serious health condition" which is similar but not identical to that for FLA leave.

N.J.A.C. 4A:6-1.21A(c) notes that all State and local government agencies are covered by the FMLA, regardless of the number of employees.

N.J.A.C. 4A:6-1.21A(d) lists the three types of FMLA leave, and highlights further differences between the FLA and FMLA. Like the FLA, FMLA leave may be taken for the birth or placement for adoption of a child, or because a child, spouse or parent has a serious health condition. However, FMLA leave is also available for the placement of a foster child, a reason for leave not available under the FLA. Further, N.J.A.C. 4A:6-1.21A(d)3 describes a leave entitlement unique to the Federal law, medical leave, which an employee may take for his or her own serious health condition. Finally, as provided in subsection (d), 12 weeks of FMLA leave may be taken in a 12-month period. However, the FLA provides for 12 weeks of leave in a two-year period.

N.J.A.C. 4A:6-1.21A(e) specifies that in State service, the 12 month period within which the 12 weeks of FMLA leave may be taken commences on the first day of such leave. Local agencies have several options under Federal regulations to determine when the 12-month period commences. However, as indicated in N.J.A.C. 4A:6-1.21A(d)1, the entitlement to leave for the birth or placement for adoption or foster care of a child expires at the end of the 12 month period starting with the date of birth or placement. This provision is unlike that for State family leave, which permits an employee to take leave for the birth or placement for adoption of a child to commence at any time within a year after the event and continue until the exhaustion of the leave entitlement.

N.J.A.C. 4A:6-1.21A(f) concerns intermittent and reduced FMLA leave. Intermittent leave may last from one hour to a number of weeks; reduced leave reduces the workweek or workday. Leave may be taken in this manner when medically necessary for an employee with a serious health condition or when the employee's child, spouse or parent has such a condition. Leave may be taken in this manner for other FMLA purposes only if the employer so agrees. Intermittent family leave under State law differs in that the intermittent intervals are at least one but fewer than 12 workweeks. Family leave on a reduced schedule under State law differs in that leave increments may be no smaller than one workday.

N.J.A.C. 4A:6-1.21A(g) provides for special conditions related to FMLA leave. A significant rule provided for in Federal law which does not apply to State family leave is that a husband and wife working for the same employer (the State, or the same political subdivision) may take a combined total of 12 weeks of leave in a 12 month period when

it is for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition. Also, FMLA leave must be designated as such in the employer's records.

N.J.A.C. 4A:6-1.21A(h) provides that an employee's leave will count against the employee's entitlement under the Federal and State law, when the reason for the leave is covered by both. Finally, N.J.A.C. 4A:6-1.21A(i) notes that an employer may designate an employee's paid sick leave as FMLA leave as long as the employer immediately notifies the employee of this action.

The remainder of the proposed new rule, N.J.A.C. 4A:6-1.21A, includes 10 practical examples of how FMLA leave will work for State and local employees and how FMLA leave interacts with State family leave.

Proposed amendments to N.J.A.C. 4A:6-1.1, 1.8 and 1.10 include cross references to the proposed new rule.

#### Social Impact

The proposed new rule and amendments are intended to provide valuable information about the rights and responsibilities of merit system employees and employers under the new Federal Family and Medical Leave Act (FMLA). It is particularly important that employees and employers understand the interaction between the FMLA and State family leave. A positive social impact should result from the dissemination of this information in an understandable way.

Although these are informational rules, they are consistent with the purpose of both the State family leave and FMLA, which are intended to support family needs and reduce workplace stress caused by family illnesses and child care requirements.

#### Economic Impact

There will be certain economic benefits to employees and certain economic costs to employers, such as the preservation of the employee's health benefits while he or she is on FMLA leave. However, these economic impacts result from the underlying Federal law.

#### Regulatory Flexibility Statement

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

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

#### 4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (N.J.A.C. 4A:6-1.2(b) through (h)); sick leave (N.J.A.C. 4A:6-1.3(a) through (h)); military leave (N.J.A.C. 4A:6-1.11); gubernatorial appointment leave (N.J.A.C. 4A:6-1.12); convention leave (N.J.A.C. 4A:6-1.13); elective office leave (N.J.A.C. 4A:6-1.17); [and] State family leave (N.J.A.C. 4A:6-1.21); and Federal family and medical leave (N.J.A.C. 4A:6-1.21A).

2.-4. (No change.)

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

#### 4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) A State employee in the career, senior executive or unclassified service who requests leave with or without pay for reason of disability due to pregnancy shall be granted leave under the same terms and conditions as those applicable to such employees for sick leave or leave without pay. The appointing authority may request acceptable medical evidence that the employee is unable to perform her work because of disability due to pregnancy. **For medical leave under Federal law, see N.J.A.C. 4A:6-1.21A.**

1.-2. (No change.)

(b) Child care leave may be granted to State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10. **For State family leave, see N.J.A.C. 4A:6-1.21. For Federal family and medical leave, see N.J.A.C. 4A:6-1.21A.**

#### 4A:6-1.10 Leave without pay: State service

(a)-(d) (No change.)

(e) For State family leave, see N.J.A.C. 4A:6-1.21. For Federal family and medical leave, see N.J.A.C. 4A:6-1.21A.

#### 4A:6-1.21A Federal family and medical leave

(a) The Federal Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., was effective on August 5, 1993, except for employees covered under a collective negotiations agreement, for whom the Act is effective on February 5, 1994, or the date the agreement expires, whichever is sooner. This rule is for informational purposes only, and addresses areas in which FMLA provisions differ from those under the State Family Leave Act (FLA) (see N.J.A.C. 4A:6-1.21). The U.S. Department of Labor has promulgated rules to implement and enforce the FMLA (see 29 CFR Part 825).

(b) Definitions, unique to this rule, are as follows:

1. "Eligible employee" means an employee of the State or a political subdivision who has worked for the employer for at least 12 months for a minimum of 1,250 hours.

2. "Family leave" means a type of FMLA leave to which an eligible employee is entitled if the employee meets the conditions set forth in (d)1 or (d)2 below.

3. "Medical leave" means a type of FMLA leave to which an employee is entitled if the employee meets the conditions set forth in (d)3 below.

4. "Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

5. "Serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:

i. Any period of incapacity or treatment in connection with or resulting from inpatient care in a hospital, hospice, or residential medical care facility;

ii. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider; or

iii. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

(c) Public agencies, including the State of New Jersey and political subdivisions, are covered employers without regard to the number of employees employed.

(d) An eligible employee of a covered employer is entitled to 12 weeks of FMLA leave in a 12-month period:

1. Because of the birth of a child or the placement of a child for adoption or foster care, except that the entitlement expires at the end of the 12 month period beginning on the date of birth or placement;

2. Because the employee is needed to care for a child, spouse or parent with a serious health condition; or

3. Because the employee's own serious health condition makes the employee unable to do his or her job.

(e) In State service, the 12-month period begins on the first day of FMLA leave.

(f) Leave may be taken intermittently or on a reduced leave schedule when medically necessary in the case of an employee who has a serious health condition or in the case of a child, spouse or parent who has a serious health condition.

1. Intermittent leave may last for as little as one hour or for as long as several weeks. A reduced leave schedule reduces the employee's hours per workweek or workday. No limit may be placed on the size of an increment of such leave, except that an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for use of leave.

2. An employee may take leave in this manner for the birth or placement of a child for adoption or foster care only if the employer agrees.

(g) Special conditions related to FMLA leave are as follows:

1. A husband and wife who both work for the same employer are permitted to take a combined total of 12 weeks of FMLA leave in a 12-month period for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition.

However, following the use of a portion of the 12-week leave entitlement for one of these purposes, the husband and wife will each be entitled to the difference between the leave taken individually by them and their 12-week entitlement if the additional leave is for a different FMLA purpose (such as their own serious health condition).

2. FMLA leave shall be designated as such in the employer's records and shall not be placed in the same category as other leaves.

3. If the employer has a uniformly applied policy governing outside employment, such a policy may continue to apply to an employee while on FMLA leave. Otherwise, an employer may not deny benefits to an employee who is entitled to leave because the employee has outside employment.

4. The enforcing agency for FMLA leave is the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Any complaints related to this leave shall be made to that agency.

(h) If an employee qualifies under both Federal and State law, the leave used counts against the employee's entitlement under both laws, provided that nothing in the FMLA supersedes any provision of State law that provides greater rights than those provided under the FMLA, and further provided that rights under the FMLA shall not be diminished by State law.

(i) An employer may designate an employee's paid sick leave as FMLA leave if the employee provides information to the employer indicating an entitlement to such leave. The employer shall immediately notify the employee that the paid sick leave has been designated as FMLA leave.

(j) Following are examples of the interaction of the FMLA and FLA:

**EXAMPLE ONE:** A State employee needs to take leave for the birth of a child in 1994 and the birth of another child in 1995. If the employee is eligible for leave under both State and Federal laws, the employee may utilize the 12-week entitlement in 1994, which counts against leave under both laws. The State must comply with applicable provisions of both laws. More generous provisions of the FMLA, such as those on intermittent and reduced leave, apply. However, more generous provisions under State law, such as the retention of seniority, also apply.

In 1995, the employee is not entitled to family leave under State law because State law only permits 12 weeks of family leave in a two-year period. However, the employee is entitled to family leave under Federal law because the FMLA permits a family leave of 12 weeks in a 12-month period.

Leave during 1994 is recorded as both FLA and FMLA. Leave during 1995 is recorded as FMLA only.

**EXAMPLE TWO:** A municipal employee suffers from a serious health condition which makes the employee unable to perform his job duties. If the employee meets the criteria for eligibility under the FMLA, the employee is therefore entitled to 12 weeks of medical leave. This leave does not count against the employee's entitlement under State law because State law does not provide for leave for an employee's own serious health condition. Therefore, during the same 12-month period, if the employee needs to take leave because of the serious health condition of a child, the employee is entitled to 12 weeks of such leave under State law as long as the employee meets the criteria for eligibility.

**EXAMPLE THREE:** A State employee is disabled due to her pregnancy and is unable to work. The employee needs to take 12 weeks of leave for this reason. If the employee is eligible for medical leave under the FMLA, then the 12 weeks of pregnancy-disability leave will count toward her FMLA entitlement for that 12-month period. If she thereafter wishes to take 12 weeks of leave to care for her new child and is eligible for family leave under State law, she may then take 12 weeks of family leave. However, if the employee needs additional leave for child care, she may apply for leave without pay for this additional leave. The appointing authority may, but is not required to, grant such additional leave, since the employee has exhausted her leave entitlements under both State and Federal law. See N.J.A.C. 4A:6-1.10.

**EXAMPLE FOUR:** Joe is employed by the State Department of Insurance. His wife Jill is employed by the Department of State. Joe takes three weeks of leave to care for his seriously ill mother. Jill takes three weeks of leave to care for her newborn child. These three weeks are recorded on both of their records as State family leave (FLA) and Federal family leave (FMLA). They have remaining a combined total of six weeks of FMLA leave if used to care for their newborn child. However, if either is unable to work due to a serious health condition, each has nine weeks of FMLA leave remaining for that purpose. Each has nine weeks of FLA remaining.

**EXAMPLE FIVE:** An employee gives birth to a child on January 1. On November 1, she commences leave to care for her child, and completes this leave 12 weeks later. Her leave through December 31 is recorded as both FLA and FMLA. After December 31, the leave is recorded only as FLA.

**EXAMPLE SIX:** An employee takes in a foster child on December 1. He wishes to take a leave to care for the child commencing the following November 1. This leave is recorded as FMLA only, and only lasts through the end of November.

**EXAMPLE SEVEN:** An employee's wife gives birth on January 1. He commences leave on January 10. This leave is recorded as both FLA and FMLA, for a 12 week total.

**EXAMPLE EIGHT:** John is covered under a negotiations agreement. He has taken 12 weeks of leave, to end on December 31, 1993 because of his own serious health condition. Then he has a relapse and, on February 10, 1994, requires further leave. The leave does not fall under the FLA at all. Prior to February 5, 1994, the leave is also not recorded as FMLA. The leave commencing on February 10, 1994 is recorded as FMLA.

**EXAMPLE NINE:** Susan is a nonrepresented managerial employee who commences leave on July 1, 1993 for care of a newborn and needs leave for the next 15 weeks. From July 1 through August 4, the leave is recorded as FLA only. From August 5 through September 22 (12 weeks after July 1) the leave is recorded as FLA and FMLA. From September 23 through October 13, this leave is recorded as FMLA only.

**EXAMPLE TEN:** Robert is taking six weeks of paid sick leave for major surgery and recuperation from the surgery. Robert has informed his employer about the reason for his leave. His employer has designated this paid sick leave as FMLA leave. Immediately upon doing so, the employer also notifies Robert of this designation.

## COMMUNITY AFFAIRS

### (a)

#### NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

##### Return on Equity

##### Proposed Amendment: N.J.A.C. 5:80-3.2

Authorized By: New Jersey Housing and Mortgage Finance

Agency, Christiana Foglio, Executive Director.

Authority: N.J.S.A. 55:14K-7a(6).

Proposal Number: PRN 1994-131.

Submit comments by April 6, 1994 to:

Anthony W. Tozzi  
New Jersey Housing and Mortgage Finance Agency  
3625 Quakerbridge Road  
CN 18550  
Trenton, NJ 08650-2085

The agency proposal follows:

##### Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objectives, the Agency acts as a mortgage lender by providing financing for the construction or rehabilitation of housing projects which will be occupied, in whole or in part, by persons of low and/or moderate income.

Sponsors of housing projects who receive mortgage financing from the Agency are required to maintain and operate the project subject to restrictions designed to preserve the low/moderate income status of the project. Part of these restrictions provide limitations on the amount that a sponsor may earn on its investment in a project. The rules at N.J.A.C. 5:80-5.3 were adopted to outline the criteria for permitting sponsors to earn a return on its investment and establish the maximum amounts that can be earned by sponsors.

Pursuant to N.J.A.C. 5:80-3.2, for housing projects financed prior to January 17, 1984, the maximum rate of return that a sponsor can earn on its investment is eight percent.

There are 36 projects financed before January 17, 1984 with rates of return less than eight percent. Most of these projects became for-profit projects through a sale of the project from an original nonprofit sponsor. Under the terms of the sales agreement, the sponsors agreed to limit the rate of return to less than eight percent, although the maximum rate of return that could have been permitted was eight percent.

The Agency has recently received requests from sponsors to increase the rate of return to eight percent. The Agency believes it is feasible to permit increases in the rate of return, up to eight percent, provided the project can meet the following criteria and is proposed as an amendment at N.J.A.C. 5:80-3.2(b):

1. The project has residual receipts, as defined at N.J.A.C. 5:80-30, or a reserve of the Development Cost Escrow, as defined at N.J.A.C. 5:80-6.5, of an amount equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects) which include debt service and reserve payments of the latest Agency-approved annual budget; and

2. The project has been current in all escrow and debt service payments for the past three fiscal years.

As proposed at N.J.A.C. 5:80-3.2(c), upon meeting the criteria, increases are to be subject to the following conditions:

1. The rate of return is prospective only;

2. Payment of an Agency processing fee of \$3,500;

3. Amendments are to be made to the appropriate mortgage documents to reflect the above conditions; and

4. Payments of the increased rate of return on equity are to be subject to existing regulations governing return on equity at N.J.A.C. 5:80-3.

##### Social Impact

The proposed amendments at N.J.A.C. 5:80-3.2(b) and (c) concerning the return on equity rules will assist the Agency with its role of ensuring the continued viability of housing projects financed by the Agency. By regulating the amount of return and restricting payment of returns to surplus cash, the Agency can help ensure that rents remain affordable, and that the projects remain safe, decent and habitable. This, in turn, benefits the health, welfare and safety of the tenants residing at such housing projects.

##### Economic Impact

The proposed amendments concerning the return on equity rule will assist the Agency with its role of ensuring the financial stability of housing projects financed by the Agency. By regulating the amount of return, the Agency can help ensure that operating expenses of the project are met and, at the same time, that sponsors earn a reasonable return on their investment. The rule also impacts on the bonds issued by the Agency in financing housing projects. By restricting payment of returns to surplus cash, the Agency can help ensure that sponsors pay off their mortgage loans to the Agency. This, in turn, enables the Agency to make payments on the bonds it has issued.

The proposed rules will also increase the amount of return that sponsors can earn on their investment. However, before sponsors are permitted to obtain the increased return, they must meet the criteria set forth at N.J.A.C. 5:80-3.2. This includes the full funding of escrows for taxes, insurance and repairs/replacements, an operating surplus of three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects) and available cash for anticipated capital improvements and other obligations of the project. This criteria should ensure that the increased rate of return will not impact negatively on the financial stability of the project. Affected sponsors seeking the return maximum increase will pay a processing fee of \$3,500.

##### Regulatory Flexibility Analysis

The proposed amendments will apply to the owners of projects financed by the Agency, some of which are small businesses as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et

seq. The rules do not impose any new reporting or recordkeeping requirements on such small businesses. Sponsors who have agreed to a return of less than eight percent may seek to increase their return maximum to eight percent of the financial and other compliance requirements of N.J.A.C. 5:80-3.2(b) and (c) are met, including the payment of a \$3,500 processing fee (see Summary above). The Agency foresees no increase in capital costs or the need for professional services in meeting the criteria for the proposed amendments. The proposed amendments to the rules work to the benefit of owners by providing them with an increase in the rate of return on their investment. Because the rules do not impose any new reporting or recordkeeping requirements, will not require any increased costs or need for professional services, and because of the benefits to be derived from the rules, no differentiation in the compliance requirements, based upon business size, is proposed.

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

5:80-3.2 Housing projects prior to January 17, 1984

(a) For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) **Housing Sponsors who have agreed to an annual rate of return of less than eight percent may request an increase in the rate to a maximum of eight percent upon meeting the following criteria:**

1. **The housing project has residual receipts, as defined at N.J.A.C. 5:80-3.2 or a reserve of the Development Cost Escrow of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects) which includes debt service and reserve payments of the Agency-approved annual budget in effect at the time of the request and;**

2. **The housing project has been current in all escrow and debt service payments for the three fiscal years prior to the request.**

(c) **Housing Sponsors who meet the criteria in (b) above, shall be granted an increase in the annual rate of return, up to eight percent, subject to the following conditions:**

1. **The increased rate of return shall be prospective only;**  
 2. **Payment of a \$3,500 processing fee;**  
 3. **Payments of the increased return on equity shall be subject to this subchapter; and**

4. **Amendments will be made to the appropriate mortgage documents to reflect the conditions in (c)1 through 3 above.**

(a)

## NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

### Prepayment

#### Proposed Amendment: N.J.A.C. 5:80-5.10

Authorized By: New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1994-133.

Submit comments by April 6, 1994 to:

Anthony W. Tozzi  
 New Jersey Housing and Mortgage Finance Agency  
 3625 Quakerbridge Road  
 CN 18550  
 Trenton, NJ 08650-2085

The agency proposal follows:

#### Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency") pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objectives, the Agency acts as a mortgage lender by providing financing for the construction or rehabilitation of housing projects which will be occupied, in whole or in part, by persons of low and/or moderate income.

Sponsors of housing projects who receive mortgage financing from the Agency are required to maintain and operate the project subject to restrictions designed to preserve the low/moderate income status of the project. These restrictions continue through the mortgage term. The rules at N.J.A.C. 5:80-5.10 were adopted to outline the criteria for permitting sponsors to prepay the mortgage. The rules also govern the procedures and conditions that apply if a sponsor is eligible and seeks to prepay.

Under the current rules, sponsors may prepay after 20 years. Upon prepayment, all Agency controls expire with the exception of those governing: (1) tenant income eligibility, (2) tenant income certification/recertification, (3) tenant selection, (4) rent increases and (5) affirmative fair housing marketing. These controls continue following prepayment through the remainder of the original mortgage term. Such continuing controls were intended to preserve the low/moderate income status of the project.

The proposed amendments at N.J.A.C. 5:80-5.10(b)1 will require that the following additional Agency controls remain in place following prepayment:

1. Maintenance of tax, insurance and repair and replacement reserves;
2. Return on equity restrictions;
3. Transfer of Ownership Interest procedures;
4. The provisions of N.J.S.A. 55:14K-7b (which gives authority to the Agency to inspect the project, examine books and records, require repairs or maintenance to protect the welfare of tenants and to assume the management and control of the project, if necessary, to enforce compliance of the sponsor's obligations).

The additional controls will help ensure that the Agency's statutory objectives will be realized, that is, maintenance of low/moderate income housing, by requiring necessary and prudent fiscal restraints on project operations through the maintenance of reserve accounts and by limiting return on equity. The continuance of the transfer of ownership regulations is essential to keep the Agency informed as to changes in ownership interests. The provisions of N.J.S.A. 55:14K-7b will provide the ability for the Agency to monitor and enforce the ongoing controls after prepayment.

In order to ensure that the controls remaining after prepayment are adhered to by sponsors, current rules require sponsors to execute a deed restriction or other appropriate agreement. Current rules also require sponsors to deliver a deed in escrow to the Agency. The proposed amendments delete the requirements to deliver a deed in escrow. The Agency believes this requirement to be unnecessary (since the deed restriction will provide the Agency with necessary enforcement ability) and perhaps unenforceable.

The proposed amendments at N.J.A.C. 5:80-5.10(f) will include a "grandfather clause" whereby the amendments which impose additional Agency controls will not apply to projects financed between October 15, 1990 (the effective date of the current prepayment section) and the effective date of the proposed amendments.

#### Social Impact

The proposed amendments are intended to help ensure the preservation of housing projects for low/moderate income residents following a prepayment of the Agency mortgage. This will be accomplished by: (1) requiring the continued maintenance of reserve accounts for repairs and replacements, (2) by continuing limitations on a sponsor's return on its investment, (3) by continuing to review and approve transfers of ownership, and (4) by continuing the Agency's ability to monitor and enforce restrictions after prepayment. The Agency believes these restrictions will help maintain rents at a level affordable to low/moderate income residents and help preserve the physical condition of the project. The ultimate beneficiary of these restrictions will be the low/moderate income residents of such projects.

#### Economic Impact

Some of the proposed restrictions will impact the financial aspects of the project's operation. The requirement to maintain a reserve account

for repairs and replacement will help ensure that necessary maintenance and repairs will be funded and thereby help preserve the physical condition of the project. The limitation on a sponsor's return on its investment will also impact the financial aspects of the project's operation. This limitation will help ensure that rental income will be utilized first for the project expenses and then, on a limited basis, to pay a sponsor's return on its investment.

#### Regulatory Flexibility Analysis

The proposed amendments will apply to owners of projects financed by the Agency, some of which are small businesses as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. All of the restrictions set forth in the amendment are restrictions that were placed upon the project as a condition for obtaining financing from the Agency. At the time such owners received financing, they agreed to abide by such restrictions through the original mortgage term. The proposed amendments will have the effect of continuing those same restrictions through the original mortgage term, following a prepayment of the mortgage. As the proposed amendments will work to continue existing restrictions, the Agency foresees no increase in capital costs. The required reporting and recordkeeping aspects are currently in place and will, therefore, not impose any new requirements on the owner. Because the proposed amendments will operate to continue existing restrictions following a prepayment and thereby does not impose any new requirements, no differentiation in the compliance requirements based, upon business size, is proposed.

The only exception to the foregoing are owners of projects financed between October 15, 1990 (the effective date of the current rules) and the effective date of the proposed amendments. When such owners received financing, the prepayment rules in effect at the time did not impose a continuation of the restrictions that are now being imposed. Accordingly, the proposed amendments will not apply to such owners.

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

#### 5:80-5.10 Prepayment

(a) (No change.)

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that: **The Agency policies on tax, insurance and repair and replacement reserves; The provisions of N.J.S.A. 55:14K-7b; and The statutory provisions** [and regulatory controls] at N.J.S.A. 55:14K-1 et seq. **and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, [and] affirmative fair housing marketing, transfer of ownership interests and return on equity** shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay **the servicing fees and charges currently being paid by the Sponsor under the mortgage documents**, [as determined by the Agency], through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency. [In addition, to guarantee the obligations under the deed restriction or other appropriate agreement, the Sponsor shall execute and deliver a deed granting the Agency title to the project, which deed shall be held in escrow by the agency. The Agency shall have the right to release the deed from escrow and file it, upon the occurrence of an event of default under the deed restriction or other agreement.]

2.-4. (No change.)

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

**(f) The provisions of this section which impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, provisions of N.J.S.A. 55:14K-7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and the effective date of such provisions.**

(a)

## NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

### Rent Increases for Low and/or Moderate Income Projects without Federal Project-Based Rent Subsidies and for Low/Market Rate Projects

#### Proposed New Rules: N.J.A.C. 5:80-9.14 and 9.15

Authorized By: New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1994-132.

Submit comments by April 6, 1994 to:

Anthony W. Tozzi

New Jersey Housing and Mortgage Finance Agency

3625 Quakerbridge Road

CN 18550

Trenton, NJ 08650-2085

The agency proposal follows:

#### Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency") pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objectives, the Agency acts as a mortgage lender by providing financing for the construction or rehabilitation of housing projects which will be occupied, in whole or in part, by persons of low and/or moderate income.

Sponsors of housing projects who receive mortgage financing from the Agency are required to maintain and operate the project subject to restrictions designed to preserve the low/moderate income status of the project. Part of these restrictions require sponsors to submit requests for rent increases to the Agency for approval. The rules at N.J.A.C. 5:80-5.9 were adopted to outline the procedures for submission and implementation of a rent increase and the criteria for permitting sponsors to increase rents.

The Agency has financed over 180 projects. Most of the projects receive some form of rent subsidy which is needed to keep rents affordable to low and/or moderate income residents. The Agency has financed 14 projects which do not receive any rental subsidies. The proposed new rule at N.J.A.C. 5:80-9.14 applies only to the latter type of project.

The proposed new rule at N.J.A.C. 5:80-9.14 will provide sponsors with an option to continue under the current rent regulation or convert the project to a 10 percent low income and 90 percent moderate income project. The Agency will use U.S. Housing and Urban Development (HUD) low and moderate income standards for calculating the rents to be charged for such units. For those electing to convert, any existing tenants that qualify as low income will count toward the 10 percent. Any balance of the low income units will be phased in as vacancies occur. These units will remain low income for 15 years (or until the expiration of the mortgage term, if less than 15 years). If the remaining mortgage term exceeds 15 years, the low income units will revert to moderate income units at the end of the 15 year period.

After conversion, rent increases for the low and moderate income units will be implemented as follows:

1. Rent increases for the 90 percent moderate income units will be permitted over a five year period (20 percent maximum per year) to bring the current rent to the maximum rent levels permitted by HUD for moderate income families.

2. Once achieving the maximum rent for moderate income families, future rent increases will be permitted in amounts equal to HUD increases in maximum rent for such units, but not in excess of 20 percent per year.

3. Rent increases for the low income units will be permitted as HUD increases the maximum rents for such units, but not in excess of 10 percent per year. Rents for low income units reverting to moderate income units will be increased to moderate income levels over a five year period (up to 10 percent maximum per year).

It is anticipated that the proposed new rule at N.J.A.C. 5:80-9.14 will produce additional cash for the projects referenced above, which tend to be older projects and will be in need of capital improvements and repairs.

Agency staff is also proposing a new rule at N.J.A.C. 5:80-9.15 regarding similar changes to the rent regulations for its "80/20" projects. These are projects financed after 1984 without Federal rent subsidies where 20 percent of the units are low income and 80 percent of the units are market.

The proposed new rule at N.J.A.C. 5:80-9.15 affecting 80/20 projects would permit owners to continue under the current rent regulation or to elect the following rent increase procedures:

1. Agency approval of rent increases for the market units would be eliminated and sponsors would be permitted to set the rent at whatever they believe the market will bear. Such units will be subject to any applicable local rent control ordinances. (It is beneficial to have market rents as high as possible as this offsets the lower rents received from the low income units. Since the market units are not the units which are being assisted by the Agency's financing, there is no need for the Agency to review and approve the rents for these units).

2. Sponsors may increase rents for the low income units (up to 10 percent per year) as HUD increases the maximum rents for such units.

Rent increases described above for the proposed new rules at N.J.A.C. 5:80-9.14 and 9.15 will only be subject to the Agency's verification of HUD's increase in the maximum rent for the low and moderate income unit. Sponsors who wish to seek increases in excess of the 10 percent and 20 percent maximum annual increases permitted would be subject to the current rent increase procedures.

**Social Impact**

The proposed new rule at N.J.A.C. 5:80-9.14 will impact residents at projects financed by the Agency. Under the proposed new rule, 90 percent of the residents will pay rents which will be set at the maximum rent level permitted by HUD for moderate income families. Ten percent of the residents will pay rents which will be set at the maximum rent level permitted by HUD for low income families.

HUD's definition of moderate income family is one which earns no more than 80 percent of the median income. HUD's definition of a low income family is one which earns no more than 50 percent of the median income. In both cases, HUD sets the median income on a county-by-county basis.

HUD's standards for determining the maximum rent level for low and moderate income families is based on a family paying 30 percent of their income toward rent. Accordingly, the maximum rent for low income families would be set by multiplying the median income by 50 percent and then multiplying the resulting number by 30 percent. The maximum rent for moderate income families would be set by multiplying the median income by 80 percent and then multiplying the resulting number by 30 percent.

A review of the 14 affected projects reveals that current rents, in general, are above HUD's maximum low income rent level but below HUD's maximum moderate income rent level. For sponsors who elect to operate under the proposed new rule at N.J.A.C. 5:80-9.14, rent increases for the 90 percent moderate income units would be phased in over a five year period to bring rents up to HUD's maximum moderate income level. Once achieving HUD's maximum moderate income rent, future increases would be permitted if HUD increases the maximum moderate income rent level.

As the rents are currently above HUD's maximum rent for low income families, the Agency will be securing an additional 10 percent of these existing units for occupancy by low income families. Sponsors will be required to meet the 10 percent low income requirement as vacancies occur.

The proposed new rule at N.J.A.C. 5:80-9.15 will also impact residents at projects financed by the Agency. The 20 percent low income residents will be impacted in the same manner as explained above for the low income residents governed by the proposed new rule at N.J.A.C. 5:80-9.14. For the market rate residents, they will be treated as any other tenant in a market rate, non-Agency rental project.

**Economic Statement**

The proposed new rules will impact the amount of rent paid by residents of Agency-financed projects as explained above. For many existing residents, rent increases will be phased in over a five year period to bring rents to HUD's maximum moderate income rent level. HUD's maximum moderate income rent level is a nationally recognized standard and one in which the Agency believes is a reasonable standard upon which to maintain rents at such projects.

The proposed new rules will also impact residents who qualify as low income families. As 10 percent of the units must be rented to low income families, this will create a low income rent level for 10 percent of the units which previously did not exist. The proposed new rules will also help address the shortage of low income units needed in the State.

The proposed new rules will also result in increased project revenue due to increases in rents. The additional project revenue will be needed by projects, since many of these projects are at or approaching 20 years old and will be in need of funds for capital improvements and repairs.

**Regulatory Flexibility Analysis**

The proposed new rules will impact upon tenants residing or applying for admission to housing projects financed by the Agency. They will also apply to the owners of the projects, some of which are small businesses as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose any new reporting or recordkeeping requirements on such small businesses. The Agency foresees no increase in capital costs or the need for professional services in meeting the proposed new rules. The proposed new rules actually reduce recordkeeping and reporting requirements over rules currently in place. Under current rules, the sponsor is required to submit the list of documents as set forth at N.J.A.C. 5:80-9.4 Under proposed new rules, sponsors will be required to submit the request and a determination of the rents based upon HUD's publication of median income. Since the proposed new rules do not impose any new reporting or recordkeeping requirements, they will not require any increased costs or need for professional services, and will actually reduce recordkeeping and reporting requirements. In addition, no differentiation in the compliance requirements, based upon business size, is proposed.

Full text of the proposed new rules follows:

5:80-9.14 Rent increases for low and/or moderate income projects without Federal project-based rent subsidies

(a) Rent increases for housing projects without project-based Federal rent subsidies and in which at least 10 percent of the units are rented to low income families and the balance rented to moderate income families shall be governed only by this section. HUD's definition of low and moderate income families shall be used for the purposes of the following:

1. Sponsors shall submit a written request to the Agency, accompanied by the most recent HUD median income figures and the maximum rents corresponding to the median income figures. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, up to a maximum of 10 percent for low income units and 20 percent for moderate income units. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors of projects without project-based Federal subsidies, which do not meet the low and moderate income unit distribution set forth in (a) above, may elect to convert their project to that unit distribution and thereby be subject to (a)1 through 3 above.

1. Sponsors who elect to convert shall get credit toward the 10 percent low income, 90 percent moderate income unit distribution for any existing tenants meeting such standard. As vacancies occur, the units shall first be rented to fulfill the 10 percent low income requirement and then 90 percent to moderate income families.

2. Upon conversion, rent increases may be implemented pursuant to (a)1 through 3 above. In the event that any of the 90 percent

moderate income units have current rents at less than the maximum moderate income rent, rent increases for the first five years following conversion shall be permitted up to 20 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

3. Low income units shall revert to moderate income units 15 years after the conversion. At such time, rent increases for the next five years shall be permitted up to 10 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(c) Sponsors who wish to implement rent increases in excess of those permitted in (a) and (b) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80-9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80-9.10. No increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example, low income tax credit restrictions, tax-exempt bond financing restrictions.

#### 5:80-9.15 Rent increases for low/market rate projects

(a) Rent increases for housing projects wherein 20 percent of the units are low income units and 80 percent of the units are market rate shall be governed by this section.

1. For the low income units. Sponsors shall submit a written request to the Agency, accompanied by the most recent HUD median income figures and the maximum low income rent corresponding to the median income figure. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, subject to a maximum of 10 percent. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors who wish to implement rent increases in excess of those permitted in (a) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80-9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80-9.10. No increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example, low income tax credit restrictions, tax-exempt bond financing restrictions.

(c) For the market units, Sponsors may increase rents without seeking the review or obtaining the approval of the Agency. As such units are not governed by Agency rent rules, the Sponsor shall comply with any applicable municipal rent control ordinance.

## HEALTH

### (a)

#### DIVISION OF FAMILY HEALTH SERVICES

#### Chapter IV of State Sanitary Code

#### Operation of Clinical Laboratories; Reporting by Laboratory Supervisors

#### Proposed Amendment: N.J.A.C. 8:44-2.11

#### Reopening of Comment Period

Take notice that the comment period for the proposed amendment for reporting of laboratory supervisors, N.J.A.C. 8:44-2.11, has been reopened. The notice of proposal was published at 26 N.J.R. 294(b). The new comment period will extend from March 7, 1994 to April 6, 1994.

All comments should be directed to:

Kevin McNally  
Lead Poisoning Prevention Program  
CN 364  
Trenton, N.J. 08625

### (b)

#### DRUG UTILIZATION REVIEW COUNCIL

#### List of Interchangeable Drug Products

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

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

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

Proposal Number: PRN 1994-138.

A public hearing concerning these proposed amendments will be held on Monday, March 28, 1994, at 2:00 P.M. at the following address:

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

Submit comments by April 6, 1994, to:

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

The agency proposal follows:

#### Summary

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

For example, the proposed tobramycin 0.3% ophthalmic solution could be used as a less expensive substitute for Tobrex, a branded prescription medicine. Similarly, the proposed cimetidine Glipizide 5 mg and 10 mg tablets, could be substituted for the more costly branded product, Glucotrol.

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

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

#### Social Impact

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

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

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

#### Economic Impact

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

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**CORRECTIONS**

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

**Regulatory Flexibility Analysis**

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

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

**Full text of the proposed amendments follows:**

- Albuterol sulfate 0.083% inh. soln.
- Albuterol sulfate syrup 2 mg/5 ml
- Alprazolam tabs 0.25 mg, 0.5 mg, 1 mg
- Atenolol tabs 25 mg, 50 mg, 100 mg
- Atenolol tabs 50 mg, 100 mg
- Betamethasone valerate 0.1% cream
- Carbidopa/levodopa tabs 10/100, 25/100, 25/250
- Cimetidine tabs 200 mg, 300 mg, 400 mg, 800 mg
- Clotrimazole 1% top soln.
- Cortisporin otic soln. substitute
- Cortisporin otic susp. substitute
- Desipramine HCl 150 mg tablet
- Desmopressin acetate 0.01% nasal soln.
- Dexchlorpheniramine maleate repetabs 4 mg, 6 mg
- Diflunisal tabs 250 mg, 500 mg
- Diltiazem tabs 30 mg, 60 mg
- Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg
- Endal HC substitute
- Entex capsule substitute
- Estropipate tabs 0.75 mg, 1.5 mg
- Estropipate tabs 0.75 mg, 1.5 mg
- Fluphenazine 10 mg tablet
- Fluphenazine HCl tabs 10 mg
- Fluphenazine HCl tabs 10 mg
- Flurbiprofen 50 mg, 100 mg
- Gemfibrozil tabs 600 mg
- Glipizide tabs 5 mg, 10 mg
- Glipizide tabs 5 mg, 10 mg
- Golytely gavage substitute
- Hycotuss substitute
- Hydrocortisone acetate supp. 25 mg
- Ibuprofen tablets 400 mg
- K-Lyte Cl effervescent tabs substitute
- Levothyroxine sodium tabs 100, 112, 125 mcg
- Levothyroxine sodium tabs 137, 150, 175 mcg
- Levothyroxine sodium tabs 200, 300 mg
- Levothyroxine sodium tabs 25, 50, 75, 88 mcg
- Marax tablets substitute
- Methazolamide 50 mg tablets
- Methenamine mandelate tabs 0.5 g, 1.0 g
- Methotrexate tabs 2.5 mg
- Methyldopa 125 mg tablets
- Methyldopa tablets 125 mg
- Methyldopa with Hydrochlorothiazide 500 mg/50 mg tabs
- Methyldopa with Hydrochlorothiazide 500 mg/50 mg tabs
- Metoclopramide tabs 5 mg
- Metoprolol tartrate tabs 50 mg, 100 mg
- Metoprolol tartrate tabs 50 mg, 100 mg
- Metoprolol tartrate tabs 50 mg, 100 mg
- Naproxen oral susp. 125 mg/5 ml
- Naproxen sodium tabs 275 mg, 550 mg
- Naproxen sodium tabs 275 mg, 550 mg
- Naproxen tabs 250 mg, 375 mg, 500 mg

- Dey
- Mova
- Novopharm
- Invamed
- Teva
- Lemmon
- Geneva
- Mylan
- Lemmon
- Steris
- Steris
- Geneva
- Ferring
- Amide
- Purepac
- Novopharm
- Teva
- Pharm. Assoc.
- Amide
- Noramco
- Ortho
- Geneva
- Geneva
- Geneva
- Greenstone
- Danbury
- Danbury
- Mylan
- Block
- Pharm. Assoc.
- Bio-Pharm
- Mylan
- Tower
- Rhone Poulenc
- Phone Poulenc
- Rhone Poulenc
- Rhone Poulenc
- Amide
- Geneva
- Amide
- Roxane
- Geneva
- Mylan
- W-C
- Watson
- Biocraft
- Novopharm
- Mutual
- Teva
- Roxane
- Novopharm
- Roxane
- Novopharm

- Naproxen tabs 250 mg, 375 mg, 500 mg
- Natalins Rx tabs substitute
- Nitrofurantoin caps 25 mg, 50 mg, 100 mg
- Nortriptyline HCl caps 10 mg, 25 mg, 50 mg, 75 mg
- Oxacillin sodium capsules 250 mg, 500 mg
- Oxacillin sodium capsules 250 mg, 500 mg
- Oxacillin sodium capsules 500 mg
- Oxacillin sodium for soln. 250 mg/5 ml
- Oxazepam caps 10 mg, 15 mg, 30 mg
- Phenytoin 125 mg/5 ml oral suspension
- Pindolol tabs 5 mg, 10 mg
- Piroxicam caps 10 mg, 20 mg
- Piroxicam caps 10 mg, 20 mg
- Prochlorperazine supp. 25 mg
- Propranolol HCl tabs 80 mg
- Stuarnatal 1 + 1 tabs substitute
- Temazepam 30 mg capsule
- Temazepam caps 30 mg
- Temazepam caps 30 mg
- Temazepam caps 30 mg
- Temazepam caps 30 mg
- Terfenadine tabs 60 mg
- Tetracycline HCl capsules 250 mg
- Theophylline tablets 200 mg
- Tobramycin ophth. soln. 0.3%
- Trazodone tablets 150 mg
- Valproic acid 250 mg capsule
- Verapamil tabs 80 mg, 120 mg
- Vicon Forte capsule substitute
- Yohimbine HCl tabs 5.4 mg
- Zenate tablets substitute

- Roxane
- Amide
- Procter & Gamble
- Lemmon
- Biocraft
- Bristol
- Beecham
- Biocraft
- Geneva
- Barre-National
- Lemmon
- Danbury
- Mepha
- G&W
- Danbury
- Amide
- Geneva
- Barr
- Geneva
- Mylan
- Purepac
- Mutual
- Halsey
- Inwood
- Bausch & Lomb
- Mutual
- Par
- Mylan
- Amide
- Amide
- Amide

**CORRECTIONS**

(a)

**STATE PAROLE BOARD**

**Parole Board Rules**

**Interstate Corrections Compact and Serving Time Out-of-State (S.T.O.S.) Cases**

**Proposed New Rule: N.J.A.C. 10A:71-3.51**

Authorized By: New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1994-150.

Submit comments by April 6, 1994 to:

Robert M. Egles  
Executive Director  
New Jersey State Parole Board  
CN 862  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The proposed new rule codifies the procedures presently utilized in processing the cases of offenders who are eligible for parole consideration and who are interstate corrections compact or serving time out-of-state (s.t.o.s.) cases. In addition to the determination and monitoring of parole eligibility, the development of a written record and providing for administrative reviews of offender cases, the new rule would require, when feasible, two-member Board panel, three-member Board panel, full Board (s.t.o.s. cases only) and annual review hearings to be conducted by teleconferencing. In the case of an offender serving a New Jersey sentence for murder in an out-of-state or Federal correctional institution under the interstate corrections compact, the Department of Corrections would be required to return the offender to New Jersey for a full Board hearing if the offender's case is referred by a two or three member Board panel for such a hearing.

**Social Impact**

The proposed new rule impacts on offenders who are serving New Jersey sentences in out-of-state or Federal correctional facilities. The new

rule provides for the processing of said offenders for parole consideration on their respective New Jersey sentences. The new rule, by codifying present practice, will clarify for the offenders and interested parties the procedures to be utilized in the preparation and presentation of a case to the Board for a final decision regarding parole release.

The proposed new rule also impacts on the Department of Corrections. The Department through the Office of Interstate Services, has always assisted the Board in the processing of New Jersey sentenced offenders confined out-of-state and the duties and responsibilities of the Department outlined in the proposed amendments reflect the duties and responsibilities that are presently being performed by the Office of Interstate Services. It is believed by the Board that the proposed new rule does not require the Department to perform any additional duties or responsibilities.

The proposed new rule also impacts on out-of-state and Federal correctional authorities and/or parole or release authorities. The Board and the Department have regularly requested and received the assistance, pursuant to the Interstate Corrections Compact and as a matter of comity, of out-of-state and/or Federal authorities in the processing of New Jersey sentenced offenders in their respective facilities. The proposed new rule does not require the performance of any additional services other than making the offender available for a teleconferencing hearing. The Board, therefore, anticipates the continued cooperation of out-of-state and/or Federal authorities.

#### Economic Impact

The economic impact of the proposed new rule is not easily identifiable. However, it is anticipated that the State Parole Board will incur a minimal expense for the conducting of some hearings by teleconferencing. The minimal expense will be offset by the significant savings which the Department of Corrections and county authorities will receive. If parole is granted in an offender's case, the authorities in the county in which the New Jersey sentence was imposed would not be required to return the offender to New Jersey upon the offender being released from the service of a custodial sentence imposed by an out-of-state or Federal court. The county of commitment would, therefore, save on transportation costs normally incurred in returning an offender to this State to continue the service of a New Jersey sentence. Also, the Department of Corrections would not incur the normal expenses which result from the housing of State inmates in a county and/or state correctional facility.

The grant of parole to a New Jersey offender confined out-of-state will not result in the actual release of the offender if the offender is serving a custodial term imposed by an out-of-state or Federal court. The grant of parole would, however, result in the removal from the offender's records of the commitment detainer filed by the county of commitment in New Jersey. The removal of the commitment detainer may result in the offender being eligible for reduced custody status and eligible for additional programs. The offender by being in a reduced custody status and by participating in additional programs may earn additional credits which may impact on parole eligibility and the expiration date on the custodial term. Other states may therefore derive some economic benefit by the release of offenders on an earlier parole eligibility date or sentence expiration date.

#### Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The rule pertains to the processing for parole consideration offenders serving New Jersey sentences in out-of-state correctional facilities. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed new rule follows:

10A:71-3.51 Interstate corrections compact and serving time out-of-state (s.t.o.s.) cases

(a) Upon notification being provided to the Board by the Department that an inmate has been transferred under the interstate corrections compact, N.J.S.A. 30:7C-1 et seq., to another state or Federal institution to continue the service of his or her custodial term, the Board shall continue to monitor the inmate's eligibility for parole.

(b) Upon notification being provided to the Board by the Department or an interested party that an offender had been sentenced to a custodial term which is to be served concurrent to an out-of-

state or Federal sentence and that the offender is presently confined in an out-of-state or Federal institution, the Board shall:

1. Obtain from the Department or appropriate agency or court the necessary documentation, for example, judgement of conviction and adult presence reports, in order to confirm the imposition of sentence and the applicable credits;

2. Compute the offender's parole eligibility date within 30 days of the receipt of the appropriate documentation;

3. Notify the Department and the offender in writing within 30 days thereafter of his or her primary parole eligibility date. Notification shall be forwarded to the offender at his present place of confinement; and

4. Monitor the offender's primary parole eligibility date while confined in the out-of-state or Federal institution.

(c) Five to seven months in advance of an offender's actual parole eligibility date, the Board shall notify the Department of those offenders who are eligible for parole consideration.

(d) In interstate corrections compact and s.t.o.s. cases, the Department within 30 days of notice being provided to the Department pursuant to (c) above shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 to 7.

(e) In interstate corrections compact and s.t.o.s. cases, public notice of parole eligibility shall be provided pursuant to N.J.A.C. 10A:71-3.8. Upon public notice of parole eligibility being issued, the Board shall notify the offender that his or her case will be reviewed for parole consideration. The offender shall be given 30 days to file with the Board a written statement and any other written information which the offender may wish the Board to review. In interstate corrections compact cases, the Board shall notify the offender that the out-of-state or Federal parole or release authority has been requested to conduct a parole hearing on behalf of the Board.

(f) Information, files, documents, reports, records or other written material submitted to the Board by an out-of-state or Federal institutional authority shall be deemed confidential as specified in N.J.A.C. 10A:71-2.1. The Board, however, shall maintain the confidentiality of any information, files, documents, reports, records or other written material as specified by the out-of-state or Federal institutional authority.

(g) The Department shall request the out-of-state or Federal institutional authority to provide the offender with a copy of the report, except information classified as confidential, at the time the report is submitted to the Board through the Department.

(h) In interstate compact cases, the Department on behalf of the Board shall request the appropriate parole or release authority to conduct a parole hearing and request that upon the conclusion of the hearing a copy of the record of the hearing, the report on the offender and any recommendation of the hearing official(s) be forwarded to the Board through the Department.

(i) Upon receipt of the offender's case records, report and relevant information, the Chairperson shall within 30 days assign the offender's case to a hearing officer for the conducting of an initial parole hearing which shall consist of an administrative review of the offender's case records, the report submitted by the out-of-state or Federal institutional authority and statements or information submitted by the offender and interested parties. At the conclusion of the initial parole hearing, the hearing officer shall comply with N.J.A.C. 10A:71-3.15 and a copy of the written case assessment shall be forwarded to the offender within seven days of the hearing date. The offender shall have 30 days to provide any additional comments or information for review by the Board.

(j) Upon expiration of the 30 days time period, the Chairperson shall assign a member(s) of the appropriate Board panel to review the recommendation of the hearing officer. The assigned Board member(s) shall comply with the provisions of N.J.A.C. 10A:71-3.16.

(k) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by a Board member(s) pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(l) In interstate corrections compact and s.t.o.s. cases, the Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the Board panel hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the Board panel shall administratively review the offender's case records, the report submitted by the out-of-state or Federal institutional authority, the statements or information submitted by the offender and interested parties and, in interstate corrections compact cases, the recommendation and comments of the out-of-state or Federal parole or release authority.

(m) Upon conclusion of the Board panel hearing, the Board panel shall comply with the provisions of N.J.A.C. 10A:71-3.18.

(n) If a three-member Board panel hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.21(d) for the purpose of establishing a future parole eligibility date which differs from the provisions of N.J.A.C. 10A:71-3.2(a) or (b) and (c), the Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the Board panel hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the three-member Board panel shall administratively review the offender's case. Pursuant to N.J.A.C. 10A:71-3.2(d)3 or 6, the offender shall be provided written notice of the reasons for the establishment of a future parole eligibility date which differs from the provisions of N.J.A.C. 10A:71-3.21(a) or (b) and (c).

(o) If a Board hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.19, the Board shall request the Department in interstate corrections compact cases to make the necessary arrangements to return the offender to this State and to have the offender present at New Jersey State Prison on the hearing date. In s.t.o.s. cases, the Board shall request the cooperation of the out-of-state or Federal institutional authorities in arranging the conducting of the Board hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the Board shall administratively review the offender's case.

(p) Upon the conclusion of the Board hearing, the Board shall comply with the provisions of N.J.A.C. 10A:71-3.20.

(q) If an annual review hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.21(f), the following shall occur:

1. The Board shall notify the Department that the offender will be scheduled for an annual review hearing. The Department upon notice being provided shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 to 7.

2. The Board shall notify the offender that his case will be scheduled for an annual review hearing before a designated Board panel. The offender shall be given 30 days to file with the Board a written statement and any other written information which the offender may wish the designated Board panel to review.

3. The Department shall request the out-of-state or Federal institutional authority to provide the offender with a copy of the report, except for information classified as confidential, at the time the report is submitted to the Board through the Department.

4. Upon receipt of the report, the offender's written statement and any other relevant information, the Chairperson shall within 15 days assign the offender's case to a designated Board panel for the conducting of an annual review hearing.

5. The designated Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the annual review hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive the conducting of such a hearing, the designated Board panel shall administratively review the offender's case.

6. The designated Board panel shall advise the offender in writing of its determination.

(r) The Board shall insure that written notice of any decision rendered is provided to the Department and the out-of-state or Federal institutional authority.

(a)

**STATE PAROLE BOARD****Parole Board Rules****Certificate of Good Conduct****Proposed Amendment: N.J.A.C. 10A:71-8.2**

Authorized By: New Jersey State Parole Board, Mary Keating

DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1994-151.

Submit comments by April 6, 1994 to:

Robert M. Egles

Executive Director

New Jersey State Parole Board

CN 862

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Legislature found and declared in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., that it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record. The Legislature found and declared that notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, a person shall not be disqualified or discriminated against by any licensing authority, as defined in N.J.S.A. 2A:168A-2, because of any conviction for a crime, unless N.J.S.A. 2C:51-2 is applicable or unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.

The issuance of a Certificate of Good Conduct by the State Parole Board reflects that the applicant has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society (N.J.S.A. 2A:168A-3 ). The Certificate of Good Conduct is intended to assist an offender to obtain employment in a business or profession requiring a license or certificate of authority or qualification.

The proposed amendments establish the additional eligibility requirements that an offender not be presently incarcerated and that the offender, if presently on parole, be under supervision for at least one year. The proposed amendments reflect the State Parole Board's position that the Certificate of Good Conduct is intended as an assessment of the offender's achievement of successful adjustment and progress while in the community and that a minimum period of time in the community must be served in order that the State Parole Board may make a valid assessment of the offender's adjustment and progress.

**Social Impact**

The proposed amendments will impact only on those offenders seeking a Certificate of Good Conduct to assist in applying for employment in a business or profession requiring a license or certificate of authority or qualification.

**Economic Impact**

The establishment of a minimum time period of community adjustment and progress may result in the delay of an offender's ability to obtain the necessary license, certification or qualification for employment in an appropriate business and profession and to obtain actual employment in an appropriate business and profession. The offender would, possibly due to continued unemployment or employment at a lesser paying job, be economically affected. However, the issuance of a Certificate of Good conduct is at the discretion of the State Parole Board; licensing, certification or qualification is at the discretion of the licensing authority; and offer of employment at the discretion of the employer. Therefore, the economic impact, if any, of the proposed amendments is not easily identifiable.

**Regulatory Flexibility Statement**

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amend-

ments pertain to the establishment of additional requirements to be met by an applicant for a Certificate of Good Conduct. A regulatory flexibility analysis is, therefore, not required.

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

#### 10A:71-8.2 Eligibility

(a) An application for a Certificate of Good Conduct shall not be entertained unless the applicant meets all of the following requirements:

1. (No change.)
2. **If the applicant is presently on parole, at least one year must have expired since release to parole supervision.**
3. **The applicant is not presently incarcerated.**
- [2.]4. (No change in text.)

## INSURANCE

### (a)

#### DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

##### Notice of Administrative Correction Obligation of Licensees to the Public and to Each Other; Advertising Rules

##### Proposed Amendments: N.J.A.C. 11:5-1.15 and 1.23

Take notice that the New Jersey Real Estate Commission has discovered errors in the proposed amended text of N.J.A.C. 11:5-1.15(i) and 1.23(h) published in the February 7, 1994 New Jersey Register at 26 N.J.R. 729(a). In N.J.A.C. 11:5-1.15(i), the word "color" should appear in boldface to signify it is a proposed addition. The second appearance of "color" in the first sentence of N.J.A.C. 11:5-1.23(h) should also appear in boldface as a proposed addition. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected proposed amendments, as they should have appeared in the February 7, 1994 New Jersey Register, follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 11:5-1.15 Advertising rules

(a)-(h) (No change.)  
(i) No licensed individual, **limited or general** partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, religion, creed, **color, sex, affectional or sexual orientation**, marital status, [or] national origin, [or] ancestry or as to whether a person is **handicapped as that term is defined in N.J.A.C. 11:5-1.23(h).**

(j)-(n) (No change.)

#### 11:5-1.23 Obligation of licensees to the public and to each other

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

(h) No licensee shall deny real estate brokerage services to any person for reasons of race, religion, **color, sex, affectional or sexual orientation**, marital status, national origin or because a person is handicapped; and no licensee shall participate or otherwise be a party to any plan, scheme or agreement to discriminate against any person on the basis of race, religion, **color, sex, affectional or sexual orientation**, marital status, national origin or because a person is handicapped. For the purposes of this subsection, the term "handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, physiological or developmental disability resulting from anatomical, psychological, physiological or

neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. **Handicapped shall also mean suffering from AIDS or HIV infection, as defined in N.J.S.A. 10:5-5(ff) and (gg).**

### (b)

#### DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

##### Notice of Administrative Correction Prelicensure Schools and Real Estate Instructors; Requirements

##### Proposed Amendment: N.J.A.C. 11:5-1.28

Take notice that the New Jersey Real Estate Commission has discovered errors in the proposed amended text of N.J.A.C. 11:5-1.28(b) and (d) published in the February 7, 1994 New Jersey Register at 26 N.J.R. 730(a). In N.J.A.C. 11:5-1.28(c), the word "license" appears twice to end the sentence, once in boldface as a proposed addition. As the word is a proposed addition, the non-boldface "license" should be deleted. In subsection (d), "[see]" which begins the first sentence should be "[All]." Also in the first sentence of subsection (d), "the members, officers," should appear in boldface as proposed additions. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected proposed amendments to these subsections, as they should have appeared in the February 7, 1994 New Jersey Register, follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]). (For the text of the balance of the proposed amendments to N.J.A.C. 11:5-1.28, see the February 7, 1994 New Jersey Register at 26 N.J.R. 730(a):

#### 11:5-1.28 Licensed schools and instructors; requirements

(a) (No change.)

(b) The Commission shall require any school or instructor in making application for licensure to submit certain documents, statements and forms [prior to approval], which shall form the basis for the Commission's judgment whether to [approve or] grant a license [hearing upon request when approval would be denied to conduct a school in the best interest of the general public]. **Where the Commission initially denies an application for a school or instructor license, it shall provide to the applicant notification in writing with reasons for such action. The school may appeal such a decision to the full Commission. N.J.A.C. 11:5-5.1 shall be applicable to all such appeals.** [Application for approval to conduct a school in real estate courses is to be made on Form A as prescribed by the Commission.]

(c) (No change from proposal.)

(d) [All] **Except as provided in (c) above, all other** [sponsors of a proposed or existing school] **applicants for a license to operate a real estate prelicensure school, and in the case of a corporation, [firm] or limited or general partnership, [each member or each stockholder, officer or director of a corporation, who would have an interest or be connected with the program of education to conduct real estate courses,] the members, officers, directors and owners of a controlling interest thereof,** shall [be at least 18 years of age with a background of] **demonstrate their good moral character, including the absence of any conviction for the [certain] crimes or other [like offense or] offenses specified under the provisions of N.J.S.A. 45:15-12.1. The Commission may make such further investigation and require such proof as it deems proper as to the honesty, trustworthiness, character and integrity of an applicant.** [Each sponsor, member, stockholder, officer or director embraced in this paragraph shall complete Form D and shall furnish letters of reference from responsible persons with information relating to such person's integrity, character and responsibility.]

(e)-(x) (No change from proposal.)

(a)

**DIVISION OF ACTUARIAL SERVICES****Financial Examinations Monitoring System ("FEMS")  
Actuarial Data and Analysis Subsystem ("ADAS")  
Data Submission Requirements for All Domestic  
Life/Health Insurers****Proposed New Rules: N.J.A.C. 11:19-4**

Authorized By: Jasper J. Jackson, Acting Commissioner,  
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:17-1 et seq.

Proposal Number: PRN 1994-139.

Submit comments by April 6, 1994 to:

Verice M. Mason  
Assistant Commissioner  
New Jersey Department of Insurance  
Legislative and Regulatory Affairs  
20 West State Street  
CN 325  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The Department of Insurance ("Department") is responsible for monitoring the financial solvency of approximately 1,600 insurance and other risk assuming entities. In order to streamline the current manual, labor intensive regulatory process involved in carrying out this responsibility, the Department, with the help of the New Jersey Office of Telecommunications and Information Systems ("OTIS"), has designed and is in the process of implementing a multi-faceted automated Financial Examinations Monitoring System ("FEMS"). The Department is proposing a series of rules intended to set forth the data elements, format and filing requirements by which insurers and related entities will submit data to the Department for use in FEMS. On May 11, 1992 the Department issued Bulletin No. 92-14 which provided insurers and other related entities affected by FEMS with a brief overview of the project. The Department has already adopted two FEMS subsystems: N.J.A.C. 11:19-2, the Investment Valuation Subsystem ("IVS"); and N.J.A.C. 11:19-3, the Data Submission Requirements for all Licensed Producers with Surplus Lines Authority and All Eligible Surplus Lines Insurers ("SLPS"). The Department has also adopted N.J.A.C. 11:19-2.5 the General Ledger Analytical Review Subsystem ("GLARS") which was published in the February 22, 1994 New Jersey Register.

FEMS was designed with several objectives in mind: to improve the Department's ability to identify and react to financially troubled insurers in a timely manner; to improve the overall quality and effectiveness of the Department's regulatory procedures; to provide up-to-date financial data for company analysis as soon as it is available; to reduce or eliminate rote number crunching and cross-checking activities so that examiners and analysts may spend more time on solvency analysis and other substantive issues and less on compliance testing; to design a system that can accommodate yearly changes in data and analytical tests without significant reprogramming; and to be consistent with National Association of Insurance Commissioners ("NAIC") automation plans.

These proposed rules are the fourth in a series of proposals that will set forth the data elements, format and filing requirements by which insurers submit data to the Department for use in the FEMS. These proposed rules specifically implement the Actuarial Data and Analysis Subsystem ("ADAS").

ADAS is designed to provide an "actuarial toolkit" for the analysts in the Valuation and Statement Bureau. ADAS will assist the Department's analysts in the valuation of the reserves of domestic life insurance companies. Specifically, ADAS provides the analysts with a method for examining plan factors and reserves for various types of insurance products.

The ADAS "actuarial toolkit" consists of the following:

1. A file server to store valuation data and spreadsheets;
2. On line access mortality and morbidity tables;
3. Software to verify factors and reserves for factor driven plans (plans for which reserves are calculated by multiplying an inforce amount or a benefit amount by a reserve factor); and
4. Customized spreadsheets to verify reserve calculations for non-factor driven plans.

The Department believes that there are several benefits to using ADAS. The ADAS subsystem will lead to a more efficient use of time spent examining and verifying life/health insurance companies' annual data submissions. The Department further believes that ADAS will increase reserve verification effectiveness by randomly selecting either the desired number of items to be tested, or the desired confidence level for the test results. Additionally, the Department believes that ADAS will provide a flexible platform for handling new product types. The spreadsheets may be copied or modified as needed.

Domestic life/health insurance companies shall submit third quarter and year end valuation data to the Department. This data shall be submitted by diskette which can be loaded onto the personal computer and by a hard copy report (for the first year) which may be entered into the system.

The ADAS subsystem does not operate independently. It is dependent on Hawley Actuarial software package for verifying traditional ordinary reserve factors. An additional feature is the ability to access the Examination Statistical Sampling Subsystem which can be used in selecting a random sample for testing. A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:19-4.1 provides the purpose and scope of these rules.

N.J.A.C. 11:19-4.2 provides definitions for terms used in this subchapter.

N.J.A.C. 11:19-4.3 provides the filing requirements.

N.J.A.C. 11:19-4.4 provides penalties for failing to comply with this subchapter.

**Social Impact**

The proposed new rules have a beneficial social impact. These new rules will assist the Department's analysts in the valuation of the reserves of domestic life insurance companies. The task of analyzing the reserves of domestic life insurance companies is performed by the Division of Actuarial Services, Life and Health. Due to the lack of automated systems this unit presently has to carry out its function primarily in a manual fashion. The Department believes that in order to better regulate this area of the insurance industry, it is necessary for its Division to be supported by state-of-the-art, transaction-oriented systems.

By using state-of-the-art, transaction-oriented systems, the benefits include:

- (a) A more thorough review prior to completion of the Certificate of Valuation by utilizing a third quarter valuation submission to identify potential problems and areas to be tested for the year end submission;
- (b) Reduction in calculation time, by reducing time spent on traditional and non-traditional product calculations;
- (c) Sampling effectiveness, by increasing reserve verification effectiveness by randomly selecting either the desired number of items to be tested, or the desired confidence level for the tests results; and
- (d) Flexibility, by providing a flexible platform for handling new product types.

**Economic Impact**

These proposed new rules will impact the Department and domestic life/health insurance companies. The Department believes that it is important to provide the Division of Actuarial Services, Life and Health with a computer system which will improve the Department's ability to perform its duty for examining reserve factors and reserves for both factor driver and non-factor plans.

As a result of these proposed new rules, domestic life insurance companies may incur some costs of retraining personnel to comply with new system requirements of ADAS.

As a result of these proposed new rules, domestic life insurers will be required to submit information to the Department in the format specified by this subchapter. Domestic life insurers may incur costs in connection with assimilating, preparing and supplying the required information. Domestic life insurers will incur costs to modify their existing systems. These costs will vary greatly from domestic life insurer to domestic life insurer depending on the nature of their existing information systems and the extent of programming changes that are necessitated to comply with these proposed new rules. For these reasons, the Department cannot quantify with any degree of certainty the cost that will be incurred by any individual domestic life insurer.

**Regulatory Flexibility Statement**

These proposed new rules impose compliance requirements on domestic insurance companies formed under the laws of this State, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department is unable

practically or reliably to estimate the costs that will be incurred or the need for professional systems analysis and data programming services that may be required by small businesses to comply with these rules. The costs and need for services will vary substantially depending upon each insurer's internal resources and present systems. In addition to changing the manner in which the data is reported, these rules will also require the submission of additional reports for the third quarter. In order to effectuate the goals of these rules, no differentiation in requirements based upon business size can be provided.

Full text of the proposed new rules follows:

#### SUBCHAPTER 4. DATA SUBMISSION REQUIREMENTS FOR ALL DOMESTIC LIFE/HEALTH INSURERS

##### 11:19-4.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the filing and reporting requirements and procedures for the submission of data related to an insurer's valuation of its reserves as part of the Financial Examination Monitoring System (FEMS) for all domestic life/health insurers.

(b) These rules apply to all domestic life/health insurers regulated under the laws of New Jersey unless specifically stated otherwise.

##### 11:19-4.2 Definitions

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

"ADAS" means the Actuarial Data and Analysis Subsystem, which provides tools to help the Department's analysts to value the reserves of domestic life/health insurance companies.

"Age" means the insured's age at issue of the policy or benefit or some other age significant to the development of the "Reserve Amount"; for example, the attained age in the year of valuation for extended term insurance.

"Amount 1" means the inforce amount or the benefit amount which is directly used in determining the "Reserve Amount." If the "Traditional Indicator" is "T," the amount times the "Factor" is equal to the "Reserve Amount." Otherwise, this relationship need not exist.

"Amount 2" and "Amount 3" mean other information significant for the development of the "Reserve Amount," such as fund balances or dates. Dates shall be in numeric format. They may also be used to identify a specific portion of the value shown in "Amount 1."

"ASCII" means the American Standard Code for Information Interchange. It is a byte-oriented coding system based on an eight bit code and used primarily to format information for transfer in a data communications environment.

"Basis level" means the code or detailed description of the unique actuarial assumptions used in developing valuation premiums and reserves, including, but not limited to, the mortality or morbidity table(s), interest rate(s), reserve method, gender, type of function, age nearest birthday ("ANB") or age last birthday ("ALB"), grading and age setbacks. Any coding system shall be fully documented.

"Certificate Line" means the unique description of the mortality, interest and reserve method used for the total reserve shown on a specific line of the Certificate of Valuation. The text of the description shall not change or vary from year to year.

"Certificate Line Number" means the location of the specific reserve amounts on the Certificate of Valuation. If the "Reinsurance Indicator" is "Y," the "Certificate Line Number" shall be the last line number in the "Certificate Section" and its description shall be "Reinsurance." If "N" then the relationship need not exist.

"Certificate of Valuation" means certification by the Commissioner with respect to the valuation of an insurer's total reserve liability, pursuant to N.J.S.A. 17B:19-2 and 5.

"Certificate Section" means the appropriate Code described in Appendix A, incorporated herein by reference.

"Certificate Section Description" means the appropriate Category of Insurance as related to the "Certificate Section" of the Certificate of Valuation as described in Appendix A.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State pursuant to N.J.S.A. 17B:18-1 et seq.

"Duration" means, if the Traditional Indicator is "T," the number of years the policy has been in force. If the indicator is "N," this field may contain a number significant to a time period relevant to determining the reserves, such as years to run for extended term or years of disablement for disabled lives. If no time period is relevant to determine the reserve, "999" shall be used to fill the field.

"Factor" means a number with two decimal places equal to the reserve per unit of "Amount 1." This field assumes two decimal places; therefore, the company shall not include the decimal point. This number shall be determined using actuarial principles and methodology and be referred to as the reserve factor. This reserve factor is used in calculating the reserve liability for an insurance contract or policy. If the Traditional Indicator is "T," the result of "Factor" times "Amount 1" is equal to the "Reserve Amount."

"Factor deck" means the diskette or report containing reserve factors listed by age and duration for one or more plans of insurance in the Company's portfolio.

"File Type" means Age Level detail submission, Duration Level detail submission, Policy Level detail submission, or Factor Deck submission. The layout for each is specified in Appendix B.

"NAIC" means the National Association of Insurance Commissioners.

"New indicator" means that if the plan appears for the first time during the current valuation year, the indicator shall be "Y"; otherwise, this field shall contain "N."

"Number of policies" means the total number of policies/certificates for the appropriate level of detail, such as policy/contract level, age level, or duration level.

"Plan ID" means the unique code to identify each plan of insurance.

"Policy ID" means the policy/contract or certificate number for the individual item.

"Reinsurance indicator" means that if the reserve amount reported represents reinsurance ceded, the indicator shall be "Y"; otherwise the indicator shall be "N."

"Reserve amount" means the amounts used to determine the reserves reported in the Annual Statement. If the "Traditional Indicator" is "T," the reserve amount shown is obtained as a result of the multiplication of "Amount 1" by the corresponding "Factor" associated with it.

"Traditional indicator" means that the field contains a "T" (Traditional) or an "N" (nontraditional). If this field contains a "T", the plan has a factor driven reserve; otherwise, if the field contains an "N" then it represents a plan that has a non-factor driven reserve.

##### 11:19-4.3 ADAS filing requirements

(a) All domestic life/health insurance companies shall provide the Department with a report on the insurer's third quarter and year end summary valuation on a personal computer diskette in accordance with (b) through (d) below.

(b) All personal computer diskettes shall be IBM compatible, formatted with IBM DOS so that it can be read by an IBM Personal System/2 ("PS/2") computer. The diskette shall be a high density, double-sided, 1.44 megabyte (3.5 inch) or 1.2 megabyte (5.25 inch) diskette (3.5 inch diskettes are preferred).

1. The file shall be a non-delimited ASCII text file with a carriage return or line feed as the last character of each record. The data shall not be in compressed format.

2. The filename except for the factor deck file, is to be named using the first letter of the "File Type" (A, D, or P) followed by a letter representative of the company type, that is, L for L/H, F for Fraternal, etc., followed by the quarter (3Q or YE), followed by the year (two digits) and the disk number. All filenames except the factor deck file shall end with the ASCII extension (.ASC). The factor deck filename shall be consistent with the plan ID, but shall not exceed eight characters.

(c) All reports on an insurer's valuation data filed by domestic life/health insurance companies with the Department shall include the information and be submitted in the format set forth in the record layout in Appendix B to this subchapter which is incorporated in this rule by reference. The report shall include the following information:

- 1. An external label shall be affixed to diskette(s) and include the following information:
i. The company's name, NAIC number, and year and quarter relating to the data submitted;
ii. The date when the diskette was mailed;
iii. The volume label (VOL), created using the DOS, shall consist of the sequence number of the diskette preceded by the first three characters of the file type; for example, "DUR 2 of 4";
iv. The volume serial number ("VSN") of the diskette (this can be determined by executing the DOS "VOL" command); and
v. The information shall be displayed as follows:

NAME: \_\_\_\_\_
NAIC #: \_\_\_\_\_ YEAR: \_\_\_\_\_
DATE MAILED: \_\_\_\_\_ QUARTER: \_\_\_\_\_
VOL: \_\_\_\_\_
VSN: \_\_\_\_\_

2. A cover letter indicating the same information on the external labels shall also describe what certificate sections or types of insurance are included on the diskette. The description shall be in sufficient detail so the Department may determine that the valuation reports and/or factor deck submissions are complete or not. The cover letter accompanying the factor deck shall list all of the plans for which factors are being provided, together with the Lowest Age and the Highest Age submitted for each plan;

3. A signed affidavit by two officers from the insurer which shall accompany all transmissions attesting to the accuracy of the information contained on the diskette(s); and

4. The diskette(s) must be received by November 15 for third quarter reports and February 15 for year end reports at the address listed below:

New Jersey Department of Insurance
FEMS—Valuation and Statement Bureau
20 West State Street
CN 325
Trenton, New Jersey 08625

(d) All reports on an insurer's valuation data filed by domestic life/health insurance companies with the FEMS—Valuation and Statement Bureau for the third quarter and year-end reports shall include the following information:

- 1. All third quarter submissions shall provide:
i. The duration level detail for all in force business;
ii. The factor decks for plans first issued since the last year-end; and
iii. A plan listing that provides, for each plan included in the valuation report, the plan code, a description of the plan, the valuation basis, the certificate line, and a description of the data contained in each field.
2. All year-end submissions shall provide:
i. The duration level detail for all in force business;
ii. An age level detail for each duration level record selected by the Department from the third quarter reports;

iii. The policy level detail for each duration level record selected by the Department from the third quarter report;
iv. The factor decks for new plans not submitted with the third quarter filing;

v. The factor decks for plans requested by the Department;
vi. A plan listing which provides, for each plan included in the valuation report, the plan code, a description of the plan, the valuation basis, the certificate line, and a description of the data contained in each field; and

vii. A complete summary of the company's year-end reserve valuation which identifies each reserve item by its appropriate actuarial bases and is consistent with the applicable Annual Statement reports, Exhibit 8 and 9 for the General Account and Exhibit 6 for Separate Accounts.

3. Insurers may treat blocks of business separately when submitting valuation reports to the Department. In order to make separate submissions, an insurer shall submit a plan describing how its blocks of business will be split and shall obtain the Commissioner's approval for the plan.

4. For year-end 1994, each domestic life/health insurer shall submit a hard copy of the valuation report along with the diskette filing. The Department may require that an insurer continue to submit a hard copy until such time as the Department determines that the insurer's diskette filing is adequate to permit the Department to complete its audit of the insurer's reserve liabilities.

11:19-4.4 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties pursuant to N.J.S.A. 17B:21-1 and 17B:21-2 and any other penalties permitted by law.

APPENDIX A
(CERTIFICATE SECTION/CERTIFICATE SECTION DESCRIPTION)

Table with 2 columns: CERTIFICATE SECTION CODE and PRIMARY CATEGORY OF INSURANCE. Rows include I A through I G (General Account), II A and II B (Accident and Health), and III A through III D (Separate Account).

Additional categories may be used by an insurer upon notification to and approval by the Commissioner.

Appendix B  
Exhibit 1  
DURATION LEVEL RECORD LAYOUT

<u>FIELD NUMBER</u>	<u>FIELD NAME</u>	<u>START POSITION</u>	<u>FIELD TYPE &amp; LENGTH</u>	<u>REQUIRED FIELD</u>	<u>COMMENTS</u>
1	CERTIFICATE SECTION	1	X(5)	Y	See Code in Appendix A.
2	CERTIFICATE SECTION DESC	6	X(50)	Y	See Appendix A.
3	CERTIFICATE LINE NUMBER	56	N(8)	Y	Range (1-9999). The specific number assigned to this field represents the location of the line in the Certificate Section of the Certificate of Valuation. However, for reserves ceded, the "Reinsurance Indicator" must be 'Y' and the "Certificate Line Number" must be the greatest number assigned in the "Certificate Section."
4	CERTIFICATE LINE	64	X(50)	Y	This field's description must be identical to any prior years' description of the valuation basis (i.e., spaces, upper and lower case lettering, hyphens, text, etc.). However, this field's description must be "Reinsurance" if the "Reinsurance Indicator" is 'Y'.
5	BASIS LEVEL	114	X(50)	N	Basis code or description of basis.
6	PLAN ID	164	X(12)	Y	Unique plan code or kind code.
7	DURATION	176	N(3)	Y	If "Traditional Indicator" is 'T', the field represents the number of years all of the policies in the record are in force. Otherwise, the field must identify a time period relevant to the reserve calculation. Enter "999" if field does not apply.
8	AMOUNT 1	179	N(13)	Y	Inforce/benefit amount used to calculate reserve. If the "Traditional Indicator" is 'T', "Amount 1" times "Factor" must equal the "Reserve Amount."
9	RESERVE AMOUNT	192	N(12)	Y	Total dollar amount of reserve for "Duration" and plan specified.
10	NUMBER OF POLICIES	204	N(9)	Y	Policy Count.
11	TRADITIONAL INDICATOR	213	X(1)	Y	Enter 'T' for a "Traditional" "Plan ID". This reserve is factor driven (i.e. the "Reserve Amount" equals a verifiable "Factor" times "Amount 1.") Age level data records described in Exhibit 2 shall be available for "Traditional" plans upon request. Enter 'N' for a "Nontraditional" "Plan ID". This reserve is not factor driven (i.e. the "Reserve Amount" is not computed as the "Factor" times "Amount 1.") Policy level data records described in Exhibit 3 shall be available for "Nontraditional" plans upon request.
12	NEW INDICATOR	214	X(1)	Y	Enter 'Y' if the "Plan ID" is new this current valuation year; otherwise, enter 'N'.
13	REINSURANCE INDICATOR	215	X(1)	Y	Enter 'Y', if the "Reserve Amount" in the record represents reinsurance ceded; otherwise enter 'N'.

## NOTE:

- (a) FIELD TYPE "X(n)" in Column 4 is alphanumeric; this field must be left justified.  
 (b) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.  
 (c) There are no spaces between fields.

Appendix B  
Exhibit 2  
AGE LEVEL RECORD LAYOUT

<u>FIELD NUMBER</u>	<u>FIELD NAME</u>	<u>START POSITION</u>	<u>FIELD TYPE &amp; LENGTH</u>	<u>REQUIRED FIELD</u>	<u>COMMENTS</u>
1	CERTIFICATE SECTION	1	X(5)	Y	Same as Duration Level Record Field.
2	CERTIFICATE LINE NUMBER	6	N(8)	Y	Same as Duration Level Record Field.
3	BASIS LEVEL	14	X(50)	N	Same as Duration Level Record Field.
4	PLAN ID	64	X(12)	Y	Same as Duration Level Record Field.
5	DURATION	76	N(3)	Y	Same as Duration Level Record Field.
6	AGE	79	N(3)	Y	Age $x \geq 0$ . If "Traditional Indicator" is 'T', then x is the issue age. Age may equal attained age or the age significant to the reserve calculation.
7	AMOUNT 1	82	N(13)	Y	Consistent with Duration Level Record Field.
8	RESERVE AMOUNT	95	N(12)	Y	The value resulting from multiplying the "Factor" (below) times "Amount 1."
9	NUMBER OF POLICIES	107	N(9)	Y	Consistent with Duration Level Record Field.
10	FACTOR	116	N(6)	Y	NNN.DD per unit "Reserve Amount." (Must include decimal point and two decimal places)
11	TRADITIONAL INDICATOR	122	X(1)	Y	Same as Duration Level Record Field.

NOTE:

- (a) FIELD TYPE "X(n)" in Column 4 is alphanumeric; this field must be left justified.
- (b) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
- (c) There are no spaces between fields.

Appendix B  
Exhibit 3  
POLICY LEVEL RECORD LAYOUT

<u>FIELD NUMBER</u>	<u>FIELD NAME</u>	<u>START POSITION</u>	<u>FIELD TYPE &amp; LENGTH</u>	<u>REQUIRED FIELD</u>	<u>COMMENTS</u>
1	CERTIFICATE SECTION	1	X(5)	Y	Same as Duration Level Record Field.
2	CERTIFICATE LINE NUMBER	6	N(8)	Y	Same as Duration Level Record Field.
3	BASIS LEVEL	14	X(50)	N	Same as Duration Level Record Field.
4	PLAN ID	64	X(12)	Y	Same as Duration Level Record Field.
5	DURATION	76	N(3)	Y	Same as Duration Level Record Field.
6	AGE	79	N(3)	Y	Age used to calculate the individual policy, contract or certificate reserve. See Age Level Record Layout.
7	POLICY ID	82	N(15)	Y	Policy number, contract number, account number, etc.
8	RESERVE AMOUNT	97	N(12)	Y	The total dollar amount of reserve for the "Age," "Duration," and "Policy ID" specified in the record.
9	AMOUNT 2	109	N(12)	N	Identifies significant information relevant to the "Reserve Amount" calculation (i.e., fund value, dates, etc.). This field shall be consistent for like/similar plans, and must be identified in the plan list when the field is filled in.
10	AMOUNT 3	121	N(12)	N	Identifies significant information relevant to the "Reserve Amount" calculation (i.e., fund value, dates, etc.). This field shall be consistent for like/similar plans, and must be identified in the plan list when the field is filled in.
11	TRADITIONAL INDICATOR	133	X(1)	Y	Same as Duration Level Record Field.
12	NEW INDICATOR	134	X(1)	Y	Same as Duration Level Record Field.

NOTE:

- (a) FIELD TYPE "X(n)" in Column 4 is alphanumeric; this field must be left justified.
- (b) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
- (c) There are no spaces between fields.

Appendix B  
Exhibit 4  
FACTOR DECK RECORD LAYOUT

<u>FIELD NUMBER</u>	<u>FIELD NAME</u>	<u>START POSITION</u>	<u>FIELD TYPE &amp; LENGTH</u>	<u>REQUIRED FIELD</u>	<u>COMMENTS</u>
1	AGE	1	N(3)	Y	Issue age $x \geq 0$ .
2	DURATION	4	N(3)	Y	Number of years from the policy issue date.
3	FACTOR	7	N(6)	Y	The actuarial value which when multiplied by "Amount 1," will result in the "Reserve Amount" for the appropriate plan of insurance. The field has two (2) implied decimal places. (No decimal point to be shown)

NOTE:

- (a) FIELD TYPE "N(n)" in Column 4 is numeric; this field must be right justified.
- (b) Records must be sorted by age and duration.
- (c) There are no spaces between fields.

(a)

**INDIVIDUAL HEALTH COVERAGE PROGRAM  
Individual Health Coverage Program Board  
Temporary Plan of Operation  
Assessments for Total Reimbursable Net Paid  
Losses for Calendar Year 1993 and Thereafter  
Proposed New Rule: N.J.A.C. 11:20-2.17**

Authorized By: Samuel F. Fortunato, Commissioner, New Jersey Department of Insurance.

Authority: N.J.S.A. 17B:27A-16.2b and 17B:27A-16.1.

Proposal Number: PRN 1994-161.

Submit written comments by February 25, 1994 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
20 West State Street  
CN-325  
Trenton, NJ 08625

**Summary**

This proposed new rule amends the Temporary Plan of Operation of the Individual Health Coverage Board ("IHC Board") to provide a process for making and collecting assessments for total reimbursable net paid losses for calendar year 1993 and thereafter. It is intended to set forth the mechanism by which the IHC Board may assess members for reimbursable net paid losses, in accordance with N.J.S.A. 17B:27A-11a.

In the absence of a permanent Plan of Operation promulgated by the IHC Board pursuant to N.J.S.A. 17B:27A-10d, the Commissioner on October 14, 1993, adopted a Temporary Plan of Operation (see N.J.S.A. 17B:27A-10e), which was codified at N.J.A.C. 11:20-2.1 through 2.16. The IHC Board has not as yet promulgated its permanent Plan of Operation but has requested that the Commissioner amend the Temporary Plan of Operation, in order to provide appropriate procedures to execute the Board's authority and responsibility to assess its members their proportionate share of losses of the IHC Program in accordance with N.J.S.A. 17B:27A-12. Although the Temporary Plan of Operation provides (at N.J.A.C. 11:20-2.11 and 2.12) procedures for assessments for 1992 total reimbursable net paid losses and for administrative, organizational and operational expenses, it does not currently provide procedures for assessing members for total reimbursable net paid losses beginning in calendar year 1993.

Subsection (a) of the proposed new rule provides that the IHC Board may assess members in accordance with N.J.S.A. 17B:27A-11a and requires that advance interim assessments paid shall be credited as an offset against any regular assessment due later.

Subsection (b) sets forth the method by which the IHC Board determines the preliminary total reimbursable net paid losses for each year.

Subsection (c) sets forth the method by which the IHC Board determines each member's assessment amount.

Subsection (d) sets forth the processes by which the IHC Board notifies its members about the assessment.

Subsection (e) provides for the payment of the assessment by the member, and the penalty rate of interest if assessments are not timely paid.

Subsection (f) provides the process by which a member may request the Commissioner to grant a deferral of its obligation, and cross-references the procedures in N.J.A.C. 11:20-11.

Subsection (g) sets forth the processes for deposit and distribution to the IHC Board of the amounts collected.

This rule is being proposed pursuant to a special procedure permitted by N.J.S.A. 17B:27A-16.1 and 16.2b, and set forth in P.L. 1993, c.164, sections 8a through f. Pursuant to that procedure, the Department of Insurance ("Department") is required to publish notice of its intended action in three newspapers of general circulation, which notice shall include the procedure for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views. Notice of the proposal is additionally required to be provided by mail or other means to affected trade and professional associations, to carriers subject to N.J.S.A. 17B:27A-2 et seq. and to such other interested persons or organizations which may request notification. Concurrently, the Department is required to forward the notice to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. P.L. 1993, c.164, section 8 further provides a minimum 20-day comment period to all interested persons in which they may comment in writing on the proposal. Following the expiration of the comment period, the Commissioner may adopt the proposal; notice of the adoption must be submitted to OAL for publication in the New Jersey Register. The adoption becomes effective on the date of the submission to the OAL, or on such later date as the Commissioner may establish. Within a reasonable time after submission for publication, the Department is also required to prepare a report for public distribution listing all parties that provided comments, summarizing the content of the comments and providing the Department's response to the data, views and arguments contained in the comments. A copy of this report is also to be filed with the OAL for publication in the New Jersey Register.

**Social Impact**

This proposed new rule will provide the IHC Board with the process for executing its responsibility under N.J.S.A. 17B:27A-12 to provide for the equitable sharing of IHC Program losses among member carriers, pending the adoption of a Plan of Operation by the IHC Board. The proposed rule will therefore ensure that the procedures for this important function of the IHC Program are in place and codified for the information of IHC Program members carriers and other interested persons.

The mechanism of equitably sharing IHC Program losses is an important part of the health care reform statute enacted in 1992 and codified at N.J.S.A. 17B:27A-2 et seq. This mechanism is necessary in order to promote the availability and affordability of individual health benefits plans to the public.

**Economic Impact**

This proposed new rule will impact the IHC Board. The proposed amendments establish a temporary operating procedure for the administration of the IHC Program to provide for the assessment of carriers, in accordance with applicable statutes, under the authority provided by N.J.S.A. 17B:27A-11 and 12. Thus, this proposed new rule merely sets forth the operating practice and procedure for the administration of the IHC Program with regard to these assessments, pending adoption of a Plan of Operation by the Board. To the extent an economic impact is imposed on members, the impact is imposed by the Act itself, which sets forth the member carrier's obligation to share program losses. See N.J.S.A. 17B:27A-12.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because these proposed new rules do not impose reporting, recordkeeping, or other compliance requirements on "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This proposed new rule establishes an additional provision in the IHC Board's Temporary Plan of Operation for the fair and equitable administration of the IHC Program. The rule generally imposes compliance requirements upon the IHC Board, which was created by the Act and which is not a "small business" as defined in the Regulatory Flexibility Act. None of the IHC Board's members carriers are "small businesses" as defined in that Act.

Full text of the proposed new rule follows:

11:20-2.17 Assessments for total reimbursable net paid losses for calendar year 1993 and thereafter

(a) The IHC Program Board may assess members for reimbursable net paid losses as an advance interim assessment, as may be necessary, pursuant to its authority under N.J.S.A. 17B:27A-11a and according to the procedures set forth in this Temporary Plan. An advance interim assessment paid shall be credited as an offset against any regular assessment due after the close of the following year as required by N.J.S.A. 17B:27A-11a.

(b) The IHC Program Board shall determine the preliminary total reimbursable net paid losses, if any, for the preceding calendar year based upon the information submitted by members no later than March 1 of each year annually to the IHC Program Board in the Carrier Market Share and Net Paid Gain (Loss) Report, set forth as Exhibit K in the Appendix to this chapter, completed in accordance with N.J.A.C. 11:20-8. Such a determination shall be made by the IHC Program Board on or about March 14 of each year.

1. The total reimbursable net paid losses of the preceding calendar year shall be the aggregate of the reimbursable net paid losses for all members reporting net paid losses for that calendar year.

2. Prior to receiving reimbursement for net paid losses, a member must meet the performance standards set forth at N.J.A.C. 11:20-10.

(c) The Board shall determine each member's assessment amount by multiplying the member's market share, or adjusted market share as applicable, by the total reimbursable net paid losses for the preceding calendar year, except that no member shall be liable for an assessment amount greater than 35 percent of the total reimbursable net paid losses for that calendar year.

1. The IHC Program Board shall determine each member's market share by comparing the member's net earned premium for the preceding calendar year to the net earned premium of all members for the preceding calendar year as reported by each member in the Carrier Market Share and Net Paid Loss Report, set forth as Exhibit K of the Appendix to this chapter, and completed in accordance with N.J.A.C. 11:20-8. Should a member fail to submit a Carrier Market Share and Net Paid Loss Report as required by N.J.A.C. 11:20-8, the member's market share shall be determined by the IHC Program based upon the premium set forth in the member's most recent Annual Statement filed with the Department. Members' market shares shall be adjusted in consideration of the following factors, if necessary:

i. A member that has been granted a final exemption under N.J.A.C. 11:20-9.5 shall not be assessed for any portion of the total reimbursable net paid losses.

ii. A member that has been granted a pro rata exemption under N.J.A.C. 11:20-9.5 shall be liable for an assessment determined by

multiplying the total amount of reimbursable losses (program losses) for the preceding calendar year by the ratio of the member's net earned premium to the net earned premium of all members for the preceding calendar year multiplied by a fraction, the numerator of which is the difference between the minimum number of non-group persons allocated to the member by the Board and the number of non-group persons actually enrolled or insured by the member and the denominator of which is the minimum number of non-group persons allocated to the member by the Board.

2. To the extent a member's assessment exceeds the 35 percent limit, the excess amount shall be apportioned to other members, except those members that received a final or pro rata exemption or that have been granted a deferral, based upon their respective adjusted market shares until such other members reach the 35 percent limit or the total reimbursable net paid losses for the preceding calendar year are fully assessed, whichever occurs first.

3. Assessment amounts for members granted a deferral by the Commissioner, or subject to dispute by a member wherein the dispute is settled in favor of the disputing member, shall be apportioned to other members based on their respective adjusted market shares.

i. Members that have been granted a deferral shall remain liable to the IHC Program for the amount deferred and any additional amounts required by N.J.A.C. 11:20-11.6.

ii. Upon eventual payment of the deferred amount to the IHC Program, the members to whom the deferred amounts were reapportioned will be credited for those amounts previously apportioned to them.

(d) Every member shall be liable for a portion of the total reimbursable net paid losses for the preceding calendar year unless the member has been granted a final exemption from assessments for the preceding calendar year by the Board in accordance with N.J.A.C. 11:20-9.

1. The IHC Program Board shall provide a preliminary notice to its members in writing, on or about March 14 of each year, of the total reimbursable net paid losses for the preceding calendar year and whether the member may or may not be liable for a portion of the total reimbursable net paid losses for the preceding calendar year.

2. No later than 90 days following the preliminary notice in (b)1 above, the IHC Program Board shall notify each member by invoice of the dollar amount being assessed on an interim basis against the member for its portion of the total reimbursable net paid losses for the preceding calendar year.

3. The IHC Program Board may, as necessary, make reconciliations of the assessment for reimbursable net paid losses which may include adjustments in market share and adjustments for deferrals granted.

4. The IHC Program Board shall notify each member of the final reconciliation of the assessment for reimbursable net paid losses for the preceding calendar year by invoice stating the dollar amount then due or credit, if any, against future assessments on or before December 1st of the current year. As a result of the final reconciliation, any monies determined to be owed to or by the Board shall be calculated without provision for interest.

(e) Assessment amounts are due and payable upon receipt by a member of the invoice for the assessment. Payment shall be by bank draft made payable to the Treasurer—State of New Jersey, IHC Program, c/o the New Jersey Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625.

1. Members shall be subject to payment of an interest penalty on any assessment, or portion of an assessment, not paid within 30 days of the date of the invoice for the assessment, unless the member has been granted a deferral by the Commissioner of the amount not timely paid.

i. The interest rate shall be 1.5 percent of the assessment amount not timely paid per month, accruing from the date of the invoice for the assessment.

ii. Payment of an assessment, or portion of an assessment, for which an interest penalty has accrued, shall include the interest

penalty amount accrued as of the date of payment; otherwise, payment shall not be considered to be in full.

iii. Good faith errors that are reported to the Board by a member within 60 days of their occurrence shall not be subject to the interest penalty set forth in (e)1i above. If a carrier makes an error relating to or involving an assessment or any other error resulting in non-payment or underpayment of funds, the member shall make immediate payment of additional amounts due.

2. Members that dispute whether they are subject to an assessment, or dispute the amount of assessment for which they have been determined liable by the IHC Program Board, shall be liable for and make payment of the full amount of the assessment invoice, including any interest penalty accruing thereon, until such time as the dispute has been resolved in favor of that member, or, if a contested case, the IHC Program Board has rendered a final determination in favor of that member in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(f) A member may request that the Commissioner grant a deferral of its obligation to pay an assessment in accordance with N.J.A.C. 11:20-11.

1. If a member files a proper request for deferral within 15 days of the date of the invoice, that member may make payment of the amount of the assessment invoice pursuant to (e) above, to be held in an interest bearing escrow amount in accordance with the procedures set forth in (g) below, pending final disposition by the Commissioner of the deferral request.

2. If the member withholds payment, as permitted pursuant to (f)1 above and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth in (e)1 above, accruing from the date of the invoice for the assessment.

(g) The Interim Administrator (or Administrator) shall deposit all monies received from the Treasury pursuant to this section in an interest bearing account maintained by the IHC Program Board for that purpose. The Board shall approve the disbursement of all funds then in the account, and any payments to those members determined by the IHC Program Board as having reimbursable net paid losses for the preceding calendar year. Disbursement shall be in proportion to the member's share of the total reimbursable net paid losses for that calendar year, until such available funds have been paid out, or a member's reimbursable net paid losses for the preceding calendar year have been reimbursed, whichever comes first.

1. Amounts of assessment in dispute or subject to a deferral request, including any interest penalty paid by a member pursuant thereto, shall not be disbursed to members having reimbursable net paid losses for the preceding calendar year, until such time as the dispute has been settled against the disputing member, or the deferral denied, except that any portion of an assessment not in dispute or subject to the deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed to members having reimbursable net paid losses for the preceding calendar year in accordance with (g) above, along with any applicable interest penalty amounts paid or interest accrued while held in escrow by the Board.

2. Amounts of assessment disputed or subject to deferral wherein the dispute is settled in favor of the disputing member, or a deferral is granted, shall be returned to the appropriate members within 15 days of the date that the Interim Administrator (or Administrator) receives notice of the determination by the IHC Program Board or the Commissioner, as applicable, along with the proportionate amount of interest, if any, paid by the member for late payment of the amount, and the proportionate amount of the interest earned on that amount while the amount was held in escrow by the Board.

(a)

## INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

### Performance Standards and Filing Requirements

#### Proposed New Rules: N.J.A.C. 11:20-10

Authorized By: New Jersey Individual Health Coverage Program Board of Directors, Charles Wokanech, Chair.

Authority: N.J.S.A. 17B:27A-2.

Proposal Number: PRN 1994-135.

Submit written comments by February 21, 1994 to:

Interim Administrator  
New Jersey Individual Health Coverage Program  
Comments to Eligibility Rules  
c/o The Prudential Insurance Company of America  
P.O. Box 4080  
Iselin, New Jersey 08830

The agency proposal follows:

#### Summary

The New Jersey Individual Health Coverage ("IHC") Program was established pursuant to N.J.S.A. 17B:27A-2 et seq. ("the Act") in order to make health benefits plans available to individuals. The Act also provides that carriers that issue individual health benefits plans and have not received an exemption may seek reimbursement for losses from the IHC Program. IHC Program Board of Directors ("the Board") proposes new rules to establish minimum performance standards for members of the IHC Program seeking reimbursement for losses. The proposed rules also require a member to file a Performance Report with the Board which shall include: a statement, certified by the member's chief executive officer, that the member has met the minimum performance standards; and an independent audit of the member's accounts receivable, premium billing operations, and claims eligibility systems.

The purpose of the proposed rules is to ensure that a member seeking reimbursement for losses has applied sound risk management principles and has adequate internal controls to avoid unnecessary losses. The proposed rules require the member to submit an annual independent audit, subject to review by the Board. The proposed rules further provide that the Board shall review the member's filing and may conduct its own independent audit to verify that the member has met the performance standards. In the event the Board initiates an audit of a member's Performance Report, the Board shall choose and direct the auditor and share the cost of the audit equally with the audited member.

The proposed rules provide that the IHC Program Board may, on the basis of the results of its own audit, adjust a member's reported net paid losses to reflect the extent of the member's failure to meet the performance standards.

N.J.A.C. 11:20-10.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 11:20-10.2 sets forth the definitions of terms used in this subchapter.

N.J.A.C. 11:20-10.3 sets forth filing requirements, performance standards, and IHC Program Board's review of filings.

N.J.A.C. 11:20-10.4 sets forth the opportunity for a hearing for members denied reimbursement for losses.

N.J.A.C. 11:20-10.4 sets forth penalties for violation of the subchapter.

P.L. 1993, c.164, section 8 provides a special procedure by which the Board may take actions, such as promulgation of these rules. Prior to the adoption of an action, the Board shall provide notice and a detailed description of its intended action to three newspapers of general circulation. The Board is further required to forward the notice of the intended action and detailed description to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board is also required to provide all interested persons an opportunity to comment in writing on the intended action of at least 20 days. The Board may adopt an action immediately following the close of the public comment period, and the action shall be effective on the date the regulations are submitted to the OAL for publication in the New Jersey Register, or such later date as the Board may establish. Within a reasonable time after submission of the comments, the Board is also required to prepare a report for distribution listing all parties who provided comments, summarizing the content of the comments, and providing the Board's

response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

**Social Impact**

The proposed amendment affects the few members of the IHC Program which will seek reimbursement for losses. The performance standards and reporting requirements ensure that members keep reimbursable losses to a minimum, that reported losses are accurate, and that reported losses that are the result of poor risk management or lack of internal controls are not reimbursed by the IHC Program. While members seeking reimbursement for losses will not welcome additional reporting requirements, the annual Performance Report required is a minimal burden necessary to justify the assessment of other members of the IHC Program to pay those losses. Members of the IHC Program that are not seeking reimbursement for losses and are paying assessments for the losses of other members are entitled to know that the IHC Program Board has made an effort to substantiate reported losses and that such losses are the result of legitimate unexpected claims rather than poor business practices.

**Economic Impact**

The proposed amendment is likely to have a minimal negative economic impact on members seeking reimbursement from the IHC Program, but, to the extent the new rules result in lower reported net paid losses or the IHC Program Board's reduction of reported net paid losses, the proposed rules may have a beneficial economic impact on member subject to assessment for losses.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, recordkeeping, or other compliance requirements on small business. None of the members of the IHC Program issuing health benefits plans in New Jersey is a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rules follows:

**SUBCHAPTER 10. PERFORMANCE STANDARDS AND REPORTING REQUIREMENTS**

**11:20-10.1 Purpose and scope**

(a) The purpose of this subchapter is to establish performance standards and reporting requirements which a member shall meet in order to receive reimbursement for losses reported pursuant to N.J.A.C. 11:20-8 for calendar year 1993 and thereafter.

(b) This subchapter applies to all members that seek reimbursement for losses.

**11:20-10.2 Definitions**

Words and terms used in this subchapter shall have the meanings defined in N.J.S.A. 17B:27A-2 and N.J.A.C. 11:20-1.

**11:20-10.3 Filing requirements and Board review**

(a) Every member seeking reimbursement for losses, in accordance with N.J.A.C. 11:20-2.8 and 2.11, shall provide a Performance Report to the IHC Program Board, annually no later than April 1, which contains the following:

1. A statement certified by the Chief Executive Officer of the member that:

i. The member's performance for the preceding calendar year reflected good faith efforts to apply sound risk management principles in an efficient manner; and

ii. If applicable, the member applied the same individual case management and claims handling techniques and other methods of operation to its group and non-group business, for the same delivery system, as provided in its health benefits plan policies and contracts; and

2. An audit statement of an annual audit of the member's accounts receivable, premium billing operations, and claims eligibility systems, performed by an independent auditor at the member's expense.

(b) A member shall demonstrate to the IHC Program Board's satisfaction that the member has met the performance standards set forth in (a)1 above.

(c) The IHC Program Board shall review and may audit a member's Performance Report. The IHC Program Board shall choose and direct the independent auditor. The costs of an independent audit of a member's Performance Report shall be shared equally by the IHC Program Board and the member being audited.

(d) The IHC Program Board shall adjust a member's reported net paid losses to account for the member's failure to meet performance standards and filing requirements.

**11:20-10.4 Hearings**

Any member that is denied reimbursement for losses, in whole or in part, on the grounds that the member has failed to meet the performance standards and filing requirements of this subchapter, may request a hearing within 20 days of the date that the IHC Program Board notifies the member of its final determination, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A request for a hearing shall include a detailed explanation of the reasons that the Board's action should be reconsidered.

**11:20-10.5 Penalties**

A member's failure to meet the performance standards and filing requirements set forth in this subchapter may result in the imposition of penalties provided by law.

**TRANSPORTATION**

(a)

**THE COMMISSIONER**

**Jurisdictional Assignments for Railroad Overhead Bridges**

**Proposed Readoption with Amendments: N.J.A.C. 16:53B**

**Proposed Repeal: N.J.A.C. 16:53B-1.7**

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:5G-1 et seq. and 52:14B-4(3).

Proposal Number: PRN 1994-136.

Submit comments by April 6, 1994 to:

Administrative Practice Officer  
N.J. Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:53B expires on July 3, 1994. The Department of Transportation has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order. The Department of Transportation is proposing to readopt N.J.A.C. 16:53B with amendments.

The proposed readoption with amendments will help to continue the orderly and equitable allocation of responsibilities for so called "orphan" railroad overhead bridges. The Railroad Overhead Bridge Act of 1988, N.J.S.A. 27:5G-5 et seq., was enacted to ensure an orderly and timely mechanism to allocate future responsibilities for bridges carrying roads over railroads where jurisdictions and responsibilities are uncertain. The Act and the rules proposed for readoption establish standards for allocating jurisdictional assignments when existing jurisdictions are found to be uncertain or contested. The rules required under the Act were adopted by the Commissioner of Transportation on July 3, 1989 at 21 N.J.R. 1833(b).

Under the Act, implementing regulations could not become operative until the passage of bridge bond funding by the Legislature and approval of the bond funding by public referendum. Bridge bond funding was authorized by the Legislature as P.L. 1989, c.180, and subsequently

approved by public referendum on November 7, 1989. The Department of Transportation is, therefore, proposing to repeal N.J.A.C. 16:53B-1.7, in order to remove obsolete operative date qualifiers and eliminate confusion as to the operative status of these rules.

Additional amendments proposed at N.J.A.C. 16:53B-1.4(a)1 and 3 will clarify the jurisdictional status for railroad overhead bridges which carry State highways and certain railroad overhead bridges which cross right of way owned by the NJ Transit Corporation. The Railroad Overhead Bridge Act of 1988 requires that the Department of Transportation assume jurisdictional responsibility for bridges which carry State highways over railroads. Additionally, the Act also provides that the NJ Transit Corporation shall assume general jurisdictional responsibility for so called "orphan" railroad overhead bridges which cross their right of way, unless the Commissioner of Transportation determines that the bridge should be assigned to the jurisdiction of another public entity. The amendments to N.J.A.C. 16:53B-1.4 implement this statutory transfer of jurisdiction to the Department of Transportation and NJ Transit Corporation.

N.J.A.C. 16:53B-1.1 sets forth the purpose and general policies of jurisdiction pertaining to railroad overhead bridges. N.J.A.C. 16:53B-1.2 describes the words and terms used in the Chapter. N.J.A.C. 16:53B-1.3 sets forth the general provisions for railroad overhead bridge jurisdiction. N.J.A.C. 16:53B-1.5 provides for hearing procedures initiated by the Commissioner. N.J.A.C. 16:53B-1.6 sets forth the responsibilities of the railroad.

#### Social Impact

The proposed readoption with amendments will not alter any preexisting statutory, regulatory standards or procedures pertaining to jurisdictional assignments for railroad overhead bridges.

The rules proposed for readoption have a positive social impact. It is the express purpose of these rules to implement the intent of the Legislature to resolve jurisdictional problems associated with many RROHB's and to facilitate bridge work necessary for protecting the safety and welfare of the public. These proposed rules provide a workable model under which voluntary interim jurisdiction may be established. Improved cooperation and coordination, to the benefit of the public at large, is a direct result of these rules. Another benefit of these rules is that they create standardized criteria for resolution of RROHB jurisdictions and future coordination of interagency RROHB projects. All of these factors have a positive social benefit.

The proposed repeal of N.J.A.C. 16:53B-1.7 deletes operative data citations and the proposed amendments at N.J.A.C. 16:53B-1.4, make changes in the wording which make it explicit that the required statutory transfer of jurisdiction for certain bridges to the Department of Transportation and the NJ Transit Corporation is accomplished. The wording prior to these amendments did not necessarily indicate that either the Department of Transportation or the NJ Transit Corporation had active jurisdictional responsibilities for the applicable railroad overhead bridges.

#### Economic Impact

The readoption with proposed amendments do not alter any substance or procedure at N.J.A.C. 16:53B, except that it is made explicit that statutory jurisdictional transfers made in the Railroad Overhead Bridge Act of 1988 to the Department of Transportation and the NJ Transit Corporation are operative. Explicit declaration that these jurisdictional transfers are operative will not change the amount of funds that the Department, and NJ Transit through the Department, will be required to program and appropriate for necessary and emergency maintenance and capital construction purposes. Virtually all "orphan" railroad overhead bridges which cross NJ Transit Corporation right of way carry county or municipal roadways. Statutory allocation of jurisdiction for these bridges to the NJ Transit Corporation has the net effect of making these bridges principally a State responsibility and not a primary financial liability to local county or municipal governments.

There are approximately 6,000 bridges in New Jersey that carry highways. Of these bridges, files show that 11 percent (665 ±) cross over an active or inactive railroad right-of-way. Because of the bankruptcy of many major railroad companies in the northeast, and the subsequent formation of Conrail, Amtrak and NJ Transit, responsibilities for some of these bridges was uncertain or subject to substantial challenge. The allocation of jurisdictional responsibilities made by the Act, and these rules, eliminates the jurisdictional uncertainty for many bridges, but it does not provide a sufficient funding stream to either the Department of Transportation or NJ Transit with which to maintain, repair, or replace these structures. State funds to maintain, repair, or replace bridges

allocated to the NJDOT and NJ Transit will have to come from either special purpose transportation bonds or annual appropriations from the Transportation Trust Fund. Use of Federal funds for these bridges will reduce the total amount of Federal funds available for other transportation projects. Bridges subject to the provisions of these rules are needed public infrastructure, but the financial liability associated with them is very high. For example, a 1987 analysis of railroad overhead bridge needs indicated that overhead bridges on NJ Transit right-of-way alone could annually absorb (in an unconstrained budget scenario) in excess of \$15 million of bridge replacement and repair funds. In a constrained funding environment, only priority projects are likely to be fully funded; lesser priority projects are subject to potential deferment.

#### Regulatory Flexibility Statement

A regulatory flexibility statement is not required because the proposed readoption with amendments will have no effect upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed repeal of N.J.A.C. 16:53B-1.7 deletes qualifying language for an operative date. These rules apply primarily to State and local governments and providers of railroad services.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53B.

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

#### 16:53B-1.4 Assignment of jurisdictions

(a) Railroad overhead bridge jurisdiction assignments made by the Commissioner shall be done under the consideration of the following criteria and in this order of significance:

1. [The Commissioner shall assign all] **All** bridges carrying State highways **are transferred** to the jurisdiction of the Department.

2. (No change.)

3. [The Commissioner shall assign each] **Each** railroad overhead bridge carrying a highway, other than a State highway, over and across a right-of-way owned by the New Jersey Transit Corporation **is transferred** to the jurisdiction of that corporation, unless the Commissioner determines, subject to the provisions of (d) below, that the bridge should be assigned to the jurisdiction of another public entity.

4. (No change.)

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

#### [16:53B-1.7 Operative date

The Railroad Overhead Bridge Act of 1988 became effective December 5, 1988, but remains inoperative until the passage of additional bridge bond funding by the Legislature. The Act provides, however, that despite being inoperative the Department must adopt implementing regulations. Unless the Railroad Overhead Bridge Act of 1988 becomes operative, the provisions of this chapter are likewise not operative. All parties are nevertheless encouraged to resolve interim jurisdictional matters in a manner consistent with the principles and intent of this chapter.]

(a)

**TRANSPORTATION ASSISTANCE****Office of Regulatory Affairs  
Zone of Rate Freedom****Proposed Readoption: N.J.A.C. 16:53D**

Authorized By: Kathy A. Stanwick, Acting Commissioner,  
Department of Transportation.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 48:4-2.20 et seq.  
Proposal Number: PRN 1994-159.

Submit written comments by April 6, 1994 to:  
Thomas P. Thatcher  
Administrator Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN600  
Trenton, NJ 08626

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:53D, Zone of Rate Freedom, generally referred to in the autobus industry as "ZORF," will expire on May 3, 1994.

The Department of Transportation has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order. The Department, therefore, is proposing to readopt N.J.A.C. 16:53D without change.

The statutory authority for these rules is N.J.S.A. 48:4-2.20 et seq. (P.L.1983, c.517, effective January 17, 1984). The statute requires the Commissioner of Transportation to annually establish a "Zone of Rate Freedom" which will provide for a maximum permitted percentage adjustment to any rate, fare or charge for regular route autobus service. In establishing a "ZORF" percentage, the Commissioner must consider all relevant factors, including, but not limited to, the availability of alternative modes of transportation, increases or decreases in operational bus costs, the interests of consumers or users of bus service, and the rates, fares and charges prevailing in the bus industry, as well as in other related transportation services. Prior to the establishment of a "ZORF" percentage, the Commissioner is required to hold a public hearing.

N.J.A.C. 16:53D, specifically pertains to autobuses in regular route service. Autobus is defined as "any motor vehicle or motorbus operated over public highways or public places in this State for the transportation of passengers for hire in intrastate business which is regulated by and subject to the provisions of Title 48 of the Revised Statutes." Casino or regular routes in the nature of special, charter and special autobus operations are exempt from "ZORF" rules.

After reviewing all relevant factors, and after public hearing, the Commissioner of Transportation annually sets "ZORF" percentages which are then codified at N.J.A.C. 16:53D-1.1. Any regular route autobus carrier who seeks a fare adjustment pursuant to the "ZORF" percentages must file notice with the Department and comply with the procedures detailed in N.J.A.C. 16:53D-1.2. N.J.A.C. 16:53D-1.3 outlines the types and categories of autobuses exempt from this rulemaking requirements.

**Social Impact**

ZORF procedures give individual autobus operators the flexibility to marginally increase or marginally decrease bus fares within predetermined upper and lower limits. This regulatory scheme is designed to protect the consumer from excessive fares, and to also permit service providers to increase or decrease fares within set parameters to facilitate market place competition. Having ZORF procedures for minor fare changes eliminates the necessity of making a more complex, formal, tariff filing with the Department of Transportation. The ZORF mechanism, therefore, facilitates processes of both the Department of Transportation and the regulated industry. Establishing a maximum percentage of increase protects the public interest from unreasonable and unwarranted fare increases. It is also important to note that limiting the percentage of decrease can also protect the public interest. The Department wishes to avoid predatory fare decreases where an autobus

carrier reduces a fare well below the cost of providing service for the sole purpose of driving a competitor out of business; thus reducing or eliminating future fare competition restraints.

The Department believes that the ZORF procedure is essential to balance the public interest and the economic needs of the autobus industry.

**Economic Impact**

The ZORF mechanism gives autobus operators a methodology by which to marginally increase, or marginally decrease, previously established bus fares. Traditionally, the permitted decreases have been larger than the permitted increases. For example, in 1994 ZORF percentages permitted autobus operators a four percent maximum increase and a 10 percent maximum decrease.

Although the number of carriers recently filing for a ZORF fare adjustment are relatively few, the Department believes that the very presence of a ZORF fare adjustment mechanism stimulates autobus carrier competition.

In establishing a ZORF percentage, the Commissioner considers various relevant factors. These include the availability of alternative modes of transportation, increases or decreases in the cost of bus operations, the interests of consumers and the bus industry, and the prevailing rates, fares and charges. Prior to the establishment of a ZORF percentage, the Commissioner holds a public hearing. In the past several years, few persons have shown up for the annual ZORF hearing. The Department incurs modest costs in conducting these hearings. Autobus operators who apply for a ZORF fare adjustment incur modest costs in preparing notice to the Department for said adjustment. The public would incur either added, or reduced, fare costs as a result of said filing.

**Regulatory Flexibility Analysis**

Readoption of the ZORF rules may impose new or additional reporting, recordkeeping, or compliance requirements upon autobus operators, some of whom may be small businesses as defined under the "Regulatory Flexibility Act," N.J.S.A. 52:14B-16 et seq.

Any regular route autobus carrier who seeks a fare adjustment under the ZORF procedure must comply with the requirements at N.J.A.C. 16:53-1.2. These requirements include notification to the Department by the filing of a complete schedule of all current fares and all fares to be adjusted. Additionally, the autobus carrier must post a public notice and file an affidavit of such posting with the Department.

These actions would constitute a reporting, recordkeeping or compliance requirement as defined in the Regulatory Flexibility Act. It is important to note that these additional reporting, recordkeeping or compliance requirements only apply to businesses which voluntarily seek to utilize the ZORF procedure for a fare adjustment. In recent years, the Department averaged five or less ZORF filings. The Department believes that the reporting, recordkeeping and compliance requirements of this Chapter are minimal and in no way impose a burden upon autobus operators. Utilization of the ZORF procedure is, in fact, far less burdensome than any other fare adjustment mechanism available to autobus operators under the general provisions of Title 48 of the Revised Statutes.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53D.

## OTHER AGENCIES

(a)

## CASINO CONTROL COMMISSION

## Casino Licensees

## Casino Hotel Facility Requirements

## Proposed Repeal and New Rules: N.J.A.C. 19:43-6.1 and 6.4 through 6.9

## Proposed Amendments: N.J.A.C. 19:43-6.2 and 6.3

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-1(b)(11), 27, 63c, 69a, 83, 84e, 98, 100  
and 136.

Proposal Number: PRN 1994-144.

Submit written comments by April 6, 1994 to:

Mary S. LaMantia, Senior Counsel  
Casino Control Commission  
Tennessee and Boardwalk  
Atlantic City, New Jersey 08401

**Agency Note:** Amendments to N.J.A.C. 19:43-6.2 are included in this proposal for purposes of clarifying and reorganizing that section. Be advised that other, substantive additions to N.J.A.C. 19:43-6.2 have previously been proposed by the Commission. See proposed N.J.A.C. 19:43-6.2(a)7 and 8 and (a)12 through 15, 25 N.J.R. 5893(a). Such proposed new text does not appear herein at the direction of the OAL. However, this proposal is not intended to and should not be read as superseding the previous proposed amendments to N.J.A.C. 19:43-6.2.

The agency proposal follows:

## Summary

This proposal revises, updates and streamlines the casino hotel facility requirements set forth in N.J.A.C. 19:43-6. By repeal and amendment the Commission seeks to eliminate language in these rules which is a reiteration of the statutory provisions and therefore redundant.

The proposed new N.J.A.C. 19:43-6.1 and 6.4 implement recent amendments to section 83 of the Casino Control Act (Act), authorizing an increase in maximum casino space based on the number of "qualifying sleeping units" in the approved casino hotel. See P.L. 1991, c.182. See also P.L. 1993, c.292. Proposed N.J.A.C. 19:43-6.4(b) codifies the requirements for petitions filed by casino licensees requesting casino expansion. Proposed N.J.A.C. 19:43-6.4(c) sets forth the prerequisites for a Casino Control Commission ("Commission") ruling approving such casino expansion. Finally, proposed N.J.A.C. 19:43-6.4(d) sets forth conditions for the conduct of gaming in the additional casino space.

Rules that unnecessarily reiterate facilities standards set forth in the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq., are replaced by the appropriate statutory cross-references in proposed N.J.A.C. 19:43-6.2, The casino hotel. See the proposed repeal of N.J.A.C. 19:43-6.1, Impact of facilities, 6.4, Policy requiring superior quality, and 6.7, Duty to operate a superior quality facility. Notably, a number of the rules proposed for repeal have been rendered inaccurate or obsolete by recent legislation. For example, section 83 of the Act no longer requires that each casino hotel contain a minimum amount of qualifying indoor public space. The definition of an "approved hotel" in section 27 of the Act and the criteria for determining maximum casino square footage have also been substantially revised. See P.L. 1991, c.182 (eff. June 29, 1991); P.L. 1992, c.9 (eff. May 19, 1992); P.L. 1993, c.159 (eff. June 20, 1993); P.L. 1993, c.292 (eff. December 21, 1993).

Many of the facilities rules have not been amended since their original promulgation in 1978, and no longer serve any significant regulatory purpose. For example, in a continuing effort to streamline its requirements, the Commission has decided to eliminate the periodic reports of facilities data (generally referred to as "Project Data Reports") currently required in N.J.A.C. 19:43-6.8. Outdated provisions in N.J.A.C. 19:43-6.5, Minimum standards for reconstruction, 6.6, Declaratory rulings as to reconstructed facilities, and 6.9, Traffic flow, are also eliminated. N.J.A.C. 19:43-6.3, Declaratory rulings as to proposed casino hotel facilities, is likewise revised to eliminate outdated provisions and unnecessary reiteration of procedural standards for declaratory rulings (see N.J.A.C. 19:42-9.1).

## Social Impact

The proposed amendments and new rules promote the public policies of the Act by assuring the suitability of casino hotel facilities in accordance with N.J.S.A. 5:12-1(b)11, 83, 84e and 98. In particular, the proposed new standards for expansion of casino space will assure efficacious implementation of the legislative scheme embodied in section 83 of the Act. Further, the streamlining of the Commission's facilities rules benefits both the regulated industry and the regulatory agencies by deleting unnecessary and obsolete regulatory provisions.

## Economic Impact

The casino hotel facilities standards in N.J.A.C. 19:43-6 necessarily result in costs of compliance for all casino licensees and applicants. N.J.A.C. 19:43-6.2 lists the mandated facilities, space and equipment that each licensed casino must provide. Clearly, each casino licensee will incur both time and expense in ensuring that its casino hotel facility conforms to the requisite specifications. The regulatory agencies also devote resources to ensuring that all casino hotel facilities licensed by the Commission comply with the mandates of the Act.

## Regulatory Flexibility Statement

The proposed amendments, repeals and new rules affect only the operations of casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

## SUBCHAPTER 6. CASINO HOTEL FACILITY REQUIREMENTS

## 19:43-6.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"Qualifying sleeping unit" ("QSU") means a hotel room which satisfies the standards set forth in section 27 and subsection 83b of the Act.

## [19:43-6.1 Impact of facilities

(a) No casino license shall be issued unless the Commission shall have first been satisfied in accordance with section 84e of the Act and the regulations of the Commission:

1. That the casino, its related facilities and its proposed location are suitable;
2. That the proposed casino hotel will not adversely affect other licensed casino operations or facilities;
3. That the proposed facilities comply in all respects with all requirements of the Act and the regulations of the Commission;
4. That the proposed facilities comply in all respects with all requirements of the master plan and zoning ordinances of Atlantic City;
5. That the proposed facilities comply in all respects with all requirements of the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.);
6. That the patron market is adequate; and
7. That the proposal will not adversely affect overall environmental, economic, social, demographic or competitive conditions or natural resources of either Atlantic City or this State.]

## 19:43-6.2 The casino hotel

(a) No casino license shall be issued or renewed unless the casino **and, if applicable, the simulcasting facility**, [shall be] **are** located within an approved hotel [which conforms in all respects to all] **as defined in sections 27 and 83 of the Act, and unless the proposed facilities conform to the facilities requirements** [of the Act and unless, in accordance with] in sections 1, 6, 27, [70,] 83, 84e, 98, 100, 103 and 136 of the Act and the [regulations] **rules** of the Commission, [such approved hotel] **including, without limitation, the following:**

- [1. Is under one ownership;
2. Is a single building located within Atlantic City with or without additional buildings or facilities annexed by means of physical connection;

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- 3. Contains not fewer than 500 sleeping units of at least 325 square feet each held available and used regularly for the lodging of tourists and convention guests;
- 4. Contains the minimum amount of indoor public meeting and exhibition space;
- 5. Contains the minimum amount of indoor dining; entertaining and sports facilities space;
- 6. Contains a single casino of a minimum of 15,000 square feet and of not greater than the maximum square feet set forth in the Act, conforming in all respects to the entrance and visibility requirements set forth in the Act, and the facilities of which are arranged to promote maximum patron comfort and optimum casino operation security and an atmosphere of social graciousness;]
- [7.]1. [Contains] **The casino hotel shall contain** a closed circuit television (CCTV) system **approved by the Commission; and**
- [8.]2. [Contains specifically designated and secure] **Secure areas shall be designated** for the inspection, repair and storage of gaming equipment[;].
- [9. Contains a count room and such other secure facilities for the inspection, counting and storage of cash, coins, tokens, checks, dice, cards, chips and other representatives of value;
- 10. Conforms with the provisions relating to barrier-free design for providing facilities for the physically handicapped in public buildings; and
- 11. Contains facilities suitable for all family, cabaret and pub entertainment requirements;]

19:43-6.3 Declaratory rulings as to proposed casino hotel facilities

[(a)] Upon the petition of any person who owns, has a contract to purchase or construct, leases or has an agreement to lease any building or site located within the limits of Atlantic City and who intends to and is able to complete a proposed casino hotel facility therein or thereon, the Commission may in its discretion [make] **issue** a declaratory ruling as to whether [or not] the conformance of the proposed casino hotel facility to any of the facilities requirements of the Act and the [regulations] **rules** of the Commission has been established by clear and convincing evidence.

[(b) It shall be the affirmative responsibility of each such petitioner to file all information, documentation and assurances material to the requested declaratory ruling in such form as is required of an applicant for a casino license, which may include the filing of a completed "casino hotel facility statement".

[(c) The Commission shall afford the interested parties a full opportunity for hearing upon any petition for a declaratory ruling as to a proposed casino hotel facility.

[(d) A declaratory ruling as to a proposed casino hotel facility shall bind the Commission and the parties to the proceedings on the statement of facts set forth therein and shall be deemed a final action subject to review in the Appellate Division of the Superior Court; provided, however, that no casino license shall be issued concerning any such casino hotel facility unless compliance with every requirement of the Act and regulations of the Commission as of the time of the issuance of such license shall have first been established.

[(e) No petition for a declaratory ruling shall be accepted by the Commission unless the petitioner shall first have paid in full a fee of not less than \$5,000 and in such further amount as the Commission may, in its discretion, deem reasonable, proper and appropriate in relation to the operating expenses of the Commission and the Division in considering the petition.]

[19:43-6.4 Policy requiring superior quality and favoring completely newly constructed convention hotel complexes

The restoration of Atlantic City as the Playground of the World and the major hospitality center of eastern United States, by permitting a limited number of licensed casino rooms in major Atlantic City convention hotel complexes as an integral element thereof as a unique urban redevelopment tool, will best be accomplished by a policy which assures that every aspect of every convention hotel complex to which the privilege of a casino license is extended is of a superior, exceptional, first class, five star and deluxe quality and by a further policy which fosters, encourages, prefers and favors

completely newly constructed facilities as opposed to rehabilitated facilities as convention hotel complexes to which the privilege of a casino license may most appropriately be extended.

19:43-6.5 Minimum standards for reconstruction of existing buildings and facilities

(a) Any existing building or facility, whether incorporated into an approved hotel as part of a convention hotel complex or otherwise, for which the privilege of a casino license is sought shall be reconstructed in conformance with the following minimum standards which may be applied with flexibility to any aspect of any such existing building or facility which already meets a higher standard of safety or quality:

1. Any such reconstructed existing building or facility shall be architecturally and functionally integrated with any and all newly constructed facilities both externally and internally so as to result in the entire convention hotel complex becoming a single building to the extent required by and in keeping with the policy of the Act;

2. All completely new furnishings and decorations shall be provided throughout all sleeping units and all public space within the entire convention hotel complex;

3. All completely new windows and window frames shall be provided throughout any such existing building or facility older than twenty years;

4. As to the interior of any such existing building or facility:

i. All new floor coverings shall be provided throughout all sleeping units and all public space;

ii. All new plumbing, lighting and other fixtures and fittings shall be provided throughout all sleeping units and all public spaces within any such existing building or facility older than twenty years;

iii. All interior walls, partitions, doors and door frames shall be completely repainted or provided with new covering and, in any such existing building or facility older than 20 years, shall be completely replaced;

iv. All ceilings shall be completely restored and repainted or provided with new covering;

v. A completely new sprinkler system shall be provided throughout; and

vi. All completely new elevator, heating, ventilation, air-conditioning, electrical and plumbing systems and all completely new components of such systems shall be provided throughout any such existing building or facility older than 20 years;

5. A completely new roof shall be provided for any such existing building or facility older than 20 years; provided, however, that the Commission may give due consideration to any architecturally, culturally or historically significant aspects of its existing roof;

6. All exterior walls of any such existing building or facility older than 20 years shall be completely replaced or covered; provided, however, that the Commission may give due consideration to any architecturally, culturally or historically significant aspects of its existing exterior walls;

7. In any such existing building or facility newer than 20 years, no windows or window frames, plumbing, lighting or other fixtures or fittings, interior walls, partitions, doors or door frames, elevator, heating, ventilation, air-conditioning, electrical or plumbing systems or components thereof, roof, or exterior walls shall be retained rather than completely replaced with new unless same are of a superior, exceptionally, first class, five star and deluxe quality.

19:43-6.6 Declaratory rulings as to reconstructed facilities

(a) The Chairman may in his discretion refuse to accept for filing or process any application for a casino license involving other than a completely newly constructed convention hotel complex unless and until the Commission by declaratory ruling shall have determined both that the proposed reconstruction conforms to the minimum standards contained in section 5 of this subchapter and that extending the privilege of one of the limited number of casino licenses to the proposed convention hotel complex would further the policies of the Act and the Commission.

(b) The Commission shall, in determining whether or not extending the privilege of a casino license to the said proposed convention

hotel complex would further the policies of the Act and the Commission, consider the following factors:

1. The age, structural soundness and any architectural, cultural or historical significance of the existing building or facility;
2. The extent to which the proposed convention hotel complex exceeds the minimum facilities requirements contained in the Act and the regulations of the Commission and whether or not it contains any special features or characteristics;
3. The adequacy of financial resources associated with the proposal to enable both the complete construction of the proposed convention hotel complex and the full operation of the convention hotel and casino;
4. The estimated capital investment in direct construction costs, in gaming and non-gaming related furniture, fixtures, and equipment costs, in indirect construction costs and in site acquisition costs;
5. The size and location of the site of the proposed convention hotel complex;
6. The probable time within which construction would be likely to commence and be completed and within which convention hotel and casino operations would be likely to commence and the probable overall economic impact of the proposal;
7. An overall comparison of the proposed convention hotel complex with all other known existing or proposed Atlantic City casino hotel facilities;
8. The aesthetic and architectural suitability of the proposed convention hotel complex;
9. That, in essence, the overall environmental, economic, social, demographic, competitive and natural resource conditions in both Atlantic City and this State are evolving, developing, dynamic and continually changing conditions by their very nature and must be evaluated as of the probable issuance dates both of any such declaratory ruling as to the proposed convention hotel complex and of a casino license to the proposed convention hotel complex;
10. Whether the issuance of any such declaratory ruling in favor of the proposed convention hotel complex or of a casino license to the proposed convention hotel complex would best serve and further the policy of redeveloping and restoring Atlantic City in a planned and orderly manner and to the highest possible degree as the Playground of the World and the major hospitality center of the Eastern United States; and,
11. Any other factor deemed by the Commission to be relevant and material to its determination.

#### 19:43-6.7 Duty to maintain and operate a superior quality facility

Every casino licensee shall have a continuing duty to maintain and operate its entire convention hotel complex as a facility of a superior, exceptional, first class, five star and deluxe quality, to submit the said complex to periodic inspections by the Commission and to promptly comply with all requirements and directives of the Commission relating to the maintenance and operation of the said complex as a facility of a superior and first class quality.

#### 19:43-6.8 Periodic reports of facility data

Each casino licensee or applicant shall prepare and submit to the Commission, on forms provided by the Commission, a report concerning the current status of the square footages of the casino room and simulcasting facility and other related casino hotel facility data. Such reports shall be filed on the first business day of each calendar quarter or on such other periodic schedule as may be directed by the Commission.

#### 19:43-6.9 Traffic flow around the casino hotel facility

Each casino licensee or applicant shall take such steps as are necessary to establish and maintain an efficient flow of traffic within the general ingress and egress routes of the casino hotel complex and to develop an efficient system which accommodates employee parking and transportation requirements in cooperation and consultation with the appropriate government agencies.]

#### 19:43-6.4 Casino facilities

(a) Each approved hotel shall contain a casino of not more than the amount of casino space permitted by subsection 83b of the Act.

(b) In accordance with subsection 83b of the Act, a casino licensee shall file a written petition with the Commission requesting permission for any increase in the amount of casino space in its approved hotel. Such petition shall include, without limitation, the following:

1. The current total square footage of its casino space;
2. The proposed increase in total square footage of its casino space;
3. The current total number of OSU's in the approved hotel;
4. A description of any proposed hotel addition, including, without limitation, the following:
  - i. The number of additional OSU's proposed;
  - ii. Identification of the site, including block and lot number as depicted on the Tax Map of the City of Atlantic City; and
  - iii. Evidence which establishes that the proposed hotel addition meets the standards for OSU's and for an approved hotel set forth in section 27 of the Act;
5. The construction schedule for the proposed casino expansion and proposed hotel addition, including:
  - i. The anticipated date for commencement of construction;
  - ii. The anticipated date for completion of construction; and
  - iii. The anticipated date on which the additional OSU's will be available for the regular lodging of guests;
6. The requested date for the commencement of gaming operations in the additional casino space;
7. Any approvals required from governmental and regulatory authorities which have been obtained to date; and
8. The estimated budget for the proposed hotel addition and the proposed casino expansion, including construction, furniture, fixtures and equipment, and the anticipated means of funding such costs.

(c) The Commission may approve a request for casino expansion pursuant to (b) above upon a finding that:

1. The proposed hotel addition meets the standards for OSU's and for an approved hotel in section 27 of the Act;
2. The total number of OSU's and proposed OSU's permit the requested increase in casino space in accordance with the formula set forth in subsection 83b of the Act;
3. The proposed OSU's can be constructed on the schedule represented by the casino licensee in its petition, including a construction completion date no later than two years from the date of commencement of gaming operations in the additional casino space pursuant to (d) below;
4. Construction of the proposed hotel addition and the proposed casino expansion, for the cost and on the schedule represented by the casino licensee in its petition, will not deprive the casino licensee of its financial stability in accordance with N.J.S.A. 5:12-84a and N.J.A.C. 19:43-4; and
5. The casino licensee has demonstrated that it has site control over the location of the proposed hotel addition, by obtaining Commission approval of an executed and binding contract for any necessary purchase or lease of real property required for construction or such other agreement as approved by the Commission.

(d) The Commission may permit a casino licensee to conduct gaming in the additional casino space approved pursuant to (c) above, provided that:

1. The specific layout, design and contents of the additional casino space:
  - i. Comply with the requirements set forth in N.J.A.C. 19:46-1.27; and
  - ii. Are approved by the Commission for gaming operations;
2. The casino licensee obtains all necessary building permits and construction code plan releases and commences construction of the proposed hotel addition by a date specified by the Commission;
3. The casino licensee obtains all required governmental and regulatory approvals by a date specified by the Commission;
4. The casino licensee submits to the Commission and the Division, on a monthly basis, a report of its compliance with the construction schedule and budget submitted pursuant to (b)5 and (b)8 above;

5. The casino licensee submits to the Commission and the Division, on a monthly basis, a report of the status of each application for approval pursuant to (d)3 above, until such time as all approvals are obtained;

6. On or before two years from the date of commencement of gaming operations:

- i. Construction of the hotel addition is completed;
- ii. All necessary furniture, fixtures and equipment is installed; and
- iii. The proposed additional OSU's are offered as available for the regular lodging of guests; and

7. Any other condition which the Commission deems necessary and appropriate has been satisfied.

(e) The standards of (c) and (d) above shall not be construed to limit the authority of the Commission to determine the suitability of facilities as provided in the Act.

**(a)**

**CASINO CONTROL COMMISSION**

**Casino Licensees; Advertising Casino Simulcasting Facility**

**Proposed Amendments: N.J.A.C. 19:43-14.2**

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(o) and P.L.1993, c.292. Proposal Number: PRN 1994-145.

Submit written comments by April 6, 1994 to:

Seth Brilliant, Senior Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

Recent statutory amendments to the Casino Control Act (P.L.1993, c.292) specifically included a reference to casino simulcasting facilities in section 70(o) of the Act, which regulates gaming-related advertising by casino licensees.

The proposed amendments would conform the Commission's present advertising regulations to the above statutory changes by adding references to a casino simulcasting facility where appropriate.

**Social Impact**

These proposed amendments are technical in nature and are needed to implement the statutory changes noted above. They are not expected to have any social impact, primarily because they merely codify existing Commission practices with respect to advertising by casino licensees of their casino simulcasting facilities.

**Economic Impact**

These proposed amendments are not expected to have any economic impact because they simply codify existing Commission practices with respect to advertising by casino licensees of their casino simulcasting facilities.

**Regulatory Impact Statement**

This amendment will affect only casino licensees which also operate a casino simulcasting facility. None of these licensees is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:43-14.2 Criteria governing advertising

(a)-(d) (No change.)

(e) The following practices shall be prohibited with respect to all advertisements:

1. Any representation or description of the size of a casino or casino simulcasting facility;

2. The use or statement of any information concerning the number of games available at a casino or casino simulcasting facility;

3. The use or statement of any information or representation about odds. For purposes of this section, the term odds shall not be limited to numerical information, and shall include, without limitation, the following:

i.-ii. (No change.)

iii. House advantage, hold, win or any like indication of the probability of winning or losing at a particular casino or casino simulcasting facility or at any authorized game;

4.-6. (No change.)

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

**(b)**

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls Count Rooms; Characteristics Slot Count; Procedure for Counting and Recording Contents of Slot Drop Buckets and Slot Drop Boxes**

**Proposed Amendment: N.J.A.C. 19:45-1.43**

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(f), 69(a), 70(l), 99(a)8 and 100(c). Proposal Number: PRN 1994-143.

Submit written comments by April 6, 1994 to:

Seth H. Brilliant, Senior Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, N.J. 08401

The agency proposal follows:

**Summary**

On July 6, 1993, a Commission proposal to revise certain hard count procedures was published at 25 N.J.R. 2855(a). On September 8, 1993, the Commission adopted the proposal, and it was published at 25 N.J.R. 4622(a), with technical and substantive changes not requiring additional public notice or comment.

In order to further streamline the hard count process, the Commission has now determined to modify one additional aspect of the newly revised hard count procedure. This amendment would eliminate the present requirement that the coin and slot token wrapping equipment be tested for accuracy in all denominations prior to the inception of the hard count.

These tests of the wrapping equipment needlessly delay the hard count and do not, by themselves, necessarily ensure the accuracy of the count. Even in instances where the inspector does remain in the count room throughout the count, it is far more practical to check the accuracy of the wrapping machines during the count, while they are in use, rather than doing so only at the inception of the count.

After reviewing the hard count process, the Commission has determined that the accuracy of the hard count would be more efficiently attained by spot-checking the wrapping machines and the wrapped coin and slot tokens during the count itself. Accordingly, this amendment would delete the "wrap test" requirement now found at N.J.A.C. 19:45-1.43(i)lii. A new paragraph, N.J.A.C. 19:45-1.43(i)8, would expressly authorize a Commission inspector to check the accuracy of any wrapping machine, and the amount of any wrapped coin or slot tokens, at any time during the count.

It should be noted that any other equipment for weighing and counting coin and slot tokens would still be required to be calibrated and tested prior to the count, N.J.A.C. 19:45-1.43(i)lii, and could also be rechecked, at the direction of a Commission inspector, at any time during the count. The accuracy of the count is further ensured by N.J.A.C. 19:45-1.43(h), which continues to require that coin and slot tokens be recounted on a random sample basis by the casino licensee at the conclusion of the hard count, before the count is purchased by the cage cashier.

**Social Impact**

No social impact upon the general public is anticipated. This amendment would only make a minor modification in a casino licensee's hard count procedure, which does not involve the general public.

**Economic Impact**

It is anticipated that this proposed amendment will have a favorable impact on casino licensees by further streamlining the hard count process, while still maintaining the integrity and accuracy of the count.

**Regulatory Flexibility Statement**

This proposed amendment will only affect New Jersey casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets and slot drop boxes

(a)-(h) (No change.)

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. Prior to the first slot drop bucket being emptied and counted, employees of the casino licensee shall:

i. (No change.)

ii. Check, in the presence of the Commission inspector, the accuracy of all weighing[, wrapping, and other] **and** counting equipment, **with the exception of coin or slot token wrapping machines**, to insure proper calibration for each denomination of coin and slot token; and

iii. (No change.)

2.-7. (No change.)

8. **A Commission inspector may, at any time, require the accuracy of any weighing, wrapping or counting equipment, or the amount of any previously weighed, wrapped or counted coin or slot tokens, to be checked or rechecked.**

Recodify existing 8.-12. as 9.-13. (No change in text.)

(j) (No change.)

(a)

**CASINO CONTROL COMMISSION****Rules of the Games****Shuffle and Cut of the Cards****Proposed Amendments: N.J.A.C. 19:47-3.5, 4.4 and 7.5**

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a) and 100.

Proposal Number: PRN 1994-146.

Submit written comments by April 6, 1994 to:

E. Dennis Kell  
Assistant General Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

In order to ensure the integrity of the games of baccarat-punto banco, baccarat-chemin de fer and minibaccarat, Commission regulations require that after the shuffle, the dealer lace approximately one deck of cards so that they are evenly dispersed into the remaining stack of cards. This proposal would give a casino licensee the option of reshuffling all or part of the cards after they have been laced. A casino licensee would be required to indicate in its internal controls the procedure which it intends to follow.

**Social Impact**

The proposal would merely permit a casino licensee to reshuffle some or all of the cards after they have been laced in the games of baccarat-punto banco, baccarat-chemin de fer and minibaccarat, which should have no overall social impact.

**Economic Impact**

To the extent that the reshuffling procedure is implemented by casino licensees, it may slightly decrease the number of hands which can be dealt in a given time period. To the extent that reshuffling has such an effect, revenues from these games may be minimally reduced.

**Regulatory Flexibility Statement**

The proposed amendments will affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:47-3.5 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall lace approximately one deck of cards so that they are evenly dispersed into the remaining stack. After lacing the cards, the dealer calling the game **shall, if the casino licensee elects this option, shuffle some or all of the cards again. After lacing the cards and, where applicable, reshuffling them, the dealer calling the game shall offer the stack of cards, with backs facing away from [him] the dealer,** to the participants to be cut. The dealer shall begin with the participant seated in the highest number position at the table or, in the case of reshuffle, the last curator and working clockwise around the table, shall offer the stack to each participant until a participant accepts the cut. If no participant accepts the cut, the dealer shall cut the cards. **A casino licensee shall indicate in its internal controls submission whether it has elected to reshuffle the cards after they have been laced.**

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

19:47-4.4 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall lace approximately one deck of cards so that they are evenly dispersed into the remaining stack. After lacing the cards, the dealer calling the game **shall, if the casino licensee elects this option, shuffle some or all of the cards again. After lacing the cards and, where applicable, reshuffling them, the dealer calling the game shall offer the stack of cards, with backs facing away from [him] the dealer,** to the participants to be cut. The dealer shall begin with the participant seated in the highest number position at the table or, in the case of reshuffle, the participant seated to the left of the participant responsible for dealing the cards, and working clockwise around the table, shall offer the stack to each participant until a participant accepts the cut. If no participant accepts the cut, the dealer shall cut the cards. **A casino licensee shall indicate in its internal controls submission whether it has elected to reshuffle the cards after they have been laced.**

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

19:47-7.5 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall lace approximately one deck of cards so that they are evenly dispersed into the remaining stack. After lacing the cards, the dealer calling the game **shall, if the casino licensee elects this option, shuffle some or all of the cards again. After lacing the cards and, where applicable, reshuffling them, the dealer calling the game shall offer the stack of cards, with backs facing away from [him] the dealer,** to the participants to be cut. The dealer shall begin with the participant seated in the highest number position at the table and, working clockwise around the table, shall offer the stack to each participant until a participant accepts the cut. If no participant accepts the cut,

the dealer shall cut the cards. A casino licensee shall indicate in its internal controls submission whether it has elected to reshuffle the cards after they have been laced.

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

(a)

**CASINO CONTROL COMMISSION**

**Alcoholic Beverage Control**

**Classification of Authorized Locations**

**Standards for Qualification**

**Conditions of Operation in Type I CHAB Locations**

**Proposed Amendments: N.J.A.C. 19:50-1.4, 1.5, 2.2, 3.1**

**Proposed Repeal: N.J.A.C. 19:50-3.6**

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q) and 103 and P.L. 1993 c.292.

Proposal Number: PRN 1994-147.

Submit written comments by April 6, 1994 to:

Seth Brilliant, Senior Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

On December 21, 1993, statutory amendments to the Casino Control Act (P.L. 1993 c.292) streamlined section 103 of the Act by deleting section 103(g)6, which provided a separate casino hotel alcoholic beverage (CHAB) authorization for a casino simulcasting facility. The reference to "casino simulcasting facility" was then added to section 103(g)1, which governs the service of alcoholic beverages on a casino floor. Thus, the same Type I CHAB authorization can now be used for a casino simulcasting facility as well as a casino room.

These proposed amendments and repeal would simply conform the present CHAB regulations to the above statutory changes by eliminating the corresponding Type VI CHAB authorization in N.J.A.C. 19:50-3.6, and permitting a casino simulcasting facility to be authorized as a Type I CHAB location as well.

The same rules and restrictions concerning the sale and service of liquor will continue to apply to both areas (sale only by the glass or other open receptacle; complimentary alcoholic beverages may be served, but must be requested by the patron), since gaming activity occurs in both locations.

**Social Impact**

These amendments to the CHAB regulations are technical in nature, are needed to implement the recent statutory changes noted above, and are not expected to have any social impact beyond reducing the number of CHAB authorizations thus slightly making the process more simple and more easily administered.

**Economic Impact**

Streamlining the Commission's CHAB regulations in accordance with the recent statutory amendments, and reducing the number of CHAB authorizations from six to five may result in a slightly simpler and more easily administered system of alcoholic beverage licensure for CHAB licensees. This may result in some minor economic savings for CHAB licensees.

**Regulatory Impact Statement**

This amendment will affect only CHAB licensees which are also casino licensees operating casinos or casino simulcasting facilities. None of these licensees is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:50-1.4 Classification of authorized locations

(a) Authorized locations shall be classified as follows:

1. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(1) shall be classified as Type I (casino/casino simulcasting facility) locations.

2.-5. (No change.)

[6. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(6) shall be classified as Type VI (casino simulcasting facility) locations.]

(b) The activities permitted in each type of authorized location, subject to applicable laws, rules, and regulations, are as follows:

1. In a Type I location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle, but not in an original container, for on-premises consumption within a casino or casino simulcasting facility.

2. In a Type II location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle for on-premises consumption within a casino hotel but not in a casino or casino simulcasting facility, or from fixed locations outside a casino hotel, but on a casino hotel premises. Examples of Type II locations include, without limitation, showrooms, cabarets, restaurants, meeting rooms, pubs and lounges.

3. In a Type III location, a CHAB licensee shall be entitled to sell any alcoholic beverage in original containers from an enclosed package goods room, not in a casino or casino simulcasting facility, for consumption outside the authorized location.

4. In a Type IV location, a CHAB licensee shall be entitled to sell any alcoholic beverage from a room service location within an enclosed room, not in a casino or casino simulcasting facility, for delivery to a guest room or to any other room in the premises authorized by the Commission, other than a Type I, III or V location.

5. In a Type V location, a CHAB licensee shall be entitled to possess or to store in a fixed location on the premises, not in a casino or casino simulcasting facility, alcoholic beverages intended but not actually exposed for sale.

[6. In a Type VI location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle, but not in an original container, for on-premises consumption within a casino simulcasting facility.]

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

19:50-1.5 Standards for qualification

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

(d) No Type V authorization shall issue to any applicant who does not hold a Type I, II, III, or IV [or VI] CHAB authorization.

(e) Every employee and agent of a CHAB licensee whose employment or agency includes duties in, on, or about the premises, but not in a Type I [or Type VI] authorized location, shall be registered as a casino hotel employee in accordance with section 91 of the Act.

(f) (No change.)

19:50-2.2 Additional operating conditions of CHAB licensees

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

(f) No CHAB licensee shall sell or offer to sell alcoholic beverages at a price below "cost," as defined by the Division of Alcoholic Beverage Control, except that CHAB licensees may serve complimentary alcoholic beverages:

1. In Type I (casino/casino simulcasting facility) authorized locations, at a patron's request, pursuant to section 103(g)(1) of the Act;

2. In Type II (hotel), Type III (package goods), [or Type IV (room service) [or Type VI (casino simulcasting facility)]] authorized locations, pursuant to sections 99 and 102 of the Act and the Commission's regulations concerning complementaries;

3.-4. (No change.)

(g)-(h) (No change.)

19:50-3.1 Conditions of operation in Type I (casino/casino simulcasting facility) locations

(a) No alcoholic beverage shall be sold, given or be available for consumption, offered, delivered or otherwise brought to a patron within a casino room or casino simulcasting facility unless so requested by the patron.

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

(e) Alcoholic beverages may be served in a Type I location only when the casino room or casino simulcasting facility is open for gaming activity as provided in section 97(a) of the Act, but shall not be served later than 15 minutes prior to the closing of the casino room or casino simulcasting facility.

[19:50-3.6 Conditions of operation in Type VI (casino simulcasting facility) locations

(a) No alcoholic beverage shall be sold, given or be available for consumption, offered, delivered or otherwise brought to a patron within a casino simulcasting facility unless requested by the patron.

(b) No alcoholic beverage in an original container shall be brought into a Type VI location except by the CHAB licensee authorized to sell alcoholic beverages in that Type VI location.

(c) No CHAB licensee shall serve any alcoholic beverage in a Type VI location except by the glass or other open receptacle, but not in an original container, for on-premises consumption within the authorized location.

(d) No alcoholic beverage shall be displayed in a Type VI location except:

1. As required for the necessary operation of a bar;
2. During the customary and ordinary course of preparing a patron's drink order; or
3. Incidental to delivery or consumption by a patron.

(e) Alcoholic beverages may be served in a Type VI location only when the casino simulcasting facility is open, but shall not be served later than 15 minutes prior to the time that the casino room is required to close.]

## (a)

### CASINO CONTROL COMMISSION

#### Persons Doing Business with Casino Licensees

#### Proposed Readoption: N.J.A.C. 19:51

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 70b, 70i, 92 and 94.

Proposal Number: PRN 1994-148.

Submit written comments by April 6, 1994 to:

Mary S. LaMantia, Senior Counsel  
Casino Control Commission  
Tennessee and Boardwalk  
Atlantic City, New Jersey 08401

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:51, Persons Doing Business with Casino Licensees is scheduled to expire on April 27, 1994. The rules in N.J.A.C. 19:51 set forth the license requirements for enterprises that conduct business with casino licensees and applicants. The rules also identify the individuals and enterprises required to establish their qualifications by virtue of their association with a casino service industry (CSI) enterprise or junket enterprise. In addition, the chapter sets forth recordkeeping and advertising requirements applicable to casino service industry enterprises.

The chapter was originally adopted by the Casino Control Commission ("Commission") in 1978 as N.J.A.C. 19:43, Casino Service Industries (see 10 N.J.R. 4(b), 10 N.J.R. 128(c)), and was readopted in 1984. In 1989, the Commission readopted the chapter with amendments to conform with amendments to the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq.

The Commission has continued to review and update N.J.A.C. 19:51 since the 1989 re adoption. 1991 amendments revised the criteria for determining whether an enterprise is providing casino licensees or applicants with goods or services "on a regular or continuing basis" pursuant to N.J.S.A. 5:12-92c. The relevant monetary thresholds (now codified at N.J.A.C. 19:51-1.2) were increased from \$50,000 to \$75,000 for transactions with a single casino licensee or applicant, and from \$150,000 to \$225,000 for transactions with all casino licensees and applicants. See 22 N.J.R. 3203(a), 23 N.J.R. 1963(a). A new "regular and continuing business" monetary threshold was later added to N.J.A.C. 19:51-1.2:

\$30,000 or more in transactions with any one casino licensee or applicant, or \$100,000 or more with all casino licensees or applicants, within each of three consecutive 12-month periods. See 25 N.J.R. 2662(a), 25 N.J.R. 4625(a).

Amendments in 1992 to N.J.A.C. 19:51-1.2 clarified the standards for determining whether an enterprise requires licensure as a gaming-related CSI pursuant to subsection 92a of the Act. The amendments also updated the list of nongaming-related CSI enterprises pursuant to N.J.S.A. 5:12-92c. See 24 N.J.R. 4241(b), 25 N.J.R. 368(a). New rules were adopted to provide that the Commission may require certain nongaming-related enterprises to obtain CSI licensure prior to conducting business with a casino licensee or applicant, where "necessary in order to contribute to the public confidence and trust in the credibility and integrity of the gaming industry in New Jersey." N.J.A.C. 19:51-1.2(g). Such CSI applicants may, under the new rules, request a transactional waiver pursuant to N.J.A.C. 19:51-1.2(h).

Other amendments to N.J.A.C. 19:51 reflected legislative revisions to the Act directing that junket enterprises be licensed in accordance with N.J.S.A. 5:12-92c. See 24 N.J.R. 2695(b), 24 N.J.R. 3738(a). Finally, in 1992 the rules in chapter 51 were retitled and recodified as N.J.A.C. 19:51. See 24 N.J.R. 3225(a), 24 N.J.R. 4563(a).

The Commission continues to review and update N.J.A.C. 19:51 as part of its regulatory review process. For example, the Commission recently proposed to reorganize and clarify N.J.A.C. 19:51-1.2 by recodifying the rules concerning gaming-related and nongaming-related CSI license requirements and transactional waivers. See 26 N.J.R. 339(a). In light of this ongoing review, the chapter, is proposed for re adoption at this time without amendment.

#### Social Impact

The rules in N.J.A.C. 19:51 protect the casino industry from the influence of unfit and unqualified individuals and businesses. The Legislature, in adopting the Act, expressly recognized such regulation as vital to the interests of the State. N.J.S.A. 5:12-1b(9). Re adoption of N.J.A.C. 19:51 is essential to the integrity of the casino industry and the regulatory process, and to the Commission's ability to strictly regulate casino operations and all related service industries. N.J.S.A. 5:12-1b(6), 1b(9).

#### Economic Impact

N.J.A.C. 19:51 sets forth standards for the licensure of casino service industry enterprises and the qualification of certain associated individuals. Such applicants incur costs in terms of the time and expense associated with compiling and filing the information and documentation required for application, as well as application and renewal fees (see N.J.A.C. 19:43-9). Compliance with the continuing obligations of CSI licensees, such as recordkeeping (N.J.A.C. 19:51-1.9), also necessarily involve some administrative costs. The regulatory agencies expend considerable time in monitoring and enforcing compliance with N.J.A.C. 19:51. Such impact will continue with the re adoption of the chapter. Nonetheless, these rules are essential to the strict regulation of casino operations and the ancillary industries as mandated by the Act, N.J.S.A. 5:12-1b(6), 1b(9).

#### Regulatory Flexibility Analysis

The chapter imposes recordkeeping and other compliance requirements upon CSI enterprises. The Commission estimates that there are approximately 1300 licensed CSI enterprises and approximately 375 CSI license applications pending as of January 1994. A large number of these licensees and applicants may qualify as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., although no available data reveals precisely how many enterprises meet the statutory criteria.

The rules in N.J.A.C. 19:51 require that all CSI enterprises compile and submit information which demonstrates their qualification for licensure. Exempting small businesses from the requirement that they produce such information would endanger the public interest. The Legislature sought to protect casino gaming from harmful influences by mandating strict regulation of all persons associated with licensed casinos and all related service industries. N.J.S.A. 5:12-1b(6). Without the information supplied by CSI enterprises, it would be impossible for the regulatory agencies to ensure the qualifications of these enterprises as demanded by the Act.

The compliance and reporting requirements of this chapter also include the maintenance of certain business records by CSI enterprises. These records assist the regulatory agencies in enforcing the strict regula-

tion of those entities doing business with casino licensees and applicants. Thus, small businesses are not exempted from the recordkeeping requirements and no differing standards based on business size are offered.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:51.

## BANKING

### (a)

#### DIVISION OF REGULATORY AFFAIRS

#### Mutual Holding Companies

#### Proposed New Rules: N.J.A.C. 3:13-5 and 3:32-3

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:9A-8.1 et seq., 17:9A-382 et seq. and 17:12B-319.

Proposal Number: PRN 1994-160.

Submit comments by April 6, 1994 to:

Rule Comments  
Attn: Stephen Szabatin  
Deputy Commissioner  
Department of Banking  
CN 040  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Department of Banking proposes to adopt rules concerning the establishment of mutual holding companies. The Legislature authorized the creation of mutual savings bank holding companies in 1987. P.L. 1987, c.201, effective July 22, 1987. Savings and loan associations were authorized to establish mutual holding companies in 1989. P.L. 1989, c.165, effective August 11, 1989.

A mutual savings bank holding company is owned by the depositors of the depository or depositories controlled by the holding company. However, the holding company is managed by a board of directors elected by a plurality of the board of the holding company. The holding company controls at least a majority of the total outstanding shares of the subsidiary capital stock savings bank.

The Commissioner of Banking has authority to approve the charge of an organizing mutual bank holding company. In the case of a mutual savings and loan holding company, the Office of Thrift Institutions asserts that this State law is preempted by Federal law in this area. Without conceding this point, there is no question that the Commissioner has authority to approve the charter of the subsidiary depository if it is State chartered.

The proposed new rules, consistent with statute, set forth a regulatory framework for the Department to use when considering applications for mutual holding companies. In particular the rules require that the applicant submit the following when applying to establish a mutual holding company: (1) a description of the proposed formation; (2) a certified copy of the resolution of the board of directors authorizing the application; (3) a certificate of incorporation; (4) biographical statements for each director of the subsidiary depository; (5) a request for "Criminal History Record Information" for each director for the holding company and the subsidiary; (6) proposed by-laws of the subsidiary depository; (7) a business plan for the mutual holding company and subsidiary; (8) a copy of any applications for establishment of a mutual holding company filed with any Federal regulator; and (9) the application fee of \$10,000. Within 60 days after its execution, the directors must submit a certificate of incorporation for the subsidiary, along with an affidavit from each incorporator of the subsidiary. Within 10 days after the date upon which a completed application is filed, the applicant must publish notice.

The rules, consistent with the authorizing statutes, also establish the criteria to be considered by the Commissioner when considering the application of a mutual holding company. In particular, the Commissioner in the proposal must consider the following: (1) whether the establishment of a holding company is in the best interests of the depositors; (2) whether the qualifications, experience and character of the proposed officers and directors of the holding company are sufficient to result

in its successful operation; (3) whether the interest of the public will be served by the establishment of a mutual holding company; (4) whether the mutual holding company is adequately capitalized; and (5) whether the establishment of the mutual holding company meets the requirements of law.

The proposed new subchapters also include definitions, a listing of the various manners in which the holding companies may be formed, the general organization of the boards of directors, the requirements for the officers and provisions for the division of surplus.

#### Social Impact

As noted in the Senate Statement to the bill authorizing mutual savings bank holding companies, the mutual holding company form of ownership promotes the expansion of institutions by making possible and facilitating their ability to acquire and sell subsidiary depositories. In addition, it provides another method for an institution to attract capital thereby adding to the safety and soundness of the institution. To the extent that these rules advance this form, they will have this social benefit.

#### Economic Impact

The rules provide for an application fee of \$10,000. This fee is necessary to reimburse the Department for the administrative expenses for processing the application.

#### Regulatory Flexibility Analysis

The vast majority of mutual depositories and holding companies are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements are imposed in the form of application requirements. In some instances there may be the need for the professional services of attorneys and of outside accounting firms in the development of the application or in-house professionals may be all that is necessary. However, since these requirements are needed for the Commissioner to ensure compliance with the underlying statutes and to consider whether the application meets the statutory criteria, no differentiation is made based on business size. The provisions, other than the application requirements, found in the proposed rules are reiterations of the statutes and therefore do not independently impose reporting, recordkeeping or compliance requirements.

Full text of the proposed new rules follows:

#### SUBCHAPTER 5. MUTUAL SAVINGS BANK HOLDING COMPANIES

##### 3:13-5.1 Definitions

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

"Board of directors" may be used to mean "board of managers."

"Capital stock savings bank" means any savings bank chartered pursuant to the provisions of P.L. 1982, c.9 (N.J.S.A. 17:9A-8.1 et seq.).

"Commissioner" means the Commissioner of the Department of Banking.

"Department" means the New Jersey Department of Banking.

"Director" may be used to mean "manager" or "trustee."

"Organizing mutual savings bank" means a mutual savings bank which has its principal office of business in this State, the board of directors of which propose to form a mutual savings bank pursuant to this subchapter.

"Mutual savings bank holding company" means a mutual savings bank holding company formed pursuant to N.J.S.A. 17:9A-382 et seq., which has its principal office of business in this State.

"Subsidiary capital stock savings bank" means a capital stock savings bank which has been incorporated by the directors of a mutual savings bank holding company, a majority of the stock of which subsidiary capital stock savings bank is held by a mutual savings bank holding company.

##### 3:13-5.2 Formation of mutual savings bank holding company

(a) The board of directors of an organizing mutual savings bank may apply to the Commissioner to form a mutual savings bank holding company in any of the following ways:

1. Plan 1: The board of directors may apply to incorporate a mutual savings bank holding company, transfer a portion of the organizing mutual savings bank's assets to the holding company, and

then convert the organizing mutual savings bank to a subsidiary capital stock savings bank;

2. Plan 2: The board of directors may apply to incorporate a mutual savings bank holding company, form a subsidiary capital stock savings bank, and either merge the organizing mutual savings bank into the subsidiary capital stock savings bank or sell or transfer the assets and liabilities of the organizing mutual savings bank to the subsidiary capital stock savings bank and liquidate the organizing mutual savings bank;

3. Plan 3: The board of directors may apply to form a mutual savings bank holding company by incorporating a subsidiary capital stock savings bank, and by transferring a substantial part of the assets and liabilities of the organizing mutual savings bank to the newly formed subsidiary capital stock savings bank in return for a majority of its capital stock; or

4. Any other method of reorganization approved by the Commissioner.

### 3:13-5.3 Application

(a) The board of directors of an organizing mutual savings bank may apply to form a mutual savings bank holding company by submitting the following to the Commissioner:

1. A description of the proposed formation of the mutual savings bank holding company;

2. A certified copy of the resolution of the board of directors of the organizing mutual savings bank authorizing the application by a  $\frac{2}{3}$  vote of the board;

3. A certificate of incorporation for the mutual savings bank holding company containing:

i. The name by which the mutual savings bank holding company shall be known;

ii. The street, street number, and municipality where the principal office of the mutual savings bank holding company is to be located;

iii. The names and addresses of the directors of the organizing mutual savings bank;

iv. The number of directors of the mutual savings bank holding company;

v. The names of persons who are to act as directors of the mutual savings bank holding company until their successors are elected and qualified;

vi. The amount of capital deposits and surplus which are to be transferred from the organizing mutual savings bank to the mutual savings bank holding company;

vii. A provision allowing for the retention of any interests of the respective depositors of the organizing mutual savings bank in the assets of the organizing mutual savings bank, according to a fair valuation, including assets which are proposed to be transferred from the organizing mutual savings bank to the mutual savings bank holding company; and

viii. A provision providing for the establishment of a liquidation account;

4. Biographical statements for each director of the subsidiary capital stock savings bank and mutual savings bank holding company;

5. A completed form from the New Jersey State Police requesting criminal history record information for each director for the subsidiary capital stock savings bank and mutual savings bank holding company;

6. Proposed by-laws of the subsidiary capital stock savings;

7. A business plan for the mutual savings bank holding company and subsidiary capital stock savings bank;

8. A copy of any applications for establishment of a mutual savings bank holding company filed with any Federal regulator; and

9. An application fee of \$10,000.

(b) Within 60 days after its execution, the directors shall submit a certificate of incorporation for any subsidiary capital stock savings bank setting forth the following:

1. The name by which the subsidiary capital stock savings bank shall be known;

2. The street, street number and municipality in which the principal office of the subsidiary capital stock savings bank is to be located;

3. The names and addresses of the directors of the mutual savings bank holding company who will be the incorporators of the subsidiary capital stock savings bank;

4. The number of directors on the board of directors;

5. The names of the persons who will serve as directors until their successors are elected and qualified;

6. The amount of capital stock, the number or shares into which it is divided, and the par value of each share, not less than a majority of the total outstanding shares of which will be held in the name of the mutual savings bank holding company; and

7. The amount of surplus with which the subsidiary capital stock savings bank will commence business.

(c) Along with the certificate of incorporation, each incorporator of the subsidiary capital stock savings bank shall submit an affidavit setting forth the following:

1. That no fee, commission, or other compensation has been paid, directly or indirectly, by the mutual savings bank holding company or by the subsidiary capital stock savings bank in the course of organizing the subsidiary capital stock savings bank, and that no promotion fees or charges have been provided or are contemplated;

2. A complete disclosure of all fees paid or agreed to be paid in the matter of chartering and organizing the proposed subsidiary capital stock savings bank;

3. That at least a majority of the shares of the authorized stock of the subsidiary capital stock savings bank is held by the mutual savings bank holding company; and

4. That the subsidiary capital stock savings bank proposes to either:

i. Merge with the organizing mutual savings bank;

ii. Purchase the assets of the organizing mutual savings bank; or

iii. Receive the assets and liabilities of the organizing mutual savings bank.

(d) Within 10 days after the date upon which a completed application is filed with the Commissioner, the applicant shall cause to be published a notice of application containing:

1. The name and address of the applicant;

2. A brief statement of the nature of the application; and

3. A statement advising that objections to the application can be filed with the New Jersey Commissioner of Banking, along with the address of the Commissioner.

### 3:13-5.4 Approval of application

(a) The Commission shall approve the application for a mutual savings bank holding company upon a finding of the following factors:

1. The establishment of a mutual savings bank holding company is in the best interests of the depositors of the mutual savings bank;

2. The qualifications, experience and character of the proposed officers and directors of the mutual savings bank holding company are sufficient to result in the successful operation of the mutual savings bank holding company;

3. The interests of the public will be served by the establishment of a mutual savings bank holding company;

4. The mutual savings bank holding company is adequately capitalized; and

5. The establishment of the mutual savings bank holding company meets the requirements of law.

(b) The Commissioner shall approve the charter application of a subsidiary capital stock savings bank filed with an application for a mutual savings bank holding company upon a finding of the following factors:

1. The qualifications, experience and character of the proposed officers and directors of the subsidiary capital stock savings bank are sufficient to result in the successful operation of the subsidiary capital stock savings bank;

2. The interests of the public will be served by the establishment of the subsidiary capital stock savings bank; and

3. The capital stock of the subsidiary capital stock savings bank is in accordance with the amount required for banks pursuant to N.J.S.A. 17:9A-4.

## 3:13-5.5 Board of directors

(a) The board of directors of a mutual savings bank holding company shall be managed by a board of not less than six nor more than 21 directors.

(b) Directors of a mutual savings bank holding company shall be elected by a plurality of the members of the board of the mutual savings bank holding company at the annual meeting for a term of up to three years, as provided in the bylaws.

(c) A vacancy on the board of directors may be filled by a plurality of the members of the board of directors for the remainder of the unexpired term. If the board fails to fill a vacancy for one year, the Commissioner may appoint a member to the board.

(d) Directors of a mutual savings bank holding company may be paid reasonable compensation. The compensation paid to directors shall be fixed by a majority vote of the board. The Commissioner may direct that the amount of compensation paid to directors be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the director, and any other relevant factors, when making this determination.

## 3:13-5.6 Officers

(a) The board of directors of a mutual savings bank holding company at the first meeting following each annual meeting may elect a Chairman of the Board and shall elect a President, both of whom shall be directors. The board of directors shall select the Chairman of the Board, President or another officer who is a director to be the chief executive officer. The board of directors shall also appoint a Secretary and a Treasurer, neither of whom need be directors.

(b) A mutual savings bank holding company may pay its officers any reasonable compensation as may be from time to time fixed by the board of directors. The Commissioner may direct that the amount of compensation paid to officers be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the officer, and any other relevant factors, when making this determination.

## 3:13-5.7 Division of surplus

(a) The board of a mutual savings bank holding company may, by a majority vote of the directors, divide any surplus which is in excess of the amount required for the operations of the mutual savings bank holding company and which is not necessary to maintain the safety and soundness of the mutual savings bank holding company, and may distribute this surplus to the depositors of its subsidiary capital stock savings bank or banks. All such distributions shall be made equitably based on the amount deposited by each depositor in the subsidiary capital stock savings bank or banks.

(b) The Commissioner may, if he or she deems the surplus held by a mutual savings bank holding company to be excessive, either upon petition or on the Commissioner's own initiative, order the savings bank holding company to distribute the surplus to the depositors of its subsidiary capital stock savings bank or banks.

## SUBCHAPTER 3. MUTUAL STATE ASSOCIATION HOLDING COMPANIES

## 3:32-3.1 Definitions

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

"Capital stock state association" means any association chartered pursuant to the provisions of P.L.1974, c.137 (N.J.S.A. 17:12B-244 et seq.).

"Commissioner" means the Commissioner of the Department of Banking.

"Department" means the New Jersey Department of Banking.

"Mutual state association" means a mutual association which has its principal place of business in this State.

"Mutual state association holding company" means a mutual state association holding company which has its principal office of business in this State and which has been formed by a mutual state association pursuant to N.J.S.A. 17:12B-298 through N.J.S.A. 17:12B-318.

"Organizing mutual state association" means a mutual state association which has its principal office or business in this State, the board of directors of which propose to form a mutual state association holding company pursuant to the provisions of this subchapter.

"State association" means any savings and loan association or any corporation, however named, now or hereafter chartered pursuant to P.L.1963, c.144 (N.J.S.A. 17:12B-1 et seq.).

"Subsidiary capital stock state association" means a capital stock state association which has been incorporated by the directors of a mutual state association holding company, a majority of the stock of which subsidiary capital stock state association is held by a mutual state association holding company.

## 3:32-3.2 Formation of mutual state association holding company

(a) The board of directors of an organizing mutual state association may apply to the Commissioner to form a mutual state association holding company in any of the following ways:

1. Plan 1: The board of directors may apply to incorporate a mutual state association holding company, transfer a portion of the organizing mutual state association's assets to the mutual state association holding company, and then convert the organizing mutual state association to a capital stock state association;

2. Plan 2: The board of directors may apply to incorporate a mutual state association holding company, form a subsidiary capital stock state association, and either merge the organizing mutual state association into the capital stock state association or sell or transfer the assets and liabilities of the organizing mutual state association to the capital stock state association and liquidate the organizing mutual state association;

3. Plan 3: The board of directors may apply to form a mutual state association holding company by incorporating a subsidiary capital stock state association, and by transferring a substantial part of the assets and liabilities of the organizing mutual state association to the newly formed capital stock state association in return for a majority of its capital stock; or

4. Any other method of reorganization approved by the Commissioner.

## 3:32-3.3 Application

(a) The board of directors of an organizing mutual state association may apply to form a mutual state association holding company by submitting the following to the Commissioner:

1. A description of the proposed formation of the mutual state association holding company;

2. A certified copy of the resolution of the board of directors of the organizing mutual state association authorizing the application by a  $\frac{2}{3}$  vote of the board.

3. A certificate of incorporation for the mutual state association holding company containing:

i. The name by which the mutual state association holding company shall be known;

ii. The street, street number, and municipality where the principal office of the mutual state association holding company is to be located;

iii. The names and addresses of the directors of the organizing mutual state association;

iv. The number of directors of the mutual state association holding company;

v. The names of persons who are to act as directors of the mutual state association holding company, until their successors are elected and qualified;

vi. The amount of capital deposits and surplus which are to be transferred from the organizing mutual state association to the mutual state association holding company;

vii. A provision allowing for the retention of any interests of the respective depositors of the organizing mutual state association in the assets of the organizing mutual state association, according to a fair valuation, including assets which are proposed to be transferred from the organizing mutual state association to the mutual state association holding company; and

viii. A provision providing for the establishment of a liquidation account;

4. Biographical statements for each director of the subsidiary capital stock state association and mutual state association holding company;

5. A completed form from the New Jersey State Police requesting criminal history record information for each director of the subsidiary capital stock state association and mutual state association holding company;

6. Proposed by-laws of the subsidiary capital stock state association and mutual state association holding company;

7. A business plan for the subsidiary capital stock state association and mutual state association holding company;

8. A copy of any applications for establishment of a mutual state association holding company filed with any Federal regulator; and

9. An application fee of \$10,000.

(b) Within 60 days after its execution, the directors shall submit a certificate of incorporation for any subsidiary capital stock state association setting forth the following:

1. The name by which the subsidiary capital stock state association shall be known;

2. The street, street number and municipality in which the principal office of the subsidiary capital stock state association is to be located;

3. The names and addresses of the directors of the mutual state association holding company who will be the incorporators of the subsidiary capital stock state association;

4. The number of directors on the board of directors;

5. The names of the persons who will serve as directors until their successors are elected and qualified;

6. The amount of capital stock, the number or shares into which it is divided, and the par value of each share, not less than a majority of the total outstanding shares of which will be held in the name of the mutual state association holding company; and

7. The amount of surplus with which the subsidiary capital stock state association will commence business.

(c) Along with the certificate of incorporation, each incorporator of the subsidiary capital stock state association bank shall submit an affidavit setting forth the following:

1. That no fee, commission, or other compensation has been paid, directly or indirectly, by the mutual state association holding company or by the subsidiary capital stock state association in the course of organizing the subsidiary capital stock state association, and that no promotion fees or charges have been provided or are contemplated;

2. A complete disclosure of all fees paid or agree to be paid in the matter of chartering and organizing the proposed subsidiary capital stock state association;

3. That at least a majority of the shares of the authorized stock of the subsidiary capital stock state association is held by the mutual state association holding company; and

4. That the subsidiary capital stock state association proposes to either:

i. Merge with the organizing mutual state association;

ii. Purchase the assets of the organizing mutual state association; or

iii. Receive the assets and liabilities of the organizing mutual state association.

(d) Within 10 days after the date upon which a completed application is filed with the Commissioner, the applicant shall cause to be published a notice of application containing:

1. The name and address of the applicant;

2. A brief statement of the nature of the application; and

3. A statement advising that objections to the application can be filed with the New Jersey Commissioner of Banking, along with the address of the Commissioner.

#### 3:32-3.4 Approval of application

(a) The Commissioner shall approve the application for a mutual state association holding company upon a finding of the following factors:

1. The establishment of a mutual state association holding company is in the best interests of the depositors of the mutual state association;

2. The qualifications, experience and character of the proposed officers and directors of the mutual state association holding company are sufficient to result in the successful operation of the mutual state association holding company;

3. The interests of the public will be served by the establishment of a mutual state association holding company;

4. The mutual state association holding company is adequately capitalized; and

5. The establishment of the mutual state association holding company meets the requirements of law.

(b) The Commissioner shall approve the charter application of a subsidiary capital stock state association filed with an application for a mutual state association holding company upon a finding of the following factors:

1. The qualifications, experience and character of the proposed officers and directors of the subsidiary capital stock state association are sufficient to result in the successful operation of the subsidiary capital stock state association;

2. The interests of the public will be served by the establishment of the subsidiary capital stock state association; and

3. The capital stock of the subsidiary capital stock state association is in accordance with the amount required for state associations pursuant to N.J.S.A. 17:12B-248.

#### 3:32-3.5 Board of directors

(a) The board of directors of a mutual state association holding company shall be managed by a board of not less than six nor more than 21 directors.

(b) Directors of a mutual state association holding company shall be elected by a plurality of the members of the board of the mutual association holding company at the annual meeting for a term of up to three years, as provided in the bylaws.

(c) A vacancy on the board of directors may be filled by a plurality of the members of the board of directors for the remainder of the unexpired term. If the board fails to fill a vacancy for one year, the Commissioner may appoint a member to the board.

(d) Directors of a mutual association holding company may be paid reasonable compensation. The compensation paid to directors shall be fixed by a majority vote of the board. The Commissioner may direct that the amount of compensation paid to directors be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the director, and any other relevant factors, when making this determination.

#### 3:32-3.6 Officers

(a) The board of directors of a mutual state association holding company at the first meeting following each annual meeting may elect a Chairman of the Board and shall elect a President, both of whom shall be directors. The board of directors shall select the Chairman of the Board, President or another officer who is a director to be the chief executive officer, and may elect a Secretary and a Treasurer, neither of whom need be directors.

(b) A mutual state association holding company may pay its officers any reasonable compensation as may be from time to time fixed by the board of directors. The Commissioner may direct that the amount of compensation paid to officers be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the officer, and any other relevant factors, when making this determination.

#### 3:32-3.7 Division of surplus

(a) The board of a mutual state association holding company may, by a majority vote of the directors, divide any surplus which is in excess of the amount required for the operations of the mutual state association holding company and which is not necessary to maintain the safety and soundness of the mutual state association holding company, and may distribute this surplus to the depositors of its subsidiary capital stock state association or associations. All such distributions shall be made equitably based on the amount deposited by each depositor in the mutual state association or associations.

(b) The Commissioner may, if he or she deems the surplus held by a mutual state association holding company to be excessive, either

upon petition or on the Commissioner's own initiative, order the state association holding company to distribute the surplus to the depositors of the subsidiary capital stock state association or associations.

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ACCOUNTANCY

#### Applications for Original Examination and for Reexamination

#### Proposed Amendment: N.J.A.C. 13:29-1.6 and 1.7

Authorized By: Board of Accountancy, Jay Church, Executive Director.

Authority: N.J.S.A. 45:28-1.

Proposal Number: PRN 1994-153.

Submit written comments by April 6, 1994 to:

Jay Church, Executive Director  
State Board of Accountancy  
Post Office Box 45000  
Newark, New Jersey 07101

The agency proposal follows:

#### Summary

The State Board of Accountancy is proposing an amendment to N.J.A.C. 13:29-1.6, Applications for original examination, and N.J.A.C. 13:29-1.7, Applications for reexamination; conditional credit. The amendment to N.J.A.C. 13:29-1.6 is proposed in order to update the subjects in which a candidate for licensure may sit for examination. The amendment to N.J.A.C. 13:29-1.7 is proposed in order to clarify the question of which sections a candidate shall receive conditional credit for as part of the reexamination process.

Except as more specifically set forth below, amended N.J.A.C. 13:29-1.7 details existing Board administrative procedures with only minor editorial revisions made for the sake of clarity. One substantive change is that proposed new N.J.A.C. 13:29-1.7(b)2 updates the current provision to account for the change from an examination with five sections to an examination with only four sections. The same provision also creates the standard calling for an average of at least 50 on sections not passed. Proposed new N.J.A.C. 13:29-1.7(b)3 updates the current provision by reiterating the standard calling for a grade of at least 50 on a section not passed. Proposed new N.J.A.C. 13:29-1.7(b)4 creates a grandfathering clause for candidates who received conditional credit for accounting practice alone prior to 1994.

#### Social Impact

The proposed amendments will only affect applicants for licensure. The licensing process itself enables only qualified individuals to serve the public, thus protecting health and welfare.

#### Economic Impact

Only individuals seeking licensure will be affected by these proposed amendments, which are premised on the following two changes from current policy requirements: the examination has been restructured from five to four sections; and a standard has been created calling for an average of at least 50 on sections not passed. Only the second of these changes will have any conceivable economic impact on candidates for licensure and then only in that candidates will be held to a standard that may necessitate an increase in the number of instances in which they sit for the examination.

#### Regulatory Flexibility Analysis

The proposed amendments will only affect individual applicants, rather than small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; no regulatory flexibility analysis is, therefore, necessary.

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

13:29-1.6 Applications for original examination

(a) (No change.)

(b) An applicant for examination for the Certified Public Accountant's certificate who meets the requirements of (a) above to the Board's satisfaction shall be granted admission to sit for the examination in [theory of accounts, accounting practice, commercial law] **financial accounting and reporting business enterprises (previously theory of accounts); accounting and reporting-taxation, managerial, and governmental and not for profit organizations (previously accounting practice); business law and professional responsibilities (previously commercial law); and auditing.**

13:29-1.7 Applications for reexamination; **conditional credit**

(a) Applications for reexamination shall be allowed as follows in (b) below, and all fees [must] **shall** be paid by check or money order.

(b) Rules on conditional credit are as follows:

[1. A candidate will be required to attain a grade of not less than 75 in each subject before he or she will be declared to have passed the examination.

2. A candidate who fails to pass all subjects, but who receives a passing grade of 75 or more in two or more subjects, or in accounting practice alone, shall receive conditional credit for each subject passed.

3. To add to conditional status, the candidate must attain a grade of 75 or more in the subjects passed.

4. In the event that a candidate fails to qualify in all examined subjects in accordance with (b)2 and 3 above during the 10 examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant at the next succeeding examination for which he or she sits, and shall be required to write the entire examination therefor.]

**1. A candidate who takes the examination for the first time shall be required to take all four sections. On reexamination, the candidate shall be required to take all sections for which he or she has not yet received a passing grade of 75.**

**2. The candidate who receives a passing grade of 75 or more in at least two of the four sections shall be granted conditional credit provided that the candidate also attains an average grade of 50 on those section(s) not passed.**

**3. To add to conditional credit pursuant to (b)2 above, the candidate shall attain a grade of 75 or more in the section(s) passed and a grade of 50 on the section not passed.**

**4. A candidate who received conditional credit for accounting practice alone prior to 1994 shall be granted conditional credit for passing an additional section provided that the candidate also attains an average score of 50 on the two remaining sections not passed.**

**5. In the event that a candidate fails to successfully complete the examination during the 10 examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant, and shall be required to take all four sections of the examination.**

[5.]6. (No change in text.)

[6. At every sitting, the candidate must sit for all subjects for which he or she has not yet received a passing grade. The failure of a candidate to submit a paper for any subject of an examination not yet passed will disqualify all papers submitted by that candidate at that examination unless the Board, in its discretion, finds good cause not to disqualify the papers submitted.

7. The conditional credit provided for in this rule shall be deemed to have commenced with the examination administered in May 1991.]

[8.]7. (No change in text.)

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF EXAMINERS OF ELECTRICAL  
CONTRACTORS**

**Examinations**

**Proposed Amendment: N.J.A.C. 13:31-1.3**

Authorized By: Board of Examiners of Electrical Contractors,  
Edward O'Hara, Chairman.

Authority: N.J.S.A. 45:5B-1.

Proposal Number: PRN 1994-152.

Submit written comments by April 6, 1994 to:  
Christine DeGregorio, Executive Director  
State Board of Examiners of Electrical Contractors  
Post Office Box 45006  
Newark, New Jersey 07101

The agency proposal follows:

**Summary**

In order to codify current Board practice, the Board is proposing to change the Multistate Electrical Licensing Test (MELT), specified in its regulations, to the National Electrical Contractor Licensing Examination. The latter was developed by the National Assessment Institute (NAI) of College Park, Maryland. It has been administered to candidates for licensure in New Jersey since 1989, the year in which the Board approved the NAI as its testing service.

**Social Impact**

In adopting the NAI as its testing service, the Board provided licensees with a beneficial change because the scoring system used by the NAI is point-by-point, as opposed to the scaled down system used by MELT, and as such the NAI system is more readily comprehensible to licensees.

**Economic Impact**

The change in testing service had no economic impact at the time that it was implemented because the fees of MELT and NAI were identical. Since that time, the Board had adopted a two-part examination structure and has reviewed and renewed its NAI contract on the biennial basis.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required, since the amendment concerns an examination taken by candidates for licensure, who cannot yet be classified as small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

13:31-1.3 Examinations

(a) The Board examination shall be the [Multistate Electrical Licensing Test (MELT)] **National Electrical Contractor Licensing Examination** developed by the [Educational Testing Service, Princeton, New Jersey] **National Assessment Institute of College Park, Maryland**.

(b) An applicant must obtain a passing grade on the [MELT examination] **National Electrical Contractor Licensing Examination**. Any applicant who fails to pass the Board examination shall not be eligible to retake the examination for six months from the date of such failure.

(b)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF EXAMINERS OF ELECTRICAL  
CONTRACTORS**

**Identification of Licensees and Permittees**

**Proposed Amendments: N.J.A.C. 13:31-1.9**

Authorized By: Board of Examiners of Electrical Contractors,  
Edward O'Hara, Chairman.

Authority: N.J.S.A. 45:5B-1.

Proposal Number: PRN 1994-155.

Submit written comments by April 6, 1994 to:  
Christine DeGregorio, Executive Director  
State Board of Examiners of Electrical Contractors  
Post Office Box 45006  
Newark, N.J. 07101

The agency proposal follows:

**Summary**

The Board of Examiners of Electrical Contractors is proposing to amend its rule on signs for vehicles used in the course of rendering electrical services, in order to ensure visible identification of proper licensure even when a non-commercial vehicle is involved, such as a private automobile. The new wording broadens the coverage of the sign requirement from the present "commercial vehicles" to the more general "vehicles utilized for the installation or repair of electrical equipment." The change is needed because a number of unlicensed individuals, using a variety of vehicles, have been found to be doing electrical work. Since they may not meet the standards of competence and expertise reflected by possession of a license, the work of these fly-by-night persons is not only unlawful but may also result in grave hazard to consumers.

Also, under the proposed amendment, the company name must appear on the sign, along with the license number and the business permit number, in order to provide consumers with full information and the reassurance that they are dealing with easily identifiable, properly licensed professionals.

**Social Impact**

In expanding the sign rule from coverage of commercial vehicles only to coverage of any vehicle used for the provision of electrical services, the proposed amendment makes possible the instant identification of a properly-licensed electrician upon arrival in any kind of vehicle, including a private automobile. The change thereby increases consumer protection against possibly faulty electrical work done by unlicensed personnel, with resulting danger to health and safety. The public is similarly served by the new requirement of the company name on the vehicle sign, which will make identification easier and more readily remembered than the license and permit numbers alone.

The Board will also benefit because the lack of a sign on a vehicle being used for electrical work will facilitate enforcement actions against unlicensed persons.

**Economic Impact**

For those licensed electricians who use a non-commercial vehicle, such as a private car or van, for work, the amendment creates the expense of a sign to be attached permanently or temporarily to the vehicle. The Board estimates that such a sign, which is likely to be magnetic and detachable, will cost about \$45.00. Also, if an existing sign does not contain the electrical company's name as well as its license and permit numbers, expenditure will be necessary for that addition. These costs must be weighed against the economic benefit to consumers of the proposed change, in that electrical work by unlicensed individuals is expected to be lessened, thus avoiding the possibility of substandard work that may later have to be professionally corrected, at extra expense.

**Regulatory Flexibility Analysis**

The Board of Examiners of Electrical Contractors has approximately 16,000 licensees and permittees, virtually all of them small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment does not entail reporting or recordkeeping but does mandate compliance with requirements for a vehicle sign, no matter what type of vehicle is used for work. The services of a sign-painter or, more likely, a supplier of removable magnetic signs, will be needed in order to comply, at a cost of approximately \$45.00. After that initial expense, there are no annual costs for compliance. The rule minimizes adverse impact on small businesses by strengthening the competitive position of legitimately licensed electricians and firms against unlicensed persons, whose activities—which may result in shoddy and dangerous installations—are expected to be reduced by the new requirements. No licensees or permittees can be exempted from the compliance requirements without negating the effect of the rule.

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

13:31-1.9 Identification of licensees and permittees

(a) All [commercial vehicles used in connection with the business of electrical contracting] **vehicles utilized for the installation or**

repair of electrical equipment shall be visibly marked with the company name, the license number and the business permit number.

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

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS**

**Minimum Eye Examination; Contact Lens  
Proposed Amendment: N.J.A.C. 13:35-5.1**

Authorized By: New Jersey State Board of Medical Examiners,  
Charles A. Janousek, Executive Director.

Authority: N.J.S.A. 45:9-2 and 52:17B-41.31.

Proposal Number: PRN 1994-156.

Submit written comments by April 6, 1994 to:

Charles A. Janousek  
Executive Director  
New Jersey State Board of Medical Examiners  
28 West State Street  
Trenton, New Jersey 08608

The agency proposal follows:

**Summary**

Pursuant to P.L. 1991, c.441, the Legislature enacted a statute governing the dispensing of contact lenses. Specifically at N.J.S.A. 52:17B-41.31, it required that the complete record of a contact lens specification be released directly to a patient upon request. The Board's current rule, N.J.A.C. 13:35-5.1, contemplated a release of specifications to licensed health care providers pursuant to a patient request. Thus, this amendment brings the regulation in conformity with the statute. The amendment does add a requirement that the physician provide a warning to the patient to assure that the patient is aware that the contact lens specification ought not to be relied upon if it is more than a year old. Over time the eyes may change and it is medically inappropriate to use a specification based on measurements which are more than a year old. This will allow the patient the freedom of choice that the Legislature intended, while assuring that the patient will be aware of the risks involved in relying upon an out of date contact lens specification.

**Social Impact**

Since this amendment merely reflects the reform enacted by the Legislature, it should have little social impact. The warning to be provided will serve to protect patients who may be unaware of the time limited nature of contact lens specifications.

**Economic Impact**

Again, since this measure has already been in place now for two years, there is no discernible economic impact that will be derived from this regulation. This amendment merely attempts to provide uniform guidance to licensees. The extra cost of providing the warning is considered by the Board to be negligible, and clearly outweighed by the benefit in assuring that patients obtain contact lenses that fit properly and will not cause harm to their eyes.

**Regulatory Flexibility Analysis**

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physicians are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The Board of Medical Examiners currently registers approximately 30,000 physicians. The proposed amendment will apply to those physicians who practice in the field of ophthalmology. No figures are readily available to reflect how many licensees practice in the field of ophthalmology. While the primary purpose underlying this amendment is to assure that patients are provided access to contact lens specifications and are apprised of the practical problems associated with those specifications, this amendment would impose some new compliance requirements. Specifically, ophthalmologists providing the contact lens specification to the patient would need to provide a written warning which would put the patient on notice that the contact lens specification ought to be used within one year of the eye examination. It is not anticipated that any professional services would need to be involved in providing this notice; office staff need only insert the date of the examination. Since all that is contemplated is the presentation of the warning,

the costs associated both initially and in terms of continuing compliance are minimal. The Board does not anticipate that recourse to any other providers of professional services will be needed in order to satisfy this proposed requirement. The Board believes that the proposed requirement and any nominal expenses associated with it are well justified in view of its usefulness. Because the proposed amendment imposes conditions upon individual practice, the amendment must be uniformly applicable to all licensees who issue contact lens specifications without differentiation as to size and practice. As a practical matter, however, this amendment will only apply to practicing ophthalmologists.

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

13:35-5.1 Minimum eye examination; contact lenses

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

(c) The complete record of contact lens specifications, with the date on which the measurements were made, shall be released by an ophthalmologist to the patient or to another ophthalmologist, optometrist or ophthalmic dispenser licensed in New Jersey upon either the oral or written request of the patient or the professional writing on the patient's behalf. **If the ophthalmologist releases the contact lens specification directly to the patient, a written warning shall also be provided, which shall read as follows:**

**You should be aware that the health and physical measurements of your eyes may change over time. If you wish to obtain new lenses and it has been more than one year since the date of your last eye examination [INSERT DATE], you should have your eyes reexamined and measured by your eye doctor to determine the extent to which such changes may have occurred.**

(b)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS**

**Advertising—Testimonials**

**Proposed Amendment: N.J.A.C. 13:35-6.10**

Authorized By: Board of Medical Examiners, Fred Jacobs, M.D.,  
J.D., President.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1994-157.

Submit written comments by April 6, 1994 to:

Charles A. Janousek  
Executive Director  
New Jersey State Board of Medical Examiners  
140 E. Front St., 2nd Floor  
Trenton, NJ 08608

The agency proposal follows:

**Summary**

The New Jersey State Board of Medical Examiners is proposing amendments to N.J.A.C. 13:35-6.10(n), regarding advertising and solicitation practices, which sets forth the requirements for testimonial advertisements. The proposed amendments consist of revisions to two of the three existing subparagraphs of this subsection. The third subparagraph will, for the sake of clarity, be deleted in favor of creating a new, second paragraph. The existing second and third paragraphs will be respectively recodified as paragraphs (n)3 and 4. Together, these changes will supply a particular statement that must be conspicuously displayed as part of a testimonial advertisement involving a specific or identifiable procedure that truthfully reflects the actual experience of the patient.

In the first and second subparagraphs, the phrase "or words to the same effect" is to be removed. The Board has found that when licensees create alternative wording, such wording may not adhere to the requirements for testimonial advertisements. The leeway created by allowing licensees to create alternative wording has led to interpretative disputes regarding whether the licensee's alternative wording is manipulative in nature and does not actually provide the information offered in the Board's approved statements. Therefore, the amendment provides that all licensees of the Board will henceforth use precisely worded statements mandated by the Board whenever they rely on testimonial advertisements.

In the new second paragraph, the substitute wording is provided which requires a simple statement disclosing the fact of compensation. What was once a requirement to disclose the terms of compensation, in wording chosen by the licensees, will be changed to a requirement to disclose the fact of compensation for a testimonial in accordance with a specifically worded format. This amendment has been made in order to bring the Medical Board's requirements for disclosure into conformity with the disclosure requirements adopted by the Board of Optometry and the Board of Dentistry.

#### Social Impact

Given the factual distortions that have sometimes resulted from the Board's allowing licensees to create testimonial statements with wording of their own choice, the proposed amendments in the first and second subparagraphs should be entirely beneficial to consumers who stand to be better protected against misleading advertising. Eliminating the option of "words to the same effect" will prevent licensees from intentionally or unintentionally creating testimonial statements that may not actually convey a message which is to the same effect.

The amendments deleting the existing third subparagraph in favor of the new second paragraph are intended to be beneficial to consumers in that they create a specifically worded format to be used by licensees to inform the public of the fact of direct or indirect compensation received by or on behalf of the person delivering the testimonial. The adoption of a standard already in existence for optometrists and dentists will allow doctors to avoid the discrimination of having to meet a higher standard regarding the disclosure of a specific amount and type of compensation for a testimonial advertisement, and will do so without depriving consumers of significant information by which to judge the validity of such an advertisement since they will nevertheless be aware of the fact that compensation was provided to the testimonial giver.

#### Economic Impact

The proposed amendments are likely to have an economic impact on the public in that consumers should be better protected against misleading testimonial advertising that causes them to purchase medical services that they might not otherwise utilize or which might be better purchased elsewhere. The proposed amendments should be economically beneficial to licensees as well, for they will no longer be at risk of creating alternative wording that the Board will subsequently deem to be not to the "same effect." There will be no new or additional costs to licensees as they are currently required to provide for similar statements in their advertising; this amendment merely requires that specific wording will be utilized. The amendment removing the previous, more expansive disclosure requirement will have no economic impact.

#### Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physicians are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendments, which govern testimonial advertisements, will apply to all of the approximately 29,800 plenary licensed physicians (M.D. and D.O.) as well as podiatrists and other licensees of the Board of Medical Examiners. No reporting or recordkeeping is required, nor do the amendments require initial capital costs or the retention of professional services or any other costs of compliance. The only compliance requirement is adherence to the proposed amendments.

The Board considers these amendments to be reasonable and to be the minimum, necessary for the protection of the public health, safety and welfare. Thus, the proposed amendments must be uniformly applied to all licensees without differentiation as to size of practice.

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

13:35-6.10 Advertising and solicitation practices

(a)-(m) (No change.)

(n) The requirements for testimonial advertisements are as follows:

1. All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the patient and shall include the following conspicuously displayed statements:

i. "This procedure may not be suitable for every patient. All patients must be evaluated by a physician as to the appropriateness of performing the procedure." [or words to the same effect.]

ii. "The above testimonial represents the individual's response and reaction to the procedure; however, no medical procedure is risk-

free. Associated potential risks and complications should be discussed with the physician rendering this procedure." [or words to the same effect.]

[iii. Any compensation, direct or indirect, received by or on behalf of a person giving a testimonial shall be disclosed by specifying the type of compensation and amount or value of compensation in the testimonial advertisement.]

**2. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."**

Recodify existing 2 and 3 as 3 and 4 (No change in text.)

(o) (No change.)

(a)

### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF OPTOMETRISTS

#### Availability of Records

#### Proposed Amendment: N.J.A.C. 13:38-6.1

Authorized By: Board of Optometrists, Barry Schneider, President.

Authority: N.J.S.A. 45:12-4.

Proposal Number: PRN 1994-158.

Submit written comments by April 6, 1994 to:

Susan Gartland  
Executive Director  
Board of Optometrists  
P.O. Box 45012  
Newark, New Jersey 07101

The agency proposal follows:

#### Summary

Pursuant to P.L. 1991, c.441, the Legislature enacted a statute governing the dispensing of contact lenses. Specifically at N.J.S.A. 52:17B-41.31, it required that the complete record of a contact lens specification be released directly to a patient upon request. Prior to this proposed amendment, N.J.A.C. 13:38-6.1 required that every optometrist practicing in this State keep a record of examinations made and prescriptions issued and that the name of the person dispensing contact lenses to the consumer/patient be indicated on the patient record. In its current form, however, N.J.A.C. 13:38-6.1 does not contemplate that a contact lens specification may be directly released to a patient.

This proposed amendment brings the rule in conformity with N.J.S.A. 52:17B-41.31. The amendment does add a requirement that the optometrist provide a warning to the patient to assure that the patient is aware that the contact lens specification should not be relied upon if it is more than one year old. This requirement reflects the fact that, over time, a person's eyes may change and it is inappropriate to use a specification based on evaluations and measurements which are more than one year old. This requirement will allow the patient the freedom of choice that the Legislature intended, while assuring that the patient will be aware of the risks involved in relying upon an out of date contact lens specification.

#### Social Impact

The amendment implements the statutory policies embodied within N.J.S.A. 52:17B-41.30 and 52:17B-41.31, providing for access to a patient's optometric records. The warning to be provided will serve to protect patients who may be unaware of the time-limited nature of contact lens specifications.

#### Economic Impact

Since the statutory provisions that the amendment implements have been in place for two years, there is no discernible economic impact that will be derived from this amendment. This amendment merely attempts to provide uniform guidance to licensees. The extra cost of providing the warning is considered by the Board to be negligible, and clearly outweighed by the benefit in assuring that patients obtain contact lenses that fit properly and will not cause harm to their eyes.

**Regulatory Flexibility Analysis**

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., optometrists are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The Board of Optometrists currently registers approximately 2,100 licensees to whom this proposed amendment will be applicable. While the primary purpose underlying this amendment is to assure that patients are provided access to contact lens specifications and are apprised of the practical problems associated with those specifications, this amendment would impose some new compliance requirements. Specifically, optometrists providing the contact lens specification to the patient would need to provide a written warning which would put the patient on notice that the contact lens specification ought to be used within one year of the eye examination. It is not anticipated that any professional services would need to be involved in providing this notice; office staff need only insert the date of the examination. Since all that is contemplated is the presentation of the warning, the costs associated both initially and in terms of continuing compliance are minimal. The Board does not anticipate that recourse to any other providers of professional services will be needed in order to satisfy this proposed requirement. The Board believes that the proposed requirement and any nominal expenses associated with it are well justified in view of its usefulness. Because the proposed amendment imposes conditions upon individual practice, it must be uniformly applicable to all licensees who issue contact lens specifications without differentiation as to size of practice.

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

## 13:38-6.1 Availability of records

(a) (No change.)

(b) The complete record of the contact lens specifications, **with the date on which the measurements were made**, shall be released by an optometrist to the patient or to another optometrist, ophthalmologist or ophthalmic dispenser licensed in New Jersey upon either the oral or written request of the patient or the professional writing on the patient's behalf. **If the optometrist releases the contact lens specification directly to the patient, a written warning shall also be provided, which shall read as follows:**

**You should be aware that the health and physical measurements of your eyes may change over time. If you wish to obtain new lenses and it has been more than one year since the date of your last eye examination [INSERT DATE], you should have your eyes reexamined and measured by your eye doctor to determine the extent to which such changes may have occurred.**

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

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARDS OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS, ARCHITECTS, AND  
PROFESSIONAL PLANNERS**

**Depiction of Existing Conditions on a Site Plan****Proposed Amendments: N.J.A.C. 13:27-6.2, 13:40-7.2 and 13:41-4.2**

Authorized By: Board of Professional Engineers and Land Surveyors, Arthur Russo, Executive Director; Board of Architects, Charles A. Spitz, President; and Board of Professional Planners, Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:8-27 et seq.; 45:3-3 and 7 and 45:1-3.2; and 45:14A-4.

Proposal Number: PRN 1994-130.

Submit written comments by April 6, 1994 to:

Arthur Russo, Executive Director  
State Board of Professional Engineers & Land Surveyors  
Post Office Box 45015  
Newark, New Jersey 07101

The agencies proposal follows:

**Summary**

Three boards—the Board of Professional Engineers and Land Surveyors, the Board of Architects, and the Board of Professional Planners—are proposing parallel amendments to rules that govern the depiction of existing conditions on a site plan. The identical amendments are the result of interdisciplinary meetings between representatives from the boards whose licensees will be affected by the amendments. The proposed changes in the existing rules are twofold: first, a substitution in terminology such that "transferred" would replace "transposed" as the verb describing the relocation of survey information to a site plan; second, a signed and sealed survey would necessarily be submitted to the reviewing governmental body as part of the site plan submission.

The first change is sought in order to avoid the inference that the transposing of survey information might allow for changes in the relative position, order or sequence of such information. The first change is merely grammatical in nature, intended as it is to clarify the fact that the transferred survey information shall remain unchanged except for the physical change of its conveyance from one document to another. The second proposed change is sought based on an omission in the current rules regarding depiction of existing conditions on a site plan. The rules of all three boards state that survey information may be transposed to the site plan if duly noted as to the date of the survey, by whom, and for whom. However, N.J.S.A. 45:8-45 requires that a governmental agency shall not "receive or file any plan involving land surveying unless there is affixed thereto the seal of a land surveyor licensed pursuant to this chapter." Thus these amendments aim to remedy the failure to require a seal on a site plan on which survey information has been transposed, and would do so by requiring submission of a signed and sealed copy of the survey.

**Social Impact**

Given the fact that the identical proposed amendments have been crafted in response to an existing statutory requirement, the amendments are not likely to have any social impact on the public at large. Meanwhile, the amendments will ensure that licensees are aware of their need to comply with N.J.S.A. 45:8-45, for the amendments mandate that a signed and sealed survey accompanies the submission of a site plan to the reviewing governmental body.

**Economic Impact**

The proposed amendments are not expected to have an economic impact either on consumers or licensees, except to the almost negligible extent that licensees may need to dedicate some time to ensure that a signed and sealed copy of the survey is submitted to the reviewing governmental body with the site plan submission.

**Regulatory Flexibility Analysis**

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., licensees of the three boards affected by these proposed amendments are deemed "small businesses," then within the meaning of the statute the following statement is applicable:

The proposed amendments will apply to all licensees of the Board of Professional Engineers and Land Surveyors, the Board of Architects, and the Board of Professional Planners. The amendments do contain both reporting and recordkeeping requirements. The reporting requirement is that a signed and sealed survey must be submitted to the reviewing governmental body with the site plan submission. The recordkeeping requirement exists in that licensees must be sure to have on hand a signed and sealed copy of the survey. No initial capital costs, costs for professional services or other costs of compliance are anticipated.

The relevant Boards consider these amendments to be reasonable and to be the minimum necessary in order to be in compliance with N.J.S.A. 45:8-45. Thus the amendments must be uniformly applied to all licensees without differentiation as to size of practice.

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

## 13:27-6.2 Depiction of existing conditions on a site plan

(a) Survey: Showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be [transposed] **transferred** to the site plan if duly noted as to the date of the survey, by whom, and for

whom. A signed and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission.

(b) (No change.)

13:40-7.2 Depiction of existing conditions on a site plan

(a) Survey: Showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be [transposed] transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. A signed and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission.

(b) (No change.)

13:41-4.2 Depiction of existing conditions on a site plan

(a) Survey: showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be [transposed] transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. A signed and sealed copy of the survey must be submitted to the reviewing governmental body with the site plan submission.

(b) (No change.)

## INSURANCE

(a)

### DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

**Notice of Extension of Comment Periods  
Obligations of Licensees to the Public and to Each  
Other; Advertising Rules**

**Prelicensure Schools and Real Estate Instructors;  
Requirements**

**Collection of Social Security Numbers of Licensees  
Commission Records Open to Public Inspection;**

**Investigative Files Not Open to the Public  
Applications for Temporary Suspension**

**Proposed Amendments: N.J.A.C. 11:5-1.15 and 1.23,  
1.28, 1.44, 2.5 and 4.9**

Take notice that the New Jersey Real Estate Commission is extending the public comment period for the above-referenced five notices of proposal, published in the February 7, 1994 New Jersey Register at 26 N.J.R. 729(a), 730(a), 735(a), 736(a) and 737(a) until March 25, 1994.

Submit written comments by March 25, 1994 to:

Robert J. Melillo  
Special Assistant to the Director  
New Jersey Real Estate Commission  
CN-328  
Trenton, New Jersey 08625-0328

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

(a)

### OFFICE OF ADMINISTRATIVE LAW

#### Special Hearing Rules

#### Division of Consumer Affairs

#### Lemon Law Hearings

#### Readoption with Amendments: N.J.A.C. 1:13A

Proposed: December 6, 1993 at 25 N.J.R. 5387(a).

Adopted: February 2, 1994 by Jaynee LaVecchia, Director,  
Office of Administrative Law.

Filed: February 3, 1994 as R.1994 d.107, **without change**.

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

Effective Date: February 3, 1994, Readoption;  
March 7, 1994, Amendment.

Expiration Date: February 3, 1999.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 1:13A.

**Full text** of the adopted amendment follows:

#### 1:13A-11.1 Subpoenas

(a) Subpoenas may be issued by the Clerk of the OAL or a judge or *pro se* parties, attorneys-at-law or non-lawyer representatives, if any, in the name of the Clerk to compel the attendance of a person to testify or to produce books, papers, documents or other objects at a hearing.

(b) (No change.)

## AGRICULTURE

(b)

### DIVISION OF ANIMAL HEALTH

#### Disease Control Program

#### Adopted New Rules: N.J.A.C. 2:2

Proposed: December 6, 1993 at 25 N.J.R. 5387(b).

Adopted: January 18, 1994 by Arthur R. Brown, Jr., Secretary,  
Department of Agriculture, and the State Board of  
Agriculture.

Filed: February 4, 1994 as R.1994 d.108, **without change**.

Authority: N.J.S.A. 4:5-1 et seq.

Effective Date: March 7, 1994.

Expiration Date: March 7, 1999.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

On January 17, 1994 the rules at N.J.A.C. 2:2, Disease Control Program, expired pursuant to Executive Order No. 66(1978). However, the rules have been proposed for readoption and were filed for adoption with the Office of Administrative Law on February 4, 1994. In accordance with N.J.A.C. 1:30-4.4(f), they are published as new rules with an effective date, the date of publication, March 7, 1994.

**Full text** of the rules adopted as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 2:2.

## BANKING

(c)

### DIVISION OF REGULATORY AFFAIRS

#### Bank Service Corporations

#### Adopted New Rules: N.J.A.C. 3:14

Proposed: January 3, 1994 at 26 N.J.R. 3(b).

Adopted: February 10, 1994 by Jeff Connor, Commissioner,  
Department of Banking.

Filed: February 10, 1994 as R.1994 d.117 **without change**.

Authority: N.J.S.A. 17:1-8.1 and 17:9A-24.4.

Effective Date: March 7, 1994.

Expiration Date: March 7, 1999.

#### Summary of Public Comments and Agency Responses:

The Board received a comment from Robert A. Gunther, Senior Vice President and Associate Counsel for UJB Financial Corp.

COMMENT: The commenter suggested that language be added at the end of new N.J.A.C. 3:14-1.3(a)2ii, (a)3ii and (a)4ii which would require the Commissioner to request any additional information no later than 30 days after receipt of the application in the case of the first two subparagraphs, and no later than 45 days in the case of the last subparagraph. The language is intended to encourage prompt requests for additional information so that approvals may be rendered within the time frames set forth in N.J.A.C. 3:14-1.3(a)2, (a)3, and (a)4 (60 days, 60 days, and 90 days, respectively).

RESPONSE: The Department has considered the comments and may incorporate them or some similar change in the future through amendment. The Department thinks that further analysis of the effects that the requested timeframes would have on the Department must be done and the commenter concurred. Therefore, at present, the Department chooses to adopt the rule with no changes so that institutions may begin to utilize it.

**Full text** of the adoption follows:

### CHAPTER 14 BANK SERVICE CORPORATIONS

#### SUBCHAPTER 1. BANK SERVICE CORPORATIONS

##### 3:14-1.1 Definitions

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

"Affiliate" means an entity related by common control or substantial ownership to a bank holding company, a banking subsidiary of a bank holding company, a bank, a savings bank, a bank service corporation of a bank holding company, bank, or savings bank, or any other non-banking subsidiary of a bank holding company, bank or savings bank.

"Appropriate Federal banking agency" means the Board of Governors of the Federal Reserve System, the local Federal Reserve Bank having jurisdiction, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency.

"Bank" shall have the meaning of that term in N.J.S.A. 17:9A-1(1).

"Bank services" means:

1. Services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions;

2. Any service, other than deposit taking, that the Board of Governors of the Federal Reserve System determines by regulation to be permissible for a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.A. §1843(c)(8)), performed at any geographical location, subject to applicable Federal or state branching laws regulating the geographic

## BANKING

## ADOPTIONS

location of banks to the extent that those laws are applicable to any activity authorized by this paragraph 2;

3. Any service, other than deposit taking, approved for such bank service corporation, or for bank service corporations in general, by the Board of Governors of the Federal Reserve System, or by the appropriate local Federal Reserve Bank;

4. Any service, other than deposit taking, which a bank holding company is authorized to provide to its affiliates pursuant to 12 C.F.R. §225.21(a)(1), §225.22(a)(1), or §225.22(a)(2), provided however that services constituting permitted bank services under this paragraph 4 and which would not constitute permitted bank services under paragraphs 1, 2, or 3 above are provided only to an affiliate of the bank service corporation; and

5. Any service, other than deposit taking, not described in paragraphs 1, 2, 3 or 4 above, and which has been fully described in an application to the Commissioner, which application the Commissioner has approved, or the period during which the Commissioner could disapprove the application as set forth in N.J.A.C. 3:14-1.3(a) has expired.

"Bank service corporation" means a corporation which is organized under Title 14 or Title 14A of the statutes of this State, or which is organized under a general incorporation statute of another state of the United States and which has a Certificate of Authority from the New Jersey Secretary of State to transact business in this State, to perform bank services, and all of whose capital stock is owned by one or more banking institutions.

"Banking institution" means a bank organized under the laws of this State or the laws of another state of the United States, a savings bank organized under the laws of this State or under the laws of another state of the United States, and a national bank organized under the laws of the United States.

"Holding company" means a bank holding company, a savings bank holding company, or a mutual savings bank holding company under the supervision of the Department.

"Invest" means an advance of funds to a bank service corporation, whether by the subscription to or purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

"Person" means individuals, partnerships, corporations, and all other business entities, no matter how designated.

"Savings bank" shall have the meaning of that term in N.J.S.A. 17:9A-1(13).

### 3:14-1.2 Permissible activities

(a) Subject to N.J.A.C. 3:14-1.3, a banking institution may engage in the following activities:

1. Contracting with a bank service corporation for the provision of bank services;

2. Investing in a bank service corporation, except that:

i. No bank shall invest in any one bank service corporation if the total of all the bank's investments in that bank service corporation exceeds, or if the making of such an investment would cause such total to exceed, 10 percent of the bank's unimpaired capital stock and surplus;

ii. No bank shall invest in a bank service corporation if the total of all the bank's investments in bank service corporations exceeds, or if the making of such an investment would cause such total to exceed, 15 percent of the bank's unimpaired capital stock and surplus;

iii. No savings bank shall invest in any one bank service corporation if the total of all the savings bank's investments in that bank service corporation exceeds, or if the making of such an investment would cause such total to exceed, five percent of the surplus of the savings bank;

iv. No savings bank shall invest in a bank service corporation if the total of all the savings bank's investments in bank service corporations exceeds, or if the making of such an investment would cause such total to exceed, 7.5 percent of the surplus of the savings bank; and

v. No bank or savings bank shall invest in a bank service corporation unless that bank service corporation has agreed in writing

to submit to periodic examinations and to regulation by the Department.

### 3:14-1.3 Authority to engage in bank services

(a) A bank service corporation may provide a bank service to a banking institution, an affiliate of a banking institution, or other person, or to combinations or multiples of the above, subject to the limitations set forth in this section.

1. A bank service which is described in paragraphs 1, 2, or 4 of the definition of "bank service," and which will be provided only to an affiliate, may be provided without application or notice to the Commissioner.

2. A bank service which is described in paragraphs 1 or 2 of the definition of "bank service," and which will be provided to a non-affiliate, may be provided if:

i. Written application has been received by the Commissioner which fully describes the bank service to be provided, the type of customer to whom the bank service is to be provided, the type of business in which the non-affiliate engages, and any information which supports the conclusion that the provision of the bank service is in the financial interest of the bank service corporation or affiliates of the bank service corporation; and either

(1) The bank service corporation has received approval in writing from the Commissioner; or

(2) At least 60 calendar days have passed since the receipt of the written application by the Commissioner, during which time the bank service corporation did not receive written notification by the Commissioner that the provision of the bank service to the non-affiliate is disapproved; and

ii. The Commissioner, at his or her discretion, has required and has received any additional information which might be relevant to a decision of whether to approve the application, which may include, but shall not be limited to, the names of the non-affiliates to whom the bank service is to be provided.

3. A bank service which is described in paragraph 3 of the definition of "bank service" may be provided to an affiliate or a non-affiliate if:

i. Written notice has been received by the Commissioner that the service has been approved for such bank service corporation, or for bank service corporations in general, by the Board of Governors of the Federal Reserve System, or by the appropriate local Federal Reserve Bank; and either

(1) The bank service corporation has received approval in writing from the Commissioner; or

(2) At least 60 calendar days have passed since the written notice required to be submitted by (a)3i above has been received by the Commissioner, and during which time the bank service corporation did not receive written notification by the Commissioner that the provision of the bank service is disapproved; and

ii. The Commissioner, at his or her discretion, has required and has received any additional information which might be relevant to a decision to disapprove the bank service, which may include, but shall not be limited to, a description of the bank service to be provided, the names of the non-affiliates to whom the bank service is to be provided, the type of business in which the non-affiliate engages, and any materials which support the conclusion that the provision of the bank service is in the financial interest of the bank service corporation or affiliates of the bank service corporation.

4. A bank service which is described in paragraph 5 of the definition of "bank service", may be provided to an affiliate or non-affiliate if:

i. Written application has been received by the Commissioner which fully describes the bank service to be provided, the types of customers to whom the bank service is to be provided, the type of business in which the non-affiliate engages, and any information which supports the conclusion that the provision of the bank service is in the financial interest of the bank service corporation or affiliates of the bank service corporation; and either

(1) The bank service corporation has received approval in writing from the Commissioner; or

(2) At least 90 calendar days have passed since the Commissioner's receipt of the application, during which time the bank

service corporation has not received written notification by the Commissioner that the provision of the bank service is disapproved, provided, however, that the Commissioner may make reasonable extensions of the period during which it may consider the application; and

ii. The Commissioner, at his or her discretion, has required and has received any additional materials which might be relevant to a decision of whether to approve the application, which may include, but shall not be limited to, the names of the non-affiliates to whom the bank service is to be provided.

(b) A bank service corporation may engage in a bank service described in paragraphs 2, 3, or 4 of the definition of "bank service", only upon the same terms and subject to the same conditions as are set forth in Federal law.

(c) Nothing in this chapter shall be construed to authorize a bank service corporation to engage in any activity which is reserved to banking institutions or qualified banks pursuant to N.J.S.A. 17:9A-213.

### 3:14-1.4 Standards for approving or disapproving applications

(a) In evaluating an application or notice under N.J.A.C. 3:14-1.3, the Commissioner may disapprove the application or bank service if, in his or her judgment:

1. The activity is inappropriate for the bank service corporation or for any affiliate;
2. The activity is unduly risky to the safety and soundness of the bank service corporation or for any affiliate; or
3. The bank service corporation or any affiliate has a substantial problem in any of the following areas:
  - i. Financial history and condition;
  - ii. Managerial resources;
  - iii. Funding and liquidity;
  - iv. Interest-rate exposure;
  - v. Concentration of assets; or
  - vi. Volume of assets classified as substandard, doubtful or loss, or subject to special mention.

### 3:14-1.5 Services to noninvestors

(a) A bank service corporation shall not discriminate unreasonably in the provision of any bank services, authorized under N.J.S.A. 17:9A-24.1 et seq. or this chapter, to any banking institution that does not own stock in the bank service corporation on the ground that the nonstockholding banking institution is in competition with a banking institution that owns stock in the bank service corporation, except that:

1. It shall not be considered unreasonable discrimination for a bank service corporation to charge a nonstockholding banking institution a price for providing bank services that reflects the full cost of offering those services, including the cost of capital and a reasonable return thereon; and
2. It shall not be considered unreasonable discrimination for a bank service corporation to refuse to provide bank services to a nonstockholding banking institution if comparable bank services are available to the nonstockholding institution from another person at a comparable cost, or if the providing of bank services to the nonstockholding institution would be beyond the reasonable capacity of the bank service corporation.

## PERSONNEL

### (a)

#### MERIT SYSTEM BOARD

##### Make-up Examinations

##### Adopted Amendment: N.J.A.C. 4A:4-2.9

Proposed: November 1, 1993 at 25 N.J.R. 4823(a).

Adopted: February 8, 1994 by the Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Filed: February 10, 1994 as R.1994 d.114, **without change**.

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

Effective Date: March 7, 1994.

Expiration Date: May 12, 1998.

##### Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing concerning the proposed amendment was held on November 18, 1993. Henry Maurer served as hearing officer. One person presented comments at that time and also submitted written comments. Mr. Maurer recommended that the amendment be adopted as proposed, but that an additional amendment be proposed. The record of the public hearing may be reviewed by contacting Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

##### Summary of Public Comments and Agency Responses:

COMMENT: Paul Pologruto, Staff Representative, Communications Workers of America (CWA) Local 1032, stated that his local represents approximately 1,000 professional level engineers in State service who would be affected by the rule amendment. He asserted that the Summary published in the Register was incorrect in stating that the schedule for professional level engineering promotional examinations is known well in advance. On the contrary, he stated, the actual date of the examination has been made known to candidates no more than two weeks in advance. He noted that many of the union members are immigrants from Asia and Africa who plan trips to visit their families months in advance. Therefore, he argued, these employees will be disadvantaged by the rule amendment unless the month the test will be given is stated in the examination announcement.

Mr. Pologruto also commented that errors are frequently made with regard to eligibility for professional level engineering promotional examinations. Therefore, he urged that "error by the Department of Personnel or appointing authority" should continue to be a valid reason for granting a make-up examination.

RESPONSE: With regard to the scheduling of professional level engineering promotional examinations, such examinations will now be held once each year. Moreover, testing will take place five months after the date of the announcement, thus giving candidates ample advance notice. These changes address the objections raised by the commenter. Therefore, the Board believes it is appropriate to adopt the amendment as proposed, so that make-ups for professional level engineering promotional examinations are granted on the same basis as police and fire promotional examinations.

The Board also believes that error by the Department of Personnel or appointing authority should remain a valid reason for granting a make-up for professional level engineering examinations. Further, it is current practice to grant a make-up of a police or fire promotional examination for that reason. Thus, the Board agrees with the commenter that the phrase, "error by the Department or appointing authority" should be added under N.J.A.C. 4A:4-2.9(b) as an additional reason for authorizing make-ups of police, fire and professional level engineering promotional examinations. However, since this would be a substantive change in the rule proposal, requiring additional public notice and comment, a new rule amendment is published for comment elsewhere in this issue of the New Jersey Register.

Full text of the adoption follows:

##### 4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for police, fire and professional level engineering promotional examinations under (b) below, may be authorized for the following reasons:

1. Error by the Department of Personnel or appointing authority;
2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
3. Documented serious illness or death in the candidate's immediate family;
4. Natural disaster;
5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and
6. Other valid reasons.

(b) For police, fire and professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination.

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate; or

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation.

(c) (No change.)

(d) In situations involving illness, death or natural disasters, a candidate must request, in writing, a make-up examination, within five days after the examination date. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of military leave, prior vacation plans or other valid reasons of which a candidate is aware upon receipt of the examination notice.

(e)-(h) (No change.)

## ENVIRONMENTAL PROTECTION AND ENERGY

### (a)

#### ENVIRONMENTAL REGULATION

#### Notice of Administrative Corrections

#### Surface Water Quality Standards

#### Surface Water Classifications for the Waters of the State of New Jersey

#### N.J.A.C. 7:9B-1.15

Take notice that the Department of Environmental Protection and Energy has discovered several errors in the current text of the surface water classification tables in N.J.A.C. 7:9B-1.15. Amendments to these classifications were proposed on November 2, 1992 (24 N.J.R. 3983(a)) and February 1, 1993 (25 N.J.R. 405(a)). The latter amendments were adopted first, effective August 16, 1993 (25 N.J.R. 3755(a)). In adopting the amendments in the earlier proposal, effective December 6, 1993 (25 N.J.R. 5569(a)), several changes based on the original rule text effective prior to August 16, 1993 were incorporated into the Code without regard for the changes already made to the original rule text by the earlier effective rulemaking. Through this notice of administrative correction, the rule text is revised to properly reflect the amendments effective August 16, 1993.

In addition, at N.J.A.C. 7:9B-1.15(g), the "FW2-TM(C1)" classification of Wawayanda State Park under Wawayanda Creek, Tributaries, is the result of a printing error. The Department, as reflected in the original rulemaking document PRN 1993-59, intended that the "FW2-NT(C1)" classification then in effect remain unchanged. In the publication of the proposal, this classification was, instead, reproduced as a duplicate of the classification which followed. As no change in the current classification was intended or shown through the use of change—indicating symbols in the proposal, the correct classification can be restored to the rule through this notice.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

#### 7:9B-1.15 Surface water classifications for the waters of the State of New Jersey

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

(c) The surface water classification in Table 1 are for waters of the Atlantic Coastal Basin:

TABLE 1

Waterbody	Classification
...	
<b>MINGAMAHONE BROOK</b>	
<b>MAINSTEM</b>	
(Farmingdale)—Entire length, except segments described below	FW2-TM
(Allaire State Park)—Brook and tributaries within the boundaries of Allaire State Park	FW2-TM(C1)
<b>EASTBRANCH</b>	
(Farmingdale)—Source to confluence with mainstem north of Farmingdale	FW2-NT
...	

(d) The surface water classifications in Table 2 are for waters of the Delaware River Basin:

TABLE 2

Waterbody	Classification
...	
<b>ASSUNPINK CREEK</b>	
[(Washington)] (Trenton)—Source to [boundary of Van Ness Park] <b>confluence with the Delaware River</b> , except segments described separately below	FW2-NT
(Roosevelt)—Creek and those tributaries within the boundaries of the Assunpink Wildlife Management Area	FW2-NT(C1)
(Quaker Bridge)—[Eastern boundary] <b>Portions of the creek within the boundaries of Van Ness Refuge [Park to Quaker Bridge Rd.]</b>	FW2-NT(C1)
[(Quaker Bridge)—Quaker Bridge Rd. to western Park boundary.]	[FW2-NT(C1)]
[(Lawrence)—Western Van Ness Park boundary to, but not including, Whitehead Mill Pond]	[FW2-TM]
[(Trenton)—Whitehead Mill Pond to Delaware River]	[FW2-NT]
...	
<b>BEAVER BROOK (Jefferson)—Source to, but not including, Lake Shawnee</b>	FW2-NT
...	
<b>KNOWLTON BROOK (Knowlton)—Entire length</b>	FW2-TP(C1)
<b>KURTENBACH'S BROOK (Waterloo)—Entire length</b>	FW2-TP(C1)
...	
<b>LITTLE FLAT BROOK</b>	
(High Point State Park)—Source to boundary of High Point State Park	[FW1(tm)]
(Layton)—State park boundary to, but not including, [Hainesville Pond, except tributaries] <b>tributary</b> described below, [or under the listing for Flat Brook above] <b>to confluence with Big Flat Brook</b>	FW1(tp) [FW2-TM(C1)] FW2-TP(C1)
(Flatbrook-Roy)—Tributary which originates north of Bevans-Layton Rd. downstream to the first pond adjacent to the Fish and Game headquarters building	[FW1(tm)] FW1(tp)
[(Hainesville)—Hainesville Pond to Rt. 206 bridge, except tributaries described under the listing for Flat Brook, above]	[FW2-NT(C1)]
[(Hainesville)—Rt. 206 bridge to confluence with Big Flat Brook, except tributaries described under listing for Flat Brook, above]	[FW2-TM(C1)]
<b>STONY BROOK (Knowlton)—Entire length</b>	[FW2-NT] FW2-TP(C1)
...	

**ADOPTIONS**

(e) The surface water classifications in Table 3 are for waters of the Passaic, Hackensack and New York Harbor Complex Basin:

TABLE 3	
Waterbody	Classification
CLINTON BROOK [(Mossmans Brook)] (W. Milford)—Source to, but not including, Pequannock River, except Clinton Reservoir listed separately below	[FW2-NT(C1)] FW2-TP(C1)
[(Newfoundland)—Clinton Reservoir dam to Pequannock River]	[FW2-TP(C1)]
MONKSVILLE RESERVOIR (Long Pond Ironworks State Park)	FW2-TM(C1)
PASSAIC RIVER (Mendham)—Source to [Rt. 202] Interstate 287 bridge [(Van Doren's Mill)], except tributaries described separately below	[FW2-TM] FW2-TP(C1)
(Paterson)—[Rt. 202] Interstate 287 bridge to Dundee Lake dam	FW2-NT

PEQUANNOCK RIVER MAINSTEM	
[(Newfoundland)] (Hardyston)—Pacock Brook to [Hamburg Turnpike, (Bench Mark 257) in Bloomingdale except], but not including, Macopin Reservoir or the tributaries described separately below	FW2-TM
(Kinnelon)—Macopin Reservoir outlet to Hamburg Turnpike bridge in Pompton Lakes Borough	FW2-TP(C1)
(Riverdale)—Hamburg Turnpike bridge in Pompton Lakes Borough to [Pompton River] confluence with Wanaque River	[FW2-NT] FW2-TM
(Pompton Plains)—Confluence with Wanaque River downstream to confluence with Pompton River	FW2-NT

**TRIBUTARIES**

(f) (No change.)  
(g) The surface water classifications in Table 5 are for waters of the Wallkill River Basin:

TABLE 5	
Waterbody	Classification
FRANKLIN POND CREEK (Hardyston)—Source to, but not including, Franklin Pond	FW2-TP(C1)
[(Franklin)—Entire length, except those tributaries described separately, below]	[FW2-TM]
[(Hamburg Mtn.)—The first tributary, just south of Hamburg Mtn., flowing toward the Wallkill River and located entirely within the Hamburg Mtn. Wildlife Management Area]	[FW1(tm)]
(Hamburg Mtn.)—Tributaries within the Hamburg Mtn. Wildlife Management Area [not classified as FW1 as described above]	FW2-TM(C1)
WAWAYANDA CREEK	
TRIBUTARIES	
(Wawayanda State Park)—Segments within State Park boundaries, except Livingston Ponds Brook as noted above	[FW2-TM(C1)] FW2-NT(C1)

**HUMAN SERVICES**

(h) FW1 waters are listed in Table 6 by tract within basins:

DELAWARE RIVER BASIN	
HIGH POINT STATE PARK AND STOKES STATE FOREST	CLOVE BROOK WATERSHED (No change.) FLAT BROOK WATERSHED All surface waters of the Flat Brook drainage within the boundaries of High Point State Park and Stokes State Forest except the following: (1) Saw Mill Pond and Big Flat Brook downstream to the confluence with [Big] Flat Brook; (2)-(10) (No change.) SHIMERS BROOK WATERSHED (No change.)
(i) (No change.)	

**HUMAN SERVICES**

(a)

**DIVISION OF FAMILY DEVELOPMENT  
Home Energy Assistance Handbook  
Eligibility Requirements; Income Eligibility  
Guidelines**

**Adopted Concurrent Amendment: N.J.A.C. 10:89-2.3,  
3.1, 3.2 and 3.3**

Proposed: January 3, 1994 at 26 N.J.R. 256(a).  
Adopted: February 3, 1994 by William Waldman, Commissioner,  
Department of Human Services.  
Filed: February 7, 1994 as R.1994 d.109, without change.  
Authority: N.J.S.A. 30:4B-2.  
Effective Date: February 7, 1994.  
Expiration Date: May 24, 1995.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows:**

- 10:89-2.3 Income eligibility
  - (a) (No change.)
  - (b) Regardless of income eligibility, the following households are not eligible for program benefits:
    1. Persons residing in publicly operated housing unless the household can demonstrate that it has direct responsibility for payment of its heating costs. Energy costs included in rent which is subsidized do not qualify as out-of-pocket payments for heating costs;
    2. Persons receiving a rent subsidy which includes all heating costs. Energy costs included in rent which is subsidized do not qualify as out-of-pocket payments for heating costs;
  - 3-5. (No change.)
  - (c)-(f) (No change.)

## (g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limits
1	\$ 871
2	1179
3	1486
4	1794
5	2101
6	2409
7	2716
8	3024
9	3331
10	3639
Each Additional Member	+ 308

## 10:89-3.1 Automatic payments to certain households

## (a) Recipient households:

1. Certain households eligible for and receiving AFDC or non-public assistance (NPA) Food Stamps (FS) will receive automatic payments based on the information regarding income, household size, heating arrangement and fuel type contained in computer records maintained by the Division of Family Development. Where the household receives FS as a public assistance (PA) household and the PA FS household is greater than the AFDC eligible unit, the automatic payment shall be based on the PA FS household size. This information will be collected from the head of the household at each application, reapplication or recertification for AFDC or FS and will be updated whenever the household reports a change. However, once a household becomes eligible for automatic payments, the entitlement cannot be adjusted.

## i.-ii. (No change.)

iii. The following households are not eligible for automatic energy payments:

(1) Persons residing in publicly operated housing or receiving a rent subsidy which includes all heating costs. Energy costs included in rent which is subsidized do not qualify as out-of-pocket payments for heating costs;

## (2)-(4) (No change.)

2. Eligible households which heat by electricity or natural gas will receive the automatic payment(s) in the form of a two party check, payable to the head of household and the generic copayee "your heating utility." Households which heat by oil, coal, wood, propane and kerosene will receive the automatic payment(s) in the form of a two party check payable to the head of household and the generic copayee "Your Heating Supplier."

## 3. (No change.)

## 10:89-3.2 Special energy assistance

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

## (f) Households responsible for heating costs:

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

5. A household directly responsible for payment of heating costs to any non-participating fuel supplier will receive the special energy benefit payable to the head of household and "Your Heating Supplier."

## 6. (No change.)

## 10:89-3.3 Cooling assistance

(a) Income eligible households for which there is medical evidence that the health of at least one household member will be seriously endangered unless the household's living quarters are cooled shall receive a one-time benefit in the amount of \$100.00 subject to the following provisions. This benefit is available in addition to any other benefits made under this program and will be paid directly to the household.

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

3. The following households are not eligible for cooling assistance payments:

i. Households residing in publicly operated housing or receiving a rent subsidy which includes all cooling costs. Energy costs included in rent which is subsidized do not apply as out-of-pocket for cooling costs;

## CORRECTIONS

## (a)

## THE COMMISSIONER

## Notice of Administrative Correction

## Inmate Discipline

## Prohibited Acts

## N.J.A.C. 10A:4-4.1

Take notice that the Department of Corrections has discovered an error in the current text of N.J.A.C. 10A:4-4.1(a). Prohibited act ".008 abuse/cruelty to animals" was proposed and adopted with an asterisk, which N.J.A.C. 10A:4-4.1(b) explains means an act of sufficient severity to warrant possible transfer to the Vroom Readjustment Unit (see 19 N.J.R. 178(a) and 534(a)). This omission in the Code is rectified through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface thus):

## 10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and results in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts).

...

\*.008 abuse/cruelty to animals

...

(b) (No change.)

## (b)

## THE COMMISSIONER

## Records

## Adopted New Rules: N.J.A.C. 10A:22

Proposed: December 20, 1993 at 25 N.J.R. 5754(a).

Adopted: February 3, 1994 by William H. Fauver, Commissioner, Department of Corrections.

Filed: February 8, 1994 as R.1994 d.113, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: March 7, 1994.

Expiration Date: March 7, 1999.

## Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment from Mary C. Williams, Edna Mahan Correctional Facility for Women.

COMMENT: The commenter stated, "The new amount listed that the DOC would like to charge for costs of copying is without basis and too expensive for the parties it's aimed at. The current costs are too expensive and out of line with copying prices available in most places . . . Prisoners will be subject to the prices in 10A:22 and as such, we would not be able to afford the prices which could effectively deny us our meaningful access to court (if we need something xeroxed for Court which falls outside the guidelines for "legal copies approved") . . ." [sic]

RESPONSE: The present rule regarding the fee for copying records found at N.J.A.C. 10A:22-2.11 was originally based on N.J.S.A. 47:1A-2 (P.L. 1991, c.177) which took effect on July 1, 1991. Please note that N.J.A.C. 10A:1-1.3 and 10A:31-6.13 which address the same issue were adopted on December 6, 1993, at 25 N.J.R. 5475(a). The proposed fee increases for the copying of public records are determined and mandated by the New Jersey Legislature and represent increases in the costs of providing these services. Although the increase in these fees may impose an economic burden on individuals who request documents, the intent of the Department of Corrections is to comply with the law and to provide a uniform fee schedule. In accordance with N.J.A.C. 10A:6-2.5, Legal photocopying services, the adoption of these rules will not affect an inmate's meaningful access to the courts as stated by the commenter

## ADOPTIONS

because photocopying of legal material is provided to indigent inmates at no charge.

**Full text** of the adoption follows:

### 10A:22-2.4 Availability of information to non-Department of Corrections agencies or individuals

(a) Information from adult inmate and parolee records shall be provided to law enforcement agencies or individuals, who request such information in the performance of their public duties, and shall be in accordance with N.J.A.C. 10A:22-2.7.

(b) Adult inmate or parolee records may be made available to the following non-Department of Corrections agencies or individuals:

- 1.-3. (No change.)
4. The New Jersey State Parole Board;
5. A county probation department; and
6. Police departments.

(c) Selected records of adult inmates or parolees shall be made available to government agencies or other authorized non-Department of Corrections individuals upon request. These agencies and individuals include, but are not limited to, the following:

- 1.-5. (No change.)

### 10A:22-2.5 Availability of information to Department of Corrections' personnel

(a) Information from inmate and parolee records shall be provided to Department of Corrections' personnel who need relevant information for use in connection with their work responsibilities. Only the amount of information necessary or relevant in connection with staff performance of duties shall be provided.

(b) Medical and psychiatric/psychological records or information shall be provided as limited below:

1. (No change.)

2. Medical or psychiatric/psychological information may be made available to Department of Corrections' personnel, to whom the information is relevant in connection with the staff person's need to make a decision concerning the inmate such as, job placement, discipline, and parole. Only that amount of information that is necessary to permit proper exercise of discretion shall be provided.

(c) In the event a question arises as to the disclosure of medical or psychiatric/psychological information to Department of Corrections' personnel, the question shall be referred to the Superintendent for review and the decision of the Superintendent shall be final.

### 10A:22-2.6 Availability of medical information to inmates

(a) An inmate may obtain a copy of his or her medical records or a summary thereof by submitting a written request, on Form 301-XII, to the correctional facility's supervisor of the Medical Department, or to the Superintendent in those correctional facilities which do not have a supervisor of the Medical Department.

- (b)-(g) (No change.)

### 10A:22-2.7 Procedure for release of confidential inmate or parolee records

- (a) (No change in text.)

(b) The only confidential information which shall be released shall be the specific information that is directly related to the stated purpose for which the information is requested.

- (c) (No change in text.)

(d) If Department of Corrections staff cannot determine whether confidential information should be released, the Office of the Attorney General shall be contacted for guidance.

- (e) (No change in text.)

### 10A:22-2.8 Records authorized by the inmate or parolee for inspection or release

(a) The following categories of records may be inspected by or released to authorized persons or agencies, upon written consent of the adult inmate or parolee:

- 1.-6. (No change.)
- (b) (No change.)

## INSURANCE

### 10A:22-2.9 Litigation

All requests for release of information or records concerning any matter which is the subject of pending or ongoing litigation shall be referred to the Deputy Attorney General of record for handling pursuant to the applicable rules of court.

### 10A:22-2.10 Juvenile records

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

### 10A:22-2.11 Reimbursement for costs of copying

(a) Pursuant to N.J.S.A. 47:1A-2, except as otherwise provided in this subchapter correctional facilities and other administrative units within the Department of Corrections may charge the following fees for copying records deemed to be public:

- |                               |                 |
|-------------------------------|-----------------|
| 1. First through 10th page    | \$0.75 per page |
| 2. Eleventh through 20th page | \$0.50 per page |
| 3. Over 20 pages              | \$0.25 per page |

(b) Governmental agencies or officers who request records in the performance of their official duties shall be exempt from payment of fees for copying records.

(c) The copying fees for records other than records deemed to be public shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of public records change in accordance with the N.J.S.A. 47:1A-2, these changes shall be published as a public notice in the New Jersey Register, and revised in (a) above through a notice of administrative change pursuant to N.J.A.C. 1:30-2.7.

## INSURANCE

### (a)

### DIVISION OF PROPERTY/CASUALTY Producer Assignment Program Exemptions

#### Adopted Amendments: N.J.A.C. 11:3-42.2 and 42.9

Proposed: June 7, 1993 at 25 N.J.R. 2215(a).

Adopted: February 4, 1994 by Samuel F. Fortunato,

Commissioner, Department of Insurance.

Filed: February 4, 1994 as R.1994 d.112, **without change**.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:33B-9.

Effective Date: March 7, 1994.

Expiration Date: January 4, 1996.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows:

### 11:3-42.2 Definitions

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

... "Insurer" means any person authorized to transact the business of personal private passenger automobile insurance in this State, including insurers organized pursuant to N.J.S.A. 17:50-1 et seq.

... "Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

...

### 11:3-42.9 Exemption from program

(a) The Program is intended to address the dual goals of protecting producers who have built businesses and developed expertise serving the residual market and of encouraging auto insurance sales and service in inadequately served territories. Therefore, assignment of producers on an equitable basis should consider whether an

insurer's own marketing system has, in practice, provided reasonable access to persons in all areas of the State. When an insurer has demonstrably provided such access, it may be exempt from assignments under the Program.

1. (No change.)

2. Requests for exemptions from this Program shall be filed with the Department no later than the end of the quota period, as set forth at N.J.A.C. 11:3-42.5, for which assignments are being made. Failure to submit a complete application by the due date may result in a denial of the insurer's request for exemption from assignments for that assignment period. An insurer that previously submitted an application for an exemption pursuant to this section may incorporate by reference information included with the previous request. However, the insurer shall submit documentation of continued or additional marketing and solicitation efforts between the time the original request was made and the time the present request is made.

3. The review of requests for exemptions from this Program shall be conducted by the ARM Unit within the Department. The ARM Unit shall review the request and shall notify the insurer in writing as to its decision within 45 days of the end of the quota period for which assignments are being made.

i.-ii. (No change.)

4. (No change.)

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

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ARCHITECTS

#### Rules of Professional Conduct Landscape Architects

##### Adopted Amendment: N.J.A.C. 13:27-8.13

Proposed: December 6, 1993 at 25 N.J.R. 5440(a).

Adopted: February 3, 1994 by the State Board of Architects,  
Charles A. Spitz, A.I.A., President.

Filed: February 10, 1994 as R.1994 d.118 with a technical change  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-3.4).

Authority: N.J.S.A. 45:1-3.2 and 45:3-3 and 7.

Effective Date: March 7, 1994.

Expiration Date: February 20, 1995.

#### Summary of Public Comments and Agency Responses:

**No comments were received.**

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

13:27-8.13 Rules of professional conduct

(a)-(n) (No change.)

(o) All advertisements and public representations of certificate holders which make specific reference to service as a "landscape architect" shall list the name and certificate number of the landscape architect. If the certificate holder conducts the practice under a corporation or trade name, the advertisement/public representation may list the business name under which the practice is conducted but shall also conspicuously disclose the name and certificate number of at least one of the principal practitioners. This requirement applies to all advertising locations, including, but not limited to: the public media, commercial property, and motor vehicles.

1. Landscape architects, whose advertisements/listings in a telephone or other consumer information directory do not comply with this requirement as of \*[the date of adoption]\* **\*March 7, 1994\***, shall immediately notify the directory publisher of the additional data which shall be published in the next available directory in which the landscape architect intends to continue such advertise-

ment/listing. The certificate holder, personally or through the business entity, shall retain a copy of the notification which shall be made available for inspection at Board request.

(p) (No change in text.)

(b)

### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF CHIROPRACTIC EXAMINERS Notification of Change of Address; Service of Process

#### Adopted New Rule: N.J.A.C. 13:44E-2.9

Proposed: September 7, 1993 at 25 N.J.R. 3936(a).

Adopted: December 16, 1993 by the Board of Chiropractic  
Examiners, Alfred Davis, D.C., President.

Filed: February 10, 1994 as R.1994 d.120, without change.

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: March 7, 1994.

Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44E-2.9, relating to notification of change of address and service of process.

The official comment period ended on October 7, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3936(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, Kay McCormack, Executive Director, 124 Halsey St., P.O. Box 45004, Newark, New Jersey 07101.

#### Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received four written comments regarding the proposal. A list of the commenters follows:

Lois Taylor

Jeffrey Contino/Todd Kirstein

Lauri Taylor

Larry Sabel

Following is a summary of the comments received together with the Board's responses:

COMMENT: A respondent wrote to state that there should be no disciplinary proceedings for failure to notify the Board of a change of address within 10 days because such a provision sounds like "communistic Russia."

RESPONSE: The Board must retain the 10-day timeframe within which a licensee must notify the Board of a change of address because it is statutorily mandated pursuant to N.J.S.A. 45:9-41.11.

COMMENT: Lauri Taylor wrote to state that notification is being done anyway when someone moves, and so this proposal is "ridiculous" to put into law. The respondent added, by way of argument, that "If someone does not want to be found, they did something wrong—find them; don't make it law." Brian Atkisson responded to this proposal with a simple question: "Who will remember?"

RESPONSE: The Board reiterates that the purpose of this regulation is not only to protect the public by ensuring that consumers retain access to their records but also to ensure that licensees can be kept informed through newsletters and other periodic mailings that the Board may provide to licensees. The Board also states that licensure is a privilege, not a right, and that the privilege of licensure entails certain professional responsibilities, including accessibility.

COMMENT: One respondent wrote interpreting this proposal as endorsing the concept that licensees will henceforth receive copies of proposed regulations and the minutes of Board meetings; as such, the respondent endorsed the proposal.

RESPONSE: Licensees can obtain the minutes of Board meetings by writing to the Board's Executive Director, requesting to be included on the mailing list for those minutes. The respondent should also know that the Board will be providing licensees with a booklet detailing all the statutory and regulatory requirements that pertain to licensed chiroprac-

tors once the Board completes its current effort to amend and adopt regulations meant to clarify the Board's regulatory scheme. At present, a reasonable effort is made to keep licensees informed of regulatory developments by means of notices that appear in this Register, in several of the State's major newspapers, and through a secondary distribution list.

COMMENT: One respondent wrote in to offer comments that apply to all of the chiropractic proposals published in the September 7th issue of the New Jersey Register. The respondent made the following statements: the profession does not need any of these proposals, which are burdensome, overly broad "catch-all" regulations that will serve no purpose except to employ State workers who will then enforce them; the Board needs to inform all licensees, in advance, of future regulatory proposals; the proposals contain provisions with which it is "impossible" to comply; and the Board is a tool of the insurance industry.

RESPONSE: The Board is duty-bound to promulgate rules and regulations in order to create appropriate guidelines governing the practice of chiropractic in this State. These guidelines protect the public against unreasonable professional practices and, in doing so, simultaneously provide guidance to licensees.

Full text of the adoption follows:

13:44E-2.9 Notification of change of address; service of process

(a) A licensee of the Board of Chiropractic Examiners shall notify the Board in writing of any change of address from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 10 days following the change of address.

(b) Service of an administrative complaint or other Board-initiated process at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

### (a)

#### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF CHIROPRACTIC EXAMINERS Display of License; Right to a Hearing

##### Adopted New Rules: N.J.A.C. 13:44E-2.10 and 2.11

Proposed: September 7, 1993 at 25 N.J.R. 3936(b).

Adopted: December 16, 1993 by the Board of Chiropractic Examiners, Alfred Davis, D.C., President.

Filed: February 10, 1994 as R.1994 d.121, **without change**.

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: March 7, 1994.

Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:44E-2.10 and 2.11, relating to display of license and right to a hearing.

The official comment period ended on October 7, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3936(b). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, Kay McCormack, Executive Director, 124 Halsey St., P.O. Box 45004, Newark, New Jersey 07101.

#### Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received six written comments regarding the proposal. A list of the commenters follows:

Patrick Gentempo, Jr.

Lois Taylor

Jeffrey Contino/Todd Kirstein

Lauri Taylor

Lorenzo Marchese

Christopher Kent

Following is a summary of the comments received together with the Board's responses:

COMMENT: Three respondents wrote to state that the right to a hearing should also be guaranteed in cases where a licensee may be deprived of practice privileges or subject to a monetary forfeiture. Dr. Patrick Gentempo suggested that the rule be broadened as follows: "Prior to any suspension, revocation, refusal to renew a license, restriction of practice, or assessment of any monetary forfeiture, the licensee shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1."

RESPONSE: The Board would like to assure licensees that the right to a hearing is guaranteed in all of the instances cited above pursuant to N.J.S.A. 45:1-21 and 45:1-22. While the adoption of N.J.A.C. 13:44E-2.11 is in effect a restatement of rights guaranteed under N.J.S.A. 45:1-21 and 45:1-22, and has been offered in order to remind the licensee community of its right to a hearing, the rights guaranteed under cited statutes continue to be equally applicable.

COMMENT: Two respondents wrote to state that this proposal is unnecessary because it merely codifies what is already law concerning the fact that each person should always have a right to a hearing.

RESPONSE: The Board agrees that this adoption does merely codify what is already law but, as the above comments make obvious, there is some advantage in reiterating the right to a hearing so that licensees will be aware of the opportunity to defend themselves in a hearing.

COMMENT: One respondent wrote in to offer comments that apply to all of the chiropractic proposals published in the September 7th issue of the New Jersey Register. The respondent made the following statements: the profession does not need any of these proposals, which are burdensome, overly broad "catch-all" regulations that will serve no purpose except to employ State workers who will then enforce them; the Board needs to inform all licensees, in advance, of future regulatory proposals; the proposals contain provisions with which it is "impossible" to comply; and the Board is a tool of the insurance industry.

RESPONSE: The Board is duty-bound to promulgate rules and regulations in order to create appropriate guidelines governing the practice of chiropractic in this State. These guidelines protect the public against unreasonable professional practices and, in doing so, simultaneously provide guidance to licensees.

Full text of the adoption follows:

13:44E-2.10 Display of license

Each person holding a license to practice chiropractic in the State of New Jersey shall display the license and the current renewal certificate in a conspicuous place in his or her principal office or place of practice. In addition, the licensee shall display a copy of the current renewal certificate in all other facilities where the licensee practices.

13:44E-2.11 Right to a hearing

Prior to any suspension, revocation or refusal to renew a license, the licensee shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### (b)

#### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF CHIROPRACTIC EXAMINERS Overutilization; Excessive Fees

##### Adopted New Rule: N.J.A.C. 13:44E-2.13

Proposed: September 7, 1993 at 25 N.J.R. 3937(a).

Adopted: December 16, 1993 by the Board of Chiropractic Examiners, Alfred Davis, D.C., President.

Filed: February 10, 1994 as R.1994 d.122 **without change and with deferral of final action on N.J.A.C. 13:44E-2.13(a)7**.

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: March 7, 1994.

Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44E-2.13, regarding overutilization and excessive fees.

The official comment period ended on October 7, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3937(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, Kay McCormack, Executive Director, 124 Halsey St., P.O. Box 45004, Newark, New Jersey 07101.

#### Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received 46 written comments regarding the proposal. A list of the commenters follows:

Geraldine Banda, Joseph Gravso, T. Leonard Probe, Kevin Drumbore, David A. Schliep, Loretta Imbrogno, Patrick Gentempo, Jr., William Charschan, Joseph C. D'Angiolillo, Charles Stanfield, Wendie Hunt, Thomas Salmon, Raymond Milazzo, Drew Rubin, Patrick J. Arnold, Anthony Patras, David R. Kutschman, Hector Munoz, Ted Campbell, George Bennett, Richard LuBow, David Graber, Perry Wolk-Weiss, Keith English, Abraham Sadon, Patrick Smith, Adam Goldstone, Philip Falzarano, John Kane, Christopher Kent, Lois Taylor, Thomas Mieradka, Daniel Fortunato, Kathleen Belko, William Winters, Stanley Pittin, Jeffrey Contino, Larri Taylor, John Farrell, Andrew Herman, Karen Walters, George Lubertazzo, Gary Stewart, William DeGasperis, Barry Lichtenstein, Larry Sabel.

Following is a summary of the comments received together with the Board's responses:

**COMMENT:** Twenty-two respondents wrote to state that this proposal at least verges on limiting free-market competition by imposing price controls and is moreover in direct violation of Federal and State law, particularly Federal Trade Commission (FTC) laws and the Racketeer Influenced and Corrupt Organizations Act (RICO). The contention was made that a professional should be able to charge any fee agreed upon by doctor and patient, and that the proposal is unethical because it gives the health insurance industry an opportunity to assign a quantitative number of patient visits.

**RESPONSE:** The Board rejects the notion that this rule limits free-market competition and imposes price controls, since the rule does not set fees but is, instead, merely concerned with overutilization and fees that reach the level of being manifestly unconscionable. The rule also does not limit the fee agreed upon between a doctor and a patient unless that fee is deemed excessive pursuant to the standards set forth in subsection (d). Furthermore, the rule is in no way intended to place limits on the number of patient visits, so long as those visits are justified.

**COMMENT:** The 22 respondents who expressed concern regarding the compatibility of this rule with FTC and RICO laws also expressed concern that this proposed new rule may be or become a tool for insurance carriers to utilize the Board to prosecute insurance cases on their behalf, particularly as it relates to the clause in paragraph (a)7 about unsubstantiated theory, modality or procedure.

**RESPONSE:** Paragraph (a)7 has not been adopted at this time pending further review of the proposed amendments to N.J.A.C. 13:44E-1.1, Scope of practice. The Board points out, however, that it responds to complaints from consumers and other licensees as well as insurance carriers, and that this rule provides the Board with a mechanism by which to respond to charges of unethical practices. To the extent that insurance carriers must reimburse excessive fees, and even though only a very small minority of licensees charge such fees, the public may eventually suffer through higher premiums or reduced coverage.

**COMMENT:** Fourteen respondents wrote to inform the Board that the public is adequately protected as follows: by current law prohibiting fraudulent billing for services not rendered, by the rule that requires a posting of fees, and by third-party contracts that already limit reimbursement. The view was expressed that if there is only a small number within the profession committing these offenses, then that minority could be dealt with in other ways, using existing rules and sparing the "embarrassment of the rest of us."

**RESPONSE:** While the Board's general statutory powers to discipline licensees for unprofessional conduct protect the public against fraudulent billing, this rule is intended to reiterate and clarify that protection. It should be noted that in fact there is no rule, regarding advertising practices or other aspects of the chiropractic profession, that requires a posting of fees and that third-party contracts have no bearing on this rule. It should also be noted that the application of this rule is not limited to circumstances involving third-party contracts. The argument based on the correct view that only a minority of the profession is committing

these offenses is unpersuasive for two reasons. First, wrong-doing is often committed by only a small faction of the regulated group. But second, the damage done by this small faction can be very extensive and harmful both in terms of injury to the public and to the reputation of the profession.

**COMMENT:** Two respondents wrote to state that this proposal is slanderous, for it wrongly assumes that the whole profession is a bunch of overutilizers and money mongers and is so bankrupt of moral and ethical fiber as to require special legislation just to rein in "all of those money hungry Chiropractors ready to 'rip off' or 'gouge' all those unsuspecting consumers."

**RESPONSE:** The Board is responsible for resolving consumer complaints in an appropriate manner. This and all other rules that the Board authors are not perjorative in intent but are, instead, responsive to the legitimate concerns of at least certain members of the public and of this licensed community.

**COMMENT:** A respondent wrote to state that paragraph (a)3 is "ridiculous" [sic] as nobody represents multiple charges for the same chiropractic services if they are law abiding. The view was seemingly expressed that if a licensee were to engage in such representations it would be done in error, and therefore the licensee should not be charged with a "criminal offence" [sic]

**RESPONSE:** The Board does find itself serving in an enforcement capacity since there are, unfortunately, licensees who are not law abiding and must be adequately sanctioned. Certainly, a licensee who violated the law would be granted the opportunity to explain his or her actions.

**COMMENT:** Ten respondents asked the Board to state whether maintenance care that lasts for a number of years is to be construed as excessive. The statement was made that appropriate amounts/types of treatments can only be made on a case-by-case basis. The fear was expressed that the standard of paragraph (a)2, justified by the needs of the patient, makes any doctor guilty until he or she proves that the services were justified, thereby creating a recordkeeping nightmare.

William DeGasperis suggested that rather than relying on a bureaucracy that "will be controlling what and how a doctor functions," the chiropractor should rely on the treating physician's assessment or, alternatively, upon peer review to determine overutilization.

**RESPONSE:** The Board is, as a body of knowledgeable professionals, responsible for making the determinations outlined above. It should be stressed that the standard by which overutilization is judged depends on whether the licensee's professional actions can or cannot be clinically substantiated. As for the issue of maintenance care, the intention of this rule is not to limit or restrict maintenance care so long as that care is valid and, as such, the number of years that care may be offered is not in and of itself necessarily a factor in determining whether a licensee has engaged in overutilization. The Board agrees that determinations can be made only on a case-by-case basis and that the standard established by paragraph (a)2 requires licensees to ensure that their on-going treatment of a patient is validated by periodic progress notes that the Board does not consider so cumbersome as to create a recordkeeping nightmare. The Board's response to Dr. DeGasperis's suggestion is that the Board has a consumer-based function and neither has nor seeks the authority to reinstate peer review.

**COMMENT:** Four respondents asked the Board to clarify unsubstantiated theory, modality or practice and to answer the question of whether the Board will make itself responsible for verifying instances when a theory or modality proves to be commonly practiced in another part of the country, as recognized for instance by the Mercy Conference. A related question was raised as to whether each Board member will be fully trained on every modality, theory and practice that takes place throughout the country. The statement was made that unsubstantiated theory does not belong under overutilization and that the term inserted here makes doctors have to defend themselves on any part of an adjustment.

**RESPONSE:** The Board has decided not to act on paragraph (a)7 at this time because of its on-going review of the proposed amendments to N.J.A.C. 13:44E-1.1, Scope of practice.

**COMMENT:** Five respondents wrote to ask the Board to be specific about which procedures are likely to be implicated as involving overutilization and to provide examples of "typical" overutilization cases.

**RESPONSE:** The Board is unwilling to provide such a "laundry list" of procedures beyond the representative examples already listed in this rule because it is the Board's experience that providing such a list tends to be counterproductive by increasing—rather than reducing—confusion, by ultimately failing to be sufficiently comprehensive, and by hampering

the Board's effectiveness in addressing situations that may arise in conjunction with this rule.

COMMENT: Three respondents wrote to ask the Board to list diagnostic services considered unacceptable and likely to expose a licensee to charges of professional misconduct. The Board has also been asked to state how and why it will be alerted.

RESPONSE: The respondents should consult N.J.A.C. 13:44E-1.1, Scope of practice, regarding guidance as to what are impermissible diagnostic services. The Board will be alerted by a variety of sources including, but not limited to, the following: consumer complaints, media accounts, other licensees, prosecuting attorneys, other boards, or other State agencies.

COMMENT: Five respondents wrote to ask the Board to provide an acceptable fee schedule so that they may avoid penalties pursuant to N.J.S.A. 45:1-21. Other related questions included, how will usual, customary and reasonable (UCR) be determined, how will fees be determined to be too high, and by whom?

RESPONSE: The Board will not provide the respondents with a fee schedule because to do so would create limits on free-market competition, thereby violating the wishes of other respondents also opposed to this rule. The Board is not in the business of setting fees. The other related questions that were raised above can be answered as follows. UCR is a pricing mechanism created by and for the insurance industry. The Board does not rely on, nor is it bound by, insurance industry standards. Fees will be determined to be too high if they are manifestly unconscionable or overreaching under the circumstances. Any determination regarding excessive fees will be made by the full Board, possibly based on an initial recommendation by a committee established by the Board.

COMMENT: One respondent asked the Board to define the source of the data on which it will rely in determining fair fees that licensees "can live with."

RESPONSE: The Board will review billing records, looking for clinical substantiation on a case-by-case basis. There is no one set of standards on which the Board will rely. Rather than attempting to establish specific standards that will vary over time and according to circumstances, the Board has created this rule in order to articulate the categories of conditions that the Board will employ as guidelines in resolving complaints about excessive fees.

COMMENT: One respondent suggested that the proposal should say that the patient is entitled to know the fee before service is rendered, so that the patient can determine if he or she feels it is excessive and can, therefore, choose to accept a service from a particular chiropractor or go elsewhere.

RESPONSE: The Board will contemplate taking action at a future date on the suggestion that a patient is entitled to know the fee before service is rendered.

COMMENT: Six respondents asked the Board if time units will be put on testing since some tests such as EMGs and muscle testing are repeated monthly. The statement was made that this proposal will jeopardize not only preventative but also maintenance care because no one can project how many visits it will take to correct or stabilize a condition. The question was asked if the phrase about the "nature and length of the professional relationship with the patient" refers to preventative care and the statement was described as vague, nebulous and subjective.

RESPONSE: In creating this rule, the Board is not placing itself in a position of either advocating or accepting the notion that time units should be put on testing. A similar response pertains to the suggestion that this proposal will jeopardize maintenance care because the Board again does not wish to go beyond the position that rendered services should be capable of being clinically substantiated.

The phrase "nature and length of the professional relationship with the patient" is repeated from the Medical Board's regulations on overutilization which, in turn, track a State Supreme Court fee rule that articulates factors to be considered in determining whether an attorney's fee is reasonable. See Rule of Professional Conduct ("R.P.C.") 1.5. The phrase in question was originally created to reflect concerns that, for example, a close relationship build up over time between a health care provider and patient may leave the patient vulnerable to a pronounced and unreasonable fee increase because of the patient's fear of abandonment by a health care provider whose knowledge has become so extensive regarding the patient's condition that the patient is vulnerable to intimidation.

COMMENT: Two respondents wrote to ask the Board if a multiple charge that would have previously applied to chiropractic care for the whole body, involving for instance separate reimbursements for leg and neck chiropractic care, would according to this proposal be eligible for only one reimbursement.

RESPONSE: The practice of artificially and inappropriately dividing services into separate billings will be addressed on a case-by-case basis.

COMMENT: A respondent wrote to ask the Board to clarify the meaning of subparagraph (a)4iv: "Any requirements or conditions imposed by the patient or by circumstances."

RESPONSE: The subparagraph in question again tracks R.P.C. 1.5 and is in its composition as clear as the Board felt it could be if sufficient legal latitude were to be retained. Nevertheless, the Board will offer an example of a situation this subparagraph might address in order to provide a sense of its possible application: If a patient requires home visits, a higher fee might in fact be justifiable.

COMMENT: A respondent wrote to ask how duplication of services will be addressed.

RESPONSE: Such duplication will be addressed on a case-by-case basis, and knowingly illegal duplication will certainly be considered a violation of this rule.

COMMENT: In order to prevent overutilization, a respondent asked the Board to provide an appropriate treatment schedule for the International Classification of Diseases (ICD)-9 codes.

RESPONSE: The Board believes it is inappropriate to provide a treatment schedule for the ICD-9 codes because licensees should be allowed to exercise professional discretion informed by the knowledge that services rendered need to be capable of being clinically substantiated.

COMMENT: A respondent asked the Board what it considers to be reasonable costs connected with provision of medical records.

RESPONSE: The Board considers a reasonable fee to be the fee necessary to recoup costs pursuant to N.J.A.C. 13:44E-2.2(d)5.

COMMENT: A respondent wrote to ask the Board questions regarding Independent Chiropractic Examinations (ICE), as follows: If it is suspected that treatment being provided is excessive and/or inappropriate, and the decision to obtain an ICE has been made, can payment of chiropractic billing be withheld until a determination is made through ICE of appropriateness of treatment? If payment cannot be withheld, what recourse does the insurer have to recover payments made to a chiropractor which have been judged through ICE to be excessive or inappropriate? If the treating chiropractor disagrees with the opinion of the ICE and requests another examination by a different chiropractor, must the insurer undertake such an examination and who bears the cost?

RESPONSE: The Independent Chiropractic Examination does not lie within the purview of this rule, and so all questions including those regarding the recovery of payments should be submitted elsewhere as may be appropriate.

COMMENT: A respondent wrote wondering what other factors licensees should be aware of to avoid being accused of charging excessive fees.

RESPONSE: This rule was drafted to reflect the Board's policy goals and to be as self-explanatory as legally advisable. The Board cannot anticipate all of the factors that it might find itself taking into consideration. In general terms, it might be noted that in trying to address fee-gouging, regulatory agencies walk the line between price-setting, which is impermissible, and having standards that are too vague, which is equally impermissible. The Board finds that the factors it has set forth in this rule do, indeed, achieve the goal of walking the line between these two impermissible courses of action.

COMMENT: One respondent wrote in to offer comments that apply to all of the chiropractic proposals published in the September 7th issue of the New Jersey Register. The respondent made the following statements: the profession does not need any of these proposals, which are burdensome, overly broad "catch-all" regulations that will serve no purpose except to employ State workers who will then enforce them; the Board needs to inform all licensees, in advance, of future regulatory proposals; the proposals contain provisions with which it is "impossible" to comply; and the Board is a tool of the insurance industry.

RESPONSE: The Board is duty-bound to promulgate rules and regulations in order to create appropriate guidelines governing the practice of chiropractic in this State. These guidelines protect the public against unreasonable professional practices and, in doing so, simultaneously provide guidance to licensees.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*):

13:44E-2.13 Overutilization; excessive fees

(a) A licensee shall not directly or indirectly engage in the rendering of any bill or the submission of any claim for service which:

1. Is not justified by the needs of the patient;
2. Is for any diagnostic or treatment services, goods or appliances which are excessive in quality or quantity;
3. Represents multiple charges for the same chiropractic services or treatments, good or appliance;
4. Contains an excessive fee. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances. The charging of an excessive fee shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21. Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following.
  - i. The time and effort required;
  - ii. The novelty and difficulty of the procedure or treatment;
  - iii. The skill required to perform the procedure or treatment properly;
  - iv. Any requirements or conditions imposed by the patient or by circumstances;
  - v. The nature and length of the professional relationship with the patient;
  - vi. The experience, reputation and ability of the licensee performing the services; and/or
  - vii. The nature and circumstances under which services are provided.
5. Is for services, goods or appliances which were not rendered or supplied;
6. Is for a charge or claim which, due to the presence of insurance coverage, exceeds the usual and customary charges for such services, goods or appliances for patients who do not have insurance coverage; or
7. \*(Reserved)\*

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF CHIROPRACTIC EXAMINERS**

**Referral of Patients to Physical Therapists**

**Adopted New Rule: N.J.A.C. 13:44E-2.14**

Proposed: September 7, 1993 at 25 N.J.R. 3938(a).

Adopted: December 16, 1993 by the Board of Chiropractic Examiners, Alfred Davis, D.C., President.

Filed: February 10, 1994 as R.1994 d.123, **without change**.

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: March 7, 1994.

Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44E-2.14, regarding referral of patients to physical therapists.

The official comment period ended on October 7, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3937(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, Kay McCormack, Executive Director, 124 Halsey St., P.O. Box 45004, Newark, New Jersey 07101.

**Summary of Public Comments and Agency Responses:**

During the 30-day comment period, the Board received 18 written comments regarding the proposal. A list of the commenters follows: Robert Warsak, Joseph D'Angiolillo, Wendie Hunt, Perry Wolk-Weiss, Blase Toto, Adam Goldstone, Lois Taylor, Jeffrey Contino/Todd Kirs-

tein, Anthony Patras, Hector Munoz, Michael Liberman, Lauri Taylor, John Farrell, William DeGasperi, Larry Sabel, Cindy Gore, Geraldine Banda, Michael Spadafino.

Following is a summary of the comments received together with the Board's responses:

**N.J.A.C. 13:44E-2.14 Referral of patients to physical therapists**

**COMMENT:** A respondent congratulated the Board on clarifying the professional relationship between physical therapists and chiropractors.

**RESPONSE:** The Board appreciates this expression of support.

**COMMENT:** A respondent simply described this proposal as "ridiculous".

**RESPONSE:** The Board does not agree with the characterization stated above. This rule will provide valuable guidance regarding the professional interaction between chiropractors and physical therapists, and thus will ultimately benefit consumers at large.

**COMMENT:** Six respondents wrote to state that this proposal is unnecessary, since the existing law which regulates how physical therapists are to accept referrals from other portal of entry physicians merely needs to be amended to include chiropractors. The statement was also made that this proposal is unnecessary and constitutes over-regulating because it regulates what is normally done and so to enforce such behavior, the argument goes, is therefore wrong. The Board was asked whether this proposal duplicates a regulation by the Board of Medical Examiners and was told that this proposal is unfair and discriminatory toward the chiropractic profession.

**RESPONSE:** This rule is, in fact, necessary because the "existing law" that was alluded to above concerns Medical Board regulations, which either have expired and thus no longer exist or else simply no longer apply since the formation of the Board of Chiropractic Examiners. Thus the Board of Chiropractic Examiners needs to establish its own regulations governing the relationship between chiropractors and physical therapists.

**COMMENT:** Seven respondents wrote expressing concern that this proposal will give increased strength to physical therapists to become primary care providers, or at the very least will "over-recognize" the advantages of physical therapy. The statement was made that if spinal manipulation is what really makes the difference in treating subluxation, then it is questionable to refer patients to physical therapists and the better route might be to include physical therapy modalities within chiropractic. The question was asked as to why costs should be allowed to escalate because of patients paying more for identical services performed by a physical therapist.

**RESPONSE:** This rule will not give "increased strength" to physical therapists to become primary care providers. What this rule will actually accomplish is to delineate the relationship between chiropractors and physical therapists. It should be noted that the services performed by physical therapists will be ancillary rather than "identical" to the chiropractic adjustment, which remains the primary mode of service applicable under this rule.

**COMMENT:** Two respondents wrote to protest against the statement, "it confirms their ability to make professional judgments regarding the patients referred to them." This statement was deemed to be both vague and ill-advised, since it seems to mean that a referring chiropractor is surrendering authority regarding the prescribing of a specific program of treatment.

**RESPONSE:** Physical therapists are required by law to provide physician-directed adjustments and, in doing so, retain the right to offer professional judgments. The Board wishes to reassure the respondents that a surrendering of authority is not what this rule is about; rather, it serves to clarify and affirm the professional relationship between chiropractors and physical therapists.

**COMMENT:** A respondent wrote to ask if chiropractors will choose to whom to send their patients or if a patient can hereby find a physical therapist on his or her own.

**RESPONSE:** Both scenarios are acceptable so long as it is, of course, understood that the consumer always retains the ultimate right to choose his or her own physical therapist. It should also be noted that patients will still need to be referred to a physical therapist as provided for pursuant to the provisions of this rule.

**COMMENT:** A respondent wrote to suggest that this proposal include a statement that physical therapists can refer to chiropractors in the event that they get patients who need that type of care. The question was asked whether there is also a similar regulation governing physical therapists' referrals to chiropractors.

**RESPONSE:** The suggestion being offered should be addressed instead to the State Board of Physical Therapy. The answer to the question is "no," since there is a prohibition against referrals being made by physical therapists.

**COMMENT:** One respondent wrote in to offer comments that apply to all of the chiropractic proposals published in the September 7th issue of the New Jersey Register. The respondent made the following statements: the profession does not need any of these proposals, which are burdensome, overly broad "catch-all" regulations that will serve no purpose except to employ State workers who will then enforce them; the Board needs to inform all licensees, in advance, of future regulatory proposals; the proposals contain provisions with which it is "impossible" to comply; and the Board is a tool of the insurance industry.

**RESPONSE:** The Board is duty-bound to promulgate rules and regulations in order to create appropriate guidelines governing the practice of chiropractic in this State. These guidelines protect the public against unreasonable professional practices and, in doing so, simultaneously provide guidance to licensees.

**Full text of the adoption follows:**

13:44E-2.14 Referral of patients to physical therapists

(a) A chiropractor providing physician direction for the initiation of physical therapy treatment by a physical therapist shall supply the physical therapist with the following information in writing:

1. The name of the patient;
2. The printed name of the referring chiropractor, including office address and phone number;
3. The signature of the chiropractor and the date;
4. The purpose of referral (for example, "physical therapy examination and treatment"); and
5. The spinal component of patient's problem.

(b) The referring chiropractor may verbally supply this information provided that a written confirmation is forwarded to the physical therapist within two weeks.

(c) After the physical therapist has completed the physical therapy examination and evaluation, the referring chiropractor shall participate in consultation with the physical therapist. This consultation shall:

1. Clarify any divergent assessments that the referring chiropractor and physical therapist may have made regarding the patient's needs;
2. Coordinate treatment programs in the event that the patient receives concurrent chiropractic and physical therapy. Any such concurrent treatment programs shall be compatible; and
3. Jointly determine a schedule of additional consultation that will allow the referring chiropractor to monitor the patient's on-going plan of care.

(d) The referring chiropractor shall document the initial and on-going consultation with the physical therapist in the patient's record.

**(a)**

**DIVISION OF CONSUMER AFFAIRS  
OFFICE OF WEIGHTS AND MEASURES  
Scales, Instruments and Devices; Weights and Measures**

**Readoption with Amendments: N.J.A.C. 13:47B**

Proposed: November 15, 1993 at 25 N.J.R. 5102(a).

Adopted: January 31, 1994 by William Wolfe, State Superintendent, Division of Consumer Affairs, Office of Weights and Measures.

Filed: February 10, 1994 as R.1994 d.124, **without change.**

Authority: N.J.S.A. 51:1-61.

Effective Date: February 10, 1994, Readoption;  
March 7, 1994, Amendments.

Expiration Date: February 10, 1999.

The Office of Weights and Measures afforded all interested parties an opportunity to comment on the proposed readoption with amendments of N.J.A.C. 13:47B, Scales, Instruments and Devices.

The official comment period ended on December 15, 1993.

Announcement of the opportunity to respond to the Office of Weights and Measures appeared in the New Jersey Register on November 15, 1993 at 25 N.J.R. 5102(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Office of Weights and Measures, William Wolfe, State Superintendent, 1261 Routes 1 and 9 South, Avenel, New Jersey 07001.

**Summary of Public Comments and Agency Responses:**

During the 30-day comment period, the Office of Weights and Measures received one written comment regarding the proposal from Curt Macysyn, Associate Director, Fuel Merchants Association of New Jersey.

**COMMENT:** The respondent recommended that N.J.A.C. 13:47B-1.1(b) be amended as follows: Delete the existing provision: (b) "Tests must be made before the first sale each day, and also prior to using a new supply of liquid." As recommended, the amended subsection would read: (b) "Tests must be made on a periodic basis, but in no case shall that period of time exceed one week."

The respondent offers this recommendation because of the onerous nature of conducting a test each day. The respondent believes that the proposed amendment allows the Division to maintain the test, which is valuable from an enforcement standpoint, while providing service station operators with the flexibility to conduct the test when most feasible.

**RESPONSE:** The State Superintendent of Weights and Measures believes that the daily test of the dispenser, which merely requires the dealer to pump five gallons of liquid fuel in a five-gallon standard to check for accuracy of the dispenser and then dump the liquid fuel back in the storage tank, provides an effective way to protect the interests of the dealer and consumers. Since the dealer is required under law to maintain the dispensers as correct and in proper operating condition at all times, this test provides the dealer with an opportunity to assess the calibration of the dispensers and take appropriate actions as needed before the incorrect conditions are detected, and enforcement actions are taken, by a New Jersey Weights and Measures officer. The consumers benefit from this requirement in that they can purchase liquid fuels with confidence in the correct calibration of the dispensers. Based on the foregoing reasons, the State Superintendent of Weights and Measures does not believe that this regulation, which has been in effect for more than 25 years, imposes an onerous burden on the dealers.

**Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:47B.**

**Full text of the adopted amendments follows:**

13:47B-1.1 Liquid measuring devices

(a) Dealers using gasoline pumps and other automatic liquid measuring devices for the sale of gasoline and similar liquid fuels shall obtain a proper standard measure in a capacity of five gallons, for the purpose of making tests to ascertain whether the device is delivering the correct quantity.

(b) (No change.)

13:47B-1.2 Length measuring devices

The use of counter tacks as linear measures is forbidden in this State and all measures of length shall be in conformance with the requirements set forth in the National Institute of Standards and Technology Handbook 44, Specifications, tolerances and other technical requirements for weighing and measuring devices.

13:47B-1.5 Type approval

(a) All new types of weighing and measuring devices of any description whatsoever, and all devices of older types to which may be added any alteration of new feature intended or designed as an improvement to such equipment shall, before distribution or installation thereof in the State of New Jersey, be submitted by the manufacturer thereof to the State Superintendent of Weights and Measures, (Trenton) Avenel, New Jersey for inspection and approval of type and operation.

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

13:47B-1.16 Inspection certificates

(a) (No change.)

(b) Such certificates shall be available at the place of business of the owner or user where the weighing or measuring devices are

installed or carried on the vehicle on which any weighing or measuring devices are employed in the vending of commodities.

(c) (No change.)

13:47B-1.20 National Institute of Standards and Technology Handbook 44

All specifications, tolerances and other technical requirements for weighing and measuring devices contained in the National Institute of Standards and Technology Handbook 44, 1993 edition and all future editions together with all amendments and supplements thereto, adopted by the National Conference on Weights and Measures are hereby adopted and promulgated as the legal requirements for all weighing and measuring devices used for commercial purposes and law enforcement in the State of New Jersey; provided, however that the Superintendent of the Office of Weights and Measures of the Division of Consumer Affairs, Department of Law and Public Safety may from time to time further amend or supplement said specifications, tolerances and other technical requirements for the purpose of conforming the needs of any situation affecting the interests of the State and its people.

(a)

**NEW JERSEY RACING COMMISSION**

**Thoroughbred Rules**

**Intent of Medication Rules**

**Adopted Amendment: N.J.A.C. 13:70-14A.1**

Proposed: July 19, 1993 at 25 N.J.R. 3099(a).

Adopted: February 7, 1994 by the New Jersey Racing

Commission, Frank Zanzucki, Executive Director.

Filed: February 10, 1994 as R.1994 d.125, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:5-30.

Effective Date: March 7, 1994.

Expiration Date: January 25, 1995.

With regard to the adopted amendments to N.J.A.C. 13:70-14A.1, the Racing Commission received comment from the Standardbred Breeders and Owners Association of New Jersey, Inc. ("SBOA"), the New Jersey Veterinary Medical Association ("NJVMA") and David Lee Skand, V.M.D., P.C. See also the adopted amendments to N.J.A.C. 13:70-14A.9, 20.11 and 21.4 published elsewhere in this issue of the New Jersey Register.

**Summary of Public Comments and Agency Responses:**

As noted, comments to these amendments were received from the identified parties. While the comments of the SBOA bear direct relation to similar amendments to the Racing Commission's harness racing regulations, N.J.S.A. 13:71, certain of these comments relate indirectly to the instant amendments and are therefore addressed herein in that context. The SBOA prefaced its comments by stating that, while not opposing amendments which seek to strengthen and clarify the medication rules, it advances its comments to, in its view, achieve a more meaningful regulation. A summary of the received comments, and the agency response, is set forth immediately below.

COMMENT: The SBOA commented that testing standards utilized or adopted to enforce the amended language of N.J.A.C. 13:70-14A.1, which provides that a drug and/or substance administered to a horse is foreign to the horse irrespective of whether the drug or substance is also naturally occurring to the horse, should allow for regular and naturally occurring substances in samples from race horses.

RESPONSE: Rejected. N.J.A.C. 13:70-14A.1 defines a drug and/or substance as foreign to the natural horse to include those drugs or substances administered to the horse which are also naturally occurring to the horse. The comment is rejected in that the rule neither addresses or seeks to address testing methodology. The rule, by its terms, does not prohibit the horse from carrying drugs or substances naturally occurring to it when such is not the result of an administration. Where the evidence relating to an alleged infraction is limited to fluid samples from the race horse, the rule by its own terms would not result in an infraction where available testing methodology could not sufficiently distinguish

between a naturally occurring level and that resulting from an administration. Of course, in appropriate cases, evidence in lieu of or in supplement to fluid sample testing could be of relevance to the determination of whether or not an infraction of the rule occurred with respect to such drug or substance. For example, dependent on the existant facts, it must certainly be of relevance if an investigator employed by the Racing Commission were to observe a horse entered to start in a race having administered to it such a drug or substance.

COMMENT: The SBOA commented that the Commission should further define or clarify the 13 substances listed in N.J.A.C. 13:70-14A.1(b), and should consider adopting a definition for innocuous compounds to include those substances which may be used with horses on race day. The comments of Dr. Skand also reflect that, while the intent of the proposal is both practical and beneficial to the sport, the clarification of various types of substances set forth in N.J.A.C. 13:70-14A.1(b)1 would be beneficial.

RESPONSE: Rejected. The comments of the SBOA were received on June 18, 1992, prior to the July 19, 1993 publication of the N.J.A.C. 13:70-14A.1 proposal in the New Jersey Register. The rule as published does define external rub or innocuous compound. They are defined as a single substance, mixture of substances or compound which does not contain any of the 13 examples of prohibited items set forth in subsection (b), or additionally, any other substance foreign to the natural horse which alters its normal physiological state. The Commission is of the view that this definition adequately defines the subject terms. With regard to the 13 substances listed in N.J.A.C. 13:70-14A.1, these substances are only listed as examples of drugs or substances foreign to the natural horse which are prohibited. The rule, by its terms, prohibits any horse entered to start in or participating in any race from carrying in its body any drug and/or substance foreign to the natural horse, except external rubs and innocuous compounds or as otherwise provided in the rules. The Commission is of the view that the inclusion of these 13 items as mere examples of prohibited substances makes the rule more meaningful in view of the general prohibition. Moreover, the inclusion of examples of prohibited drugs and/or substances directly within the body of the regulation results in the new rule being more specific than that which preceded it. The language of the rule is consistent with its intent and deemed necessary to achieve maximum social benefit, that is, to advance the integrity of racing and the confidence of the wagering public in the sport.

COMMENT: The SBOA commented with respect to the language of N.J.A.C. 13:70-14A.1(c) and (d) which allows the horse to carry in its body on the day of the race food products resulting from the normal and proper diet of a horse. The SBOA noted that the term "normal and proper diet of a horse" should be defined, noting that food products may contain products which would constitute "innocuous compounds."

RESPONSE: Rejected. In view of the agency-initiated changes to N.J.A.C. 13:70-14A.1(c) and (d), which are consistent with the intent of the regulation and advanced for clarification purposes (see explanation below), the language of these subsections of the rule is sufficient by its own terms. The clarifying language makes clear that a horse may carry in its body on the day of the race, or intake on the day of the race, food products resulting from the normal and proper diet of a horse which does not contain prohibited drugs and/or substances foreign to the natural horse.

COMMENT: The SBOA further commented with respect to N.J.A.C. 13:70-14A.1(d). The SBOA notes that the regulation on race day seeks to prohibit "tubing, jugging or drenching." The SBOA questions whether the prohibition should be as broad as proposed and, while not suggesting that the Commission should permit the practice of "tubing," it suggests that certain intravenous administrations should not be prohibited on race day.

RESPONSE: Rejected. The rule, in paragraph (b), indicates that the horse may not carry in its body on race day drugs and/or substances foreign to the natural horse regardless of when or how administered. Subsection (d) sets forth additional restrictions, relating to the administration on the day of the race. While it absolutely prohibits the administration on race day of any such drugs and/or substances foreign to the natural horse, it limits the method of administration on race day of permissible items as lasix, phenylbutazone, and non-prohibited external rubs or innocuous compounds. The prohibition against "tubing, jugging or drenching" on race day is deemed necessary to achieve the intent of the regulation and to maximize enforcement efforts on the day of the wagering event.

COMMENT: The New Jersey Veterinary Medical Association ("NJVMA") as noted, also commented with respect to N.J.A.C. 13:70-14A.1. While recognizing the need to insure the integrity of the racing industry, the NJVMA comments state that the control of prohibited substances is currently controlled through post-race testing and the concept of attempting to regulate against prohibited substances through a ban on "race day medications." The NJVMA propounds the view that there is no sound basis to select an arbitrary time frame of "race day" and questions the ability to enforce the restriction. It further proposes that the regulation fails to adequately contemplate medical considerations and the prohibition against race day treatment could in its estimation risk an animal's health.

RESPONSE: As noted, paragraph (b) indicates that the horse may not carry in its body on race day drugs and/or substances foreign to the natural horse regardless of when or how administered. Subsection (d) sets forth additional restrictions, relating to administration on the day of the race. The rule prohibits the administration on race day of any such drugs and/or substances foreign to the natural horse, and for reasons addressed above, it limits during that time frame the method of administration on race day of permissible items as lasix, phenylbutazone and non-prohibited innocuous compounds. The rule is not intended, directly or indirectly, to in any way risk an animal's health. The rule is intended to prevent a horse from participating in a race while carrying drugs and/or substances foreign to the natural horse and to maximize enforcement efforts. The regulation in no way seeks to prohibit medication necessary to the health of the horse from being administered. However, where such an administration would result in the horse not being in compliance with the regulation or regulations of the Commission, the regulation among other things seeks to prevent that animal from participating in a race event with other animals in compliance.

#### Summary of Agency-Initiated Changes:

N.J.A.C. 13:70-14A.1(c) and (d) have been revised to clarify that a horse may carry in its body on the day of the race, or intake on the day of the race, food products resulting from the normal and proper diet of a horse which do not contain prohibited drugs and/or substances foreign to the natural horse. The language of N.J.A.C. 13:70-14A.1(d) was further clarified to reflect that the terms external rub and innocuous compound are defined elsewhere in the regulation.

Full text of the adoption follows (additions to proposal indicated with boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

13:70-14A.1 Intent of medication rules; general provisions

(a) It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse.

(b) On the day of the race, irrespective of the date, time and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in these rules. Examples of drugs and/or substances foreign to the natural horse, and thus prohibited pursuant to this section, are as follows:

1. Articles meeting the definition of drug as set forth in N.J.A.C. 13:70-2.1;
2. Chemical substances;
3. Stimulants;
4. Depressants;
5. Anesthetics;
6. Tranquilizers;
7. Anti-inflammatories;
8. Erythropietin (epogen, EPO);
9. Pain killers;
10. Sodium bicarbonate (baking soda);
11. Confectionery sugar;
12. Stamina builders; and

13. Mixtures, compounds or solutions commonly referred to as "milkshakes" which contain any prohibited drug and/or substance.

(c) Nothing contained in this section, however, shall be construed to prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse **\*not containing prohibited drugs and/or substances\***.

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an **\*otherwise permissible\*** external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:70-14A.9, the intravenous or oral administration of phenylbutazone pursuant to N.J.A.C. 13:70-14A.9, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound **\*as defined in this section\*** shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse **\*not containing prohibited drugs and/or substances\*** may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) An external rub or innocuous compound is a single substance, mixture of substances or compound which does not contain any of the 13 examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse which alters its normal physiological state.

(a)

## NEW JERSEY RACING COMMISSION

### Thoroughbred Rules

### Administering Medication to Respiratory Bleeders

### Adopted Amendment: N.J.A.C. 13:70-14A.9

Proposed: July 19, 1993 at 25 N.J.R. 3100(a).

Adopted: February 7, 1994 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: February 10, 1994 as R.1994 d.129, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 7, 1994.

Expiration Date: January 25, 1995.

#### Summary of Public Comments and Agency Responses:

No comments received. See also the adopted amendments to N.J.A.C. 13:70-14A.1, 20.11 and 21.4 published elsewhere in this issue of the New Jersey Register.

Full text of the adoption follows:

13:70-14A.9 Administering medication to respiratory bleeders; standards for the administration of phenylbutazone

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

(f) Notwithstanding anything to the contrary herein or in N.J.A.C. 13:70-14A.1, on the day of the race a horse may carry in its body and have administered to it, intravenously or orally, phenylbutazone in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.

(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, they shall punish the offending party as follows:

1. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity above 2.5 micrograms per milliliter up to and including 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

- i. First violation of N.J.A.C. 13:70-14A.9(g)1—\$250.00 fine;
- ii. Second violation of N.J.A.C. 13:70-14A.9(g)1—\$500.00 fine and seven days suspension;
- iii. Third violation of N.J.A.C. 13:70-14A.9(g)1—\$500.00 fine, loss of any purse and suspension; and
- iv. Fourth or subsequent violation of N.J.A.C. 13:70-14A.9(g)1—such fines, suspensions and/or other penalties allowed by this chapter.

2. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity exceeding 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

- i. First violation of N.J.A.C. 13:70-14A.9(g)2—\$500.00 fine and loss of any purse;
- ii. Second violation of N.J.A.C. 13:70-14A.9(g)2—\$500.00 fine, loss of any purse and 15-days suspension;
- iii. Third violation of N.J.A.C. 13:70-14A.9(g)2—\$500.00 fine, loss of any purse and suspension; and
- iv. Fourth or subsequent violation of N.J.A.C. 13:70-23.8(g)2—such fines, suspensions and/or other penalties allowed by this chapter.

## (a)

**NEW JERSEY RACING COMMISSION****Thoroughbred Rules****Limitation on Entering or Starting****Adopted Amendment: N.J.A.C. 13:70-20.11**

Proposed: July 19, 1993 at 25 N.J.R. 3101(a).

Adopted: February 7, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: February 10, 1994 as R.1994 d.130, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 7, 1994.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.** See also the adopted amendments to N.J.A.C. 13:70-14A.1, 14A.9 and 21.4 published elsewhere in this issue of the New Jersey Register.

**Full text** of the adoption follows:

13:70-20.11 Limitations on entering or starting

- (a) A trainer shall not enter or start a horse that:
  1. Is not in serviceable, sound racing condition;
  2. Is on the stewards, starters or veterinarians list in any racing jurisdiction;
  3. Is not in compliance with N.J.A.C. 13:70-14A.1;
  4. Is blind, or has seriously impaired vision in both eyes;
  5. Is a chronic known bleeder.
- (b) (No change.)

## (b)

**NEW JERSEY RACING COMMISSION****Thoroughbred Rules****Medication****Adopted Amendment: N.J.A.C. 13:70-21.4**

Proposed: July 19, 1993 at 25 N.J.R. 3102(a).

Adopted: February 7, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: February 10, 1994 as R.1994 d.131, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 7, 1994.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.** See also the adopted amendments to N.J.A.C. 13:70-14A.1, 14A.9 and 20.11 published elsewhere in this issue of the New Jersey Register.

**Full text** of the adoption follows:

13:70-21.4 Medication

An owner shall not knowingly enter, or cause to be entered, any horses having received a substance foreign to the natural horse which results in the horse not being in compliance with N.J.A.C. 13:70-14A.1 and/or N.J.A.C. 13:70-20.11.

## (c)

**NEW JERSEY RACING COMMISSION****Harness Rules****Intent of Medication Rules****Adopted Amendment: N.J.A.C. 13:71-23.1**

Proposed: July 19, 1993 at 25 N.J.R. 3104(a).

Adopted: February 7, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: February 10, 1994 as R.1994 d.126, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:5-30.

Effective Date: March 7, 1994.

Expiration Date: January 25, 1995.

With regard to the amendments to N.J.A.C. 13:71-23.1, the Racing Commission received comment from the Standardbred Breeders and Owners Association of New Jersey, Inc. ("SBOA"), the New Jersey Veterinary Medical Association ("NJVMA") and David Lee Skand, V.M.D., P.C. See also the adopted amendment to N.J.A.C. 13:71-23.8 published elsewhere in this issue of the New Jersey Register.

**Summary of Public Comments and Agency Responses:**

As noted, comments to these amendments were received from the identified parties. The SBOA prefaced its comments by stating that, while not opposing amendments which seek to strengthen and clarify the medication rules, it advances its comments to in its view achieve a more meaningful regulation. A summary of the received comments, and the agency response, is set forth immediately below.

**COMMENT:** The SBOA commented that testing standards utilized or adopted to enforce the amended language of N.J.A.C. 13:71-23.1, which provides that a drug and/or substance administered to a horse is foreign to the horse irrespective of whether the drug or substance is also naturally occurring to the horse, should allow for regular and naturally occurring substances in samples from race horses.

**RESPONSE:** Rejected. N.J.A.C. 13:71-23.1 defines a drug and/or substance as foreign to the natural horse to include those drugs or substances administered to the horse which are also naturally occurring to the horse. The comment is rejected in that the rule neither addresses or seeks to address testing methodology. The rule, by its terms, does not prohibit the horse from carrying drugs or substances naturally occurring to it when such is not the result of an administration. Where the evidence relating to an alleged infraction is limited to fluid samples from the race horse, the rule by its own terms would not result in an infraction where available testing methodology could not sufficiently distinguish between a naturally occurring level and that resulting from an administration. Of course, in appropriate cases, evidence in lieu of or in supplement to fluid sample testing could be of relevance to the determination of whether or not an infraction of the rule occurred with respect to such drug or substance. For example, dependent on the existent facts, it must certainly be of relevance if an investigator employed by the Racing Commission were to observe a horse entered to start in a race having administered to it such a drug or substance.

**COMMENT:** The SBOA commented that the Commission should further define or clarify the 13 substances listed in N.J.A.C. 13:71-23.1(b), and should consider adopting a definition for innocuous compounds to include those substances which may be used with horses on race day. The comments of Dr. Skand also reflect that, while the intent of the proposal is both practical and beneficial to the sport, the clarification

of various types of substances set forth in N.J.A.C. 13:71-23.1 would be beneficial.

RESPONSE: Rejected. The comments of the SBOA were received on June 18, 1992, prior to the July 19, 1993 publication of the N.J.A.C. 13:71-23.1 proposal in the New Jersey Register. The rule as published does define external rub or innocuous compound. They are defined as a single substance, mixture of substances or compound which does not contain any of the 13 examples of prohibited items set forth in subsection (b), or additionally, any other substance foreign to the natural horse which alters its normal physiological state. The Commission is of the view that this definition adequately defines the subject terms. With regard to the 13 substances listed in N.J.A.C. 13:71-23.1(b), these substances are only listed as examples of drugs or substances foreign to the natural horse which are prohibited. The rule, by its terms, prohibits any horse entered to start in or participating in any race from carrying in its body any drug and/or substance foreign to the natural horse, except external rubs and innocuous compounds or as otherwise provided in the rules. The Commission is of the view that the inclusion of these 13 items as mere examples of prohibited substances makes the rule more meaningful in view of the general prohibition. Moreover, the inclusion of examples of prohibited drugs and/or substances directly within the body of the regulation results in the new rule being more specific than that which preceded it. The language of the rule is consistent with its intent and deemed necessary to achieve maximum social benefit, that is, to advance the integrity of racing and the confidence of the wagering public in the sport.

COMMENT: The SBOA commented with respect to the language of N.J.A.C. 13:71-23.1(c) and (d) which allows the horse to carry in its body on the day of the race food products resulting from the normal and proper diet of a horse. The SBOA noted that the term "normal and proper diet of a horse" should be defined, noting that food products may contain products which would constitute "innocuous compounds."

RESPONSE: Rejected. In view of the agency-initiated changes to N.J.A.C. 13:71-23.1, which are consistent with the intent of the regulation and advanced for clarification purposes (see explanation below), the language of these subsections of the rule is sufficient by its own terms. The clarifying language makes clear that a horse may carry in its body on the day of the race, or intake on the day of the race, food product resulting from the normal and proper diet of a horse which does not contain prohibited drugs and/or substances foreign to the natural horse.

COMMENT: The SBOA further commented with respect to N.J.A.C. 13:71-23.1(d). The SBOA notes that the regulation on race day seeks to prohibit "tubing, jugging or drenching." The SBOA questions whether the prohibition should be as broad as proposed and, while not suggesting that the Commission should permit the practice of "tubing," it suggests that certain intravenous administrations should not be prohibited on race day.

RESPONSE: Rejected. The rule, in paragraph (b), indicates that the horse may not carry in its body on race day drugs and/or substances foreign to the natural horse regardless of when or how administered. Subsection (d) sets forth additional restrictions, relating to the administration on the day of the race. While it absolutely prohibits the administration on race day of any such drugs and/or substances foreign to the natural horse, it limits the method of administration on race day of permissible items as lasix, phenylbutazone, and non-prohibited external rubs or innocuous compounds. The prohibition against "tubing, jugging or drenching" on race day is deemed necessary to achieve the intent of the regulation and to maximize enforcement efforts on the day of the wagering event.

COMMENT: The New Jersey Veterinary Medical Association ("NJVMA"), as noted, also commented with respect to N.J.A.C. 13:71-23.1. While recognizing the need to insure the integrity of the racing industry, the NJVMA comments state that the control of prohibited substances is currently controlled through post-race testing and the concept of attempting to regulate against prohibited substances through a ban on "race day medications." The NJVMA propounds the view that there is no sound basis to select an arbitrary time frame of "race day" and questions the ability to enforce the restriction. It further proposes that the regulation fails to adequately contemplate medical considerations and the prohibition against race day treatment could in its estimation risk an animal's health.

RESPONSE: As noted, paragraph (b) indicates that the horse may not carry in its body on race day drugs and/or substances foreign to the natural horse regardless of when or how administered. Subsection (d) sets forth additional restrictions, relating to administration on the day

of the race. The rule prohibits the administration on race day of any such drugs and/or substances foreign to the natural horse, and for reasons addressed above, it limits during that time frame the method of administration on race day of permissible items as lasix, phenylbutazone and non-prohibited innocuous compounds. The rule is not intended, directly or indirectly, to in any way risk an animal's health. The rule is intended to prevent a horse from participating in a race while carrying drugs and/or substances foreign to the natural horse and to maximize enforcement efforts. The regulation in no way seeks to prohibit medication necessary to the health of the horse from being administered. However, where such an administration would result in the horse not being in compliance with the regulation or regulations of the Commission, the regulation among other things seeks to prevent that animal from participating in a race event with other animals in compliance.

#### Summary of Agency-Initiated Changes:

N.J.A.C. 13:71-23.1(c) and (d) have been revised to clarify that a horse may carry in its body on the day of the race, or intake on the day of the race, food product resulting from the normal and proper diet of a horse which do not contain prohibited drugs and/or substances foreign to the natural horse. The language of N.J.A.C. 13:71-23.1(d) was further clarified to reflect that the terms external rub and innocuous compound are defined elsewhere in the regulation.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

13:71-23.1 Intent of medication rules; general provisions

(a) It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse.

(b) On the day of the race, irrespective of the date, time and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in these rules. Examples of drugs and/or substances foreign to the natural horse, and thus prohibited pursuant to this section and these rules are as follows:

1. Articles meeting the definition of drug as set forth in N.J.A.C. 13:71-4.1;
2. Chemical substances;
3. Stimulants;
4. Depressants;
5. Anesthetics;
6. Tranquilizers;
7. Anti-inflammatories;
8. Erythropietin (epogen, EPO);
9. Pain killers;
10. Sodium bicarbonate (baking soda);
11. Confectionery sugar;
12. Stamina builders; and
13. Mixtures, compounds or solutions commonly referred to as "milkshakes" which contain any prohibited drug and/or substance.

(c) Nothing contained in this section, however, shall be construed to prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse **\*not containing prohibited drugs and/or substances\***.

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an **\*otherwise permissible\*** external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:71-23.8, the intravenous or oral administration of phenylbutazone pursuant to N.J.A.C. 13:71-23.8, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration

of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound **\*as defined in this section\*** shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse **\*not containing prohibited drugs and/or substances\*** may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) An external rub or innocuous compound is a single substance, mixture of substances or compound which does not contain any of the 13 examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse which alters its normal physiological state.

**(a)**

**NEW JERSEY RACING COMMISSION**

**Harness Rules**

**Administering Medication to Respiratory Bleeders**

**Adopted Amendment: N.J.A.C. 13:71-23.8**

Proposed: July 19, 1993 at 25 N.J.R. 3105(a).

Adopted: February 7, 1994 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: February 10, 1994 as R.1994 d.128, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 7, 1994.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.** See also the adopted amendments to N.J.A.C. 13:71-23.1 published elsewhere in this issue of the New Jersey Register.

**Full text of the adoption follows:**

13:71-23.8 Administering medication to respiratory bleeders; standards for the administration of phenylbutazone

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

(f) Notwithstanding anything to the contrary in this section or in N.J.A.C. 13:71-23.1, on the day of the race a horse may carry in its body and have administered to it, intravenously or orally, phenylbutazone in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.

(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, they shall punish the offending party as follows:

1. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity above 2.5 micrograms per milliliter up to and including 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

- i. First violation of N.J.A.C. 13:71-23.8(g)1—\$250.00 fine;
- ii. Second violation of N.J.A.C. 13:71-23.8(g)1—\$500.00 fine and seven-days suspension;
- iii. Third violation of N.J.A.C. 13:71-23.8(g)1—\$500.00 fine, loss of any purse and suspension; and
- iv. Fourth or subsequent violation of N.J.A.C. 13:71-23.8(g)1—such fines, suspensions and/or other penalties allowed by this chapter.

2. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity exceeding 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

- i. First violation of N.J.A.C. 13:71-23.8(g)2—\$500.00 fine and loss of any purse;
- ii. Second violation of N.J.A.C. 13:71-23.8(g)2—\$500.00 fine, loss of any purse and 15-days suspension;

iii. Third violation of N.J.A.C. 13:71-23.8(g)2—\$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:71-23.8(g)2—such fines, suspensions and/or other penalties allowed by this chapter.

**TRANSPORTATION**

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits**

**Routes N.J. 154 in Camden County and U.S. 40 and U.S. 40/U.S. 322 in Atlantic County**

**Adopted Amendments: N.J.A.C. 16:28-1.32 and 1.56**

Proposed: January 3, 1994 at 26 N.J.R. 106(a).

Adopted: February 4, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: February 10, 1994 as R.1994 d.115, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: March 7, 1994.

Expiration Date: May 7, 1998.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows:**

16:28-1.32 Route 154

(a) The rate of speed designated for the certain parts of State highway Route 154 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Camden County:

(1) Cherry Hill Township:

(A) 40 miles per hour between Haddonfield-Berlin Road (County Road 561) and Route N.J. 70-Route N.J. 41 intersection (approximate mileposts 0.00 to 1.70).

16:28-1.56 Route U.S. 40 and U.S. 40/U.S. 322

(a) The rate of speed designated for the certain parts of State highway U.S. 40 and U.S. 40/U.S. 322 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. (No change.)

(1) (No change.)

(2) Egg Harbor Township:

(A) (No change.)

(B) Zone 2: 50 miles per hour between 700 feet east of Pineview Avenue and Washington Avenue (County Road 608) (approximate mileposts 56.48 to 57.41); thence

(C) Zone 3: 45 miles per hour between Washington Avenue (County Road 608) and Delancy Avenue (approximate mileposts 57.41 to 58.34); thence

(D) Zone 4: 40 miles per hour between Delancy Avenue and the westernmost Egg Harbor Township—Pleasantville City Line (approximate mileposts 58.34 to 58.40); thence

(3) City of Pleasantville:

(A) 40 miles per hour between the westernmost Pleasantville City-Egg Harbor Township line and the easternmost Pleasantville City-Egg Harbor Township line (approximate mileposts 58.40 to 59.82); thence

(4)-(5) (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Lane Usage**

**Route I-287 in Morris County**

**Adopted New Rule: N.J.A.C. 16:30-3.10**

Proposed: January 3, 1994 at 26 N.J.R. 107(a).

Adopted: February 4, 1994 by Richard C. Dube, Director,  
Division of Traffic Engineering and Local Aid.

Filed: February 10, 1994 as R.1994 d.116, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-88.

Effective Date: March 7, 1994.

Expiration Date: May 7, 1998.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows:

16:30-3.10 Route I-287

(a) The use of certain parts of Route I-287 as described in this subsection shall be denied to a certain classification of vehicles as described herein:

1. In the Town of Morristown and Township of Parsippany-Troy Hills, Morris County:

i. The drivers of all trucks having a registered gross weight of vehicle plus load in excess of five tons shall not drive the truck in the two left lanes of the roadway nor overtake and pass another vehicle in such lane of traffic unless the lanes are obstructed or impassable or unless otherwise directed by a police officer, except that an overtaken vehicle may be passed when it is being driven at such a slow speed as to impede the normal and reasonable movement of traffic.

(1) For northbound traffic:

(A) From the vicinity of Franklin Street (milepost 36.15) in the Town of Morristown to the Route I-80 Interchange (milepost 42.13) in the Township of Parsippany-Troy Hills.

(2) For southbound traffic:

(A) From the vicinity of Parsippany Road in the Township of Parsippany-Troy Hills (milepost 40.60) to the vicinity of South Street (milepost 35.80) in the Town of Morristown.

## TREASURY-TAXATION

(b)

**DIVISION OF TAXATION**

**Gross Income Tax**

**Partnerships; Net Profits from Business**

**Adopted Repeal and New Rule: N.J.A.C. 18:35-1.14**

**Adopted New Rule: N.J.A.C. 18:35-1.25**

Proposed: February 16, 1993 at 25 N.J.R. 677(a).

Adopted: February 4, 1994 by Leslie A. Thompson, Director,  
Division of Taxation.

Filed: February 4, 1994 as R.1994 d.110 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54A:9-17(a).

Effective Date: March 7, 1994.

Expiration Date: June 4, 1998.

**Summary of Public Comments and Agency Responses:**

The Division received two sets of comments regarding the proposed rules. The first set was from Markley S. Roderick, Esq., writing on behalf

of the Partnership Committee of the Section of Taxation of the New Jersey State Bar Association. The second set was from Michael C. Lefanto, writing on behalf of the New Jersey Society of Certified Public Accountants.

COMMENT: The impact statements and the proposal itself do not make the effective date of the proposal clear. In addition, one commenter believes that the proposal constitutes ad hoc rulemaking and therefore cannot be applied retroactively under existing law.

RESPONSE: The impact statements indicate that these rules clarify existing law and policies which have been in effect since *Smith v. Director*, 108 N.J. 19 (1987) was handed down. Consequently, the Division believes that the proposal may be applied retroactively pursuant to *Sorenson v. Taxation Div. Director*, 184 N.J. Super. 393 (Tax Ct. 1981), 2 N.J. Tax 470 (1981).

In *Sorenson*, the Tax Court upheld the application of a current rule to past transactions. The Court allowed retroactivity upon its consideration of the following factors: (1) comparison of public interest with private interest; (2) whether, and if so how, the conduct of the taxpayer would have differed if the rule had been in effect; (3) the extent of reliance on the former rule and the burden that would be suffered if that reliance were frustrated. These are exactly the same factors the Division's Conference and Appeals Branch will weigh should an audit result, based on the adopted rule, differ from what the taxpayer claims to be the proper treatment under the circumstances. Of course, any new filing and information requirements will not be applied retroactively but will be effective for all tax years ending after adoption of the proposal.

COMMENT: The Regulatory Flexibility Analysis indicates that any partnership, which for Federal income tax purposes includes interest or dividends in the ordinary income or loss of the partnership, is required to provide its partners with a statement to attach to the New Jersey return which justifies the inclusion of such income in the partnership's ordinary income or loss for New Jersey gross income tax purposes. The commenter believes that a Schedule K-1 (and Schedule C for self-employed individuals) properly prepared on a Federal income tax basis, should be accepted by New Jersey. In addition, the commenter believes that this required "statement" is an unnecessary burden on taxpayers.

RESPONSE: Although distributive share of partnership income is based on ordinary income as determined for Federal income tax purposes, that does not preclude the Division from questioning the method in which such amounts are calculated.

The Division does not believe that this is a burden on New Jersey taxpayers, inasmuch as the statement is not prepared by the taxpayer but is provided by the partnership. Further, the information is available and need only be communicated to the Division in support of the taxpayer's return.

COMMENT: N.J.A.C. 18:35-1.14(b)3ii requires the use of the New Jersey Business Apportionment Schedule (Form NJ-1040-NR-A). The commenter believes that incorporation by reference is inappropriate and the methodology of said Schedule should be set forth verbatim in the rule.

RESPONSE: The Division notes that the request that the methodology used in the Business Apportionment Schedule is beyond the scope of this rulemaking, which deals specifically with partnerships.

COMMENT: N.J.A.C. 18:35-1.14(b)3iii allows a partnership which believes that Form NJ-1040-NR-A does not provide an equitable allocation to provide a more appropriate method of allocation and request exception from the use of the Schedule. The commenter requests that the partnership be permitted to use the alternate method unless and until the Director or taxpayer requests a change.

RESPONSE: The Division agrees in part. The Division has amended the rule to require the request for exception from the use of the Schedule every three years, unless the Director or taxpayer requests a change sooner.

COMMENT: N.J.A.C. 18:35-1.14(c)7 prohibits the deduction of a partner's unreimbursed business expenses and for interest paid by a partner on a loan used to capitalize partnership operations from distributive share. The commenter believes that this is contrary to the *Smith* decision.

RESPONSE: Unreimbursed business expenses are not an expense of the partnership, nor is interest paid by a partner on capital contributions. These items may not be considered in determining a partner's distributive share. The Division believes that only those items of income, expense, loss, or gain which are used to determine the partnership's net income may be used to determine a partner's distributive share.

COMMENT: In Example 8 the partner is permitted to reduce distributive share by the amount of a charitable contribution incurred as a business expense. The commenter refers to the Note to Example 7 which states that charitable contributions not deductible under IRC Section 162 are not deductible for gross income tax purposes and indicates that this note is unnecessary and confusing.

RESPONSE: The Division's position with respect to charitable contributions has always been that only those contributions deducted by the partnership as business expenses may be used to compute a partner's distributive share for New Jersey income tax purposes. Charitable contributions deducted by a partner on Federal 1040, Schedule A, may not be used to reduce New Jersey distributive share. The Division has revised the Note to Example 7 to clarify its position upon adoption.

COMMENT: The commenter suggests that the words "with or" be deleted from N.J.A.C. 18:35-1.14(d) because the taxable year of a partnership which differs from that of a partner cannot end with the partner's taxable year.

RESPONSE: It is possible for a partnership to have a short period year that begins differently from that of a partner but ends with the partner's taxable year. Therefore, the change requested will not be made.

COMMENT: The commenter believes that the proration of partnership income in the case of a part-year residency required by N.J.A.C. 18:35-1.14(e) is erroneous and complex. The commenter further feels that proration is in conflict with the principle of having partnership income "triggered" by the end of the partnership's tax year and believes that subsection (d) is indicative of this principle.

RESPONSE: Subsection (d) is simply providing that income is not realized by a partner until it is realized separately. Subsection (e) provides that once such income is realized by the partner it must be recognized that such income was earned over the course of an entire year. If during that time the partner was a part-time resident, the Division believes that proration is necessary.

COMMENT: The commenter suggests that an out-of-State partnership be required to file only a copy of its Federal Form 1065 and not the Forms K-1 of non-New Jersey partners as required by N.J.A.C. 18:35-1.14(f)1.

RESPONSE: The Division needs all Forms K-1 to reconcile the Federal Form 1065 information.

COMMENT: The commenter believes that a resident partner should not be required to attach a copy of the New Jersey Business Apportionment Schedule (Form NJ-1040-NR-A) to the resident NJ-1040.

RESPONSE: The Division agrees and has amended N.J.A.C. 18:35-1.14(g)2 upon adoption. A resident partner is subject to tax on a distributive share of partnership income no matter where all or any part of it is derived, whether in the United States or a foreign country. Thus, the requirement in this case is of no utility to the State.

COMMENT: The use of the word "directly" in N.J.A.C. 18:35-1.25(b) is inconsistent with the *Smith* decision.

RESPONSE: The Division believes that when this subsection is read in its entirety the use of the word "directly" is appropriate. As indicated in the proposed Summary, the *Smith* decision related to N.J.A.C. 18:35-1.14(c)4, regarding dividend and interest income and gains and losses from disposition of property realized by a securities partnership in the ordinary course of business.

COMMENT: The commenter suggests the inclusion in the adoption of rules concerning the filing of composite returns by nonresident partners, since such returns are accepted from partnerships which have obtained written permission from the Division.

RESPONSE: Rulemaking concerning the filing of composite returns by nonresident partners would not be appropriate, since the use of composite returns is elective with partnerships and their partners, and permission to file a composite return is granted by the Division on a case-by-case basis, in accordance with N.J.S.A. 54A:9-17 and 54A:8-6(b).

COMMENT: The commenters believe that prohibiting the use of gains or losses from IRC Section 1231 property in determining a taxpayer's net profits from business (as well as distributive share of partnership income) as provided in N.J.A.C. 18:35-1.25(b)7 is unwarranted and unsupported.

RESPONSE: The Division believes that the exclusion of IRC Section 1231 gains or losses from net profits from business and distributive share of partnership income is warranted under the Gross Income Tax Act. The Division relies on the 1993 New Jersey Tax Court decision in *Spinella v. Director*, 13 N.J. Tax 305 (1993). *Spinella* involved a partnership whose business was the operation of a hotel. The Court held that since the partnership "was not engaged in the business of buying and selling section 1231 properties (an oxymoron if ever there was one) the gain

realized on the hotel foreclosure cannot be characterized as a partnership distribution of income cognizable under N.J.S.A. 54A:5-1(k) . . ." The Court stated that such gain must be treated as gain from the disposition of property under N.J.S.A. 54A:5-1(c).

COMMENT: The commenters believe that the Division could amend N.J.A.C. 18:35-1.25 to provide that to the extent that gains from the disposition of partnership property are a result of depreciation adjustments to Federal basis, such gains should only be taken into account if the partner received a tax benefit from such depreciation.

RESPONSE: N.J.S.A. 54A:5-1(c) requires the use of Federal adjusted basis when calculating gain (or loss) from the disposition of property and should remain unaffected by the absence of a tax benefit from depreciation deductions. The Division relies on the 1993 New Jersey Tax Court decisions in *Vasudev v. Director*, 13 N.J. Tax 223 (1993) and *Spinella v. Director*, 13 N.J. Tax 305 (1993). Both decisions recognized that, in fact, when Federal rules are followed, basis adjustments are not made when no tax benefit is derived from depreciation deductions. Consequently, no adjustment should be made to basis for New Jersey income tax purposes. To do so would be to provide a benefit that would not be allowed for Federal income tax purposes.

COMMENT: The commenter believes that there is no basis for the distinction in N.J.A.C. 18:35-1.14(h) between Keogh contributions made by a partnership on behalf of employees and those made on behalf of partners. The commenter maintains that there is no difference between the two and that both types should be allowed as deductible business expenses.

RESPONSE: Keogh contributions made on behalf of an employee are business expenses. However, contributions made for the benefit of a partner or self-employed individual are not ordinary and necessary business expenses. As a result, such contributions must be taken as an adjustment to income for Federal income tax purposes. There is no authority in the Gross Income Tax Act to allow such a deduction from income for Keogh contributions.

COMMENT: The commenter questions whether the Division can require a partnership, whose only connection to this State is a partner who is a New Jersey resident, to compute its New Jersey gross income in the same manner as an individual taxpayer.

RESPONSE: The Division recognizes that it probably will not be able to enforce this requirement if the partnership's only connection to New Jersey is a limited partner who is a resident. However, the partnership's failure to comply with this requirement in no way eliminates the partner's obligation to calculate and report his distributive share in accordance with the Gross Income Tax Act, the *Smith* decision, and N.J.A.C. 18:35-1.14 and 1.25.

COMMENT: The commenters believe that the treatment of net lease activities contained in N.J.A.C. 18:35-1.25(b)4 which prohibits the offset of real estate net lease activities should be deleted. The commenters maintain that there is no statutory authority for such distinction and that such treatment is contrary to Federal income tax concepts which the proposal refers to.

RESPONSE: The Summary to the proposal specifically states that the proposal does not define the term "trade or business." It also states that this item would continue to "be characterized generally as a trade or business for Federal income tax purposes." (Emphasis added.) However, where Federal income tax concepts are contrary to New Jersey case law they cannot be embraced. The Division relies on *Newark Bldg. Assoc. v. Dir., Div. of Taxation*, 128 N.J. Super. 535 (1974), which held that limited activities of a partnership as lessor of a net lease do not constitute a business.

#### Summary of Changes Upon Adoption:

At the time that the proposal was drafted, Form NJ-1040-NR-A was called the Business Apportionment Schedule. Since that time, the name of the form has been changed to Business Allocation Schedule. Consequently, the word "Apportionment" has been replaced with "Allocation" in each instance that it appears in the name of Form NJ-1040-NR-A. In addition, it should be noted that the Comments and Responses refer to the Business "Apportionment" Schedule, since that is how it was referred to in the proposal.

N.J.A.C. 18:35-1.14(b)3iii has been amended to require a partnership that requests exception to the use of the Business Allocation Schedule to make the request every three years. Previously, the proposal did not specifically indicate how often the request was required and would have been interpreted as being required annually.

The word "deductible" was changed to "deducted" the first time it appears in the Note to Example 7 found in N.J.A.C. 18:35-1.14(c)8. This was done simply to clarify the intention of the Note.

N.J.A.C. 18:35-1.14(g)2 was amended to no longer require a resident taxpayer to include a copy of the partnership's Business Allocation Schedule with the New Jersey resident tax return.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

#### 18:35-1.14 Partnerships and partners

(a) The following words and terms, when used in this section, shall have the following meanings:

1. "Partnership" means and shall include a syndicate, group, pool, joint venture and any other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation, trust or estate within the meaning of the New Jersey Gross Income Tax Act. "Partnership" shall not include:

- i. A publicly traded partnership;
- ii. A limited partnership association;
- iii. An unincorporated organization whose members properly elect to exclude such organization from the application of Subchapter K of Subtitle A of the Internal Revenue Code; or
- iv. Any other entity which is not taxed as a partnership for Federal income tax purposes.

2. "Partner" means and shall include any person or entity subject to the Gross Income Tax who shall be a member of a partnership, whether as a general partner or a limited partner.

(b) Partners, not partnerships shall be subject to tax and resident and non-resident partners treated as follows:

1. A partnership as such is not subject to the Gross Income Tax. However, each partner of a partnership shall be subject to Gross Income Tax on his or her distributive shares of the categories of New Jersey gross income, whether or not distributed, realized by the partnership for its taxable year ending within or with such partner's taxable year. Each partner shall account for and report his or her distributive shares of the partnership's categories of New Jersey gross income in the manner provided in (c) below.

2. A partner who is a resident taxpayer of New Jersey shall report and be subject to Gross Income Tax upon such partner's full distributive shares of the categories of New Jersey gross income of each partnership in which such partner is a member, regardless of the sources from which such income was derived by each such partnership.

3. A partner who is a nonresident taxpayer of New Jersey shall report and be subject to tax upon the distributive shares of the categories of New Jersey gross income of each partnership in which such partner is a member, but only to the extent such income was derived by the partnerships from sources within New Jersey.

i. Where a partnership's business is carried on solely within New Jersey, all items of the income, gain, expenses or losses of the partnership are deemed to have been derived from sources within New Jersey.

ii. Where a partnership's business is carried on both within and outside of New Jersey, the portion of the partnership's income, gains, expenses or losses attributable to sources within New Jersey shall, except as provided in (b)3iii below, be determined by use of the New Jersey Business **\*[Apportionment]\* \*Allocation\*** Schedule (Form NJ-1040-NR-A), as prepared by the partnership.

iii. Where a partnership's business is carried on both within and outside of New Jersey, and the partnership believes that the determination of the portion of the partnership's income, gains, expenses or losses attributable to sources within New Jersey by use of the New Jersey Business **\*[Apportionment]\* \*Allocation\*** Schedule does not provide an equitable allocation of such items to sources within and outside of New Jersey, and the books and records of the partnership will disclose to the Director's satisfaction a more appropriate method of allocation of such items, the partnership may request from the Director an exception from the use of the New Jersey Business **\*[Apportionment]\* \*Allocation\*** Schedule. Any such request shall be made in writing and shall set forth the basis of the

request and the substitute method of allocation requested to be used in lieu of use of the New Jersey Business **\*[Apportionment]\* \*Allocation\*** Schedule. The substitute method of allocation may not be utilized prior to the submission of the partnership's exception request and the approval of such request by the Director. **\*The partnership's exception request, once approved, shall be made every three years, unless the Director or the partnership requests a change sooner.\***

(c) The determination of a partner's distributive shares of the partnership's items of gross income shall be as follows:

1. Each partnership which has one or more New Jersey resident partners, or which derives any item of gross income from sources within New Jersey, shall compute its New Jersey gross income in the same manner as would an individual taxpayer. Such gross income shall be allocated according to its character among the categories of gross income specified in N.J.S.A. 54A:5-1. Each partner's respective distributive shares of the partnership's various categories of gross income shall be determined by the partnership agreement of the partnership in the same manner the partner's distributive share of partnership income is determined for Federal income tax purposes.

2. Each partner shall report as such partner's "distributive share of partnership income" described in N.J.S.A. 54A:5-1k the net aggregate amount of:

i. The partner's distributive shares of the net profits (or loss) from each partnership of which such partner is a member derived from the conduct by such partnership of a business, profession or other income-producing activity, provided such business, profession or income-producing activity constitutes the conduct of a trade or business, plus

ii. The amount of the partner's guaranteed payments, as determined for Federal income tax purposes, from each partnership of which such partner is a member.

3. A partnership shall determine its net profits (or loss) from the conduct of a business, profession or other income-producing activity for purposes of this subsection in the same manner an individual taxpayer determines his or her "net profits from business" pursuant to N.J.A.C. 18:35-1.25, provided, however, in the case of tiered partnerships, a partnership shall take into account its distributive share of partnership income from any partnership of which it is a member.

4. Each partner shall report such partner's distributive shares of each category of New Jersey gross income of the partnership, other than the partnership's net profits (or loss) from the conduct of a business, profession or other income-producing activity described in (c)2 and 3 above, as an item of income attributable to such category of gross income in the same manner as if the partner had derived such item of gross income directly from sources other than a partnership. Each such item of gross income attributable to any category of gross income shall be reported on a consolidated basis with the partner's other items of gross income which are attributable to such category and which are derived from sources other than a partnership.

5. In the case of any category of gross income which pursuant to the Gross Income Tax Act is to be determined on a net income basis, a partner's distributive share of partnership income, gain, loss or expense attributable to such category shall be reported on a net consolidated basis with the partner's items of income, gain, loss or expenses derived from sources other than a partnership which also are attributable to the same category of gross income.

6. A partner may not report a distributive share of partnership income or loss on a consolidated basis with the partner's net income or loss from business derived from sources other than a partnership.

7. In determining a partner's distributive share of partnership income or loss, no deduction is allowed for expenses which are not incurred by the partnership.

8. The provisions of this section are illustrated by the following examples:

**TREASURY-TAXATION**

**ADOPTIONS**

**Example 1:** A partnership shows the following income on its Federal Partnership Return of Income (Form 1065):

Partnership ordinary income (derived from the conduct of a trade or business):	\$25,000
Included in the partnership's ordinary income is interest income of \$500 derived from U.S. Treasury bills and excluded from the partnership's ordinary income is interest income of \$300 derived from State of New York bonds	
Dividend income (non-business source):	1,200
Long term capital gain on sale of partnership capital assets:	1,000
<b>Total</b>	<u>\$27,200</u>

Partner A has a 50 percent interest in the partnership and is entitled to a 50 percent share of partnership profits or losses. How does partner A report his share of the partnership income or gain on his New Jersey Form NJ-1040?

Partner A reports this income for New Jersey Gross Income Tax purposes as follows:

Distributive share of federal partnership ordinary income	\$12,500
Adjustments for New Jersey Gross Income Tax purposes:	
Add: Interest on New York State bonds	150
	<u>\$12,650</u>
Deduct: Interest on U.S. Treasury bills	(250)
Partner A's distributive share of partnership income:	\$12,400
Dividends:	600
Net gains from disposition of property:	500
<b>Total New Jersey Gross Income:</b>	<u>\$13,500</u>

**Example 2:** A taxpayer has the following income:

Distributive share of partnership income, including \$5,000 of guaranteed payments:	\$12,000
Distributive share of partnership capital gain (non-business):	2,000
Salary and wages from employment:	15,000
Capital loss on sale of individually owned stock:	(4,000)

How is this reportable for New Jersey gross income tax purposes on taxpayer's Form NJ-1040?

The taxpayer will report this income for New Jersey Gross Income Tax purposes as follows:

Salary and wages from employment:	\$15,000
Distributive share of partnership income:	12,000
Capital loss on sale of individually owned stock:	(\$4,000)
Plus: Distributive share of partnership gain:	2,000
Net gain from disposition of property:	0†
<b>Total New Jersey gross income</b>	<u>\$27,000</u>

†Note: The taxpayer may offset the capital loss on the sale of individually owned stock against his distributive share of the partnership's capital gain, but may not apply the resulting net loss from the disposition of property against income attributable to other categories of New Jersey gross income.

**Example 3:** A taxpayer has the following income:

Salary and wages from employment:	\$10,000
Distributive share of partnership loss:	(3,000)
Distributive share of partnership capital loss (non-business):	(2,000)
Capital gain on sale of individually owned stock:	5,000

How is this income reportable for New Jersey Gross Income Tax purposes on Form NJ-1040?

Salary and wages from employment:	\$10,000
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Gain on sale of stock:	\$5,000
Less: Share of partnership capital loss	(2,000)
Net gains or income from disposition of property:	3,000
Distributive share of partnership income:	0†
<b>Total New Jersey gross income</b>	<u>\$13,000</u>

†Note: The taxpayer cannot apply his distributive share of partnership loss against his income attributable to other categories of New Jersey gross income. The taxpayer may only net a distributive share of a partnership loss against a distributive share of partnership income derived from another partnership.

**Example 4:** The Federal form Schedule K-1 (Form 1065) issued to a partner of a partnership actively engaged in the practice of medicine contained the following information:

Partnership net ordinary income (all of which is derived from business activities):	\$25,000
Interest income realized on money market accounts holding required working capital	300
Interest income realized on security deposits held by lessors pertaining to medical equipment leased by the partnership and used in its trade or business	100
Portfolio (i.e., non-business) income:	
Interest (Includes \$500 from U.S. Treasury bills and does not include \$300 from New York State bonds held by the partnership):	1,800
Dividends:	1,200
Royalties:	500
Net long term capital gain:	600
Gain on the sale of property described in I.R.C. §1231	400

The taxpayer will report this information on his NJ-1040 as follows:

Distributive share of partnership income:		
Business ordinary income	\$25,000	
Interest on working capital	300†	
Interest on security deposits	100	
Net distributive share of partnership income reportable on NJ-1040:		25,400
Interest:	1,800	
Adjustments:		
Less interest income from U.S. Treasury bills	(500)	
Plus interest income from New York State bonds	300	
Interest income reportable on NJ-1040:		1,600
Dividends:		1,200
Net income from rents, royalties, etc.:		500
Gains from disposition of property:		
Long term capital gain	600	
§1231 gain	400	
Net gains from disposition of property:		1,000

†Note: Interest income realized by the partnership with respect to its working capital and security deposits may be taken into account in determining the partnership's net income or loss from trade or business only if the partnership annexes to its tax return the statement described in N.J.A.C. 18:35-1.14(f)4. Absent such statement, the interest income must be separately reported as "interest" by the partnership and will be taxable to the partners as "interest."

**Example 5:** The Federal form Schedule K-1 (Form 1065) issued to a partner of a partnership actively engaged in a trade or business of dealing in and trading securities contained the following information:

Partnership net ordinary income (all of which is derived from business activities):	\$25,000
Other classes of partnership income:	
Interest (Includes \$500 from U.S. Treasury bills and does not include	

**ADOPTIONS**

\$300 from New York State bonds (realized in the ordinary course of business):	1,800
Dividends (realized in the ordinary course of business):	1,200
Trading gains treated as capital gain (realized in the ordinary course of business):	600
Net gain under I.R.C. §1231:	400
Royalties (non-business):	500

The taxpayer will report this income on his NJ-1040 as follows:

Partnership items of income derived from the conduct of a trade or business:	
Partnership net ordinary income:	\$25,000
Interest:	1,800
Dividends:	1,200
Net trading gains treated as capital gain:	600
	\$28,600
Adjustments:	
Interest income from U.S. Treasury bills	(500)
Interest income from New York State bonds	300
	(200)
Distributive share of partnership income:	\$28,400
Net Gains from the disposition of property:	
§1231 Gain	400
Net income from rents, royalties, etc.:	500

**Example 6:** Taxpayer is a partner in two partnerships. Partnership A is a medical partnership and Partnership B is a securities partnership. Each partnership's activities constitute an active trade or business. The Federal Schedules K-1 (Form 1065) issued to the taxpayer by the partnerships contained the following information:

	Partnership A	Partnership B
Partnership net ordinary income	\$100,000†	(\$240,000)†
Other income:		
Interest:	5,000††	1,000†
Dividends:	—	25,000†
Capital gain:	12,000††	20,000†
Net gain or loss under I.R.C. §1231	—	(5,000)††

The taxpayer also incurred with respect to his partnerships the following unreimbursed business expenses:

†Business income.	15,000	8,000
††Non-business income.		

The Taxpayer will report this income on his NJ-1040 as follows:

Partnership A		
Partnership Ordinary Income	\$100,000	
Partnership B		
Partnership net ordinary income	(\$240,000)	
Interest	1,000	
Dividends	25,000	
Capital gain	20,000	
	(194,000)	
	( 94,000)	
Distributive share of partnership income:		0†
Interest income (Partnership A):		5,000
Gains from disposition of property:		
Capital gain (Partnership A)	12,000	
§1231 loss (Partnership B)	(5,000)	
Net gain from disposition of property:		7,000

†Note: Taxpayer would report "0" on the line of his NJ-1040 calling for the taxpayer's distributive share of partnership income. However, if the taxpayer had been a partner of a third partnership, up to \$94,000 of the taxpayer's distributive share of income realized by the third partnership from the conduct of a trade or business could be offset by the net \$94,000 loss from Partnerships A and B.

**TREASURY-TAXATION**

**Example 7:** The Federal form Schedule K-1 (Form 1065) issued to a New Jersey resident partner of a partnership actively engaged in the practice of law in New York contained the following information:

Partnership net ordinary income:	\$10,000
Guaranteed payments:	5,000
Interest (Includes \$2,000 from U.S. Treasury bills and does not include \$2,000 from New York State bonds) (non-business):	5,000
Net gain under I.R.C. §1231:	4,000
I.R.C. §179 deduction:	1,000
Taxes based on income (UBT):	2,000
Expense incurred to carry New York State bonds:	1,000
Keogh deduction:	2,000
Charitable contributions (non-business):	3,000

The taxpayer also incurred unreimbursed business expenses with respect to his partnership in the amount of \$3,000.

The taxpayer will report this information on his NJ-1040 as follows:

Partnership net ordinary income	\$10,000	
Guaranteed payments	5,000	
	\$15,000	
Adjustments		
Taxes Based on Income	2,000	
§179 Deduction	(1,000)	
	1,000	
Distributive share of partnership income:		16,000†
Interest income		
Adjustments:	5,000	
Interest income from U.S. Treasury bills	(2,000)	
Interest income from New York State bonds	2,000	
Net Adjustments:		—
Interest:		5,000††
Net Gains from the disposition of property:		
§1231 Gain		4,000

†Note: Keogh Plan contributions for partners, charitable contributions not \*[deductible]\* **\*deducted\*** under I.R.C. §162 and unreimbursed business expenses are not deductible for Gross Income Tax purposes.

††Note: The cost to carry the New York State bonds cannot be deducted because the expense was not incurred in the ordinary course of a trade or business conducted by the partnership.

**Example 8:** The taxpayer is a New Jersey resident who is a partner in two partnerships. Partnership A is a New York based securities partnership and Partnership B is a New Jersey based accounting partnership. Each partnership's activities constitute an active trade or business. The Federal forms Schedule K-1 (Form 1065) issued to the taxpayer by the partnerships contained the following information:

	Partnership A	Partnership B
Partnership Ordinary Income:	(\$10,000)†	(\$15,000)†
Guaranteed payments:	2,000	
Interest:	8,000†	3,000††
Interest from U.S. Treasury Bills included in the interest above	7,000†	
Interest from Pennsylvania State bonds not included in interest above	5,000†	
Dividends:	5,000†	
Net short term capital gains or losses:	(2,000)†	
Net long term capital gains or losses:	18,000†	(1,000)††
Net Gain under §1231:	1,500††	
Taxes based on income (UBT):	2,500†	
Cost to carry Pennsylvania bonds:	1,000†	
Keogh deductions:	2,000	
Charitable contribution incurred as a business expense:		3,000

†Business income.  
††Non-business income.

**TREASURY-TAXATION**

**ADOPTIONS**

The taxpayer is also a shareholder in a New York S corporation. The Schedule K-1 issued by the S corporation showed an ordinary loss of (\$5,000)†.

The taxpayer will report this information on his NJ-1040 as follows:

<b>Partnership A</b>		
Partnership ordinary income	(10,000)	
Guaranteed payments	2,000	
Interest	8,000	
Dividends	5,000	
Net short term capital loss	(2,000)	
Net long term capital gain	<u>18,000</u>	\$21,000
<b>Adjustments:</b>		
Interest income from U.S. Treasury Bills	(7,000)	
Interest income from Pennsylvania State Bonds	5,000	
Taxes based on income	2,500	
Cost to carry Pennsylvania bonds	<u>(1,000)</u>	(500)
Distributive share of partnership income from Partnership A:		20,500
<b>Partnership B</b>		
Partnership ordinary income	(15,000)	
Charitable contribution incurred as a business expense:	(3,000)	
Adjustments:	<u>-0-</u>	
Distributive share of partnership loss from Partnership B		(18,000)
Distributive share of partnership income:		2,500
Interest (Partnership B):		3,000
Gains from disposition of property:		
Net gain under §1231 (Partnership A)	1,500	
Net long term capital loss (Partnership B)	<u>(1,000)</u>	
Net gains from the disposition of property:		500

†Note: S Corporation status is not recognized for New Jersey Gross Income Tax purposes. An S Corporation shareholder's share of the corporation's loss is not deductible for New Jersey Gross Income Tax purposes.

(d) If a partner's taxable year differs from that of the partnership, the partner is to report the partner's distributive share of income, gain or loss for the taxable year of the partnership which ends with or within his or her taxable year.

Example 1: A partner's taxable year ends on December 31, 1979, while the partnership's fiscal year ends on June 30, 1979. The partner is to report the partner's entire distributive share of the income, gain or loss from the partnership's taxable year ended June 30, 1979 on the partner's 1979 NJ-1040.

(e) The following apply to partners who are part-year residents:

1. A partner who is a resident taxpayer for part of any taxable year and a nonresident taxpayer for part of such taxable year is required to report his or her distributive share of partnership income as follows:

- i. The part-year resident return shall include:
  - (1) The portion of the partner's distributive share of partnership income determined by multiplying the partner's entire distributive share of partnership income (including guaranteed payments) by the percentage which the number of days of the partnership's fiscal year that the partner was a New Jersey resident bears to 365; plus
  - (2) The partner's distributive share of each other category of New Jersey gross income (or loss) realized by the partnership during the period covered by the return.
- ii. The part-year nonresident return shall include:
  - (1) The portion of the partner's distributive share of partnership income as follows:
    - (A) If the distributive share of partnership income was derived entirely from New Jersey sources, the portion of that distributive share of partnership income (including guaranteed payments) determined by multiplying the partner's entire distributive share of

partnership income by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; or

(B) If the distributive share of partnership income was derived partly within New Jersey and partly outside New Jersey, the portion of such distributive share determined by multiplying the partner's entire distributive share of partnership income derived by the partnership from sources within New Jersey (determined as provided in (b)3ii or (b)3iii above), by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; and

(2) The partner's distributive share of each other category of New Jersey gross income (or loss) realized by the partnership and derived from New Jersey sources during that period covered by the return.

2. If the partner can demonstrate to the Director's satisfaction that the above reporting method does not properly reflect the partner's reportable income, gains and losses incurred during the partner's periods of residency and nonresidency, then the partner may allocate to the part year resident and part year nonresident returns the portions of the partner's distributive share of partnership income realized by the partnership during each such period.

3. In all cases, a partner who is a resident taxpayer for part of the tax year and a nonresident taxpayer for the remainder of the tax year must attach a schedule to the partner's part year NJ-1040 and the part year NJ-1040-NR showing the calculations used to determine the amounts reported on each return with respect to income, gains, or losses of a partnership.

(f) Partnership filing requirements are as follows:

1. Partnerships having a New Jersey resident partner or having any income derived from New Jersey sources shall file with the Division a complete copy of the Federal Form 1065, U.S. Partnership Return of Income, required to be filed with the Internal Revenue Service, along with the requisite schedules and attachments. Such information filing must be made on or before the date of expiration of the permitted filing period for the partnership's Federal Form 1065, including any extensions of such period allowed for Federal income tax purposes.

2. Except as may be authorized by the Director pursuant to (b)3iii above, every partnership which derives income both from sources within and outside of New Jersey and which has one or more nonresident partners shall complete a New Jersey Business \*[Apportionment]\* \*Allocation\* Schedule (NJ-1040-NR-A). The partnership shall attach a copy of the Schedule to the Federal Form 1065 which it files with the Division, and must also provide a copy of the \*[Apportionment]\* \*Allocation\* Schedule to each nonresident partner.

3. Each partnership shall distribute to each of its partners their respective Schedule K-1 of the partnership's Federal Form 1065. Each partnership also shall distribute to any partner requesting same any materials required to be filed by the partner with the partner's return pursuant to (g) below.

4. Any partnership which for Federal income tax purposes includes interest or dividends in the ordinary income or loss of the partnership, shall annex to its tax return which it files with the Division a statement such as that described in N.J.A.C. 18:35-1.25(b)2 which justifies the inclusion of such income items in the partnership's ordinary income or loss for New Jersey Gross Income Tax purposes. Any partnership which fails to annex such a statement to its return shall separately state on its return the full amounts of its dividend and interest income.

(g) Partner filing requirements are as follows:

1. Each nonresident taxpayer who is a partner in a partnership having income, gains or losses derived from New Jersey sources shall, for each such partnership, include a copy of each of the following with the partner's New Jersey non-resident tax return:

- i. The partner's Federal Schedule K-1;
- ii. Reconciliation of his or her share of partnership income as determined for Federal income tax purposes, in accordance with (c) above; and
- iii. The partnership's New Jersey Business \*[Apportionment]\* \*Allocation\* Schedule (NJ-1040-NR-A), as provided by the partnership.

2. Each resident taxpayer shall include **\*with the New Jersey resident tax return\*** a copy of each of the items specified in (g)li through **\*[iii]\* \*ii\*** above, for each partnership in which the taxpayer is a partner, regardless of the source from which the partnership's income, gains, or losses are derived.

(h) The following apply to Keogh Plans:

1. Partnership contributions to a Keogh Plan made on behalf of employees of the partnership and which are deductible as ordinary and necessary business expenses for Federal income tax purposes also shall be deductible for New Jersey Gross Income tax purposes in determining the net income of the partnership. The employees on whose behalf such contributions were made are not subject to gross income tax on the amounts contributed in the taxable year in which they are contributed to the Keogh Plan, unless withdrawn in such taxable year by the employees from the Plan. The employees are not considered to have actually or constructively received the contributions at the time they were made to the Keogh Plan. When an employee makes a withdrawal from the Keogh Plan, both the untaxed employer contribution and accumulated interest earned thereon are taxable to the employee.

2. Partnership contributions to a Keogh Plan made on behalf of a partner are not deductible business expenses. Such contributions are to be taken into account in determining the distributive shares of partnership income of the individual partners for New Jersey gross income tax purposes in the taxable years in which they are contributed to the Keogh Plan. Previously taxed employer contributions to a Keogh Plan are not subject to tax when subsequently withdrawn by the partners.

3. The interest income accumulated on the Keogh Plan contributions made by the partnership on behalf of the partners is not subject to tax during the period of a partner's participation. Such interest shall become taxable when the partner withdraws it from the Keogh Plan. When a partner makes periodic withdrawals, the accumulated interest in the Keogh Plan is subject to tax in the ratio that the interest bears to the total amount in the partner's account.

4. The provisions of this subsection are illustrated by the following examples:

**Example 1:** A partner's accumulated Keogh contributions held in his account: \$7,500  
 Accumulated interest in partner's Keogh account: 500  
 Total amount in partner's Keogh account: \$8,000

Assume periodic payments to the partner from the account during the taxable year of \$1,600.

The amount of interest withdrawn would be calculated as follows:

$$\frac{\$ 500}{\$8,000} \times \$1,600 = \$100$$

Note: Under the above facts, if a periodic withdrawal of \$1,600 were made by an employee (rather than by a partner) during the taxable year, the full amount of \$1,600 is subject to tax since the employer contribution component of the amount withdrawn was not includable in the employee's income at the time the partnership made the contribution on his behalf.

Example 2: A partnership makes a contribution to a Keogh Plan on behalf of the partners for \$3,000 and on behalf of the employees for \$4,500. The partnership may deduct the \$4,500 contribution on behalf of the employees as a business expense for the taxable year and the employees will not include the \$4,500 as income until withdrawal is made from the Keogh Plan. The partnership cannot deduct the \$3,000 contribution made on behalf of the partners as a business expense for the taxable year. Each partner must include the portion of the \$3,000 contribution made on his behalf in his computation of his distributive share of partnership income in the taxable year the contribution was made. The amount of the contribution thus taxed to the partner will not again be taxable to the partner when such moneys are withdrawn by the partner from the Keogh Plan.

18:35-1.25 Net profits from business

(a) Each taxpayer is subject to gross income tax on the taxpayer's "net profits from business" within the meaning of N.J.S.A. 54A:5-1b, which shall be determined as provided in this subchapter.

(b) A taxpayer's net profits from business shall be determined by taking into account all income of the taxpayer derived from the conduct of a business, profession or any other income-producing activity, provided such business, profession or other income-producing activity constitutes the conduct of a trade or business. Such income shall be taken into account in determining the taxpayer's net profits from business, regardless of its source or character, provided it is directly attributable to the conduct of a trade or business by the taxpayer. All other income of the taxpayer which is subject to gross income tax, that is, that which is not directly attributable to the conduct of a trade or business, shall be included in one or more of the other categories of gross income specified in N.J.S.A. 54A:5-1 according to its character and shall not be includable in the category of income "net profits from business."

1. Income derived by a taxpayer in the taxpayer's capacity as an employee shall not be taken into account in determining the taxpayer's net profits from business, but rather shall be taxed as salary, wages, etc., described in N.J.S.A. 54A:5-1a. Income derived by a self-employed taxpayer as remuneration for services rendered in the conduct of a trade or business shall be taken into account in determining the taxpayer's net profits from business.

2. Interest and dividend income derived by a taxpayer shall not be taken into account in determining a taxpayer's net profits from business, unless:

i. The taxpayer shall annex to the taxpayer's tax return a statement which demonstrates that the interest or dividends, as the case may be, were realized in the conduct of a trade or business by the taxpayer, and not from investment activities or other income-producing activities which do not constitute the conduct of a trade or business. An adequate demonstration shall have been made where it is shown that:

(1) The interest is derived from loans made in the ordinary course of a trade or business of lending money;

(2) The interest or dividends are realized with respect to short-term liquid investments of money in an amount which does not exceed the reasonably anticipated working capital needs of the taxpayer's trade or business;

(3) The interest is derived in respect of accounts receivable or installment obligations acquired in the ordinary course of a trade or business, but only where credit is ordinarily offered to customers of the business;

(4) The interest or dividends are realized with respect to investments held to meet requirements imposed by law with respect to the conduct of a trade or business (for example, minimum capital requirements imposed by regulatory agencies), or with respect to deposits made in the ordinary course of business (for example, security deposits pertaining to leases by the taxpayer of property used by the taxpayer in a trade or business, or deposits pledged by the taxpayer to secure loans incurred by the taxpayer in the conduct of a trade or business), or with respect to other interest or dividend-bearing contracts or instruments held in the ordinary course of business (for example, interest received on life insurance policies owned by a taxpayer insuring the lives of key employees of the taxpayer's trade or business);

(5) The interest or dividends are derived in the ordinary course of an activity of trading or dealing in any property which generates such income, if such activity constitutes the conduct of a trade or business; or

(6) The interest or dividends are otherwise realized directly in the conduct of a trade or business, as demonstrated to the satisfaction of the Director.

3. Where no statement is attached to the taxpayer's return, or where such statement fails to demonstrate that the interest or dividends in question have been realized in the conduct of a trade or business, such items of income shall be separately stated on the taxpayer's return and taxed either as interest described in N.J.S.A.

54A:5-1e or dividends described in N.J.S.A. 54A:5-1f, as the case may be.

4. Rental income shall not be taken into account in determining a taxpayer's net profits from business, unless the rentals are received by a taxpayer in the ordinary course of the conduct of a trade or business of dealing in or leasing property of a character in respect of which the rentals are received. A taxpayer shall not be deemed to be engaged in the conduct of a trade or business of leasing property unless substantial services are rendered in connection with the leasing activities. The activity of net leasing property shall not constitute the conduct of a trade or business, unless the taxpayer shall be in the trade or business of dealing in such property and such property shall constitute inventory or stock-in-trade of the taxpayer. Rental income of a taxpayer which is not received in the ordinary course of the conduct of a trade or business shall be taken into account in determining the taxpayer's net gains or net income from or in the form of rents, royalties, patents and copyrights described in N.J.S.A. 54A:5-1d.

5. Royalty income and income derived from patents or copyrights of a taxpayer shall not be taken into account in determining the taxpayer's net profits from business, unless the royalties or the income derived from patents or copyrights are derived by the taxpayer in the ordinary course of a trade or business of licensing intangible property. A taxpayer shall be considered to be engaged in a trade or business of licensing intangible property only if the taxpayer created the property or performed substantial services or incurred substantial costs with respect to the development or marketing of such property. Royalty income or income derived from patents or copyrights of a taxpayer which is not derived in the ordinary course of a trade or business of licensing intangible property shall be taken into account in determining the taxpayer's net gains or net income from or in the form of rents, royalties, patents and copyrights described in N.J.S.A. 54A:5-1d.

6. Gains, profits and losses from the sale, exchange or disposition of property shall not be taken into account in determining a taxpayer's net profits from business, unless:

i. The gain, profit or loss is realized by the taxpayer in the ordinary course of the conduct of an activity of trading or dealing in such property and such activity constitutes the conduct of a trade or business; or

ii. The gain, profit or loss is realized by the taxpayer on the sale, exchange or other disposition of property which, in the hands of the taxpayer, constitutes property which is stock-in-trade, inventory or property held primarily for sale to customers in the ordinary course of a trade or business.

7. Gains, or profits and losses from the sale, exchange or disposition of property described in I.R.C. §1231 shall not be taken into account in determining a taxpayer's net profits from business. Gains, or profits and losses not taken into account in determining a taxpayer's net profits from business shall be taken into account in determining a taxpayer's net gains or income from the disposition of property described in N.J.S.A. 54A:5-1c.

8. A taxpayer's distributive share of partnership income or loss shall not be taken into account in determining a taxpayer's net profits from business, regardless of the character of the partnership's activities. For rules governing the taxation of income derived by a taxpayer from a partnership, see N.J.A.C. 18:35-1.14.

(c) A taxpayer's net profits from business shall be determined by taking into account all costs and expenses incurred in the conduct thereof, except no deduction shall be allowed for taxes based on income; any civil, civil administrative or criminal penalty or fine assessed and collected for a violation of a state or Federal environmental law, or any other assessment described in N.J.S.A. 54A:5-1b(2); or any treble damages paid pursuant to N.J.S.A. 58:10-23.11fa. No deduction shall be allowed for any expense or loss which is not incurred in the ordinary course of the conduct of the taxpayer's trade or business.

(d) A taxpayer's net profits from business shall be determined in accordance with the method of accounting utilized in reporting the taxpayer's business income or loss for Federal income tax purposes.

1. A taxpayer's net profits from business shall be determined by including any income which is subject to tax under the Gross Income

Tax Act but which is exempt from Federal income taxation (for example, interest on non-New Jersey municipal obligations) and by excluding any income which is exempt from tax under the Gross Income Tax Act but which is subject to Federal income taxation (for example, interest or gains attributable to obligations described in N.J.S.A. 54A:6-14).

2. A taxpayer's net profits from business shall be determined by taking into account expenses or losses incurred in the conduct of the taxpayer's trade or business which are properly deductible in accordance with the taxpayer's method of accounting, even if such deductions relate to expenses incurred in earning business income exempt from taxation under the Gross Income Tax Act, or expenses which are partly or wholly nondeductible for Federal income tax purposes under rules which limit the deductibility of particular business expenses under the Internal Revenue Code. For example, meal and entertainment expenses which constitute ordinary and necessary expenses incurred in the conduct of a trade or business are fully deductible in determining a taxpayer's net profits from business for Gross Income Tax purposes.

(e) In the case of a taxpayer who is engaged in more than one trade or business, the taxpayer's net profits from business shall be determined by taking into account the income, profits, expenses and losses of all such activities on a net consolidated basis.

## OTHER AGENCIES

### (a)

#### NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

#### Disability Discrimination Complaint Procedure

#### Adopted New Rules: N.J.A.C. 19:30-7

Proposed: November 1, 1993 at N.J.R. 4864(b).

Adopted: December 7, 1993 by New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.

Filed: February 10, 1994 as R.1994 d.111, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5(1).

Effective Date: March 7, 1994.

Expiration Date: July 23, 1995.

#### Summary of Changes upon Adoption:

1. The subchapter heading of the proposed rules indicated that these rules were subchapter 3. This was a typographical error. It has been corrected to subchapter 7.

2. A telephone number for the ADA Coordinator has been added at N.J.A.C. 19:30-7.4(a).

#### Summary of Public Comments and Agency Responses:

The proposed new rules were published on November 1, 1993. During the comment period, which closed on December 2, 1993, comments were received from the Eastern Paralyzed Veterans Association. The proposed rule was prepared by the New Jersey Department of Law and Public Safety as part of a collective process by which State agencies could adopt a procedure for the resolution of complaints regarding compliance with the Americans with Disabilities Act ("ADA"). The New Jersey Economic Development Authority ("NJEDA") believes that it is important for the procedure for filing complaints with the State and State agencies to be consistent. Therefore, in addition to the responses indicated below to each comment, maintaining consistency with the procedure used by other State agencies is an important part of each response.

COMMENT: The Summary to the proposal indicates that the name and phone number of ADA Coordinator is to be made public.

RESPONSE: The Summary indicates that the title, address and phone number is identified in the rules. The name of the ADA Coordinator is not relevant since this individual may change over time. The Authority agrees that a telephone number would be helpful for anyone wishing to contact the ADA Coordinator and has included this change at N.J.A.C. 19:30-7.4(a).

COMMENT: N.J.A.C. 19:30-7.3 provides that a complaint should be filed within 20 days after the complainant becomes aware of the alleged violation. This period is unusually short and should be at least 30 days.

RESPONSE: The comment refers to the section of the rule which includes the Authority Notice of ADA Procedure. This notice is provided to anyone who inquires regarding NJEDA's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the NJEDA. This notice indicates that the complaint should be filed within 20 days after the complainant becomes aware of the alleged violation. The complaint procedure which is found at N.J.A.C. 19:30-7.5 does not include this requirement. NJEDA will respond to any complaint; however, it is much more effective to respond to complaints which are filed in a timely manner.

COMMENT: N.J.A.C. 19:30-7.3 indicates that in most cases a written determination as to the validity of the complaint and a description of the resolution will be issued. The rule should state that all grievances should receive a written response, and if not, an explanation of what types of grievances will receive a written response should be included in the rule.

RESPONSE: The section of the rule to which the comment refers is the Authority Notice of ADA Procedure, which is provided to anyone who inquires regarding the NJEDA's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the NJEDA. This notice advises the inquirer that rules describing and governing the complaint procedure can be found in the New Jersey Administrative Code at N.J.A.C. 19:30-7. N.J.A.C. 19:30-7.8(b) states that a written decision shall be rendered.

COMMENT: N.J.A.C. 19:30-7.3 indicates that the ADA coordinator will maintain the files and records of the Authority relating to the complaints filed; however, it does not indicate how long these files and records will be maintained. This information should be included.

RESPONSE: The proposed rule addresses the procedure to follow when someone wishes to complain that NJEDA has done something that violates the Americans with Disabilities Act and does not address records retention. Records will certainly be maintained for a reasonable period, at least one year, subsequent to the resolution of the complaint.

COMMENT: N.J.A.C. 19:30-7.5 should state the time frame in which to file a grievance.

RESPONSE: The Authority Notice of ADA Procedure indicates that the complaint should be filed within 20 days after the complainant becomes aware of the alleged violation. As discussed above, this is not a requirement. NJEDA will respond to complaints when they are received.

COMMENT: The complaint form at N.J.A.C. 19:30-7.7 should not ask for identification of the complainant's disability since this information is not necessarily relevant.

RESPONSE: N.J.A.C. 19:30-7.6 indicates the information that is to be included in a complaint and does not include identification of the complainant's disability. N.J.A.C. 19:30-7.6(a) and 7.7 indicate that the form may be used. If the form is used, information regarding the complainant's disability is not required; however, any information provided here may be helpful to NJEDA in responding to the complaint.

COMMENT: The form should not ask the complainant for information regarding proposed access or accommodation. This may elicit very personal responses, what may accommodate one person may not meet the needs of another, and complainants may not have adequate knowledge of the State building code to respond.

RESPONSE: N.J.A.C. 19:30-7.6 indicates the information that is to be included in a complaint and does not include information on proposed access or accommodation. N.J.A.C. 19:30-7.6(a) and 7.7 indicate that the form may be used. If the form is used, information on proposed access or accommodation is not required; however, any information provided here may be helpful to NJEDA in responding to the complaint.

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 **\*[3]\*\*7\***. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

### 19:30-7.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

"Authority" means the New Jersey Economic Development Authority.

"Designated decision maker" means the Executive Director of the Authority or his or her designee.

### 19:30-7.2 Purpose

(a) These rules are adopted by the Authority in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Authority pursuant to N.J.A.C. 19:30-7.

### 19:30-7.3 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Authority's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority.

#### AUTHORITY NOTICE OF ADA PROCEDURE

The Authority has adopted an internal complaint procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal complaint procedure can be found in the New Jersey Administrative Code, N.J.A.C. 19:30-7. As those rules indicate, complaints should be addressed to the Authority's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator  
New Jersey Economic Development Authority  
200 South Warren Street  
CN 990  
Trenton, New Jersey 08625

1. A complaint may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

2. A complaint should be filed promptly within 20 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis).

3. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the Authority's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. In most cases a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the Designated Decision Maker and a copy forwarded to the complainant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the Authority relating to the complaints filed.

**OTHER AGENCIES**

**ADOPTIONS**

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

**19:30-7.4 Designated ADA coordinator**

(a) The designated coordinator of ADA compliance and complaint investigation for the Authority is:

ADA Coordinator  
New Jersey Economic Development Authority  
200 South Warren Street  
CN 990  
Trenton, NJ 08625  
**\*(609) 292-1800\***

(b) All inquiries regarding the Authority's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 19:30-7.5.

**19:30-7.5 Complaint procedure**

A complaint alleging that the Authority has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 19:30-7.4(a).

**19:30-7.6 Complaint contents**

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 19:30-7.7

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or alternate contact person designated by the complainant to receive communication or provide information for the complainant;

2. The address and telephone number of the complainant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

**19:30-7.7 Complaint form**

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

**Americans with Disabilities Act Complaint Form**

Date: \_\_\_\_\_

Name of complainant: \_\_\_\_\_

Address of complainant: \_\_\_\_\_  
\_\_\_\_\_

Telephone number of complainant: \_\_\_\_\_  
\_\_\_\_\_

Disability of complainant: \_\_\_\_\_  
\_\_\_\_\_

Name, address and telephone number of alternate contact person (if applicable):  
\_\_\_\_\_  
\_\_\_\_\_

**Incident or barrier:**

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of Authority employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Proposed access or accommodation:**

If you wish, describe the way in which you feel access may be had to the benefits described above, or what accommodation could be provided to allow access.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 19:30-7.4(a).

**19:30-7.8 Investigation**

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the Designated Decision Maker for the Authority. The Designated Decision Maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

# PUBLIC NOTICES

## EDUCATION

(a)

### STATE DEPARTMENT OF EDUCATION

#### Notice of Availability of Federal and State Grant Funds

Take notice that the New Jersey Department of Education has available for the general public the 1993-94 edition of the Directory of Federal and State Programs which gives information regarding the availability of the Federal and State grant funds pursuant to N.J.S.A. 52:14-34.5. A copy of this directory has been given to each Local Education Agency and County Office of Education. Copies may be obtained by writing to:

Bureau of Budget, Accounting and Contracts  
New Jersey State Department of Education  
CN 500  
Trenton, NJ 08625

**Please note:** This public notice is in accordance with N.J.S.A. 52:14-34.5 which requires . . . "state agencies that award federal and state grant funds to publish a semi-annual notice regarding the availability of those funds in the New Jersey Register or an appropriate publication of the department . . ."

## ENVIRONMENTAL PROTECTION AND ENERGY

(b)

### OFFICE OF AIR QUALITY MANAGEMENT

#### Notice of Public Workshop for Clean Fuel Fleets

Take notice that the New Jersey Department of Environmental Protection and Energy (Department) is sponsoring a public workshop to seek public input on how the State of New Jersey should proceed in meeting the clean-fuel vehicle fleet requirement of the Federal Clean Air Act (Act), 42 U.S.C. §§7401 et seq., as amended by Pub. L. 101-549, November 15, 1990.

Section 246 of the Act, 42 U.S.C. §7586, requires the State to submit to the United States Environmental Protection Agency (USEPA), by May 15, 1994, a State Implementation Plan (SIP) revision establishing a clean-fuel vehicle program for fleets of 10 or more vehicles, centrally fueled or capable of being centrally fueled, which are owned or operated by a single person. Also, the New Jersey Legislature has authorized the Department to adopt a clean-fuel vehicles program for fleets by January 1, 1995. (P.L. 1993, c.69).

The Department is seeking guidance from the public on how to meet the clean-fuel fleet requirement within the Act and proceed consistent with the authorization granted to the Department by the State Legislature.

Section 182(c) of the Act, 42 U.S.C. §7511a(c), permits the Department to submit to USEPA a substitute for all or part of the clean fuel vehicle program for fleets required by the Act so long as the substitute measure or measures will achieve long-term reductions in both ozone precursor and toxic air emissions equivalent to the reductions to be achieved through the fleet program. Under a committal SIP submitted to USEPA on November 15, 1992 the Department has until May 15, 1994 to exercise this "opt-out" provision and identify measures to substitute for all or part of the clean-fuel vehicle program required by the Act.

Questions before the Department and workshop participants include whether the State should "opt-out" of the clean-fuel vehicle program required by the Act, the range of alternative emission control measures available should the State decide to opt-out of this program, and/or how to coordinate the fleet requirements of the Act with the fleet requirements contained within the Federal Energy Policy Act of 1992, Pub. L. 102-486.

The workshop has been scheduled as follows:

Thursday, March 24, 1994

10 A.M. to 4:00 P.M.

New Jersey Department of Environmental Protection  
and Energy

Public Meeting Room, 1st Floor

Trenton, New Jersey

All persons are invited to attend this workshop. Preregistration is not required; however, as a courtesy the Department requests that prior to the date of the workshop persons planning to attend the workshop please contact:

Mark Brownstein

Office of Air Quality Management

New Jersey Department of Environmental Protection  
and Energy

CN 418

Trenton, New Jersey 08625

(609) 777-1345

Please note that this workshop is an opportunity for information and discussion only. It is not a public hearing, and no record will be made of this proceeding.

(c)

### OFFICE OF LAND AND WATER PLANNING

#### Amendment to the Cape May County Water Quality Management Plan

#### Public Notice

Take notice that on February 1, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality Management Plan was adopted by the Department. This amendment is for both the expansion of the existing sanitary wastewater treatment facility, and the construction of a new wastewater treatment system to treat process wastewater from a proposed flue gas desulfurization scrubber system at the B.L. England Generating Station in Upper Township. A slight increase in employee population served by the sanitary wastewater treatment facility is expected in association with the flue gas desulfurization scrubber system. The sanitary wastewater treatment facility discharges to ground water and will be expanded to treat a peak flow of 16,000 gallons per day (gpd). The new wastewater treatment system for process wastewater will discharge into great Egg Harbor Bay. Projected maximum daily flow to this system is approximately 86,400 gpd.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

**OFFICE OF LAND AND WATER PLANNING**  
**Amendment to the Lower Raritan/Middlesex County**  
**Water Quality Management Plan**  
**Public Notice**

Take notice that on February 1, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment proposal was submitted by Van Note-Harvey Associates on behalf of the Township of Plainsboro. This amendment to the Plainsboro Township Wastewater Management Plan includes Block 6, Lots 8.03 and

14.01 and Block 6.24, Lot 21 into the sewer service area of the Princeton Meadows Utility Company and removes said lots from the Middlesex County Utilities Authority sewer service area. These tracts of land are zoned R-300 and the intended use of these lands are for public facilities.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.



N.J.A.C.	Expiration Date
5:22	2/5/95
5:23	2/3/98
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	5/27/98
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:50	9/17/98
5:51	8/11/98
5:52	1/2/95
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	12/7/97
5:92	2/7/96
5:100	6/18/95

N.J.A.C.	Expiration Date
7:1D	9/13/98
7:1E	9/3/96
7:1F	4/16/97
7:1G	9/29/94
7:1H	7/13/95
7:1I	2/22/99
7:1J	1/4/98
7:1K	3/1/98
7:2	10/7/96
7:3	6/21/98
7:4	8/17/97
7:4A	9/18/94
7:4B	12/6/98
7:5	11/19/95
7:5A	6/17/98
7:5B	6/24/98
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	3/16/97
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/98
7:9	1/18/96
7:9A	8/21/94
7:9B	1/18/96
7:10	9/1/94
7:11	5/3/98
7:12	11/24/97
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	11/18/97
7:15	10/2/94
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/8/98
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

**DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97
5A:7	Exempt (28 C.F.R. Part 35)

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	12/8/98
6:3	6/7/98
6:5	10/22/95
6:7	1/2/95
6:8	12/11/96
6:9	5/3/98
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	10/8/98
6:24	1/11/96
6:26	8/3/97
6:28	4/10/94
6:29	2/8/95
6:30	5/11/94
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	4/10/97
6:51	8/5/96
6:53	4/10/97
6:64	9/14/97
6:68	2/26/95
6:70	10/17/94
6:78	10/8/98

7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/8/98
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

**HEALTH—TITLE 8**

**ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7**

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95

N.J.A.C.	Expiration Date
8:2	8/16/98
8:2A	12/20/98
8:7	9/14/95
8:8	4/12/94
8:9	2/14/96
8:13	9/8/97

N.J.A.C.	Expiration Date
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	8/3/97
8:22	7/11/96
8:23	12/13/94
8:24	4/14/98
8:25	5/11/98
8:26	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	11/25/97
8:33B	7/27/95
8:33C	9/8/97
8:33E	12/20/95
8:33F	11/16/94
8:33H	9/8/97
8:33I	2/16/95
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:33Q	11/19/95
8:33R	12/11/94
8:33S	10/4/98
8:34	11/1/98
8:35A	9/8/97
8:36	12/20/98
8:38	4/3/94
8:39	6/14/98
8:40	12/6/96
8:41	6/21/98
8:41A	2/18/97
8:42	8/17/97
8:42A	6/19/94
8:42B	6/14/98
8:43	10/4/98
8:43A	8/16/98
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:44	4/20/95
8:45	2/7/95
8:51	9/17/95
8:52	12/11/96
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/4/96
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	6/14/98
8:71	11/24/98
8:80	4/6/97
8:100	7/20/97

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	9/30/98
9:2	5/4/95
9:3	9/27/93
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	3/15/98
9:7	11/6/97
9:8	10/15/95

N.J.A.C.	Expiration Date
9:9	8/16/98
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94
9:16	1/19/98
9:17	2/22/99

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1A	5/12/98
10:2	12/11/96
10:3	10/22/98
10:4	Exempt (28 C.F.R. Part 35)
10:6	1/7/96
10:7	1/21/97
10:8	1/3/99
10:11	1/16/95
10:12	12/23/96
10:13	7/18/93
10:14	5/7/98
10:15	1/1/95
10:15A	1/1/95
10:15B	1/1/95
10:15C	1/1/95
10:16	12/21/97
10:31	6/5/94
10:35	9/21/97
10:36	12/29/97
10:37	11/2/95
10:38	4/29/96
10:38A	7/19/98
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/19/96
10:43	8/21/94
10:44A	11/8/98
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	9/7/98
10:52	2/8/95
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	1/3/99
10:63	11/28/94
10:64	2/22/96
10:65	2/19/96
10:66	12/6/98
10:67	2/19/96
10:68	6/28/96
10:69	5/14/98
10:69A	3/26/98
10:69B	10/21/98
10:70	6/7/96
10:71	12/24/95
10:72	8/24/97
10:73	7/15/96
10:80	9/27/98
10:81	8/24/94
10:82	8/24/94
10:83	11/2/97

<b>N.J.A.C.</b>	<b>Expiration Date</b>
10:84	1/18/99
10:85	12/20/94
10:86	9/21/97
10:87	12/21/98
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	5/15/94
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	11/25/97
10:122	5/15/94
10:122A	Exempt
10:122B	1/4/98
10:122C	1/4/98
10:122D	1/4/98
10:122E	1/4/98
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	6/4/95
10:126	10/6/98
10:126A	5/7/95
10:127	8/16/98
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:133	1/4/98
10:133A	1/4/98
10:133B	1/4/98
10:133C	1/4/98
10:133D	11/1/98
10:141	2/7/94
10:150	10/22/97

### **CORRECTIONS—TITLE 10A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
10A:1	6/1/97
10A:1-3	Exempt (28 C.F.R. Part 35)
10A:2	2/5/95
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	8/21/94
10A:20	2/18/97
10A:21	2/4/96
10A:22	3/7/99
10A:23	7/6/97
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

### **INSURANCE—TITLE 11**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
11:1	1/31/96
11:1-3	Exempt (28 C.F.R. Part 35)
11:2	11/30/95

<b>N.J.A.C.</b>	<b>Expiration Date</b>
11:3	1/4/96
11:4	11/30/95
11:5	10/15/98
11:6	7/6/98
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/26/94
11:16	1/31/96
11:17	4/15/98
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94
11:19	2/1/98
11:20	8/13/98
11:21	10/15/98

### **LABOR—TITLE 12**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
12:3	11/24/98
12:5	10/18/98
12:6	9/24/98
12:7	Exempt (28 C.F.R. Part 35)
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/5/98
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/14/99
12:45	12/29/98
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/19/98
12:61	12/16/96
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/8/98
12:112	8/27/98
12:120	5/3/95
12:175	11/10/98
12:190	2/1/98
12:195	6/14/98
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

### **COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
12A:1	Exempt (28 C.F.R. Part 35)
12A:9	5/28/98
12A:10-1	10/13/94
12A:11	4/30/98
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100	7/17/96

<b>N.J.A.C.</b>	<b>Expiration Date</b>
12A:120	7/27/98
12A:121	11/15/98

**PUBLIC UTILITIES—TITLE 14**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:5A	1/4/98
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	3/1/98
14:12	11/4/96
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

**LAW AND PUBLIC SAFETY—TITLE 13**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
13:1	6/9/98
13:1C	Exempt (28 C.F.R. Part 35)
13:2	7/24/95
13:3	5/17/98
13:4	1/17/96
13:10	3/27/94
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	7/29/98
13:27	2/20/95
13:28	5/14/98
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/21/97
13:33	3/12/95
13:34	10/22/98
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	6/19/94
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	11/1/98
13:43	8/26/98
13:44	8/7/94
13:44B	11/2/97
13:44C	7/8/98
13:44D	8/7/94
13:44E	7/1/96
13:44F	6/15/97
13:44G	1/4/98
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/10/99
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/98
13:51	9/16/96
13:54	11/18/96
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/95
13:71	1/25/95
13:72	1/19/98
13:75	6/5/94
13:76	4/16/98
13:77	1/22/98
13:78	11/24/98
13:79	10/22/98
13:80	9/17/95
13:81	8/6/95

**ENERGY—TITLE 14A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	EXPIRED RULES
14A:14	1/28/99

**STATE—TITLE 15**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
15:1	Exempt (28 C.F.R. Part 35)
15:2	4/12/98
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

**PUBLIC ADVOCATE—TITLE 15A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
15A:2	12/27/94

**TRANSPORTATION—TITLE 16**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
16:1	10/1/95
16:1A	6/16/94
16:1B	Exempt (28 C.F.R. Part 35)
16:4	9/16/96
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/9/98
16:25A	5/13/98
16:26	9/5/94
16:27	4/8/96
16:28	5/7/98
16:28A	5/7/98
16:29	5/7/98
16:30	5/7/98
16:31	5/7/98
16:31A	5/7/98
16:32	2/8/95
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97

N.J.A.C.	Expiration Date
16:43	5/10/95
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:47	4/20/97
16:49	2/8/95
16:50	12/6/98
16:51	2/14/97
16:53	7/17/94
16:53B	7/3/94
16:53C	5/13/98
16:53D	5/3/94
16:54	7/6/98
16:55	5/13/98
16:56	8/7/94
16:60	5/13/98
16:61	5/13/98
16:62	2/26/95
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	9/12/96
16:80	10/5/98
16:81	10/5/98
16:82	9/5/94
16:83	1/19/98
16:84	11/1/98
16:85	11/1/98

**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	5/1/98
17:2	11/8/94
17:3	12/20/98
17:4	6/8/95
17:5	11/30/95
17:6	12/20/98
17:7	12/19/93
17:8	10/15/95
17:9	8/23/98
17:10	5/1/98
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	5/2/96
17:19	3/8/95
17:20	6/1/98
17:25	5/26/94
17:27	10/6/98
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/19/98
17:33	4/17/94
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

**TREASURY-TAXATION—TITLE 18**

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	11/1/98
18:3	3/14/94

N.J.A.C.	Expiration Date
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/4/98
18:12	10/4/98
18:12A	10/4/98
18:14	10/4/98
18:15	10/4/98
18:16	10/4/98
18:17	10/4/98
18:18	3/14/94
18:18A	2/3/97
18:19	3/14/94
18:21	2/19/96
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/4/98
18:25	2/19/96
18:26	6/4/98
18:35	6/4/98
18:36	3/19/95
18:37	7/23/95
18:38	2/1/98
18:39	9/8/92

**OTHER AGENCIES—TITLE 19**

N.J.A.C.	Expiration Date
19:3	3/29/98
19:3A	11/4/96
19:3A-3	Exempt (28 C.F.R. Part 35)
19:3B	3/29/98
19:4	3/29/98
19:4A	3/29/98
19:6	5/6/96
19:8	5/17/98
19:9	9/13/98
19:10	9/5/94
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/7/98
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:30-7	Exempt (28 C.F.R. Part 35)
19:31	8/20/95
19:40	8/24/94
19:40-6	Exempt (28 C.F.R. Part 35)
19:41	4/15/95
19:42	8/15/95
19:43	12/21/97
19:44	12/15/96
19:45	8/15/97
19:46	4/15/98
19:47	4/15/96
19:48	8/15/98
19:49	9/18/97
19:50	12/15/98
19:51	4/27/94
19:53	12/15/95
19:54	12/15/94
19:55	1/19/98
19:61	3/2/97
19:65	10/5/97
19:75	1/11/99

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 3, 1994 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 20, 1993**

**NEXT UPDATE: SUPPLEMENT JANUARY 18, 1994**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 737 and 1030	March 1, 1993	25 N.J.R. 4361 and 4540	September 20, 1993
25 N.J.R. 1031 and 1308	March 15, 1993	25 N.J.R. 4541 and 4694	October 4, 1993
25 N.J.R. 1309 and 1620	April 5, 1993	25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 1621 and 1796	April 19, 1993	25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 1797 and 1912	May 3, 1993	25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 1913 and 2150	May 17, 1993	25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-9.4	Accelerated proceedings	26 N.J.R. 284(a)		
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings	25 N.J.R. 3888(a)		
1:13A	Lemon law hearings	25 N.J.R. 5387(a)	R.1994 d.107	26 N.J.R. 1223(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		

**Most recent update to Title 1: TRANSMITTAL 1993-2 (supplement September 20, 1993)**

<b>AGRICULTURE—TITLE 2</b>				
2:2	Animal Disease Control Program	25 N.J.R. 5387(b)	R.1994 d.108	26 N.J.R. 1223(b)
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:76-6.11	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 3890(a)	R.1994 d.43	26 N.J.R. 350(a)
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		

**Most recent update to Title 2: TRANSMITTAL 1993-7 (supplement December 20, 1993)**

<b>BANKING—TITLE 3</b>				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)		
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)		
3:3-2.2, 2.3	Release of bank examination reports to independent auditors	25 N.J.R. 4819(a)	R.1994 d.49	26 N.J.R. 351(a)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:14	Bank service corporations	26 N.J.R. 3(b)	R.1994 d.117	26 N.J.R. 1223(c)
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-5.1	Cemetery Board: cemetery company price lists	25 N.J.R. 4819(b)	R.1994 d.19	26 N.J.R. 197(a)
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		

**Most recent update to Title 3: TRANSMITTAL 1993-9 (supplement December 20, 1993)**

## CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)**

<b>PERSONNEL—TITLE 4A</b>				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:1-5.3, 5.4	Coordinator address: administrative change	_____	_____	26 N.J.R. 197(b)
4A:2-2.11	Bankruptcy interest: administrative correction	_____	_____	26 N.J.R. 198(a)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.10	State service: demotional pay adjustments	25 N.J.R. 4821(a)	R.1994 d.71	26 N.J.R. 794(a)
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.2, 2.14	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
4A:4-2.9	Make-up examinations	25 N.J.R. 4823(a)	R.1994 d.114	26 N.J.R. 1225(a)
4A:4-7.8	Voluntary demotions	25 N.J.R. 4823(b)	R.1994 d.74	26 N.J.R. 795(a)
4A:6-1.2, 1.6, 1.11, 1.12, 1.13	Leaves of absence	25 N.J.R. 4824(a)	R.1994 d.73	26 N.J.R. 795(b)
4A:6-1.3	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.1, 2.1, 2.2, 2.3, 3.1	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)

**Most recent update to Title 4A: TRANSMITTAL 1993-8 (supplement December 20, 1993)**

**COMMUNITY AFFAIRS—TITLE 5**

5:11	Relocation assistance and eviction	26 N.J.R. 289(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:23-2.18A, 3.11, 4.20	UCC: utility load management device permits; mausoleum plan review; Department fees	25 N.J.R. 4546(b)	R.1994 d.28	26 N.J.R. 352(a)
5:23-2.22, 4.18, 4.20, 4.22, 4.26, 4.29, 4.31, 4.39, 4A.1-4A.5, 4A.7-4A.2, 4B, 4C	Uniform Construction Code: industrialized/modular buildings	25 N.J.R. 5388(a)	R.1994 d.96	26 N.J.R. 1073(a)
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.20	Uniform Construction Code: administrative correction regarding Departmental fees	_____	_____	26 N.J.R. 796(a)
5:25-5.5	New home warranties and builder registration: claims procedure	25 N.J.R. 4986(a)	R.1994 d.50	26 N.J.R. 796(b)
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)		
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)		
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-24	Housing and Mortgage Finance Agency: Lease-Purchase Program	25 N.J.R. 4826(a)	R.1994 d.106	26 N.J.R. 1080(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)		
5:80-32	Housing and Mortgage Finance Agency: housing investment sales	25 N.J.R. 4828(a)	R.1994 d.105	26 N.J.R. 1082(a)
5:91-1.3	Counseling on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:92-1.1, 13.1	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		

**Most recent update to Title 5: TRANSMITTAL 1993-12 (supplement December 20, 1993)**

**MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)		
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**Most recent update to Title 5A: TRANSMITTAL 1993-1 (supplement December 20, 1993)**

**EDUCATION—TITLE 6**

6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		
6:2	Appeals to State Board of Education	25 N.J.R. 4548(b)	R.1994 d.17	26 N.J.R. 198(b)
6:28	Special education	25 N.J.R. 5734(a)		
6:29-1.7	Eye protection in public schools	26 N.J.R. 537(a)		
6:29-9.1, 9.2	Reporting of allegations of child abuse	26 N.J.R. 538(a)		
6:30	Adult education programs	26 N.J.R. 884(b)		

**Most recent update to Title 6: TRANSMITTAL 1993-8 (supplement November 15, 1993)**

**ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7**

7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)		
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:1G-1-5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)	R.1994 d.3	26 N.J.R. 200(a)
7:1I	Sanitary Landfill Facility Closure and Contingency Fund: processing of damage claims	25 N.J.R. 5116(a)	R.1994 d.83	26 N.J.R. 1114(a)
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)	R.1994 d.51	26 N.J.R. 842(a)
7:7	Coastal Permit Program	26 N.J.R. 917(a)		
7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9B-1.5, 1.15	Surface water quality standards: Wallkill River	25 N.J.R. 3755(a)	R.1994 d.84	26 N.J.R. 1124(a)
7:9B-1.15	Surface water classifications: administrative corrections			26 N.J.R. 1226(a)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
7:12-1.2, 2.1, 2.2, 3.2, 4.1, 9.1	Shellfish growing water classifications	26 N.J.R. 789(a)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:13-7.1	Delaware River, Pohatcong Township: flood plain redelineation	25 N.J.R. 4370(a)	R.1994 d.10	26 N.J.R. 212(a)
7:13-7.1	Overpeck Creek, Englewood: flood plain redelineation	25 N.J.R. 4371(a)	R.1994 d.11	26 N.J.R. 212(b)
7:13-7.1	Poplar Brook, Deal: flood plain redelineation	25 N.J.R. 4372(a)	R.1994 d.9	26 N.J.R. 211(a)
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)		
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1-3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)	R.1994 d.98	26 N.J.R. 1132(a)
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)	R.1994 d.12	26 N.J.R. 212(c)
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)		
7:25-7.13, 14.1, 14.2, 14.4-14.8, 14.10-14.13	Crab management	25 N.J.R. 4831(a)		
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)		
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)	R.1994 d.44	26 N.J.R. 353(a)
7:25-18.5, 18.6, 18.12	Delaware Bay gill net permits	25 N.J.R. 5397(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)	R.1994 d.99	26 N.J.R. 1142(a)

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7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1-21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)	R.1994 d.85	26 N.J.R. 1148(a)
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)	R.1994 d.85	26 N.J.R. 1148(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-4.1, 4.5-4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:45	Delaware and Raritan Canal State Park Review Zone	25 N.J.R. 4836(b)	R.1994 d.100	26 N.J.R. 1153(a)
7:50-2, 3, 4, 5, 6, 7	Pinclands Comprehensive Management Plan	26 N.J.R. 165(a)		

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8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
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8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)		
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)	R.1994 d.35	26 N.J.R. 355(a)
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)	R.1994 d.36	26 N.J.R. 362(a)
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)		
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)	R.1994 d.21	26 N.J.R. 217(a)
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)

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8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a), 4496(b), 6061(b))	25 N.J.R. 55(a)	R.1994 d.38	26 N.J.R. 363(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b))	25 N.J.R. 875(a)	R.1993 d.673	25 N.J.R. 6060(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a))	25 N.J.R. 2802(b)	R.1994 d.40	26 N.J.R. 364(b)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
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8:71	List of Interchangeable Drug Products	26 N.J.R. 13(b)		
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)		
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9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)	R.1994 d.13	26 N.J.R. 219(a)
9:9-1.23	NJHEAA reporting of loan status credit bureaus	26 N.J.R. 893(a)		
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)		
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9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)		
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10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)	R.1994 d.14	26 N.J.R. 221(a)
10:15A-1.2	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:37-5.37-5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
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10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41	Division of Developmental Disabilities: administration	26 N.J.R. 81(a)		
10:41	Division of Developmental Disabilities: extension of comment period regarding records confidentiality and human rights committees	26 N.J.R. 725(a)		
10:49-19.1, 19.4, 19.7, 19.11	State-defined HMOs	25 N.J.R. 4793(a)	R.1994 d.4	26 N.J.R. 224(a)
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)	Expired	
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)	R.1993 d.647	25 N.J.R. 5947(a)
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10:62	Vision care services	25 N.J.R. 3907(a)	R.1994 d.6	26 N.J.R. 225(a)
10:63-3.21, 3.22, 3.23	Nursing facility relief	26 N.J.R. 894(a)		
10:66-6.1, 6.4	Independent Clinic Services: administrative corrections regarding HCPCS	_____	_____	26 N.J.R. 797(a)
10:66-6.5	Independent clinic services; HealthStart; administrative correction	_____	26 N.J.R. 235(a)	
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10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-2.6, 3.4, 11.2, 11.3	Public Assistance Manual: client Social Security numbers	26 N.J.R. 324(a)		
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.7, 11.9	Automated Child Support Enforcement System	26 N.J.R. 84(a)		
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:82-5.3	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:83-1.11	New Jersey Supplemental Security Income payment levels: administrative change			26 N.J.R. 235(b)
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)	R.1993 d.611	26 N.J.R. 374(a)
10:86-10.2, 10.6	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)		
10:87	Food Stamp Program	25 N.J.R. 4697(b)	R.1994 d.42	26 N.J.R. 377(a)
10:89-2.3, 3.1, 3.2, 3.3	Home Energy Assistance: income eligibility guidelines	26 N.J.R. 256(a)	R.1994 d.109	26 N.J.R. 1227(a)
10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)		
10:97-1.3, 3.1	Commission for the Blind and Visually Impaired: licensing procedure for Business Enterprise Program	25 N.J.R. 4551(d)	R.1994 d.27	26 N.J.R. 378(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)		
10:127-6.5	Residential child care facilities: money and allowance	25 N.J.R. 5751(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		

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10A:4-1.2, 1.3	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)		
10A:4-4.1	Inmate discipline: administrative correction regarding prohibited acts			26 N.J.R. 1228(a)
10A:9-4.6	Gang minimum and full minimum custody status: criteria for consideration	26 N.J.R. 728(a)		
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10A:31-1.3, 16.1, 16.2, 21.4	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.47	State Parole Board: victim input	25 N.J.R. 4705(a)		
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11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)	R.1994 d.7	26 N.J.R. 236(b)
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11:3-2A	Automobile Full Insurance Underwriting Association: deferral of payment of residual bodily injury claims	26 N.J.R. 898(a)		
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
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11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
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11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)		
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11:21-4.2, 4.3, 17.3, App. Exh. BB 11:21-9 11:21-14.4, 14.5, App. Exh. U 11:21-16 11:21-App. Exh. E	Small Employer Health Benefits Program: certification of utilization compliance Small Employer Health Benefits Program: informational rate filings Small Employer Health Benefits Program: carrier status Small Employer Health Benefits Program: withdrawal of carriers from plans market Small Employer Health Benefits Program: correction to proposed Appendix Exhibit E and extension of comment period	26 N.J.R. 741(a) 25 N.J.R. 5757(a) 26 N.J.R. 328(b) 25 N.J.R. 4859(a) 25 N.J.R. 4458(a)	R.1994 d.25 R.1994 d.55 R.1994 d.26	26 N.J.R. 245(a) 26 N.J.R. 809(a) 26 N.J.R. 247(a)
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12:41	Job Training Partnership Act: grievance, hearing, and review procedures	25 N.J.R. 5456(a)	R.1994 d.78	26 N.J.R. 810(a)
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:45	Division of Vocational Rehabilitation Services	25 N.J.R. 5130(b)	R.1994 d.52	26 N.J.R. 813(a)
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12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		

**Most recent update to Title 12A: TRANSMITTAL 1993-6 (supplement December 20, 1993)**

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13:1D	Attorney General: petitions for rules	26 N.J.R. 330(a)		
13:10	Division on Civil Rights: multiple dwelling reports	26 N.J.R. 901(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:20-39.1, 39.2, 39.3, 39.5, 39.9	Special automobile registration plates for non-profit organizations	26 N.J.R. 331(a)		
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:27-3	Board of Architects: scope of architectural services	25 N.J.R. 5439(a)		
13:27-8.13	Landscape architects: advertisements and listings	25 N.J.R. 5440(a)	R.1994 d.118	26 N.J.R. 1230(a)
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)		
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-6.5	Board of Medical Examiners: permissible charges for copies of patient records	25 N.J.R. 4862(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Board of Medical Examiners: hair replacement techniques	25 N.J.R. 5444(a)	R.1994 d.86	26 N.J.R. 1104(a)
13:35-10	Athletic trainers: administrative correction to adoption notice	_____	_____	26 N.J.R. 483(a)
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1	Board of Nursing: fees	25 N.J.R. 5936(b)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39A-1.4	Board of Physical Therapy: fees and charges	25 N.J.R. 5446(a)	R.1994 d.101	26 N.J.R. 1105(b)
13:39A-5.2, 5.4, 5.6	Board of Physical Therapy: examination standards for therapists and assistants	25 N.J.R. 5447(a)	R.1994 d.87	26 N.J.R. 1105(a)
13:40-5.1	Board of Professional Engineers and Land Surveyors: subdivision plats	25 N.J.R. 5447(b)	R.1994 d.77	26 N.J.R. 822(a)
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:40A-3.5, 6.1	Board of Real Estate Appraisers: fees; temporary licenses	25 N.J.R. 4863(a)	R.1994 d.88	26 N.J.R. 1106(a)
13:40A-4.1-4.9	Board of Real Estate Appraisers: licensee continuing education	26 N.J.R. 903(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)	R.1994 d.22	26 N.J.R. 249(a)
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44C-2.2	Audiology and Speech-Language Pathology Advisory Committee: fees and charges	25 N.J.R. 5448(a)	R.1994 d.89	26 N.J.R. 1106(b)
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)	R.1994 d.120	26 N.J.R. 1230(b)
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)	R.1994 d.121	26 N.J.R. 1231(a)
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)	R.1994 d.122	26 N.J.R. 1231(b)
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)	R.1994 d.123	26 N.J.R. 1234(a)
13:44G-1-5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47B	Weights and measures	25 N.J.R. 5102(a)	R.1994 d.124	26 N.J.R. 1235(a)
13:49	State Medical Examiner: standards for procedures and investigations	25 N.J.R. 5104(a)	R.1994 d.30	26 N.J.R. 484(a)
13:57	Uniform Crime Reporting (UCR) system	26 N.J.R. 905(a)		
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)	R.1994 d.125	26 N.J.R. 1236(a)
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)	R.1994 d.129	26 N.J.R. 1237(a)
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)	R.1994 d.130	26 N.J.R. 1238(a)
13:70-20.13	Thoroughbred racing: trainer fees	25 N.J.R. 5107(b)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)	R.1994 d.131	26 N.J.R. 1238(b)
13:70-29.61	Thoroughbred racing: Superfecta	25 N.J.R. 5450(a)	R.1994 d.92	26 N.J.R. 1106(c)
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)	R.1994 d.126	26 N.J.R. 1238(c)
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)	R.1994 d.128	26 N.J.R. 1240(a)
13:71-27.54	Harness racing: Daily Triple	25 N.J.R. 5109(a)	R.1994 d.90	26 N.J.R. 1107(a)
13:71-27.59	Harness racing: Superfecta	25 N.J.R. 5451(a)	R.1994 d.91	26 N.J.R. 1107(b)
13:71-29	Harness racing: sulky	26 N.J.R. 95(a)		
13:72-1.1, 2.9, 4.3, 4.10, 6.2, 7.1, 8.1	Casino simulcasting of horse races	25 N.J.R. 5110(a)	R.1994 d.93	26 N.J.R. 1108(a)
13:82	Boating rules	26 N.J.R. 744(a)		

**Most recent update to Title 13: TRANSMITTAL 1993-12 (supplement December 20, 1993)**

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14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:12-2.1	Filing of Demand Side Management Resource Plans	25 N.J.R. 5111(a)	R.1994 d.82	26 N.J.R. 1109(a)
14:17	Office of Cable Television: practice and procedure	26 N.J.R. 96(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		
14:18-10.5	Cable television: monitor point tests	26 N.J.R. 104(a)		

**Most recent update to Title 14: TRANSMITTAL 1993-7 (supplement October 18, 1993)**

**ENERGY—TITLE 14A**

14A:14	Certification of need for electric facilities	25 N.J.R. 5745(a)	R.1994 d.97	26 N.J.R. 1159(a)
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**Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

**Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)**

**PUBLIC ADVOCATE—TITLE 15A**

**Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)**

**TRANSPORTATION—TITLE 16**

16:28-1.32, 1.56	Speed limit zones along Route 154 in Cherry Hill, and U.S. 40 and U.S. 40/322 in Egg Harbor and Pleasantville	26 N.J.R. 106(a)	R.1994 d.115	26 N.J.R. 1240(a)
16:28A-1.9, 1.18, 1.19, 1.37	Parking restrictions along Route 17 in Paramus, Route 27 in Rahway, Route 28 in Bound Brook, and Route 70 in Manchester	25 N.J.R. 4725(a)	R.1994 d.1	26 N.J.R. 250(a)
16:28A-1.19	Time limit parking zone along Route 28 in Somerville	25 N.J.R. 5111(b)	R.1994 d.61	26 N.J.R. 823(a)
16:28A-1.34, 1.71	Restricted parking along Route 49 in Millville and Route 67 in Fort Lee	25 N.J.R. 5760(a)		
16:28A-1.38	No stopping or standing zones along Route 71 in Spring Lake Heights	25 N.J.R. 5112(a)	R.1994 d.62	26 N.J.R. 823(b)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:30-3.9	HOV lane on Route I-80 in Morris County	25 N.J.R. 5761(a)	R.1994 d.95	26 N.J.R. 1109(b)
16:30-3.10	Lane usage along I-287 in Morris County	26 N.J.R. 107(a)	R.1994 d.116	26 N.J.R. 1241(a)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)		
16:30-10.16	Midblock crosswalks along Route 71 in West Long Branch and Eatontown	25 N.J.R. 5762(a)		
16:31-1.34	Turn prohibitions along Route 52 in Ocean City	26 N.J.R. 332(a)		
16:41C-1.1, 8.7	Roadside sign control and outdoor advertising along Atlantic City Expressway	25 N.J.R. 5699(a)	R.1994 d.76	26 N.J.R. 823(c)
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)		
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:44	Construction services	25 N.J.R. 4727(a)		
16:46	Drawbridge operations	26 N.J.R. 755(a)		
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:72-1.1, 1.2, 1.5, 2.2, 2.4	NJ TRANSIT: procurement policies and procedures	26 N.J.R. 908(b)		

**Most recent update to Title 16: TRANSMITTAL 1993-12 (supplement December 20, 1993)**

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17:2-1.4	Public Employees' Retirement System: replacement of member-trustee who declines to serve	25 N.J.R. 5113(a)		
17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 108(a)		
17:3-1.1	Teachers' Pension and Annuity Fund: conduct of Board meetings	25 N.J.R. 5762(b)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 108(b)		
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		

**Most recent update to Title 17: TRANSMITTAL 1993-12 (supplement December 20, 1993)**

**TREASURY-TAXATION—TITLE 18**

18:2-3	Payment of taxes by electronic funds transfer	25 N.J.R. 1078(a)	R.1994 d.63	26 N.J.R. 824(a)
18:3	Alcoholic Beverage Tax	26 N.J.R. 758(a)		
18:5	Cigarette Tax Act rules	26 N.J.R. 759(a)		
18:6	Unfair Cigarette Sales Act rules	26 N.J.R. 760(a)		
18:7	Corporation Business Tax	26 N.J.R. 761(a)		
18:8	Financial Business Tax	26 N.J.R. 333(a)		
18:12-4.5	Local property tax assessors: conflict of interest	25 N.J.R. 4591(a)	R.1994 d.81	26 N.J.R. 1110(a)
18:12-7.1	Homestead Property Tax Rebate: filing extension for certain claimants	26 N.J.R. 109(b)		

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18:12A-1.18	Local property tax assessors: conflict of interest	25 N.J.R. 4591(a)	R.1994 d.81	26 N.J.R. 1110(a)
18:18	Motor Fuels Tax	26 N.J.R. 777(a)		
18:19	Motor fuels retail sales	26 N.J.R. 778(a)		
18:22	Public Utility Corporation Tax	26 N.J.R. 335(a)		
18:23	Railroad Property Tax	26 N.J.R. 110(a)		
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)	R.1994 d.110	26 N.J.R. 1241(a)
18:35-1.17	Gross Income Tax: Workforce Development Partnership Fund and Health Care Subsidy Fund withholding	26 N.J.R. 336(a)		
18:35-1.27	Gross Income Tax: interest on overpayments	26 N.J.R. 112(a)		
18:35-2.2	Gross Income Tax: setoff of individual liability	25 N.J.R. 5454(a)		

**Most recent update to Title 18: TRANSMITTAL 1993-7 (supplement December 20, 1993)**

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19:3A-3	HMDC: Disability discrimination grievance procedure	25 N.J.R. 3946(b)	R.1994 d.15	26 N.J.R. 251(a)
19:4-2.2, 4.23A, 4.30, 4.39, 4.49, 4.59, 4.69, 4.88, 4.98, 4.107, 4.117, 4.129, 4.152	HMDC: District zoning rules	25 N.J.R. 3949(a)	R.1994 d.16	26 N.J.R. 252(a)
19:4A-3.1, 4.4, 5.3, 5.7, 6.2	HMDC: District zoning rules	25 N.J.R. 3949(a)	R.1994 d.16	26 N.J.R. 252(a)
19:9-1	Traffic control	26 N.J.R. 337(a)		
19:30-7	Economic Development Authority: Disability discrimination complaint procedure	25 N.J.R. 4864(b)	R.1994 d.111	26 N.J.R. 1248(a)
19:31-8	Economic Development Authority: Hazardous Discharge Site Remediation Fund	25 N.J.R. 4468(a)		
19:75	South Jersey Transportation Authority: rules of operation	25 N.J.R. 4874(a)	R.1994 d.70	26 N.J.R. 831(a)

**Most recent update to Title 19: TRANSMITTAL 1993-9 (supplement December 20, 1993)**

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Approval of listings of uncollectible checks	25 N.J.R. 5114(a)	R.1994 d.65	26 N.J.R. 826(a)
19:40-1.2	Casino operation certificate	25 N.J.R. 5893(a)		
19:40-1.2, 3.3	Definitions	25 N.J.R. 4866(a)	R.1994 d.31	26 N.J.R. 486(a)
19:40-2.1	Organization and operation of the Commission	Exempt	R.1994 d.64	26 N.J.R. 826(b)
19:40-3.3	Establishment of qualification by required individuals	26 N.J.R. 782(a)		
19:40-4.1, 4.2, 4.8	Confidential information	25 N.J.R. 5891(a)		
19:41-1.3	Keno	26 N.J.R. 115(a)		
19:41-1.3	Casino employment: U.S. citizenship or Federal authorization to work	26 N.J.R. 339(a)		
19:41-1.4	Casino operation certificate	25 N.J.R. 5893(a)		
19:41-1.5, 1.6, 1.7	Casino employment requirements	26 N.J.R. 779(a)		
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-1.7	Work permits	25 N.J.R. 5114(b)	R.1994 d.66	26 N.J.R. 827(a)
19:41-7.2A	Applicant identification	25 N.J.R. 4736(a)	R.1994 d.5	26 N.J.R. 254(a)
19:41-9.8, 9.9, 9.9A, 9.11A, 9.12, 9.13, 9.14, 14.6	License periods and fees	26 N.J.R. 780(a)		
19:41-9.16	Listing of endorsements on casino employee licenses	26 N.J.R. 911(a)		
19:41-11.1-11.4	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(a)		
19:42-1.1	Definitions	25 N.J.R. 4866(a)	R.1994 d.31	26 N.J.R. 486(a)
19:42-4.5	Exclusion of persons from casino premises	25 N.J.R. 4739(a)	R.1994 d.32	26 N.J.R. 487(a)
19:42-5.3	Hearings: multiple party representation	25 N.J.R. 5115(a)	R.1994 d.67	26 N.J.R. 828(a)
19:43-2.2-2.7A	Establishment of qualification by required individuals	26 N.J.R. 782(a)		
19:43-6.2, 7, 9.1, 10.1, 14.1	Casino operation certificate	25 N.J.R. 5893(a)		
19:43-9.2	Casino licensee employment requirements: persons denied licensure or with revoked or suspended licensure or registration	25 N.J.R. 4871(a)	R.1994 d.68	26 N.J.R. 828(b)
19:43-9.3	Casino employee reporting and recordkeeping requirements; experiential hours	25 N.J.R. 5114(b)	R.1994 d.66	26 N.J.R. 827(a)
19:43-9.4	Employee experiential hours	26 N.J.R. 783(a)		
19:43-10.4, 10.6	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(a)		
19:43-13.1	Definitions	25 N.J.R. 4866(a)	R.1994 d.31	26 N.J.R. 486(a)
19:44-6.1	License periods and fees	26 N.J.R. 780(a)		
19:44-8.3	Poker	25 N.J.R. 5906(a)		
19:45-1.1	Definitions	25 N.J.R. 4866(a)	R.1994 d.31	26 N.J.R. 486(a)
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.33, 1.46-1.51	Keno	26 N.J.R. 115(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45-1.1, 1.2, 1.11, 1.12, 1.20	Poker	25 N.J.R. 5906(a)		
19:45-1.1, 1.8, 1.16, 1.18, 1.46	Match play coupons	25 N.J.R. 5902(a)		
19:45-1.1, 1.14A	Casino simulcasting	25 N.J.R. 4737(a)	R.1994 d.33	26 N.J.R. 489(a)
19:45-1.1, 1.16, 1.33, 1.36, 1.37, 1.42, 1.44, 1.46, 1.46A, 1.46B	Coupon redemption for slot machine play	25 N.J.R. 4471(a)	R.1994 d.69	26 N.J.R. 829(a)
19:45-1.3, 1.10, 1.11, 1.14, 1.32, 1.34	Casino operation certificate	25 N.J.R. 5893(a)		
19:45-1.8	Records retention	25 N.J.R. 5905(a)		
19:45-1.9, 1.9B	Direct mass marketing complimentary programs	25 N.J.R. 4871(b)	R.1994 d.34	26 N.J.R. 491(a)
19:45-1.9, 1.9B	Complimentary services or items; cash and noncash gifts	26 N.J.R. 113(a)		
19:45-1.11	Casino licensee's organization	26 N.J.R. 784(a)		
19:45-1.11A	Jobs compendium submission	26 N.J.R. 114(a)		
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)		
19:45-1.27	Approval of patron credit limits	26 N.J.R. 912(a)		
19:45-1.29	Approval of listings of uncollectible checks	25 N.J.R. 5114(a)	R.1994 d.65	26 N.J.R. 826(a)
19:45-1.42	Unsecured currency in a bill changer	25 N.J.R. 4873(a)	R.1994 d.79	26 N.J.R. 1110(b)
19:45-1.45	Maintenance of signature cards	26 N.J.R. 912(b)		
19:46-1.1, 1.4, 1.5	Gaming chips	25 N.J.R. 3111(a)		
19:46-1.1, 1.8, 1.9, 1.13F, 1.20	Card-o-lette	25 N.J.R. 2230(a)		
19:46-1.4, 1.5	Match play coupons	25 N.J.R. 5902(a)		
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 115(a)		
19:46-1.10	Additional wagers in blackjack	25 N.J.R. 5454(b)	R.1994 d.80	26 N.J.R. 1113(a)
19:46-1.10, 1.16, 1.19, 1.20	Casino operation certificate	25 N.J.R. 5893(a)		
19:46-1.13B, 1.19	Pai gow poker: automated shuffling devices and dealing shoes	26 N.J.R. 344(a)		
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